

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



**Regular Session, 2002**  
**First Extraordinary Session, 2002**  
**Second Extraordinary Session, 2002**  
**Fifth Extraordinary Session, 2001**  
**Sixth Extraordinary Session, 2001**

**Volume I**  
**Chapters 1 — 188**

**COMPILED AND PUBLISHED  
UNDER THE DIRECTION  
OF  
GREGORY M. GRAY**  
*Clerk of the House*

\*\*\*\*\*

**CLERK'S PUBLICATION STAFF**

BO HOOVER

T. R. BENNETT

ROBERT ALTMANN

NANCY REYNOLDS

*The Printing  
Press, Ltd.*

The Printing Press, Ltd. - Charleston, WV

## FOREWORD

These volumes contain the Acts of the Second Regular Session and the First and Second Extraordinary Sessions of the 75th Legislature, 2002, and the Fifth and Sixth Extraordinary Sessions, 2001.

### **Second Regular Session, 2002**

The Second Regular Session of the 75th Legislature convened on January 9, 2002. The Constitutional sixty-day limit on the duration of the session was midnight, March 9, 2002. The Governor issued Proclamations on March 6 and March 16, extending the session for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned *sine die* on March 17, 2002.

Bills totaling 2,052 were introduced in the two houses during the session (1,304 House, 625 of which were carryover bills from the 2001 regular session, and 748 Senate). The Legislature passed 330 bills, 141 House and 189 Senate.

The Governor vetoed four House bills (H. B. 2900, West Virginia Business Corporation Act; H. B. 4415, Providing a sales tax exemption for fund raising activities of volunteer fire departments and rescue squads; H. B. 4658, Relating to public employees retirement and state teachers' retirement; and H. B. 4679, Supplemental appropriation to the state police, vehicle purchase) and two Senate bills (S. B. 283, Creating Women's Right to Know Act; and S. B. 353, Continuing parks section of division of natural resources and division of natural resources). The Legislature amended and again passed H. B. 4658 and S. B. 353, leaving a net total of 326 bills, 138 House and 188 Senate, which became law.

There were 161 Concurrent Resolutions introduced during the session, 95 House and 66 Senate, of which 42 House and 20 Senate were adopted. Thirty-one House Joint Resolutions and 11 Senate Joint Resolutions were introduced, proposing amendments to the State

Constitution, of which 1 House Joint Resolution and 1 Senate Joint Resolution were adopted. The House introduced 41 House Resolutions, and the Senate introduced 52 Senate Resolutions, of which 28 House and 51 Senate were adopted.

The Senate failed to pass 53 House bills passed by the House, and 52 Senate bills failed passage by the House.

\* \* \* \* \*

### **First Extraordinary Session, 2002**

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment *sine die* of the Regular Session, March 17, 2002, contained three items for consideration.

The Legislature passed 9 bills, all of which were Senate bills. The Governor vetoed one bill, S. B. 1007, Supplementing, amending, reducing and increasing items from general revenue to department of military affairs and public safety, division of corrections, correctional unit. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* 5:41 P.M. the same day.

\* \* \* \* \*

### **Second Extraordinary Session, 2002**

The Proclamation calling the Legislature into Extraordinary Session at 4:00 P.M., June 9, 2002, contained fourteen items for consideration. A subsequent Proclamation was issued on July 11, 2002, containing three additional items for consideration.

The Legislature passed 31 bills, 2 House bills and 29 Senate bills. Two Joint Resolutions were introduced and adopted, H. J. R. 201, County and Municipal Option Economic Development Amendment; and H. J. R. 202, Maximum Number of Years of Excess Levies Amendment. Eight Concurrent Resolutions were adopted, 5 House and 3 Senate. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* July 18, 2002.

\* \* \* \* \*

### **Fifth Extraordinary Session, 2001**

The Proclamation calling the Legislature into Extraordinary Session at 2:00 P.M., September 10, 2001, contained eleven items for consideration. A subsequent Proclamation was issued on September 14, 2001, containing one additional item for consideration.

The Legislature passed 12 bills, 7 House bills and 5 Senate bills. The House of Delegates adopted one House Resolution, House Resolution 1, Expressing the sense of the House of Delegates and decrying the outrageous terrorist attacks launched against the United States on Tuesday, September 11, 2001, expressing sympathy to the families and friends of those killed or injured, and urging the President of the United States and other federal officials to deal swiftly with those who threaten our freedom. The Senate adopted 5 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on September 19, 2001.

\* \* \* \* \*

### **Sixth Extraordinary Session, 2001**

The Proclamation calling the Legislature into Extraordinary Session at 1:00 P.M., October 21, 2001, contained ten items for consideration. Subsequent Proclamations were issued on December 1 and December 10, 2001, containing thirteen additional items for consideration.

The Legislature passed 23 bills, 12 House bills and 11 Senate bills. The House of Delegates introduced 2 House Concurrent Resolutions, of which one was adopted, and 2 House Resolutions, of which both were adopted. Four Senate Concurrent Resolutions were

introduced, all of which were adopted, and the Senate adopted 6 Senate Resolutions.

The Senate failed to pass one House bill passed by the House.

The Legislature adjourned the Extraordinary Session *sine die* on December 11, 2001.

\* \* \* \* \*

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

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

GREGORY M. GRAY

*Clerk of the House and  
Keeper of the Rolls.*

**TABLE OF CONTENTS**  
**ACTS**  
**Regular Session, 2002**

---

**GENERAL LAWS**

---

<b>Chapter</b>	<b>Bill No.</b>		<b>Page</b>
<b>ACTIONS AND SUITS</b>			
1.	(*HB4258)	Providing for Judgments Based Upon Affidavits and Statements of Accounts Filed by Plaintiffs Unless the Defendant Denies the Claim . . . . .	1
2.	(HB4152)	Adding Regular Mail With a Notarized Affidavit as an Option for Serving a Written Demand of a Worthless Check . . . . .	3
3.	(*SB667)	Relating to Civil Actions Against State Agencies . . . . .	5
<b>ADDRESSING AND MAPPING BOARD</b>			
4.	(SB219)	Relating to the Statewide Addressing and Mapping Board . . . . .	11
<b>ADMINISTRATION</b>			
5.	(SB237)	Removing the Requirement Agencies Applying for, Receiving and Expending Federal Funds Send Report to Legislature . . . . .	13
<b>AGRICULTURE</b>			
6.	(*HB4331)	Funding County Farmland Protection Programs . . . . .	15
7.	(*SB447)	Creating the Industrial Hemp Development Act . . . . .	21
8.	(SB417)	Changing Soil Conservation Districts to Conservation Districts; Members . . . . .	26

**ALCOHOL**

9. (\*SB530) Allowing Retailers of Nonintoxicating  
Beer and Wine to Pay Distributors by  
Electronic Funds Transfer . . . . . 60

**AMATEUR RADIO ANTENNAS**

10. (\*HB4335) Relating to Municipal or County  
Ordinances Regulating the Placing,  
Screening or Height of Amateur  
Radio Antennas . . . . . 67

**AMUSEMENT RIDE SAFETY**

11. (\*HB4278) Relating to Amusement Ride Safety . . . . . 69

**ANATOMICAL GIFT ACT**

12. (HB4370) Relating to the Revocation of an  
Anatomical Gift by Persons Other  
Than the Donor . . . . . 73

**APPROPRIATIONS**

13. (\*SB100) Budget Bill, Making Appropriations  
of Public Money for Fiscal Year  
Beginning July 1, 2003 . . . . . 76
14. (SB253) Supplementing, Amending and Reducing  
Items in Bureau of Senior Services . . . . . 242
15. (SB254) Making Supplementary Appropriation  
to Alcohol Beverage Control  
Administration . . . . . 244
16. (SB509) Making Supplementary Appropriation  
of Federal Funds to Department  
of Administration, Children's  
Health Insurance Agency . . . . . 245
17. (SB510) Making Supplementary Appropriation  
of Federal Funds to Department  
of Transportation, Division of  
Motor Vehicles . . . . . 247
18. (SB511) Making Supplementary Appropriation  
of Federal Funds to Governor's  
Office, Commission for National  
and Community Service . . . . . 248



TABLE OF CONTENTS

19. (SB512) Making Supplementary Appropriation of Federal Funds to Department of Military Affairs and Public Safety, Division of Veterans' Affairs . . . . . 250

20. (SB702) Making Supplementary Appropriation of Federal Funds to Department of Health and Human Resources, Division of Human Services, Energy Assistance . . . . . 251

21. (SB703) Making Supplementary Appropriation of Federal Funds to Department of Health and Human Resources, Division of Human Services . . . . . 253

22. (SB704) Expiring Funds to Unappropriated Balance in General Revenue From Insurance Commissioner, Insurance Commission Fund . . . . . 254

23. (SB705) Expiring Funds to Unappropriated Balance in General Revenue From Public Service Commission . . . . . 255

24. (SB706) Expiring Funds to Unappropriated Balance in General Revenue from Board of Risk and Insurance Management, Premium Tax Savings Fund . . . . . 256

25. (SB707) Supplementing, Amending, Reducing and Increasing Items of Existing Appropriations From State Road Fund to Department of Transportation, Division of Highways . . . . . 258

26. (SB744) Expiring Funds to Unappropriated Surplus Balance in General Revenue From Cable Television Advisory Board, Cable Advisory Board Fund . . . . . 260

27. (SB745) Making Supplementary Appropriation of Federal Funds to Department of Health and Human Resources, Consolidated Medical Service Fund . . . . . 261

## TABLE OF CONTENTS

28.	(SB746)	Making Supplementary Appropriation of Federal Funds to Department of Health and Human Resources, Division of Health, Central Office .....	263
29.	(HB4541)	Supplementary Appropriation to the Department of Agriculture -- Donated Food Fund .....	264
30.	(HB4560)	Supplemental Appropriation to the Department of Education and the Arts .....	266
31.	(HB4582)	Expiring Funds to the Department of Administration - Board of Risk and Insurance Management - Medical Liability Fund .....	267
32.	(HB4672)	An Appropriation Expiring Funds to the Economic Development Authority .....	269
33.	(HB4674)	Supplemental Appropriation to the Public Employees Insurance Reserve Fund .....	270
34.	(HB4675)	Supplemental Appropriation to the Department of Tax and Revenue, Special Audit and Investigative Unit .....	271
35.	(HB4677)	Supplemental Appropriation to the Department of Education and the Arts, Division of Rehabilitation Services .....	273
36.	(HB4678)	Supplemental Appropriation to the Department of Health and Human Resources, Board of Medicine .....	275
<b>ARMED FORCES</b>			
37.	(SB547)	Providing for a Monthly Administrative Allowance for Certain National Guard Members .....	276

**AUDITOR**

- 38. (\*SB501) Relating to Appointment of Deputy  
Commissioners of Delinquent and  
Nonentered Lands by the Auditor ..... 278

**BANKS AND BANKING**

- 39. (\*HB4379) Relating to the Regulation of  
Mortgage Brokers, Lenders,  
Servicers and Loan Originators ..... 280
- 40. (\*SB282) Eliminating the Requirement That  
the Banking Commissioner Maintain an  
Office at the Capitol Complex ..... 303
- 41. (HB4354) Allowing Banks More Flexibility  
in the Hours Branches are  
Required to be Open ..... 311
- 42. (\*HB4543) Frequency of Meetings of Bank  
Directors ..... 313
- 43. (\*HB4426) Conversion of National Banks to  
State-Chartered Banks ..... 316
- 44. (HB4393) Consolidating the Lending and  
Credit Rate Board Revolving Fund  
Into the Special Revenue Account  
of the Division of Banking ..... 319

**CAPITAL COMPANY ACT**

- 45. (HB4663) Reducing the Total Tax Credits  
Available Under the Capital  
Company Act ..... 325

**CASS**

- 46. (SB701) Relating to the Powers of the  
Director of Division of Natural  
Resources to Preserve Cass ..... 328

**CEMETERIES**

- 47. (HB4402) Providing a Procedures for the  
Improvement, Construction and  
Development Upon Privately Owned  
Lands Which Contain Graves ..... 331

**CHARITABLE ORGANIZATIONS**

48. (HB4413) Relating Generally to the  
Registration of Charitable  
Organizations ..... 333

**CHILD LABOR**

49. (\*HB4430) Relating to the Employment of  
Children ..... 340

**CHILD WELFARE**

50. (\*SB215) Relating to Settlement of Claims  
for Damages on Behalf of Minor  
Children ..... 350
51. (SB733) Relating to Criteria and Procedure  
for Removal of Child From Foster  
Home ..... 358
52. (\*HB4429) Allowing the Division of Human  
Services to Have Access to All  
Court Records Concerning a  
Juvenile Offender Adjudicated  
Delinquent ..... 363
53. (SB620) Relating to Examination, Diagnosis  
and Classification of Juveniles;  
Custody Period ..... 367
54. (SB717) Authorizing Director of Division of  
Juvenile Services to Place  
Children in Certain Facilities ..... 368
55. (\*SB445) Relating to Placement of Neglected or  
Abused Children Outside Foster Care  
Program ..... 370

**CLAIMS**

56. (SB584) Finding and Declaring Certain  
Claims Against the State ..... 379
57. (HB4409) Claims Against the State and Its  
Agencies ..... 404

**COAL**

58. (SB698) Relating to Duties of Office of  
Coalfield Community Development ..... 408

TABLE OF CONTENTS

XIII

- 59. (\*SB719) Creating National Coal Heritage Area Authority and Board ..... 414
- 60. (\*SB686) Creating Coal Heritage Highway Authority ..... 421

**CODE REPEALED**

- 61. (SB345) Repealing Section Prohibiting Burial of Inmates in Moundsville ..... 432
- 62. (\*HB4446) Repealing the Article of the Code Relating to Limited Benefits Accident and Sickness Insurance Policies and Certificates ..... 433

**COMMERCIAL & RESIDENTIAL RESIDENCES**

- 63. (\*HB3142) Requiring Visible Postings of Addresses for Mobile Homes in Certain Mobile Home Parks ..... 434

**COMPUTERS**

- 64. (\*SB289) Relating to State Computer Donation Program ..... 445

**CONSUMER PROTECTION**

- 65. (SB263) Relating to Regulated Consumer Lenders ..... 448
- 66. (HB4116) Protecting Consumers From Price Gouging and Unfair Pricing Practices During and After Disasters or Other States of Emergency ..... 449

**CONTROLLED SUBSTANCES**

- 67. (\*SB692) Rescheduling Controlled Substance Dronabinol to Schedule III and Adding Ketamine to Schedule III ..... 455
- 68. (\*HB4419) Relating to Creating the Offense of Withholding Information From a Practitioner That a Patient Has Obtained a Prescription for a Controlled Substance From Another Practitioner ..... 465

**CORPORATIONS**

69. (\*HB2899) West Virginia Nonprofit Corporation  
Act ..... 471

**CORRECTIONS**

70. (\*HB4115) Authority of Correctional Officers  
to Execute Warrants on Persons in  
Their Custody and Providing that  
Video Arraignments be Conducted  
by County Magistrates ..... 613
71. (\*HB2966) Extending Authority for Corrections  
and Confinement Officers to be  
Employed at Work Farms and  
Correcting Antiquated Language ..... 619
72. (\*SB465) Removing Ten Percent Holding of  
Inmate Funds Requirement for  
Certain Inmates ..... 622
73. (SB553) Allowing Inmate Benefit Funds to be  
Used for Inmate Telephone System ..... 625
74. (SB565) Allowing Inmates Wage's Paid From  
Prison Industries Account ..... 628
75. (\*HB4494) Monitoring Inmate Telephone Calls  
in Regional Jails ..... 630
76. (SB711) Relating to Community Corrections  
Generally ..... 632
77. (\*HB4296) Relating to Inmate Release for  
Work Generally ..... 642
78. (HB4530) New Felony Conviction Automatic  
Revocation of Parole Without  
Requiring Any Further Hearing by  
the Parole Board ..... 645

**COUNTIES**

79. (\*SB3) Authorizing County Commissions to  
Provide for Elimination of Hazards  
to Public Safety ..... 649
80. (SB267) Relating to Services of Prosecuting  
Attorney's Investigator ..... 650

TABLE OF CONTENTS

XV

81. (HB4366) Filing and Publication of County Reports ..... 651

82. (\*SB211) Relating to Salaries and Duties of Elected County Official Generally ..... 654

83. (HB2012) Prohibiting Certain County Officeholders From Spending More Than Fifty Percent of Their Budgets Before the End of the Calendar Year ..... 670

**COURTS AND THEIR OFFICERS**

84. (HB4580) Extending Time Period to Make Payment of Costs, Fines, Fees, Forfeitures and Restitutions or Penalties in Municipal and Magistrate Court ..... 671

85. (\*SB519) Increasing Salaries of Magistrates; Effective Date ..... 680

86. (SB740) Allowing Video Arraignments of Incarcerated Persons Performed by Certain Magistrate ..... 682

87. (SB425) Relating to Filing of Bond by Plaintiff Against Nonresident in Certain Circumstances ..... 683

**CRIMES AND THEIR PUNISHMENT**

88. (\*SB524) Requiring DNA Samples for Analysis From Persons Convicted of Certain Felonies ..... 687

89. (\*HB4070) Creating a Misdemeanor Offense for Failure to Obey Directions of Firefighters or Emergency Personnel Directing or Controlling Traffic ..... 689

90. (HB4318) Clarifying That a Judge May Assess Court Costs as a Term of Probation in the Case of Deferred Prosecution in Drug Cases ..... 692

91. (SB513) Trespassing on State Government Property; Penalties ..... 695

## TABLE OF CONTENTS

92.	(*SB97)	Establishing Criminal Offense of Harassing by Means of Computer . . . . .	696
93.	(*SB57)	Clarifying Crime of Disturbing Peace in Any State Office or Building . . . . .	698
94.	(SB61)	Creating Exceptions to Prohibition on Pecuniary Interest in Certain Contracts . . . . .	701
95.	(SB610)	Increasing Penalty for Attempts to Commit Offenses Punishable by Life Imprisonment . . . . .	705
96.	(HB4044)	Correcting a Section of the Code Concerning the Bringing of an Indictment for Petit Larceny . . . . .	706

**CRIMINAL PROCEDURES**

97.	(*HB3065)	Requiring Home Incarceration Fees be Paid to the Sheriff . . . . .	707
98.	(SB613)	Clarifying Role of Court and Probation Officers When Persons are Paroled From Home Incarceration . . . . .	708
99.	(*HB4339)	Creating a Special Revenue Account Designated the Parole Supervision Benefit Fund . . . . .	710

**DAM CONTROL AND SAFETY ACT**

100.	(*HB2983)	Relating Generally to the Dam Control and Safety Act . . . . .	711
------	-----------	---	-----

**DOMESTIC RELATIONS**

101.	(SB574)	Relating to Child Support Generally . . . . .	732
102.	(HB4273)	Adding Father-in-Law and Mother- in-Law in the Definition of Family or Household Members for Domestic Violence Prevention and Treatment . . . . .	761

**DUI**

103.	(HB3076)	Relating to the Formula Used in Determining the Percent, by Weight, of Alcohol in the Blood . . . . .	764
------	----------	---	-----



**ECONOMIC DEVELOPMENT**

104. (\*HB4005) Providing a Consumers Sales and Service Tax Exemption for Property and Services Used in Research and Development ..... 766

**EDUCATION**

105. (\*SB247) Relating to Education Generally ..... 923

106. (HB4319) Establishing the Process for Improving Education ..... 1024

107. (\*HB2374) Restricting the Use of Student Social Security Numbers ..... 1097

108. (SB177) Providing Procedure for Implementing School Dress Code ..... 1099

109. (HB4022) Establishing a More Formal Process for Awarding Grants for Schools to Implement Programs to Strengthen Student Learning Ability ..... 1101

110. (\*HB4149) Requiring Standards for Public Hearings on School Consolidation and Closure ..... 1105

111. (HB4428) Relating to Net Enrollment When Pupil Transfers are not Officially Agreed to by Respective Counties ..... 1109

112. (HB4095) Allowing the School Curriculum Team to Meet When the Designated Counselor for the School is not Assigned to That School on at Least a One-Half Time Basis ..... 1113

113. (\*SB563) Relating to Motorcycle Awareness Component of Driver Education Courses ..... 1115

114. (\*HB4579) Clarifying That a Retired Public School Teacher May be Employed as a Higher Education Teacher Without Loss of Benefits ..... 1117

115. (\*SB423) Relating to Calculating Days Worked by Retired Substitute Teacher ..... 1119

116. (\*SB32) Relating to Air Quality in Schools ..... 1120

117. (HB4367)	Continuing the Ron Yost Personal Assistance Services Program . . . . .	1125
118. (*SB207)	Establishing Eminent Scholars Endowment Trust Fund Act . . . . .	1126
119. (*HB4322)	Authorizing Institutions of Higher Education to Provide Funding and Property to Certain Corporations to Assist Them in Providing Research and Development to the Institutions . . . . .	1136
120. (*SB4)	Defining Alternative Education and Dangerous Student . . . . .	1147
121. (*HB4054)	Reimbursement of Tuition Funds to Teachers Seeking Additional Endorsement in Shortage Areas . . . . .	1162
122. (*HB4362)	Expanding the Powers and Duties of the Higher Education Policy Commission . . . . .	1167
123. (*SB217)	Regulating Credit Cards for College Students . . . . .	1174
124. (SB533)	Authorizing Higher Education Report Card and Performance Indicator Rules . . . . .	1177
125. (SB532)	Authorizing Rules for PROMISE Scholarship Program . . . . .	1178
126. (SB534)	Authorizing Higher Education Adult Part-Time Student Grant Program Rules . . . . .	1179
127. (HB4661)	Providing Eligibility for Higher Education Financial Aid, Grants or Scholarships to Students Who Attended a Private High School Outside the State . . . . .	1180
128. (SB709)	Relating to Health Sciences Scholarship Program . . . . .	1182
129. (HB4534)	West Virginia Financial Aid Coordinating Council . . . . .	1185

**ELECTIONS**

130. (SB163) Relating to Precinct Boundary Changes . . . . . 1191

131. (\*HB4566) Requiring Executive Committees to File With the Secretary of State a Current Listing of All Members . . . . . 1192

132. (\*SB196) Relating to Election Laws Generally . . . . . 1196

133. (\*SB226) Creating Accessible Voting Technology Act . . . . . 1254

**ELECTRICAL INSPECTORS**

134. (SB123) Relating to Certification of Electrical Inspectors . . . . . 1256

**ELEVATOR SAFETY**

135. (\*HB4046) Requiring the Division of Labor to Inspect Newly Installed Elevators . . . . . 1262

**EMERGENCY SERVICES**

136. (\*SB435) Relating to Confidentiality of Local Calls Received by Emergency Telephone Systems; Exceptions . . . . . 1266

**ENVIRONMENTAL PROTECTION**

137. (HB4504) Establishing Permit Fees by Statute Rather Than Rule for Surface Coal Mining Operations . . . . . 1268

138. (\*HB4449) Reimbursement of Costs Incurred for Emergency Response to Accidental Discharges or Spills of Pollutants Into Waters of the State . . . . . 1271

139. (SB609) Relating to Violations and Penalties Under Solid Waste Management Act . . . . . 1273

140. (HB4551) Relating to Beneficial Use of Sludge and Requiring Promulgation of Emergency and Legislative Rules . . . . . 1279

## TABLE OF CONTENTS

141. (\*HB4450) Authorizing a Hazardous Waste  
Generator Fee to Raise Funds to  
Meet Matching Fund Requirements  
of the Hazardous Waste Program ..... 1281

**ESTATES AND TRUSTS**

142. (\*SB474) Relating to Administration of Estates ..... 1283

**EXOTIC ENTERTAINMENT**

143. (\*SB104) Restricting Location of Businesses  
Offering Exotic Entertainment ..... 1292

**FIREARMS**

144. (HB4315) Permitting Persons Licensed to  
Carry a Concealed Handgun to Carry  
the Weapon While Hunting or While  
Engaged in Other Activities ..... 1296

**FIREFIGHTING AND PREVENTION**

145. (\*SB180) Authorizing Certain Fire Service  
Fees Paid by Property Owners ..... 1297

146. (HB2986) Limiting the Civil Liability of an  
Entity Donating Used or Obsolete  
Fire Equipment to a Volunteer Fire  
Department ..... 1299

147. (HB4490) Moving the Law Relating to  
Professional Firefighters From  
Chapter Thirty to Chapter Eight  
of the Code and Changing the Names  
of Certain Associations ..... 1300

148. (\*HB4310) Increasing the Penalties for  
Discarding Lighted Materials and  
Giving the Fire Marshal Enforcement  
Powers ..... 1306

149. (SB488) Clarifying Powers and Duties of  
Fire Marshal, Deputies, Assistants  
and Other Deputized Persons ..... 1307

**FUNERAL SERVICES**

150. (SB742) Relating to Proper Disposal of  
Human Remains by Embalmer or  
Crematory Operator; Penalties ..... 1322

**GAMING ACTIVITIES**

151. (SB550) Including Dog Racing in Interstate Compact on Licensure of Participants in Certain Live Horse Racing ..... 1355

152. (\*SB649) Increasing Licensed Lottery Sales Agent Commissions ..... 1364

**HEALTH**

153. (SB568) Authorizing Bureau for Public Health to Require Public Water System Evaluations ..... 1367

154. (HB4509) Uniform Credentialing of Health Care Practitioners ..... 1371

155. (\*HB4123) Relating to the Education and Training Requirements for a Regional Long-Term Care Ombudsman ..... 1374

156. (SB727) Creating Birth-to-Three Fund Within State Treasury ..... 1377

157. (SB723) Authorizing Pilot Program for Assisting Uninsured and Underinsured Persons Obtain Health Coverage ..... 1379

158. (SB658) Relating to End-of-Life Care ..... 1382

159. (SB216) Relating to Screening of Certain Children for Lead Poisoning ..... 1418

160. (\*SB672) Establishing Statewide Birth Defects Information System ..... 1420

161. (\*HB3017) Creating a State Oral Health Program ..... 1428

162. (\*SB536) Relating to Mental Hygiene Proceedings Generally ..... 1433

**HOLIDAYS**

163. (HB4423) Designating Susan B. Anthony Day a Legal Holiday ..... 1446

**HUMAN SERVICES**

164. (HB4666) Establishing a Process to Enter Into Negotiations With Pharmaceutical Companies for

## TABLE OF CONTENTS

	Rebates That Cannot be Accessed Through Freedom of Information Act Requests or Open Meetings . . . . .	1450
165. (*SB420)	Requiring Fingerprinting of Persons Responsible for Care of Children . . . . .	1453
166. (*SB697)	Requiring Department of Health and Human Resources Pay for Certain Professional Services; Fee Schedule . . . . .	1455

**INDUSTRIAL HOME FOR YOUTH**

167. (*SB78)	Clarifying Certain Venue for Actions on Property of Industrial Home for Youth in Harrison County . . . . .	1456
--------------	--	------

**INSURANCE**

168. (*HB4039)	Requiring That Mental Health Benefits be Treated Equally to Other Medical and Surgical Benefits Provided Under Health Insurance and Health Benefits Plans . . . . .	1457
169. (*HB2730)	Requiring Insurance Coverage for a Reasonable Period of Inpatient Care Following Mastectomy Surgery . . . . .	1471
170. (HB4581)	Repealing the Section Relating to Coverage of Obstetricians Providing Medicaid Coverage . . . . .	1482
171. (HB4669)	Relating to the Hiring of Examiners by the Insurance Commissioner . . . . .	1498
172. (SB647)	Relating to Taxes on Sale of Annuities by Life Insurers . . . . .	1512
173. (SB461)	Relating to Definition of Principal Place of Business of Domestic Insurers . . . . .	1514
174. (HB4670)	Relating to Construction of Insurance Policies - "Broadnax" . . . . .	1515
175. (*SB459)	Relating to Substandard Risk Motor Vehicle Insurance Policies . . . . .	1518
176. (SB593)	Relating to Use of Used Car Guides Approved by Insurance Commissioner . . . . .	1522

TABLE OF CONTENTS

177. (SB479) Relating to Insurance Policies and Filing Fees ..... 1523

178. (SB506) Relating to Use of Clearing Corporations and Federal Reserve Book-Entry Systems by Certain Insurance Companies ..... 1524

179. (\*HB4469) Making a Violation of the Insurance Commissioner's Rule Regarding a Consumer's Financial and Health Information a Violation of the Unfair Trade Practices Act ..... 1544

180. (\*HB4497) Implementing Provisions of the NAIC Producer Licensing Model Act Relating to Uniform Licensing and Reciprocity for Insurance Producers ..... 1553

181. (SB583) Relating to Group Accident and Sickness Insurance Generally ..... 1613

182. (HB4465) Relating to the Waiting Period and Hearings for Insurance Rate Filings ..... 1615

183. (\*SB516) Requiring Malpractice Insurers to Submit Plan for Partial Limits if Amortized Payment Defaulted ..... 1617

184. (\*SB458) Imposing Civil Penalty on Violators of Health Maintenance Organization Contracts ..... 1619

185. (SB450) Relating to Payment of Quarterly Insurance Premium Taxes ..... 1621

**JAMES "TIGER" MORTON CATASTROPHIC  
ILLNESS FUND**

186. (\*HB3181) Clarifying Legislation Regarding the Catastrophic Illness Commission and the James "Tiger" Morton Catastrophic Illness Fund ..... 1624

**LABOR**

187. (SB560) Reporting of Alien Workers ..... 1627

188. (HB4407) Compensation for Members and  
Continuation of the Manufactured  
Housing Construction and Safety  
Standards Board ..... 1631
189. (SB429) Relating to Licenses Issued by  
Contractor Licensing Board ..... 1637

**LAW ENFORCEMENT**

190. (HB4314) Prohibiting Reserve Officers From  
Carrying Firearms ..... 1645
191. (\*HB2808) Providing That Certain Sheriffs  
With Prior Service as Deputy  
Sheriff and Sheriff May Participate  
in the Deputy Sheriff's Retirement  
System ..... 1648
192. (\*HB4268) Allowing a Previously Conditionally  
Employed Law-Enforcement Officer  
an Opportunity to Become a  
Conditional Employee and be  
Given One Year to Resubmit an  
Application to a Training Academy ..... 1650
193. (\*HB4119) Allowing a Waiver of Annual  
In-Service Training for  
Law-Enforcement Officers Called  
Into Armed Forces, National Guard  
or Reserve Active Duty ..... 1656
194. (HB4289) Prohibiting Law-Enforcement Officers  
From Engaging in Racial Profiling ..... 1657

**LEGAL ADVERTISING**

195. (\*SB554) Modifying Requirements for Publishing  
Legal Advertisements; Increasing  
Rates ..... 1660

**LEGAL SERVICES**

196. (\*HB4010) Allowing the Tax and Banking  
Commissioners to Employ Legal  
Counsel to Represent Them in  
Certain Proceedings ..... 1671



**LEGISLATIVE RULES**

197. (\*HB4172) Authorizing the Department of Administration to Promulgate Legislative Rules . . . . . 1673

198. (\*HB4163) Authorizing the Department of Environmental Protection to Promulgate Legislative Rules . . . . . 1677

199. (\*HB4205) Authorizing the Department of Health and Human Resources to Promulgate Legislative Rules . . . . . 1701

200. (\*SB339) Authorizing Agencies in Department of Military Affairs and Public Safety to Promulgate Legislative Rules . . . . . 1705

201. (\*SB397) Authorizing Agencies Within Department of Tax and Revenue to Promulgate Legislative Rules . . . . . 1707

202. (\*SB305) Authorizing Agencies Within Department of Transportation to Promulgate Legislative Rules . . . . . 1712

203. (\*HB4219) Authorizing the Bureau of Commerce to Promulgate Legislative Rules . . . . . 1714

**LIENS**

204. (\*SB407) Increasing Time to Perfect Lien Upon Improved Property . . . . . 1726

205. (SB598) Relating to Exemptions of Property in Bankruptcy Proceedings . . . . . 1735

**LIMITED LIABILITY COMPANIES**

206. (HB4558) Relating to Fees for Articles of Organization for Limited Liability Companies and Certificate of Authority for Foreign Limited Liability Companies . . . . . 1739

**LOBBYIST ACTIVITIES**

207. (\*HB4016) Relating to the Regulation of Lobbyist Activities . . . . . 1765

**MINES AND MINING**

208. (\*SB179) Relating to Miners' Health and  
Safety ..... 1772

**MOTOR VEHICLES**

209. (SB105) Exempting Certain Senior Service  
Organizations From Automobile  
Titling Privilege Tax ..... 1777
210. (\*SB543) Authorizing Special Motor Vehicle  
Registration Plates Generally ..... 1785
211. (\*SB631) Authorizing Special License Plates  
for County Sheriffs and Their  
Deputies; Fees ..... 1807
212. (\*SB541) Relating to Certificate Showing  
Liens and Encumbrances on Vehicles ..... 1811
213. (SB725) Allowing Used Motor Vehicle Dealers  
to Purchase New Motor Vehicles  
and Sell Without Obtaining License  
in Certain Cases ..... 1815
214. (\*SB695) Authorizing Certain Out-of-State  
Dealers to Participate in Vehicle  
Shows ..... 1818
215. (\*SB638) Authorizing Division of Motor  
Vehicles Add Classification for  
Deaf or Hard of Hearing and Handicapped  
or Disabled Drivers ..... 1820
216. (SB438) Relating to Requirement of Compliance  
With Selective Service Registration ..... 1827
217. (SB256) Granting Certain Division of Highways  
Weighing Crews Authority to Possess  
Handguns ..... 1829
218. (\*SB664) Requiring Certain Vehicles Stop or  
Slow Down at Railroad Crossings;  
Penalty ..... 1833
219. (\*SB156) Relating to Special Registration  
Plates or Placards for Persons  
With Mobility Impairments ..... 1844

TABLE OF CONTENTS

XXVII

220. (SB278) Relating to Authorized Emergency  
Vehicles Generally ..... 1856

221. (\*SB35) Relating to Increasing Fees for  
Motor Vehicle Inspection ..... 1858

**MUNICIPALITIES**

222. (\*HB4309) Enabling Cities or Municipalities  
to Allow the Municipal Court  
Clerk to Serve as Municipal Court  
Judge in Certain Circumstances ..... 1861

223. (HB4540) Political Activities of Members  
of Paid Fire Departments ..... 1863

224. (\*HB4388) Relating to Municipal Police and  
Firemen's Pension and Relief Funds ..... 1865

225. (\*SB601) Relating to Municipal Police and  
Firemen's Pension and Relief Funds ..... 1869

226. (\*SB679) Relating to Intergovernmental  
Relations Generally ..... 1872

**NATURAL RESOURCES**

227. (SB721) Allowing Division of Natural  
Resources Enter Reciprocal Agreements  
With Ohio Regarding Hunting and  
Fishing ..... 1876

228. (SB576) Relating to Nonresident Class E  
Hunting and Trapping License ..... 1880

229. (HB2062) Relating to Class V and Class V V  
Muzzle-Loading Deer Hunting  
Licenses and Adding Open Sights  
and Telescopic Sights ..... 1882

230. (SB722) Relating to Class XJ Junior  
Sportsman's Hunting, Fishing and  
Trapping License ..... 1883

**NEIGHBORHOOD INVESTMENT PROGRAM**

231. (\*HB4437) Reauthorizing the Neighborhood  
Investment Program Act ..... 1885

**OIL AND GAS WELLS**

232. (SB712) Clarifying When Plats Must be Filed  
Before Plugging Oil and Gas Wells . . . . . 1898

**PARKING**

233. (SB724) Regulating Parking on Property  
Owned or Leased by State . . . . . 1903

**PROBATION OFFICERS**

234. (\*SB91) Requiring Payment of Funeral  
Expenses of Probation Officers  
and Correctional Employees Killed  
in Line of Duty . . . . . 1906
235. (\*SB48) Requiring Probation Officers to  
Complete Training in Use of  
Firearms . . . . . 1908

**PROFESSIONS AND OCCUPATIONS**

236. (HB4124) Prohibiting Discrimination Against  
Applicants for Professional Licenses . . . . . 1912
237. (\*SB555) Relating to License to Practice  
Medicine and Surgery or Podiatry . . . . . 1920
238. (\*SB243) Relating to Professional Discipline  
of Physicians and Podiatrists by  
Board of Medicine . . . . . 1925
239. (HB4275) Development of Guidelines for End  
of Life Pain Management . . . . . 1944
240. (HB4277) Authorizing the Board of Pharmacy  
to Form Pharmacist Recovery Networks . . . . . 1947
241. (HB4098) Continuing the Board of Examiners  
for Registered Professional Nurses . . . . . 1951
242. (HB4507) Authorizing Permits for School  
Psychologists to Practice School  
Psychology Within the Scope of  
Their Employment by a County  
School Board . . . . . 1952
243. (HB4346) Relating to the State Radiologic  
Technology Board of Examiners . . . . . 1954

TABLE OF CONTENTS

244. (HB4417) Providing That Fees and Continuing Education Requirements for Speech-Language Pathologists and Audiologists be Set by Legislative Rule ..... 1959

245. (\*SB453) Creating Real Estate License Act ..... 1961

**PUBLIC EMPLOYEES**

246. (\*SB115) Eliminating Certain Service Cap on Incremental Salary Increases to State Employees ..... 1998

247. (SB639) Providing for Gender-Based Pay Equity Salary Adjustment for State Employees ..... 2000

248. (SB592) Defining "Plan" in Public Employees Insurance Act ..... 2003

249. (HB4136) Continuation of the Public Employees Insurance Agency ..... 2007

250. (SB738) Relating to Appropriation of Moneys From Public Employees Insurance Reserve Fund ..... 2010

251. (\*HB4012) Requiring Certain New Public Employees, Officers or Certain Officials Hired After a Certain Date to be Paid One Pay Cycle in Arrears ..... 2011

**PUBLIC MONEYS**

252. (\*SB409) Relating to Transfer of Certain Funds to Securities Division of Auditor's Office ..... 2013

253. (\*SB561) Relating to Small Business Linked Deposit Program ..... 2016

254. (SB413) Relating to Purchasing Card Administration Fund ..... 2023

TABLE OF CONTENTS

255. (HB3034) Requiring State Spending Units  
to Submit a Receiving Report  
to the Auditor for Payment  
of a Claim for Commodities ..... 2024

256. (SB737) Authorizing Secretary of  
Administration to Pay Expenses  
for Certain Visitors and Employees ..... 2025

257. (SB566) Requiring State Treasurer Transfer  
Amounts Required by Legislature  
From Certain Funds ..... 2028

258. (\*HB4021) Repealing the Requirement in the  
Pension Liability Redemption Act  
That the Supreme Court of Appeals  
Render a Judicial Determination  
That the Issuance of Bonds are  
Constitutional ..... 2029

**PUBLIC SAFETY**

259. (HB4511) Relating to the Division of  
Protective Services ..... 2036

**PUBLIC SERVICE COMMISSION**

260. (SB736) Relating to Powers of Public  
Service Commission ..... 2039

**RETIREMENT**

261. (\*SB608) Amending Definition of Internal  
Revenue Code for Certain Public  
Retirement Systems ..... 2041

262. (HB4658) Relating to Public Employees  
Retirement and State Teachers'  
Retirement ..... 2089

263. (SB652) Relating to Public Employees Retirement  
Act; Deferred Annuity ..... 2115

264. (SB615) Prohibiting Certain Persons from  
Withdrawing PERS Contributions ..... 2117

265. (HB4484) Allowing Retired Members of the  
Teachers Retirement System to Name  
a New Joint Annuitant Upon the Death  
of a Spouse ..... 2119

**ROADS AND HIGHWAYS**

266. (\*SB279) Providing Family Restrooms at All  
Rest Areas on Interstate Highways . . . . . 2122

**SALARIES**

267. (\*SB690) Increasing Salary of Racing  
Commission and Water Development  
Authority Board . . . . . 2128

268. (HB4060) Removing the Sixteen-Year Cap on  
Salary Increments for Years of  
Service for Deputy Sheriffs . . . . . 2134

269. (SB164) Increasing Base Salary of State  
Police Personnel . . . . . 2135

270. (SB648) Increasing Salaries for Conservation  
Officers . . . . . 2140

**STATE POLICE**

271. (SB111) Increasing Benefits of Surviving  
Spouse of Certain State Police . . . . . 2143

**STORMWATER SYSTEMS**

272. (HB4619) Establishment of Stormwater Systems  
and Associated Stormwater Management  
Programs Within a Public Service  
District . . . . . 2145

**SUNSET**

273. (SB471) Continuing Capitol Building Commission . . . . . 2171

274. (HB4662) Changing Termination Dates Pursuant  
to the Sunset Law . . . . . 2172

275. (SB468) Continuing Division of Purchasing  
Within Department of Administration . . . . . 2178

276. (SB472) Continuing Records Management and  
Preservation Board . . . . . 2179

277. (SB241) Continuing Ethics Commission . . . . . 2185

278. (HB4256) Continuing the Department of  
Health and Human Resources . . . . . 2186

279. (SB473) Continuing Veterans' Council . . . . . 2187

280. (HB4099)	Continuing the Educational Broadcasting Authority . . . . .	2189
281. (HB4510)	Continuing the Investment Management Board . . . . .	2191
282. (HB4299)	Continuing the Division of Protective Services . . . . .	2192
283. (SB238)	Continuing Division of Highways . . . . .	2193
284. (HB4321)	Continuing the Racing Commission . . . . .	2195
285. (SB353)	Continuing Parks Section of Division of Natural Resources and Division of Natural Resources . . . . .	2196
286. (SB354)	Continuing Public Land Corporation . . . . .	2198
287. (HB4100)	Continuing the Whitewater Commission . . . . .	2199
288. (SB469)	Continuing Division of Labor . . . . .	2200
289. (SB470)	Continuing Contractor Licensing Board . . . . .	2201
290. (HB4368)	Continuing the Authority of the Commissioner to Administer the Bureau of Employment Programs . . . . .	2202
291. (SB351)	Continuing Office of Water Resources . . . . .	2203
292. (HB4298)	Continuing the Division of Corrections . . . . .	2204
293. (SB352)	Continuing State Geological and Economic Survey . . . . .	2205
294. (HB4454)	Continuing the State Rail Authority . . . . .	2207
295. (HB4121)	Continuing the Women's Commission . . . . .	2208
296. (HB4320)	Continuing Public Defender Services . . . . .	2210
297. (SB239)	Continuing Board of Examiners for Licensed Practical Nurses . . . . .	2211
298. (HB4122)	Continuing the Board of Architects . . . . .	2212
299. (SB240)	Continuing Board of Examiners for Speech-Language Pathology and Audiology . . . . .	2213
300. (HB4255)	Continuing the Bureau for Child Support Enforcement . . . . .	2214



**TAXATION**

301. (\*SB244) Relating to Tax Increment  
Financing Act . . . . . 2216

302. (\*SB578) Allowing Tax Commissioner Share  
Certain Confidential Information  
With Geological and Economic Survey . . . . . 2267

303. (\*HB4305) Creating the West Virginia Tax  
Tribunal to Resolve Disputes  
Between the Tax Commissioner  
and Taxpayers . . . . . 2269

304. (\*SB290) Extending Confidentiality and  
Nondisclosure of Tax Information  
to Local and Municipal Governments . . . . . 2306

305. (\*SB661) Relating to Estate Taxes . . . . . 2317

306. (\*SB651) Eliminating Provider Tax on  
Community Care Services . . . . . 2329

307. (SB731) Requiring the Tax Commissioner to  
Develop a Single Form for  
Reporting Oil and Gas Production  
to Government Agencies . . . . . 2332

308. (SB285) Exempting Environmental Technical  
Testing Laboratories From  
Consumers Sales and Service Tax . . . . . 2335

309. (\*HB4017) Creating a Sales Tax Holiday  
for Purchases of Back-to-School  
Clothing During a Three-Day  
Period in August 2002 . . . . . 2353

310. (SB245) Creating Simplified Sales and Use  
Tax Administration Act . . . . . 2355

311. (SB140) Updating Certain Terms Used in  
Personal Income Tax Act . . . . . 2362

312. (SB713) Exempting Certain Military  
Retirement From Personal Income  
Tax . . . . . 2364

313. (HB2372) Clarifying the Manner in Which  
Moneys Reserved for the Payment  
of Income Tax Refunds are to be  
Managed . . . . . 2371

314. (SB114) Updating Section of Corporation Net  
Income Tax Act ..... 2373

**TIMBERING**

315. (SB431) Relating to Timbering Licenses ..... 2375

**UNEMPLOYMENT COMPENSATION**

316. (\*SB497) Relating to Eligibility for  
Unemployment Compensation ..... 2383

**UNIFORM DISCLOSURE OF  
PROPERTY INTEREST ACT**

317. (\*SB484) Revising the Uniform Disclaimer of  
Property Interests Act ..... 2393

**UNIFORM INTERSTATE FAMILY  
SUPPORT ACT**

318. (SB485) Relating to Uniform Interstate  
Family Support Act ..... 2406

**UNIFORM SECURITIES ACT**

319. (\*SB475) Revising the Uniform Securities  
Act Generally ..... 2450

**VETERANS**

320. (SB428) Revising Duties and Functions of  
Veterans' Council ..... 2480

321. (HB4553) Creating a Special Revenue Account  
for the Payment of Architectural  
and Associated Costs for the Veterans  
Nursing Home ..... 2481

**WHEELCHAIRS**

322. (\*SB682) Defining Motorized Wheelchair and  
Electric Personal Assistive  
Mobility Device ..... 2488

**WHITE CANE LAW**

323. (\*HB2465) Rights and Privileges With Respect  
to Access to Public Facilities for  
Guide or Support Dogs and Trainers ..... 2492

**WORKFORCE INVESTMENT**

324. (\*HB4083) West Virginia Workforce Investment Act . . . . . 2497

**ZONING**

325. (SB171) Authorizing Zoning Ordinance Elections . . . . . 2507

\*\*\*\*\*

**LOCAL LAWS**

\*\*\*\*\*

**WIRT COUNTY**

326. (SB662) Extending Time for Wirt County  
Commission to Meet as Levying Body  
in Certain Cases . . . . . 2510

# ACTS

## First Extraordinary Session, 2002

Chapter	Bill No.		Page
<b>APPROPRIATIONS</b>			
1.	(SB1001)	Expiring Funds to Balance of Board of Pharmacy From Health Care Authority, Health Care Cost Review Authority Fund . . . . .	2511
2.	(SB1002)	Expiring Funds to Unappropriated Balance in General Revenue From Treasurer's Office, Banking Service Expense Fund . . . . .	2512
3.	(SB1003)	Making Supplementary Appropriation of Public Moneys in General Revenue to Various Departments . . . . .	2520
4.	(SB1004)	Supplementing, Amending, Reducing and Increasing Items From Lottery Net Profits to Division of Natural Resources . . . . .	2526
5.	(SB1005)	Making Supplementary Appropriation From Unappropriated Balance to Bureau of Commerce, Division of Natural Resources . . . . .	2528
6.	(SB1006)	Expiring Funds to Unappropriated Balance in General Revenue to Department of Military Affairs and Public Safety, State Police, Commercial Drivers' Licensing Program . . . . .	2529
<b>TAXATION</b>			
7.	(SB1008)	Updating Meaning of Certain Terms Used in Personal Income Tax Act . . . . .	2531
8.	(SB1009)	Updating Certain Terms Used in Corporation Net Income Tax Act . . . . .	2533

# ACTS

## Second Extraordinary Session, 2002

Chapter	Bill No.	Page
<b>APPROPRIATIONS</b>		
1.	(*SB2006)	Making Supplementary Appropriation in State Fund, General Revenue, to Department of Health and Human Resources, Division of Human Services . . . . . 2537
2.	(SB2008)	Expiring Funds to Unappropriated Balance From Revenue Shortfall Reserve Fund . . . . . 2540
3.	(SB2009)	Making Supplementary Appropriation to Department of Agriculture From General Revenue Surplus . . . . . 2542
4.	(SB2010)	Making Supplementary Appropriation to Department of Agriculture From Unappropriated General Revenue Balance . . . . 2544
5.	(SB2011)	Supplementing, Amending, Reducing and Increasing Items of Existing Appropriations to Governor's Office, Civil Contingent Fund . . . . . 2545
6.	(SB2012)	Supplementing, Amending, Reducing and Increasing Items in General Revenue to Bureau of Commerce, Board of Coal Mine Health and Safety . . . . . 2549
7.	(SB2013)	Supplementing, Amending, Reducing and Increasing Items From State Fund to Department of Military Affairs and Public Safety, Division of Corrections . . . . . 2551
8.	(SB2014)	Making Supplementary Appropriation in State Fund, General Revenue, to Department of Tax and Revenue, Adding Reappropriating Language . . . . . 2553

9.	(SB2015)	Making Supplementary Appropriation in State Fund, General Revenue, to Higher Education Policy Commission . . . . .	2555
10.	(SB2016)	Making Supplementary Appropriation of General Revenue to Department of Tax and Revenue, Office of Tax Appeals . . . . .	2559
11.	(SB2017)	Making Supplementary Appropriation to Department of Agriculture, Donated Food Fund . . . . .	2560
12.	(SB2018)	Supplementing and Expiring Funds From ABCA and Division of Banking to Division of Tax . . . . .	2562
13.	(SB2019)	Supplementing, Amending, Reducing and Increasing Items From Division of Tourism to Division of Natural Resources . . . . .	2564
14.	(SB2020)	Making Supplementary Appropriation to Bureau of Commerce, Division of Natural Resources, Hunting and Fishing License Fund . . . . .	2566
15.	(SB2021)	Making Supplementary Appropriation to Bureau of Commerce, Division of Natural Resources . . . . .	2567
16.	(SB2022)	Making Supplementary Appropriation to Department of Tax and Revenue, Insurance Commissioner . . . . .	2569
17.	(SB2023)	Making Supplementary Appropriation to Department of Tax and Revenue, Racing Commission, Fund 7304 . . . . .	2570
18.	(SB2024)	Making Supplementary Appropriation to Department of Tax and Revenue, Racing Commission, Fund 7305 . . . . .	2572
19.	(SB2025)	Making Supplementary Appropriation to Board of Examiners for Registered Professional Nurses . . . . .	2573
20.	(SB2026)	Making Supplementary Appropriation to Bureau of Commerce, Division of Labor . . . . .	2575

TABLE OF CONTENTS

XXXIX

21. (SB2028) Making Supplementary Appropriation  
from Unappropriated Surplus Balance  
to Governor's Office, Civil  
Contingent Fund . . . . . 2576

22. (SB2029) Making Supplementary Appropriation  
to Bureau of Commerce, Division of  
Miners' Health, Safety and Training . . . . . 2578

23. (SB2031) Making Supplementary Appropriation of  
Federal Funds to Bureau of Employment  
Programs . . . . . 2580

24. (SB2032) Supplementing and Amending Chapter  
Thirteen, Acts of Legislature,  
Budget Bill . . . . . 2582

**BUSINESS CORPORATION ACT**

25. (SB2004) Establishing Business Corporation Act . . . . . 2584

**FIREFIGHTING AND PREVENTION**

26. (HB203) Exempting From Consumers Sales  
and Service Tax Fundraising  
Activities by Certain Volunteer  
Fire Departments and Rescue Squads . . . . . 2765

**LEGISLATIVE RULES**

27. (SB2001) Authorizing Miscellaneous Agencies  
and Boards to Promulgate  
Legislative Rules . . . . . 2784

28. (SB2002) Relating to Legislative Rules of  
Department of Environmental  
Protection . . . . . 2802

**PUBLIC SERVICE COMMISSION**

29. (SB2003) Authorizing Public Service  
Commission to Acquire and Pay  
for Property . . . . . 2804

**SUNSET**

30. (HB204) Reestablishing the Board of  
Licensed Dietitians . . . . . 2806

XL

TABLE OF CONTENTS

TAXATION

31.	(SB2007)	Relating Generally to Tax Credits for Certain Business Activity .....	2807
-----	----------	---	------



# ACTS

## Fifth Extraordinary Session, 2001

Chapter	Bill No.		Page
<b>APPROPRIATIONS</b>			
1.	(HB501)	Supplemental Appropriation to the State Rail Authority, Unclassified .....	2831
2.	(HB502)	Supplemental Appropriation to the Department of Agriculture, Personal Services and Employee Benefits .....	2833
3.	(HB512)	Supplemental Appropriation to the Governor's Office, Civil Contingent Fund .....	2834
<b>ECONOMIC DEVELOPMENT</b>			
4.	(HB506)	Relating to the Joint Commission on Economic Development .....	2836
<b>FAMILY COURT SYSTEM</b>			
5.	(SB5007)	Relating to Family Court System .....	2839
<b>GAMING ACTIVITIES</b>			
6.	(SB5002)	Making Technical Changes to Certain Lottery Statutes .....	2955
<b>HOMESTEAD EXEMPTION</b>			
7.	(SB5001)	Changing Property Tax Year for Personal Income Tax Credit Allowed Certain Senior Citizens and Certain Disabled Persons .....	2966
<b>RECLAMATION FUND ADVISORY COUNCIL</b>			
8.	(SB5003)	Relating to Surface Coal Mining and Reclamation .....	2968

TABLE OF CONTENTS

**REDISTRICTING**

9. (HB510) Redistricting of the State's  
Congressional Districts ..... 2979

10. (HB511) Redistricting of the Senate and  
House of Delegates ..... 2981

**SYNTHETIC FUEL**

11. (SB5006) Relating to Privilege Taxes  
Imposed on Production of  
Synthetic Fuels ..... 3027

**TOURISM**

12. (HB507) Relating to Use of the Tourism  
Promotion Fund to Support the  
2001 World Rafting Championships  
in West Virginia ..... 3042

**ACTS**

**Sixth Extraordinary Session, 2001**

<b>Chapter</b>	<b>Bill No.</b>	<b>Page</b>
<b>APPROPRIATIONS</b>		
1.	(HB609)	Supplemental Appropriation to the Department of Agriculture ..... 3045
2.	(HB610)	Supplemental Appropriation to the Division of Natural Resources ..... 3047
3.	(HB611)	Supplemental Appropriation to the Division of Forestry ..... 3048
4.	(HB612)	Supplemental Appropriation to the Development Office ..... 3050
5.	(HB613)	Supplemental Appropriation to the State Police ..... 3051
6.	(HB614)	Supplemental Appropriation to the Division of Protective Services ..... 3053
7.	(HB615)	Expiring Certain Funds to the General Revenue Fund and Making a Supplemental Appropriation to the Division of Protective Services ..... 3054
8.	(HB618)	Supplemental Appropriation to the Board of Risk and Insurance Management ..... 3056
9.	(SB6016)	Making Supplementary Appropriation to Department of Tax and Revenue, Racing Commission ..... 3058
10.	(SB6017)	Making Supplementary Appropriation to Office of Emergency Services ..... 3059
11.	(SB6018)	Making Supplementary Appropriation to Higher Education Policy Commission ..... 3061

TABLE OF CONTENTS

12. (SB6019) Making Supplementary Appropriation to Bureau of Environment, Special Reclamation Fund . . . . . 3064

13. (SB6020) Making Supplementary Appropriation to Bureau of Environment, Solid Waste Management Board . . . . . 3065

14. (SB6021) Making Supplementary Appropriation to Bureau of Environment, Mining and Reclamation Operations Fund . . . . . 3067

15. (SB6022) Making Supplementary Appropriation to Bureau of Environment, Solid Waste Reclamation and Environmental Response Fund . . . . . 3069

16. (SB6023) Making Supplementary Appropriation to Auditor's Office, National White Collar Crime Center . . . . . 3070

**CORRECTIONAL FACILITIES**

17. (HB608) Acquisition, Construction, Leasing and Financing of Regional Jail, Juvenile Detention, Corrections and State Police Facilities . . . . . 3072

**FAMILY COURT SYSTEM**

18. (SB6024) Making Technical Revisions to Law Creating Family Court System; Adjusting Certain Salary Levels . . . . . 3086

**MEDICAL MALPRACTICE**

19. (HB601) Establishment and Operation of Medical Professional Liability Insurance Programs . . . . . 3092

20. (SB6014) Relating to Medical Malpractice Liability Insurance Generally . . . . . 3169

**MILITARY LEAVE OF ABSENCE**

21. (HB604) Relating to Leave of Absence for Public Officials and Employees for Certain Military Obligations . . . . . 3180

**TAXATION**

22. (HB605) Personal Income Tax Exemption  
for Members of the National Guard  
or Reserve Forces Called to  
Active Duty for "Operation  
Enduring Freedom" or Domestic  
Security Duty ..... 3181

**TERRORIST ACTS**

23. (\*SB6002) Relating to Terrorist Threats  
Generally ..... 3183

## MEMBERS OF THE HOUSE OF DELEGATES

## REGULAR SESSION, 2002

## OFFICERS

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

District	Name	Address	Legislative Service
First	Joe DeLong (D)	Weirton	75th
	Randy Swartzmiller (D)	New Cumberland	75th
Second	Timothy R. Ennis (D)	Wellsburg	72nd-75th
	Roy E. Givens (D)	Wellsburg	64th-69th;72nd-75th
Third	John Fahey (D)	Wheeling	75th
	L. Gil White (R)	Wheeling	70th-71st;73rd-75th
Fourth	Kenneth D. Tucker (D)	Moundsville	73rd-75th
	Scott G. Varner (D)	Moundsville	71st-75th
Fifth	Dave Pethel (D)	Hundred	69th-71st;74th-75th
Sixth	William Roger Romine (R)	West Union	75th
Seventh	Otis A. Leggett (R)	St. Marys	68th-75th
Eighth	Everette W. Anderson, Jr.(R)	Williamstown	71st-75th
Ninth	Larry W. Border (R)	Davisville	70th-75th
Tenth	Tom Azinger (R)	Vienna	72nd-75th
	J. D. Beane (D)	Parkersburg	70th-75th
Eleventh	John N. Ellem (R)	Parkersburg	75th
	Bob Ashley (R)	Spencer	67th-73rd;75th
Twelfth	Mitch Carmichael (R)	Ripley	75th
Thirteenth	Dale Martin (D)	Poca	75th
	Brady Paxton (D)	Liberty	71st;Appt. 4/22/99, 74th; 75th
Fourteenth	Mike Hall (R)	Hurricane	72nd-75th
	Lisa D. Smith (R)	Scott Depot	74th-75th
Fifteenth	Kevin J. Craig (D)	Huntington	75th
	Margarette R. Leach (D)	Huntington	71st-75th
Sixteenth	James Hanley Morgan	Huntington	69th-70th; Appt. 2/23/01, 75th
	Susan Hubbard (D)	Huntington	72nd-75th
Seventeenth	Jody G. Smirl (R)	Huntington	58th-61st;67th;72nd-75th
	Dale Stephens (D)	Huntington	75th
Eighteenth	Richard Thompson (D)	Lavelette	65th, Resigned 6/81;75th
Nineteenth	Don C. Perdue (D)	Prichard	74th-75th
Twentieth	K. Steven Kominar (D)	Kermit	72nd-75th
	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st; 73rd-75th
Twenty-first	Greg Butcher (D)	Chapmanville	73rd-75th
	Tracy Dempsey (D)	Harts	70th-75th
Twenty-second	Joe C. Ferrell (D)	Logan	66th;68th-70th;74th-75th
	Lidella Wilson Hrutkay (D)	Logan	75th
Twenty-third	Earnest H. Kuhn (D)	Van	72nd-75th
	Lacy Wright, Jr. (D)	Welch	62nd-64th;(Senate 65th-66th); 73rd-75th
Twenty-fourth	Emily Yeager (D)	Welch	Appt. 3/10/93,71st;72nd-75th
	Richard Browning (D)	Oceana	69th-72nd;75th
Twenty-fifth	Rick Staton (D)	Mullens	69th-75th
	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71st; 72nd-75th
Twenty-sixth	Richard D. Flanigan (D)	Princeton	66th-71st; 73rd-75th
	Mark Wills (D)	Princeton	74th-75th
Twenty-seventh	Mary Pearl Compton (D)	Union	69th-75th
	Robert S. Kiss (D)	Beckley	69th-75th
Twenty-eighth	Virginia Mahan (D)	Green Sulphur Springs	73rd-75th
	Warren R. McGraw II (D)	Prosperity	71st-75th
Twenty-ninth	Sally Matz Susman (D)	Beckley	74th-75th
	Ron Thompson (D)	Beckley	72nd-75th
Twenty-tenth	Thomas W. Campbell (D)	Lewisburg	73rd-75th
	Ray Canterbury (R)	Ronceverte	75th
Twenty-eleventh	Tom Louisos (D)	Oak Hill	67th-68th; 70th-75th
	David G. Perry (D)	Oak Hill	75th
Twelfth	John Pino (D)	Oak Hill	67th-68th; 71st-75th

## MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Legislative Service
Thirtieth	Jon Amores (D)	Charleston	72nd-75th
	Bonnie Brown (D)	South Charleston	66th-68th;70th;75th
	Barbara Burruss Hatfield (D)	South Charleston	68th-70th; 74th-75th
	Ray Keener (D)	Charleston	75th
	Rebecca A. Mathews (D)	Charleston	75th
	Joe Smith (D)	Charleston	71st; 73rd-75th
	Sharon Spencer (D)	Charleston	66th;68th-71st; 73rd-75th
Thirty-first	Carrie Webster (D)	Charleston	75th
Thirty-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73rd; 74th-75th
	Steve Harrison (R)	Cross Lanes	71st-75th
	Ron Walters (R)	Charleston	71st-73rd;75th
	Charles Rusty Webb (R)	Cross Lanes	73rd-75th
Thirty-third	William F. Stemple (D)	Arnoldsburg	73rd-75th
Thirty-fourth	Brent Boggs (D)	Gassaway	73rd-75th
Thirty-fifth	John W. Shelton (D)	Summersville	73rd-75th
Thirty-sixth	C. Randy White (D)	Webster Springs	73rd-75th
Thirty-seventh	James R. Fox (D)	Elkins	Appt. 2/20/01, 75th
	Bill Proudfoot (D)	Elkins	70th-75th
Thirty-eighth	Doug Stalnaker (R)	Weston	72nd-75th
Thirty-ninth	Dale F. Riggs (R)	Buckhannon	69th-75th
Fortieth	Mary M. Poling (D)	Moatsville	75th
Forty-first	Frank T. Angotti, Jr. (D)	Clarksburg	74th-75th
	Samuel J. Cann (D)	Clarksburg	72nd-75th
	Ron Fragale (D)	Clarksburg	70th-73rd;75th
	Barbara A. Warner (D)	Bridgeport	69th-75th
Forty-second	Tom Coleman (D)	Grafton	73rd-75th
Forty-third	Michael Caputo (D)	Fairmont	73rd-75th
	A. James Manchin (D)	Farmington	50th; 74th-75th
	Paul Edward Prunty (D)	Fairmont	61st;63rd-65th;67th-68th; 70th; 72nd-75th
Forty-fourth	Robert D. Beach (D)	Morgantown	Appt. 5/98 served 7 months,73rd; 75th
	Barbara Evans Fleischauer (D)	Morgantown	72nd-75th
	Sheirl L. Fletcher (R)	Morgantown	74th-75th
	Charlene J. Marshall (D)	Morgantown	74th-75th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93,71st; 72nd-75th
Forty-sixth	Stanley E. Shaver (D)	Tunnelton	75th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th-75th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-75th
Forty-ninth	Robert A. Schadler (R)	Keyser	69th-71st; 74th-75th
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-75th
Fifty-first	Charles S. Trump IV (R)	Berkeley Springs	71st-75th
Fifty-second	Vicki V. Douglas (D)	Martinsburg	70th-75th
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-75th
Fifty-fourth	John Overington (R)	Martinsburg	67th-75th
Fifty-fifth	John Doyle (D)	Shepherdstown	66th; 71st-75th
Fifty-sixth	Dale Manuel (D)	Charles Town	69th-75th
	(D) Democrats		75
	(R) Republicans		25
	TOTAL		100

# MEMBERS OF THE SENATE

## REGULAR SESSION, 2002

### OFFICERS

*President* — Earl Ray Tomblin, Chapmanville

*Clerk* — Darrell E. Holmes, Charleston

*Sergeant at Arms* — Tony DeRaimo, St. Albans

*Doorkeeper* — Andrew J. Trail, Charleston

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

(D) Democrats ..... 28

(R) Republicans ..... 6

TOTAL ..... 34



**COMMITTEES OF THE HOUSE OF DELEGATES**  
**Regular Session, 2002**

---

**STANDING**

---

**AGRICULTURE AND NATURAL RESOURCES**

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

**BANKING AND INSURANCE**

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

**CONSTITUTIONAL REVISION**

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

**EDUCATION**

Mezzatesta (*Chair*), Williams (*Vice Chair*), Beach, Dempsey, Fragale, Hubbard, Fahey, Fox, Louisos, Mathews, Morgan, Paxton, Perry, Poling, Shaver, Shelton, Stemple, Susman, Swartzmiller, Canterbury, Carmichael, Harrison, Overington, Romine and L. Smith.

**FINANCE**

Michael (*Chair*), Doyle (*Vice Chair*), Beane, Boggs, Browning, Campbell, Cann, Compton, Frederick, Keener, Kominar, Leach, Mezzatesta, Proudfoot, R. M. Thompson, Varner, Warner, H. White, Anderson, Ashley, Evans, Fletcher, Hall, Stalnaker and G. White.

**GOVERNMENT ORGANIZATION**

Douglas (*Chair*), Kuhn (*Vice Chair*), Angotti, Brown, Butcher, DeLong, Ennis, Flanigan, Hatfield, Manchin, Martin, Marshall, McGraw, Perdue, Prunty, Stephens, Tucker, Varner, Yeager, Azinger, Border, Ellem, Leggett, Overington and Walters.

**HEALTH AND HUMAN RESOURCES**

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

**INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT  
AND SMALL BUSINESS**

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

**JUDICIARY**

Amores (*Chair*), Manuel (*Vice Chair*), Caputo, Coleman, Craig, Ferrell, Fleischauer, Givens, Hrutkay, Mahan, Pethtel, Pino, J. Smith, Spencer, Stemple, R. Thompson, Webster, C. White, Wills, Armstead, Faircloth, Riggs, Schadler, Smirl and Webb.

**POLITICAL SUBDIVISIONS**

Proudfoot (*Chair*), Marshall (*Vice Chair*), Brown, Browning, Campbell, Ennis, Fahey, Ferrell, Kuhn, Martin, Mathews, Morgan, Perry, Shaver, Swartzmiller, C. White, Wills, Yeager, Armstead, Azinger, Schadler, Smirl, Stalnaker, Trump and G. White.

**ROADS AND TRANSPORTATION**

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

**RULES**

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

**VETERANS AFFAIRS**

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

---

**SELECT**

---

**MITCHELL VS BROADNAX**

Beane (*Chair*), Amores, Craig, Hrutkay, Michael, Staton, R. Thompson, R. M. Thompson, Webster, Wills, Armstead, Trump and G. White.

**REDISTRICTING**

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

---

**JOINT**

---

**ENROLLED BILLS**

Manchin (*Chair*), Dempsey (*Vice Chair*), Butcher and Overington.

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Mahan (*Chair*), Wills (*Vice Chair*), Cann, Kominar, Faircloth and Riggs.

**PENSIONS AND RETIREMENT**

Campbell (*Chair*), J. Smith (*Vice Chair*), Keener, Browning, Hubbard, Hall and Harrison.

**RULES**

Kiss (*Chair*), Staton and Trump.

**COMMITTEES OF THE SENATE**  
**Regular Session, 2002**

---

**STANDING**

---

**AGRICULTURE**

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

**BANKING AND INSURANCE**

Minard (*Chair*), Kessler (*Vice Chair*), Burnette, Chafin, Craig, Fanning, Helmick, Prezioso, Sharpe, Snyder, Wooton, Deem and Facemyer.

**CONFIRMATIONS**

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

**ECONOMIC DEVELOPMENT**

McCabe (*Chair*), Kessler (*Vice Chair*), Anderson, Bowman, Craig, Fanning, Helmick, Jackson, Plymale, Unger, Wooton, McKenzie and Sprouse.

**EDUCATION**

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

**ENERGY, INDUSTRY AND MINING**

Sharpe (*Chair*), Burnette (*Vice Chair*), Anderson, Chafin, Fanning, Helmick, Hunter, Jackson, Kessler, Oliverio, Ross, Snyder, Deem and McKenzie.

**FINANCE**

Craig (*Chair*), Sharpe (*Vice Chair*), Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Plymale, Prezioso, Unger, Boley, Minear and Sprouse.

**GOVERNMENT ORGANIZATION**

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

**HEALTH AND HUMAN RESOURCES**

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

**INTERSTATE COOPERATION**

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

**JUDICIARY**

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

**LABOR**

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

**MILITARY**

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

**NATURAL RESOURCES**

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

**PENSIONS**

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

**RULES**

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

**SMALL BUSINESS**

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

**TRANSPORTATION**

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

---

**SELECT**

---

**REDISTRICTING**

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

---

**JOINT**

---

**ENROLLED BILLS**

Rowe (*Chair*), Bailey, Caldwell, Mitchell and Facemyer.

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Ross (*Chair*), Anderson (*Vice Chair*), Minard, Snyder, Boley and Minear.

**PENSIONS AND RETIREMENT**

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

**RULES**

Tomblin (*Chair*), Chafin and Sprouse.





**LEGISLATURE OF WEST VIRGINIA**

---

**ACTS**

---

**SECOND REGULAR SESSION, 2002**

---

**CHAPTER 1**

**(Com. Sub. for H. B. 4258 — By Delegates Craig, Wills,  
Coleman, C. White, Smirl and Armstead)**

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section seven, article eight, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to actions on contracts; providing for certain judgments being based upon affidavits and statements of accounts filed by plaintiffs; allowing for judgments on admission of part of a claim; and requiring for itemization of costs in affidavits.

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

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

**ARTICLE 8. ACTIONS ON CONTRACTS.****§55-8-7. Action against makers, drawers, endorsers, acceptors, assignors or absolute guarantors.**

1           (a) The holder of any note, check, draft, bill of exchange or  
2 other instrument of any character, whether negotiable or not or  
3 any person entitled to judgment for money on contract, in any  
4 action at law or proceeding by notice for judgment on motion  
5 thereon, may join all or any intermediate number of the persons  
6 liable by virtue thereof, whether makers, drawers, endorsers,  
7 acceptors, assignors, or absolute guarantors, or may proceed  
8 against each separately, although the promise of the makers, or  
9 the obligations of the persons otherwise liable, may be joint or  
10 several, or joint and several. If notice or other process is not  
11 served upon all persons proceeded against, judgment may  
12 nevertheless be given against those liable who have been served  
13 as provided by law with notice or other process. These actions  
14 or proceedings by notice may be had from time to time in the  
15 same or any other court until judgment is obtained against every  
16 person liable or his personal representative. However, plaintiff  
17 shall have satisfaction of but one of two or more judgments  
18 rendered on the same demand.

19           (b) In any action at law, whether in circuit court or magis-  
20 trate court, on a note or contract, express or implied, for the  
21 payment of money, if: (1) The plaintiff files with the complaint  
22 an affidavit made by the plaintiff or an agent, stating therein to  
23 the best of the affiant's belief the amount of the plaintiff's  
24 claim, that the amount is justly due, and the time from which  
25 plaintiff claims interest; and (2) a copy of the affidavit together  
26 with a copy of any account filed with the complaint is served  
27 upon the defendant, the plaintiff is entitled to a judgment on the  
28 affidavit and statement of account without further evidence  
29 unless the defendant files an answer denying the claim or  
30 otherwise makes an appearance before the court denying that

31 the plaintiff is entitled to recover from the defendant on the  
32 claim. The affidavit must show the calculation of the amount  
33 sought. The calculation is to also include an itemization of the  
34 principal and any interest, insurance or other charges of the  
35 original obligation. The calculation is also to include an  
36 itemization of all credits to the original obligation including  
37 credits to principal, interest, insurance, any other charges,  
38 rebates of unearned interest, rebates of insurance, rebates of  
39 other charges and proceeds of sale of all collateral. If the  
40 defendant's pleading or affidavit admits that the plaintiff is  
41 entitled to recover from the defendant a sum certain less than  
42 that stated in the affidavit filed by the plaintiff, judgment may  
43 be taken by the plaintiff for the sum so admitted to be due and  
44 the case will be tried as to the residue.



## CHAPTER 2

**(H. B. 4152 — By Delegates R. M. Thompson, Boggs,  
Paxton, Perdue, J. Smith and R. Thompson)**

[Passed February 27, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article sixteen, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding regular mail with a supporting notarized affidavit or postmarked certificate of mailing as options for serving a written demand of a worthless check.

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

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

**ARTICLE 16. CIVIL REMEDY FOR WORTHLESS CHECK.****§55-16-1. Civil remedy for making, drawing, issuing, uttering or delivery of worthless check, draft or order.**

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

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

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

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

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

19 (3) Reasonable costs incurred in filing the action.

20 (d) In an action under this section, the court or jury may  
21 waive all or part of the damages or fees authorized by subdivi-  
22 sion (2), subsection (c) of this section upon a finding that the  
23 defendant’s failure to satisfy the dishonored check was due to  
24 the defendant’s recent discharge from his or her employment,  
25 personal or family illness, or personal or family catastrophic  
26 loss.

27 (e) The written demand required in subsection (a) of this  
28 section shall:

29 (1) Describe the check and the circumstances of its dis-  
30 honor;

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

34 (3) Be delivered by personal service, certified mail or  
35 regular mail to the defendant at his or her last known address:  
36 *Provided*, That service by regular mail shall be supported by  
37 either a post-marked certificate of mailing or a notarized  
38 affidavit of service.

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

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

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

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

---

## CHAPTER 3

(Com. Sub. for S. B. 667 — By Senators Tomblin, Mr. President, Wooton,  
Craig, Jackson, Bowman, Plymale, Unger, Edgell, Minard, Prezioso, Fanning,  
Helmick, Sharpe, Anderson, Ross, Mitchell,  
Rowe, Redd and Minear)

---

[Passed March 9, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to civil actions filed against state agencies; setting forth legislative findings and purpose; defining terms; establishing preliminary procedures prior to institution of an action; requiring service on the attorney general; providing notice of claim and relief requested to agency and attorney general and exceptions; tolling of statute of limitations; providing notice to the Legislature; providing for acts of misfeasance; extending time period to answer complaints; limiting available relief; and providing for liberal construction of provisions.

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

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

**ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS AGAINST THE STATE.**

§55-17-1. Findings; purpose.

§55-17-2. Definitions.

§55-17-3. Preliminary procedures; service on attorney general; notice to the Legislature.

§55-17-4. Procedures pending action.

§55-17-5. Construction of article.

**§55-17-1. Findings; purpose.**

1       (a) The Legislature finds that there are numerous actions,  
 2 suits and proceedings filed against state government agencies  
 3 and officials that may affect the public interest. Depending  
 4 upon the outcome, this type of litigation may have significant  
 5 consequences that can only be addressed by subsequent  
 6 legislative action. In these actions, the Legislature is not  
 7 directly involved as a party. The Legislature is not a proper  
 8 party to these actions because of an extensive structure of

9 constitutional protections established to safeguard the preroga-  
10 tives of the legislative branch under our governmental system  
11 of checks and balances. Government agencies and their officials  
12 require more notice of these actions and time to respond to  
13 them and the Legislature requires more timely information  
14 regarding these actions, all in order to protect the public  
15 interest. The Legislature further finds that protection of the  
16 public interest is best served by clarifying that no government  
17 agency may be subject to awards of punitive damages in any  
18 judicial proceeding.

19 (b) It is the purpose of this article to establish procedures to  
20 be followed in certain civil actions filed against state govern-  
21 ment agencies and their officials.

#### **§55-17-2. Definitions.**

1 For the purposes of this section:

2 (1) "Action" means a proceeding instituted against a  
3 governmental agency in a circuit court or in the supreme court  
4 of appeals, except actions instituted pursuant to statutory  
5 provisions that authorize a specific procedure for appeal or  
6 similar method of obtaining relief from the ruling of an  
7 administrative agency and actions instituted to appeal or  
8 otherwise seek relief from a criminal conviction, including, but  
9 not limited to, actions to obtain habeas corpus relief.

10 (2) "Government agency" means a constitutional officer or  
11 other public official named as a defendant or respondent in his  
12 or her official capacity, or a department, division, bureau,  
13 board, commission or other agency or instrumentality within  
14 the executive branch of state government that has the capacity  
15 to sue or be sued;

16 (3) "Judgment" means a judgment, order or decree of a  
17 court which would:

18 (A) Require or otherwise mandate an expansion of, increase  
19 in, or addition to the services, duties or responsibilities of a  
20 government agency;

21 (B) Require or otherwise mandate an increase in the  
22 expenditures of a government agency above the level of  
23 expenditures approved or authorized before the entry of the  
24 proposed judgment;

25 (C) Require or otherwise mandate the employment or other  
26 hiring of, or the contracting with, personnel or other entities by  
27 a government agency in addition to the personnel or other  
28 entities employed or otherwise hired by, or contracted with or  
29 by the government agency;

30 (D) Require or otherwise mandate payment of a claim  
31 based upon a breach of contract by a government agency; or

32 (E) Declare an act of the Legislature unconstitutional and,  
33 therefore, unenforceable.

**§55-17-3. Preliminary procedures; service on attorney general;  
notice to the Legislature.**

1 (a)(1) Notwithstanding any provision of law to the con-  
2 trary, at least thirty days prior to the institution of an action  
3 against a government agency, the complaining party or parties  
4 must provide the chief officer of the government agency and the  
5 attorney general written notice, by certified mail, return receipt  
6 requested, of the alleged claim and the relief desired. Upon  
7 receipt, the chief officer of the government agency shall  
8 forthwith forward a copy of the notice to the president of the  
9 Senate and the speaker of the House of Delegates. The provi-  
10 sions of this subdivision do not apply in actions seeking  
11 injunctive relief where the court finds that irreparable harm  
12 would have occurred if the institution of the action was delayed  
13 by the provisions of this subsection.



14       (2) The written notice to the chief officer of the government  
15 agency and the attorney general required by subdivision (1) of  
16 this subsection is considered to be provided on the date of  
17 mailing of the notice by certified mail, return receipt requested.  
18 If the written notice is provided to the chief officer of the  
19 government agency as required by subdivision (1) of this  
20 subsection, any applicable statute of limitations is tolled for  
21 thirty days from the date the notice is provided and, if received  
22 by the government agency as evidenced by the return receipt of  
23 the certified mail, for thirty days from the date of the returned  
24 receipt.

25       (b) A copy of any complaint filed in an action as defined in  
26 section two of this article shall be served on the attorney  
27 general. Notwithstanding any procedural rule or any provision  
28 of this code to the contrary, in an action instituted against a  
29 government agency that seeks a judgment, as defined in section  
30 two of this article, the chief officer of the government agency  
31 which is named a party to the action shall, upon receipt of  
32 service, forthwith give written notice thereof, together with a  
33 copy of the complaint filed, to the president of the Senate and  
34 the speaker of the House of Delegates.

35       (c) At least every sixty days during the pendency of the  
36 proceeding, the chief officer of the government agency shall  
37 deliver a written status report on the action to the president and  
38 the speaker. Upon request, the chief officer of the government  
39 agency shall furnish the president and speaker with copies of  
40 pleadings filed and discovery produced in the proceeding.

41       (d) The chief officer of a government agency who fails  
42 without good cause to comply with the provisions of subsection  
43 (b) or (c) of this section is guilty of misfeasance.

44       (e) The requirements for notice and delivery of pleadings  
45 and other documents to the president of the Senate or speaker  
46 of the House of Delegates pursuant to the provisions of this

47 section do not constitute a waiver of any constitutional immu-  
48 nity or protection that proscribes or limits actions, suits or  
49 proceedings against the Legislature or the state of West  
50 Virginia.

51 (f) The exercise of authority granted by the provisions of  
52 this section may not be interpreted as subjecting the Legislature  
53 or any member thereof to any terms of a judgment.

**§55-17-4. Procedures pending action.**

1 Notwithstanding any other provisions of law to the con-  
2 trary:

3 (1) A government agency shall be allowed sixty days to  
4 serve an answer to a complaint or petition for which a summons  
5 has been issued and served upon a government agency;

6 (2) Judgment by default may not be entered against a  
7 government agency in an action as defined in section two of  
8 this article unless the court, after a hearing on a motion for  
9 default judgment, finds that the government agency clearly  
10 intends to fail to appear, plead or otherwise defend in the  
11 action; and

12 (3) No government agency may be ordered to pay punitive  
13 damages in any action.

**§55-17-5. Construction of article.**

1 (a) It is the express intent of the Legislature that the  
2 provisions of this article be liberally construed to effectuate the  
3 public policy set forth in section one of this article.

- 4 (b) The provisions of this article may not be construed to  
5 impose any liability upon a state agency from which the agency  
6 is otherwise immune.

---

## CHAPTER 4

(S. B. 219 — By Senators Wooton, Caldwell, Fanning, Hunter, Kessler, Oliverio, Redd, Ross, Rowe, Snyder, Deem, Facemyer and McKenzie)

---

[Passed January 30, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section seven, article one, chapter twenty-four-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the statewide addressing and mapping board; and extending deadline for the board to issue requests for proposals and legislative rules.

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

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

**ARTICLE 1. WEST VIRGINIA STATEWIDE ADDRESSING AND MAPPING BOARD.**

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

- 1 (a) The board shall, no later than the first day of January,  
2 two thousand three, issue a request or requests for proposals for  
3 statewide addressing and mapping. The request for proposal  
4 must include requirements that each map, compilation or other

5 work created as a result of the statewide addressing and  
6 mapping intended to be accomplished by this article must be a  
7 “work made for hire” within the meaning of the copyright laws  
8 of the United States, 17 U. S. C. §101, *et seq.*, and that all right,  
9 title and interest to each map, compilation or other work must  
10 vest in the board. The request or requests for proposal may  
11 include any standards or requirements the board finds necessary  
12 or proper, including, without limitation, compliance with any  
13 applicable emergency or legislative rules. The board shall select  
14 a qualified vendor or vendors in accordance with the applicable  
15 provisions of article three, chapter five-a of this code. Disburse-  
16 ments from the West Virginia statewide addressing and  
17 mapping fund established by section five of this article are  
18 specifically authorized in order to pay the selected vendor or  
19 vendors.

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

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

39 board in legislative rules under said section. Emergency rules  
40 are specifically authorized for the purposes of this section.

---

## CHAPTER 5

(S. B. 237 — By Senator Craigo)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section twenty-three, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing requirement that agencies applying for, receiving and expending federal funds send report to the Legislature.

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

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

### ARTICLE 2. FINANCE DIVISION.

**§5A-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary; and consolidated report of federal funds.**

1 (a) Every agency of the state government when making  
2 requests or preparing budgets to be submitted to the federal  
3 government for funds, equipment, material or services, the  
4 grant or allocation of which is conditioned upon the use of state  
5 matching funds, shall have the request or budget approved in

6 writing by the secretary before submitting it to the proper  
7 federal authority. When the federal authority has approved the  
8 request or budget, the agency of the state government shall  
9 resubmit it to the secretary for recording before any allotment  
10 or encumbrance of the federal funds can be made. Whenever  
11 any agency of the state government receives from any agency  
12 of the federal government a grant or allocation of funds which  
13 do not require state matching, the state agency shall report to  
14 the secretary the amount of the federal funds granted or  
15 allocated.

16 (b) Unless contrary to federal law, any agency of state  
17 government, when making requests or preparing budgets to be  
18 submitted to the federal government for funds for personal  
19 services, shall include in the request or budget the amount of  
20 funds necessary to pay for the costs of any fringe benefits  
21 related to the personal service. For the purposes of this section,  
22 "fringe benefits" means any employment benefit granted by the  
23 state which involves state funds, including, but not limited to,  
24 contributions to insurance, retirement and social security and  
25 which does not affect the basic rate of pay of an employee.

26 (c) In addition to the other requirements of this section, the  
27 secretary shall, as soon as possible after the end of each fiscal  
28 year but no later than the first day of October of each year,  
29 submit to the governor a consolidated report which shall  
30 contain a detailed itemization of all federal funds received by  
31 the state during the preceding and current fiscal years, as well  
32 as those scheduled or anticipated to be received during the next  
33 ensuing fiscal year. The itemization shall show: (1) Each  
34 spending unit which has received or is scheduled or expected to  
35 receive federal funds in either of the fiscal years; (2) the amount  
36 of each separate grant or distribution received or to be received;  
37 and (3) a brief description of the purpose of every grant or other  
38 distribution, with the name of the federal agency, bureau or  
39 department making the grant or distribution: *Provided*, That it

40 is not necessary to include in the report an itemization of  
41 federal revenue sharing funds deposited in and appropriated  
42 from the revenue sharing trust fund, or federal funds received  
43 for the benefit of the division of highways of the department of  
44 transportation.

45 (d) The secretary may obtain from the spending units any  
46 and all information necessary to prepare a report.

47 (e) Notwithstanding the other provisions of this section and  
48 in supplementation of the provisions of this section, the  
49 Legislature hereby determines that the department of adminis-  
50 tration and its secretary need to be the single and central agency  
51 for receipt of information and documents in respect of applica-  
52 tions for, and changes, receipt and expenditure of, federal funds  
53 by state agencies. Every agency of state government, when  
54 making application for federal funds in the nature of a grant,  
55 allocation or otherwise; when amending the applications or  
56 requests; when in receipt of federal funds; or when undertaking  
57 any expenditure of federal funds, in all respective instances,  
58 shall provide to the secretary of administration document copies  
59 or sufficient summary information in respect of the federal  
60 funds to enable the secretary to provide approval in writing for  
61 any activity in respect to the federal funds.

---

## CHAPTER 6

**(Com. Sub. for H. B. 4331 — By Delegates Doyle and Manuel)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section seventy-four-a, article twenty-four, chapter eight of the code of West Virginia, one thousand

nine hundred thirty-one, as amended; to amend and reenact section eighty-one of said article; to further amend said article by adding thereto a new section, designated section eighty-five; and to amend article one, chapter nineteen by adding thereto a new section, designated section four-d, all relating to farmland protection programs; allowing an additional tax on the privilege of transferring title to real estate for funding of farmland protection programs; and creating the farmland preservation fees fund.

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

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

**Chapter**

1. **Municipal Corporations.**
19. **Agriculture.**

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

§8-24-81. Funding of farmland protection program.

§8-24-85. Tax on privilege of transferring real property.

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

- 1 (a) *Composition; chairman; quorum; qualifications.* — The
- 2 authority, which shall be established by the first day of July,
- 3 two thousand two, shall be governed and administered by a
- 4 board of trustees composed of the state treasurer, the auditor
- 5 and the commissioner of agriculture, who shall serve as ex
- 6 officio members, and nine members to be appointed by the



7 governor, by and with the advice and consent of the Senate, at  
8 least five of whom shall be representative of farmers from  
9 different areas of the state. The state treasurer, auditor and the  
10 commissioner of agriculture may appoint designees to serve on  
11 the board of trustees. One of the appointed members who is not  
12 a representative of farmers shall be a representative of the  
13 division of natural resources; one of the appointed members  
14 who is not a representative of farmers shall be a representative  
15 of the soil conservation district; and one of the appointed  
16 members who is not a representative of farmers shall be a  
17 representative of an I.R.C. 501(c)(3) qualified land trust. Three  
18 of the five representatives of farmers shall be appointed as  
19 follows:

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

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

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

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

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

35 (A) Three for a term of four years;

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

37 (C) Three for a term of two years.

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

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

45 (d) *Compensation and expenses.* — Members shall not  
46 receive compensation. Each member of the board shall receive  
47 expense reimbursement for actual expenses incurred while  
48 engaged in the discharge of official duties, the actual expenses  
49 not to exceed the amount paid to members of the Legislature.

**§8-24-81. Funding of farmland protection programs.**

1 (a) *County funds.*

2 (1) *Creation of county funds.* - Once having created a  
3 county farmland protection program, a county commission may  
4 authorize the county farmland protection board to create and  
5 maintain a farmland protection fund and hire staff as it consid-  
6 ers appropriate.

7 (2) *Sources.* - A county farmland protection fund is  
8 comprised of:

9 (A) Any moneys not specifically limited to other uses and  
10 dedicated to the fund by a county commission;

11 (B) Any moneys collected pursuant to section eighty-five  
12 of this article;

13 (C) Any money made available to the fund by grants or  
14 transfers from governmental or private sources; and

15 (D) Any money realized by investments, interest, dividends  
16 or distributions.

17 (b) *State fund.*

18 (1) *Created and continued.* — The West Virginia farmland  
19 protection fund is created for the purposes specified in this  
20 article.

21 (2) *Sources.* — The West Virginia farmland protection fund  
22 is comprised of:

23 (A) Any money made available to the fund by general or  
24 special fund appropriations;

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

27 (C) Any money realized by investments, interest, dividends  
28 or distributions; and

29 (D) Any money appropriated by the Legislature for the  
30 West Virginia farmland protection fund.

31 (3) *Disbursements.* — The treasurer may not disburse any  
32 money from the fund other than:

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

35 (B) For reasonable expenses incurred by the members of  
36 the board of trustees of the authority in the performance of  
37 official duties; and

38 (C) For consideration in the purchase of farmland conserva-  
39 tion and preservation easements.

40 (4) *Money remaining at end of fiscal year.* — Any money  
41 remaining in the fund at the end of a fiscal year shall not revert  
42 to the general revenue fund of the state, but shall remain in the  
43 West Virginia farmland protection fund to be used for the  
44 purposes specified in this chapter.

45 (5) *Budget.* — The estimated budget of the authority for the  
46 next fiscal year shall be included with the budget of the West  
47 Virginia department of agriculture.

48 (6) *Audit.* — The fund shall be audited annually.

**§8-24-85. Tax on privilege of transferring real property.**

1 (a) Notwithstanding the provisions of section two, article  
2 twenty-two, chapter eleven, and effective the first day of  
3 January, two thousand three and thereafter, in addition to the  
4 tax imposed pursuant to article twenty-two, chapter eleven of  
5 this code, any county commission that has created a farmland  
6 protection program may impose an additional county excise tax  
7 for the privilege of transferring title to real estate at the rate of  
8 no more than one dollar and ten cents for each five hundred  
9 dollars' value or fraction thereof which additional tax shall  
10 apply to a maximum value of one million dollars, as repre-  
11 sented by any document as defined in section one, article  
12 twenty-two, chapter eleven of this code, payable at the time of  
13 delivery, acceptance or presentation for recording of the  
14 document.

15 (b) The tax imposed pursuant to this section is to be  
16 administered and collected as the tax on the privilege of  
17 transferring title to real estate imposed pursuant to the provi-  
18 sions of article twenty-two, chapter eleven of this code.

19 (c) The tax imposed pursuant to this section is to be used  
20 exclusively for the purpose of funding farmland preservation.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 1. DEPARTMENT OF AGRICULTURE.

#### §19-1-4d. Farmland preservation fees fund.

1 There is hereby created a special revenue account within  
2 the state treasury to be known as “Farmland Preservation Fees  
3 Fund”. Expenditures from the fund shall be used exclusively by  
4 the commissioner of agriculture for the purpose of funding  
5 farmland preservation boards in any county which has adopted  
6 and implemented a farmland protection program pursuant to the  
7 farmland preservation act as enacted beginning with section  
8 seventy-two, article twenty-four, chapter eight of this code.

---

## CHAPTER 7

(Com. Sub. for S. B. 447 — By Senators Facemyer and Bailey)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-e, relating to legalizing the growing of industrial hemp generally; defining terms; authorizing growing industrial hemp as an agricultural crop; requiring the agricultural commissioner to promulgate rules and otherwise regulate; providing grower licensing requirements; requiring federal approval of hemp production; distribution of fees; and providing defenses.

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

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

**ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.**

- §19-12E-1. Short title.
- §19-12E-2. Purpose.
- §19-12E-3. Definitions.
- §19-12E-4. Industrial hemp authorized as agricultural crop.
- §19-12E-5. Industrial hemp - licensing.
- §19-12E-6. Industrial hemp production - notification.
- §19-12E-7. Rule-making authority.
- §19-12E-8. Disposition of fees.
- §19-12E-9. Defense for possession or cultivation of marijuana.

**§19-12E-1. Short title.**

- 1 This article is known as the “Industrial Hemp Development
- 2 Act”.

**§19-12E-2. Purpose.**

- 1 The Legislature finds that the development and use of
- 2 industrial hemp can serve to improve the state’s economy and
- 3 agricultural vitality and that the production of industrial hemp
- 4 can be regulated so as not to interfere with the strict regulation
- 5 of controlled substances in this state. The purpose of the
- 6 industrial hemp development act is to promote the economy and
- 7 agriculture by permitting the development of a regulated
- 8 industrial hemp industry while maintaining strict control of
- 9 marijuana.

**§19-12E-3. Definitions.**

- 1 As used in this article:

2 (1) "Commissioner" means the commissioner of agricul-  
3 ture;

4 (2) "Industrial hemp" means all parts and varieties of the  
5 plant *cannabis sativa* L. containing no greater than one percent  
6 tetrahydrocannabinol; and

7 (3) "Marijuana" means all plant material from the genus  
8 *cannabis* containing more than one percent  
9 tetrahydrocannabinol or seeds of the genus capable of germina-  
10 tion.

**§19-12E-4. Industrial hemp authorized as agricultural crop.**

1 Industrial hemp that has not more than one percent  
2 tetrahydrocannabinol is considered an agricultural crop in this  
3 state if grown for the purposes authorized by the provisions of  
4 this article. Upon meeting the requirements of section three of  
5 this article, an individual in this state may plant, grow, harvest,  
6 possess, process, sell or buy industrial hemp.

**§19-12E-5. Industrial hemp - licensing.**

1 (a) A person growing industrial hemp for commercial  
2 purposes shall apply to the commissioner for license on a form  
3 prescribed by the commissioner.

4 (b) The application for a license must include the name and  
5 address of the applicant and the legal description of the land  
6 area to be used for the production of industrial hemp.

7 (c) The commissioner shall require each first-time applicant  
8 for a license to file a set of the applicant's fingerprints, taken by  
9 a law-enforcement officer, and any other information necessary  
10 to complete a statewide and nationwide criminal history check  
11 with the criminal investigation bureau of the department of  
12 justice for state processing and with the federal bureau of

13 investigation for federal processing. All of the costs associated  
14 with the criminal history check are the responsibility of the  
15 applicant. Criminal history records provided to the department  
16 under this section are confidential. The commissioner may use  
17 the records only to determine if an applicant is eligible to  
18 receive a license for the production of industrial hemp.

19 (d) Prior to issuing a license under the provisions of this  
20 article, the commissioner shall determine that the applicant has  
21 complied with all applicable requirements of the United States  
22 department of justice, drug enforcement administration for the  
23 production, distribution and sale of industrial hemp.

24 (e) If the applicant has completed the application process to  
25 the satisfaction of the commissioner, the commissioner shall  
26 issue the license which is valid until the thirty-first day of  
27 December of the year of application. An individual licensed  
28 under this section is presumed to be growing industrial hemp  
29 for commercial purposes.

**§19-12E-6. Industrial hemp production - notification.**

1 (a) Every licensee shall file with the commissioner:

2 (1) Documentation showing that the seeds planted are of a  
3 type and variety certified to contain no more than one percent  
4 tetrahydrocannabinol; and

5 (2) A copy of any contract to grow industrial hemp.

6 (b) Each licensee shall notify the commissioner of the sale  
7 or distribution of any industrial hemp grown by the licensee,  
8 including, but not limited to, the name and address of the  
9 person or entity receiving the industrial hemp and the amount  
10 of industrial hemp sold.

**§19-12E-7. Rule-making authority.**



1 The commissioner shall promulgate legislative rules that  
2 include, but are not limited to:

3 (1) Testing of the industrial hemp during growth to deter-  
4 mine tetrahydrocannabinol levels;

5 (2) Supervision of the industrial hemp during its growth and  
6 harvest;

7 (3) Assessment of a fee that is commensurate with the costs  
8 of the commissioner's activities in licensing, testing and  
9 supervising industrial hemp production;

10 (4) Promulgate rules relating to the production and sale of  
11 industrial hemp which are consistent with the rules of the  
12 United States department of justice, drug enforcement adminis-  
13 tration for the production, distribution and sale of industrial  
14 hemp; and

15 (5) Any other rules and procedures necessary to carry out  
16 the purposes of this article.

#### **§19-12E-8. Disposition of fees.**

1 All fees assessed as provided for in section five of this  
2 article must be deposited with the state treasurer to the credit of  
3 the "Agricultural Fee Fund" established by the provisions of  
4 section four-c, article one of this chapter for the use of the  
5 commissioner for administering and enforcing the provisions of  
6 this article.

#### **§19-12E-9. Defense for possession or cultivation of marijuana.**

1 (a) It is a complete defense to a prosecution for the posses-  
2 sion or cultivation of marijuana pursuant to the provisions of  
3 article four, chapter sixty-a of this code that:

4 (1) The defendant was growing industrial hemp pursuant to  
5 the provisions of this article;

6 (2) The defendant has a valid applicable controlled sub-  
7 stances registration from the United States department of  
8 justice, drug enforcement administration; and

9 (3) The defendant fully complied with all of the conditions  
10 of the controlled substances registration.

11 (b) This section is not a defense to a charge of criminal sale  
12 or distribution of marijuana as defined in chapter sixty-a of this  
13 code which does not meet the definition of industrial hemp.

---

## CHAPTER 8

**(S. B. 417 — By Senators Anderson, Ross,  
Facemyer, Love and Minard)**

---

[Passed March 7, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, ten, eleven, thirteen-a, thirteen-b, thirteen-c and fourteen, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-a, all relating to soil conservation districts; changing name of “soil conservation districts law of West Virginia” to “conservation districts law of West Virginia”; changing the name “soil conservation districts” to “conservation districts”; changing the name “state soil conservation committee” to “state conservation committee”; adding two members to the conservation committee; and continuing the state conservation committee.

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

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

**ARTICLE 21A. CONSERVATION DISTRICTS.**

- §19-21A-1. Title of article.
- §19-21A-2. Legislative determinations and declaration of policy.
- §19-21A-3. Definitions.
- §19-21A-4. State conservation committee; continuation.
- §19-21A-4a. Continuation of state conservation committee.
- §19-21A-5. Creation of conservation districts.
- §19-21A-6. Election of supervisors for each district.
- §19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisor powers and duties.
- §19-21A-8. Powers of districts; additional powers of supervisors.
- §19-21A-10. Authority of supervisors in determining observance of land-use regulations; suits to enforce compliance.
- §19-21A-11. Board of adjustment.
- §19-21A-13a. Authority of governmental divisions to expend money for works of improvement; levy.
- §19-21A-13b. Assurances of cooperation by governmental division.
- §19-21A-13c. Contracts with district for construction of flood control projects; power to borrow money; levy.
- §19-21A-14. Discontinuances of districts.

**§19-21A-1. Title of article.**

- 1 This article may be known and cited as the “ Conservation
- 2 Districts Law of West Virginia”.

**§19-21A-2. Legislative determinations and declaration of policy.**

- 1 It is hereby declared, as a matter of legislative determina-
- 2 tion:

3 (a) That the farm and grazing lands of the state of West  
4 Virginia are among the basic assets of the state and that the  
5 preservation of these lands is necessary to protect and promote  
6 the health, safety and general welfare of its people; that  
7 improper land-use practices have caused and have contributed  
8 to, and are now causing and contributing to, a progressively  
9 more serious erosion of the farm and grazing lands of this state  
10 by water; that the breaking of natural grass, plant and forest  
11 cover has interfered with the natural factors of soil stabilization,  
12 causing loosening of soil and exhaustion of humus and develop-  
13 ing a soil condition that favors erosion; that the topsoil is being  
14 washed out of fields and pastures; that there has been an  
15 accelerated washing of sloping fields; that these processes of  
16 erosion by water speed up with removal of absorptive topsoil,  
17 causing exposure of less absorptive and less protective but more  
18 erosive subsoil; that failure by any landowner to conserve the  
19 soil and control erosion upon his lands causes a washing of soil  
20 and water from his or her lands onto other lands and makes the  
21 conservation of soil and control of erosion of such other lands  
22 difficult or impossible.

23 (b) That the consequences of such soil erosion in the form  
24 of soil washing are the silting and sedimentation of stream  
25 channels, reservoirs, dams, ditches and harbors; the piling up of  
26 soil on lower slopes and its deposit over alluvial plains; the  
27 reduction in productivity or outright ruin of rich bottom lands  
28 by overwash of poor subsoil material, sand and gravel swept out  
29 of the hills; deterioration of soil and its fertility, deterioration of  
30 crops grown thereon and declining acre yields despite develop-  
31 ment of scientific processes for increasing such yields; loss of  
32 soil and water which causes destruction of food and cover for  
33 wildlife; the washing of soil into streams which silts over  
34 spawning beds and destroys water plants, diminishing the food  
35 supply of fish; a diminishing of the underground water reserve  
36 which causes water shortages, intensifies periods of drought  
37 and causes crop failures; an increase in the speed and volume

38 of rainfall runoff, causing severe and increasing floods which  
39 bring suffering, disease and death; impoverishment of families  
40 attempting to farm eroding and eroded lands; damage to roads,  
41 highways, railways, farm buildings and other property from  
42 floods; and losses in navigation, hydroelectric power, municipal  
43 water supply, irrigation developments, farming and grazing.

44 (c) That to conserve soil resources and control and prevent  
45 soil erosion and prevent floodwater and sediment damage and  
46 further the conservation, development, utilization and disposal  
47 of water, it is necessary that land-use practices contributing to  
48 soil wastage and soil erosion be discouraged and discontinued  
49 and appropriate soil-conserving land-use practices and works of  
50 improvement for flood prevention or the conservation, develop-  
51 ment, utilization and disposal of water be adopted and carried  
52 out; that among the procedures necessary for widespread  
53 adoption are the carrying on of engineering operations such as  
54 the construction of terraces, terrace outlets, dams, desilting  
55 basins, floodwater retarding structures, channel improvements,  
56 floodways, dikes, ponds, ditches and the like; the utilization of  
57 strip cropping, lister furrowing, contour cultivating and contour  
58 furrowing; land drainage; land irrigation; seeding and planting  
59 of waste, sloping, abandoned or eroded lands to water-conserv-  
60 ing and erosion-preventing plants, trees and grasses; forestation  
61 and reforestation; rotation of crops; soil stabilization with trees,  
62 grasses, legumes and other thick-growing, soil-holding crops;  
63 retardation of runoff by increasing absorption of rainfall; and  
64 retirement from cultivation of steep, highly erosive areas and  
65 areas now badly gullied or otherwise eroded.

66 (d) It is hereby declared to be the policy of the Legislature  
67 to provide for the conservation of the soil and soil resources of  
68 this state, for the control and prevention of soil erosion, for the  
69 prevention of floodwater and sediment damage and for further-  
70 ing the conservation, development, utilization and disposal of  
71 water, and thereby to preserve natural resources, control floods,

72 prevent impairment of dams and reservoirs, assist in maintain-  
73 ing the navigability of rivers and harbors, preserve wildlife,  
74 protect the tax base, protect public lands and protect and  
75 promote the health, safety and general welfare of the people of  
76 this state.

77 (e) This article contemplates that the incidental cost of  
78 organizing conservation districts will be borne by the state,  
79 while the expense of operating the districts so organized will be  
80 provided by donations, gifts, contributions, grants and appropri-  
81 ations, in money, services, materials or otherwise, from the  
82 United States or any of its agencies, from the state of West  
83 Virginia or from other sources, with the understanding that the  
84 owners or occupiers will contribute funds, labor, materials and  
85 equipment to aid the carrying out of erosion control measures  
86 on their lands.

### **§19-21A-3. Definitions.**

1 Wherever used or referred to in this article, unless a  
2 different meaning clearly appears from the context:

3 (1) "District" or "conservation district" means a subdivision  
4 of this state, organized in accordance with the provisions of this  
5 article, for the purposes, with the powers and subject to the  
6 restrictions hereinafter set forth.

7 (2) "Supervisor" means one of the members of the govern-  
8 ing body of a district, elected or appointed in accordance with  
9 the provisions of this article.

10 (3) "Committee" or "state conservation committee" means  
11 the agency created in section four of this article.

12 (4) "Petition" means a petition filed under the provisions of  
13 subsection (a), section five of this article for the creation of a  
14 district.

15       (5) “State” means the state of West Virginia.

16       (6) “Agency of this state” includes the government of this  
17 state and any subdivision, agency or instrumentality, corporate  
18 or otherwise, of the government of this state.

19       (7) “United States” or “agencies of the United States”  
20 includes the United States of America, natural resources  
21 conservation service of the United States department of  
22 agriculture, and any other agency or instrumentality, corporate  
23 or otherwise, of the United States of America.

24       (8) “Landowners” or “owners of land” includes any person  
25 or persons, firm or corporation who shall hold title to three or  
26 more acres of any lands lying within a district organized under  
27 the provisions of this article.

28       (9) “Land occupier” or “occupier of land” includes any  
29 person, firm or corporation who shall hold title to, or shall be in  
30 possession of, any lands lying within a district organized under  
31 the provisions of this article, whether as owner, lessee, renter or  
32 tenant.

33       (10) “Due notice” means notice published as a Class II legal  
34 advertisement in compliance with the provisions of article  
35 three, chapter fifty-nine of this code and the publication area for  
36 such publication shall be the county in which is located the  
37 appropriate area. At any hearing held pursuant to such notice at  
38 the time and place designated in such notice, adjournment may  
39 be made from time to time without the necessity of renewing  
40 such notice for such adjournment dates.

41       (11) The terms “soil conservation”, “erosion control” or  
42 “erosion prevention projects”, when used throughout the article,  
43 shall denote those projects that have been established by federal  
44 agencies in cooperation with state agencies for the purpose of

45 demonstrating soil erosion control and water conservation  
46 practices.

47 (12) The term "governing body" means the supervisors of  
48 any conservation district, town or city, council, city commis-  
49 sion, county court or body acting in lieu of a county court, in  
50 this state, and the term "governmental division" means any  
51 conservation district, town, city or county in this state.

52 (13) "Works of improvement" means such structures as  
53 may be necessary or convenient for flood prevention or the  
54 conservation, development, utilization or disposal of water.

**§19-21A-4. State conservation committee; continuation.**

1 (a) The state conservation committee is continued. It is to  
2 serve as an agency of the state and to perform the functions  
3 conferred upon it in this article. The committee shall consist of  
4 nine members. The following shall serve, ex officio, as mem-  
5 bers of the committee: The director of the state cooperative  
6 extension service; the director of the state agricultural experi-  
7 ment station; the director of the division of environmental  
8 protection; the state commissioner of agriculture, who shall be  
9 chairman of the committee; and the director of the division of  
10 forestry.

11 The governor shall appoint as additional members of the  
12 committee four representative citizens. Members will be  
13 appointed for four-year terms, which are staggered in accor-  
14 dance with the initial appointments under prior enactment of  
15 this act. In the event of a vacancy, appointment shall be for the  
16 unexpired term.

17 The committee may invite the secretary of agriculture of the  
18 United States of America to appoint one person to serve with  
19 the committee as an advisory member.



20       The committee shall keep a record of its official actions,  
21 shall adopt a seal, which seal shall be judicially noticed, and  
22 may perform such acts, hold such public hearings and promul-  
23 gate such rules as may be necessary for the execution of its  
24 functions under this article.

25       (b) The state conservation committee may employ an  
26 administrative officer and such technical experts and such other  
27 agents and employees, permanent and temporary, as it may  
28 require and shall determine their qualifications, duties and  
29 compensation. The committee may call upon the attorney  
30 general of the state for such legal services as it may require. It  
31 shall have authority to delegate to its chairman, to one or more  
32 of its members, or to one or more agents or employees, such  
33 powers and duties as it may deem proper. The committee is  
34 empowered to secure necessary and suitable office accommoda-  
35 tions and the necessary supplies and equipment. Upon request  
36 of the committee, for the purpose of carrying out any of its  
37 functions, the supervising officer of any state agency or of any  
38 state institution of learning shall, insofar as may be possible,  
39 under available appropriations and having due regard to the  
40 needs of the agency to which the request is directed, assign or  
41 detail to the committee, members of the staff or personnel of  
42 such agency or institution of learning and make such special  
43 reports, surveys or studies as the committee may request.

44       (c) A member of the committee shall hold office so long as  
45 he or she shall retain the office by virtue of which he or she  
46 shall be serving on the committee. A majority of the committee  
47 shall constitute a quorum and the concurrence of a majority in  
48 any matter within their duties shall be required for its determi-  
49 nation. The chairman and members of the committee shall  
50 receive no compensation for their services on the committee but  
51 shall be entitled to expenses, including traveling expenses  
52 necessarily incurred in the discharge of their duties on the  
53 committee. The committee shall provide for the execution of

54 surety bonds for all employees and officers who shall be  
55 entrusted with funds or property; shall provide for the keeping  
56 of a full and accurate public record of all proceedings and of all  
57 resolutions, rules and orders issued or adopted; and shall  
58 provide for an annual audit of the accounts of receipts and  
59 disbursements.

60 (d) In addition to the duties and powers hereinafter con-  
61 ferred upon the state conservation committee, it shall have the  
62 following duties and powers:

63 (1) To offer such assistance as may be appropriate to the  
64 supervisors of conservation districts, organized as provided  
65 hereinafter, in the carrying out of any of their powers and  
66 programs.

67 (2) To keep the supervisors of each of the several districts,  
68 organized under the provisions of this article, informed of the  
69 activities and experience of all other districts organized  
70 hereunder and to facilitate an interchange of advice and  
71 experience between such districts and cooperation between  
72 them;

73 (3) To coordinate the programs of the several conservation  
74 districts organized hereunder so far as this may be done by  
75 advice and consultation;

76 (4) To secure the cooperation and assistance of the United  
77 States and any of its agencies and of agencies of this state in the  
78 work of such districts;

79 (5) To disseminate information throughout the state  
80 concerning the activities and programs of the conservation  
81 districts organized hereunder and to encourage the formation of  
82 such districts in areas where their organization is desirable;

83       (6) To accept and receive donations, gifts, contributions,  
84 grants and appropriations in money, services, materials or  
85 otherwise from the United States or any of its agencies, from  
86 the state of West Virginia or from other sources and to use or  
87 expend such money, services, materials or other contributions  
88 in carrying out the policy and provisions of this article, includ-  
89 ing the right to allocate such money, services or materials in  
90 part to the various conservation districts created by this article  
91 in order to assist them in carrying on their operations; and

92       (7) To obtain options upon and to acquire by purchase,  
93 exchange, lease, gift, grant, bequest, devise or otherwise any  
94 property, real or personal, or rights or interests therein; to  
95 maintain, administer, operate and improve any properties  
96 acquired; to receive and retain income from such property and  
97 to expend such income as required for operation, maintenance,  
98 administration or improvement of such properties or in other-  
99 wise carrying out the purposes and provisions of this article;  
100 and to sell, lease or otherwise dispose of any of its property or  
101 interests therein in furtherance of the purposes and the provi-  
102 sions of this article. Money received from the sale of land  
103 acquired in the small watershed program shall be deposited in  
104 the special account of the state conservation committee and  
105 expended as herein provided.

#### **§19-21A-4a. Continuation of state conservation committee.**

1       The state conservation committee is continued until the first  
2 day of July, two thousand six, pursuant to the provisions of  
3 article four, chapter ten of the code of West Virginia, unless  
4 sooner terminated, continued or reestablished pursuant to the  
5 provisions of that article.

#### **§19-21A-5. Creation of conservation districts.**

1       (a) Any twenty-five owners of land lying within the limits  
2 of the territory proposed to be organized into a district may file

3 a petition with the state conservation committee asking that a  
4 conservation district be organized to function in the territory  
5 described in the petition. Such petition shall set forth:

6 (1) The proposed name of said district;

7 (2) That there is need, in the interest of the public health,  
8 safety and welfare, for a conservation district to function in the  
9 territory described in the petition;

10 (3) A description of the territory proposed to be organized  
11 as a district, which description shall not be required to be given  
12 by metes and bounds or by legal subdivisions, but shall be  
13 deemed sufficient if generally accurate;

14 (4) A request that the state conservation committee duly  
15 define the boundaries for such district; that a referendum be  
16 held within the territory so defined on the question of the  
17 creation of a conservation district in such territory; and that the  
18 committee determine that such a district be created.

19 Where more than one petition is filed covering neighboring  
20 parts of the same region, whether or not these areas overlap, the  
21 state conservation committee may consolidate all or any such  
22 petitions.

23 (b) Within thirty days after such a petition has been filed  
24 with the state conservation committee, it shall cause due notice  
25 to be given of a proposed hearing upon the question of the  
26 desirability and necessity, in the interest of the public health,  
27 safety and welfare, of the creation of such district, upon the  
28 question of the appropriate boundaries to be assigned to such  
29 district, upon the propriety of the petition and other proceedings  
30 taken under this article and upon all questions relevant to such  
31 inquiries. All owners of land within the limits of the territory  
32 described in the petition, and of lands within any territory  
33 considered for addition to such described territory, and all other

34 interested parties shall have the right to attend such hearings  
35 and to be heard. If it shall appear upon the hearing that it may  
36 be desirable to include within the proposed district territory  
37 outside of the area within which due notice of the hearing has  
38 been given, the hearing shall be adjourned and due notice of  
39 further hearing shall be given throughout the entire area  
40 considered for inclusion in the district and such further hearing  
41 held. After such hearing, if the committee shall determine, upon  
42 the facts presented at such hearing and upon such other relevant  
43 facts and information as may be available, that there is need, in  
44 the interest of the public health, safety and welfare, for a  
45 conservation district to function in the territory considered at  
46 the hearing, it shall make and record such determination and  
47 shall define, by metes and bounds or by legal subdivisions, the  
48 boundaries of such district. Districts thus defined may be a  
49 watershed or portion thereof and nothing in this article shall be  
50 interpreted to exclude from consideration, small areas often  
51 constituting a very small part of a large watershed. The district  
52 may be large or small, but in making such determination and in  
53 defining such boundaries the committee shall give due weight  
54 and consideration to the topography of the area considered and  
55 of the state, the composition of soils therein, the distribution of  
56 erosion, the prevailing land-use practices, the desirability and  
57 necessity of including within the boundaries the particular lands  
58 under consideration and the benefits such lands may receive  
59 from being included within such boundaries, the relation of the  
60 proposed area to existing watersheds and agricultural regions  
61 and to other conservation districts already organized or pro-  
62 posed for organization under the provisions of this article and  
63 such other physical, geographical and economic factors as are  
64 relevant, having due regard to the legislative determinations set  
65 forth in section two of this article. The territory to be included  
66 within such boundaries need not be contiguous. If the commit-  
67 tee shall determine after such hearing, after due consideration  
68 of the said relevant facts, that there is no need for a conserva-  
69 tion district to function in the territory considered at the

70 hearing, it shall make and record such determination and shall  
71 deny the petition. After six months shall have expired from the  
72 date of the denial of any such petition, subsequent petitions  
73 covering the same or substantially the same territory may be  
74 filed as aforesaid and new hearings held and determinations  
75 made thereon.

76 (c) After the committee has made and recorded a determi-  
77 nation that there is need, in the interest of the public health,  
78 safety and welfare, for the organization of a district in a  
79 particular territory and has defined the boundaries thereof, it  
80 shall consider the question whether the operation of a district  
81 within such boundaries with the powers conferred upon  
82 conservation districts in this article is administratively practica-  
83 ble and feasible. To assist the committee in the determination  
84 of such administrative practicability and feasibility, it shall be  
85 the duty of the committee, within a reasonable time after entry  
86 of the finding that there is need for the organization of the  
87 proposed district and the determination of the boundaries  
88 thereof, to hold a referendum within the proposed district upon  
89 the proposition of the creation of the district and to cause due  
90 notice of such referendum to be given. The question shall be  
91 submitted by ballots upon which the words "For creation of a  
92 conservation district of the lands below described and lying in  
93 the county (ies) of \_\_\_\_\_, \_\_\_\_\_, and  
94 \_\_\_\_\_ Against creation of a conservation district of the  
95 lands below described and lying in the county (ies) of  
96 \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_" shall  
97 appear, with a square before each proposition and a direction to  
98 insert an X mark in the square before one or the other of said  
99 propositions as the voter may favor or oppose creation of such  
100 district. The ballot shall set forth the boundaries of such  
101 proposed districts as determined by the committee. All owners  
102 of lands lying within the boundaries of the territory, as deter-  
103 mined by the state conservation committee, shall be eligible to  
104 vote in such referendum.

105 (d) The committee shall pay all expenses for the issuance  
106 of such notices and the conduct of such hearings and referenda  
107 and shall supervise the conduct of such hearings and referenda.  
108 It shall issue appropriate regulations governing the conduct of  
109 such hearings and referenda and providing for the registration  
110 prior to the date of the referendum of all eligible voters, or  
111 prescribing some other appropriate procedure for the determina-  
112 tion of those eligible as voters in such referendum. No infor-  
113 malities in the conduct of such referendum or in any matter  
114 relating thereto shall invalidate said referendum or the result  
115 thereof if notice shall have been given substantially as herein  
116 provided and said referendum shall have been fairly conducted.

117 (e) The committee shall publish the result of such referen-  
118 dum and shall thereafter consider and determine whether the  
119 operation of the district within the defined boundaries is  
120 administratively practicable and feasible. If the committee shall  
121 determine that the operation of such district is not administra-  
122 tively practicable and feasible, it shall record such determina-  
123 tion and deny the petition. If the committee shall determine that  
124 the operation of such district is administratively practicable and  
125 feasible, it shall record such determination and shall proceed  
126 with the organization of the district in the manner hereinafter  
127 provided. In making such determination the committee shall  
128 give due regard and weight to the attitudes of the occupiers of  
129 lands lying within the defined boundaries, the number of  
130 landowners eligible to vote in such referendum who shall have  
131 voted, the proportion of the votes cast in such referendum in  
132 favor of the creation of the district to the total number of votes  
133 cast, the approximate wealth and income of the land occupiers  
134 of the proposed district, the probable expense of carrying on  
135 erosion-control operations within such district and such other  
136 economic and social factors as may be relevant to such determi-  
137 nation, having due regard to the legislative determinations set  
138 forth in section two of this article: *Provided*, That the commit-  
139 tee shall not have authority to determine that the operation of

140 the proposed district within the defined boundaries is adminis-  
141 tratively practicable and feasible unless at least sixty per  
142 centum of the votes cast in the referendum upon the proposition  
143 of creation of the district shall have been cast in favor of the  
144 creation of such district.

145 (f) If the committee shall determine that the operation of the  
146 proposed district within the defined boundaries is administra-  
147 tively practicable and feasible, it shall appoint two supervisors  
148 to act with the supervisors elected as provided hereinafter, as  
149 the governing body of the district.

150 (g) The two appointed supervisors shall present to the  
151 secretary of state an application signed by them which shall set  
152 forth (and such application need contain no detail other than the  
153 mere recitals): (1) That a petition for the creation of the district  
154 was filed with the state conservation committee pursuant to the  
155 provisions of this article and that the proceedings specified in  
156 this article were taken pursuant to such petition; that the  
157 application is being filed in order to complete the organization  
158 of the district under this article; and that the committee has  
159 appointed them as supervisors; (2) the name and official  
160 residence of each of the supervisors, together with a certified  
161 copy of the appointments evidencing their right to office; (3)  
162 the term of office of each of the supervisors; (4) the name  
163 which is proposed for the district; and (5) the location of the  
164 principal office of the supervisors of the district. The applica-  
165 tion shall be subscribed and sworn to by each of the said  
166 supervisors before an officer authorized by the laws of this state  
167 to take and certify oaths, who shall certify upon the application  
168 that he personally knows the supervisors and knows them to be  
169 the officers as affirmed in the application and that each has  
170 subscribed thereto in the officer's presence. The application  
171 shall be accompanied by a statement by the state conservation  
172 committee, which shall certify (and such statement need contain  
173 no detail other than the mere recitals) that a petition was filed,



174 notice issued and hearing held as aforesaid; that the committee  
175 did duly determine that there is need, in the interest of the  
176 public health, safety and welfare, for a conservation district to  
177 function in the proposed territory and did define the boundaries  
178 thereof; that notice was given and a referendum held on the  
179 question of the creation of such district; that the result of such  
180 referendum showed a majority of the votes cast in such referen-  
181 dum to be in favor of the creation of the district; and that  
182 thereafter the committee did duly determine that the operation  
183 of the proposed district is administratively practicable and  
184 feasible. The said statement shall set forth the boundaries of the  
185 district as they have been defined by the committee.

186       The secretary of state shall examine the application and  
187 statement and, if he finds that the name proposed for the district  
188 is not identical with that of any other conservation district of  
189 this state or so nearly similar as to lead to confusion or uncer-  
190 tainty, he shall file them and shall record them in an appropriate  
191 book of record in his or her office. If the secretary of state shall  
192 find that the name proposed for the district is identical with that  
193 of any other conservation district of this state, or so nearly  
194 similar as to lead to confusion and uncertainty, he shall certify  
195 such fact to the state conservation committee which shall  
196 thereupon submit to the secretary of state a new name for the  
197 said district, which shall not be subject to such defects. Upon  
198 receipt of such new name, free of such defects, the secretary of  
199 state shall record the application and statement, with the name  
200 so modified, in an appropriate book of record in his or her  
201 office. The secretary of state shall make and issue to the said  
202 supervisors a certificate, under the seal of the state, of the due  
203 organization of the said district and shall record such certificate  
204 with the application and statement. The boundaries of such  
205 district shall include the territory as determined by the state  
206 conservation committee as aforesaid, but in no event shall they  
207 include any area included within the boundaries of another

208 conservation district organized under the provisions of this  
209 article.

210 (h) After six months shall have expired from the date of  
211 entry of a determination by the state conservation committee  
212 that operation of a proposed district is not administratively  
213 practicable and feasible and denial of a petition pursuant to such  
214 determination, subsequent petitions may be filed as aforesaid  
215 and action taken thereon in accordance with the provisions of  
216 this article.

217 (i) Petitions for including additional territory within an  
218 existing district may be filed with the state conservation  
219 committee and the proceedings herein provided for in the case  
220 of petitions to organize a district shall be observed in the case  
221 of petitions for such inclusion. The committee shall prescribe  
222 the form for such petitions, which shall be as nearly as may be  
223 in the form prescribed in this article for petitions to organize a  
224 district. Where the total number of landowners in the area  
225 proposed for inclusion shall be less than twenty-five, the  
226 petition may be filed when signed by a majority of the land-  
227 owners of such area and in such case no referendum need be  
228 held. In referenda upon petitions for such inclusion, all owners  
229 of land lying within the proposed additional area shall be  
230 eligible to vote.

231 (j) In any suit, action or proceeding involving the validity  
232 or enforcement of, or relating to, any contract, proceeding or  
233 action of the district, the district shall be deemed to have been  
234 established in accordance with the provisions of this article  
235 upon proof of the issuance of the aforesaid certificate by the  
236 secretary of state. A copy of such certificate duly certified by  
237 the secretary of state shall be admissible in evidence in any  
238 such suit, action or proceeding and shall be proof of the filing  
239 and contents thereof.

**§19-21A-6. Election of supervisors for each district.**

1        Within thirty days after the date of issuance by the secretary  
2 of state of a certificate of organization of a conservation district,  
3 nominating petitions may be filed with the state conservation  
4 committee to nominate candidates for supervisors of such  
5 district.

6        The committee shall have authority to extend the time  
7 within which nominating petitions may be filed. No such  
8 nominating petition shall be accepted by the committee unless  
9 it shall be subscribed by twenty-five or more owners of lands  
10 lying within the boundaries of such district and within the  
11 boundaries of the county in which the candidate resides.  
12 Landowners may sign more than one such nominating petition  
13 to nominate more than one candidate for supervisor. The  
14 committee shall give due notice of an election to be held for the  
15 election of one supervisor from each county or portion thereof  
16 within the boundaries of the district. The names of all nominees  
17 in each county on behalf of whom such nominating petitions  
18 have been filed within the time designated, shall appear  
19 arranged in alphabetical order of the surnames upon a ballot,  
20 with a square before each name and a direction to insert an X  
21 mark in the square before any one name to indicate the voter's  
22 preference. All owners of lands lying within the district shall be  
23 eligible to vote in such election for one candidate from the  
24 county in which they reside. Only such landowners shall be  
25 eligible to vote. The candidate in each county who shall receive  
26 the largest number of votes cast in such election by landowners  
27 residing in his or her county shall be one of the elected supervi-  
28 sors for such district. The committee shall pay all expenses of  
29 such election, shall supervise the conduct thereof, shall pre-  
30 scribe regulations governing the conduct of such election and  
31 the determination of the eligibility of voters therein and shall  
32 make public the results thereof.

**§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.**

1       The governing body of the district shall consist of the  
2 supervisors, appointed or elected, as provided in this article.  
3 The two supervisors appointed by the committee shall be  
4 persons who are by training and experience qualified to perform  
5 the specialized skilled services which will be required of them  
6 in the performance of their duties under this section and must  
7 be legal residents and landowners of the district.

8       The supervisors shall designate a chairman and may, from  
9 time to time, change the designation. The term of office of each  
10 supervisor is three years. A supervisor shall hold office until his  
11 or her successor has been elected or appointed. In case a new  
12 county or portion of a county is added to a district, the commit-  
13 tee may appoint a supervisor to represent it until such time as  
14 the next regular election of supervisors for the district takes  
15 place. In case a vacancy occurs among the elected supervisors  
16 of a district the committee shall appoint a successor from the  
17 same county to fill the unexpired term. The appointment shall  
18 be made from a name or list of names submitted by local farm  
19 organizations and agencies. When any county or portion of a  
20 county lying within the boundaries of a district has in effect  
21 eight hundred or more signed agreements of cooperation with  
22 occupiers of land located within the county, then at the next  
23 regular election of supervisors the land occupiers within the  
24 county or portion of the county are entitled to elect two  
25 supervisors to represent the county instead of one for the term  
26 and in the manner prescribed in this section. A majority of the  
27 supervisors constitutes a quorum and the concurrence of a  
28 majority in any matter within their duties shall be required for  
29 its determination. A supervisor is entitled to expenses and a per  
30 diem not to exceed twenty dollars when engaged in the perfor-  
31 mance of his or her duties.

32 The supervisors may, with the approval of the state com-  
33 mittee, employ a secretary, technical experts and any other  
34 officers, agents and employees, permanent and temporary, as  
35 they may require and shall determine their qualifications, duties  
36 and compensation. The supervisors may delegate to their  
37 chairman, to one or more supervisors or to one or more agents,  
38 or employees, those administrative powers and duties they  
39 consider proper. The supervisors shall furnish to the state  
40 conservation committee, upon request, copies of the ordinances,  
41 rules, regulations, orders, contracts, forms and other documents  
42 they adopt or employ and any other information concerning  
43 their activities as it may require in the performance of its duties  
44 under this article.

45 The supervisors shall provide for the execution of surety  
46 bonds for all employees and officers who shall be entrusted  
47 with funds or property; shall provide for the keeping of a full  
48 and accurate record of all proceedings and of all resolutions,  
49 regulations and orders issued or adopted; and shall provide for  
50 an annual audit of the accounts of receipts and disbursements.  
51 Any supervisor may be removed by the state conservation  
52 committee upon notice and hearing for neglect of duty or  
53 malfeasance in office, but for no other reason.

54 The supervisors may invite the legislative body of any  
55 municipality or county located near the territory comprised  
56 within the district to designate a representative to advise and  
57 consult with the supervisors of a district on all questions of  
58 program and policy which may affect the property, water  
59 supply or other interests of the municipality or county.

**§19-21A-8. Powers of districts; additional powers of supervisors.**

1 A conservation district organized under the provisions of  
2 this article shall have the following powers and the supervisor

3 thereof shall have the following powers, in addition to others  
4 granted in other sections of this article:

5 (1) To conduct surveys, investigations and research relating  
6 to the character of soil erosion and floodwater and sediment  
7 damage and to the conservation, development, utilization and  
8 disposal of water and the preventive and control measures  
9 needed to publish the results of such surveys, investigations or  
10 research and to disseminate information concerning such  
11 preventive and control measures and works of improvement:  
12 *Provided*, That in order to avoid duplication of research  
13 activities, no district shall initiate any research program or  
14 publish the results except with the approval of the state commit-  
15 tee and in cooperation with the government of this state or any  
16 of its agencies, or with the United States or any of its agencies;

17 (2) To conduct demonstrational projects within the district  
18 on lands owned or controlled by this state or any of its agencies,  
19 with the consent and cooperation of the agency administering  
20 and having jurisdiction thereof, and on any other lands within  
21 the district upon obtaining the consent of the owner and  
22 occupier of such lands or the necessary rights or interests in  
23 such lands in order to demonstrate by example the means,  
24 methods and measures by which soil and soil resources may be  
25 conserved and soil erosion in the form of soil washing may be  
26 prevented and controlled and works of improvement may be  
27 carried out;

28 (3) To carry out preventive and control measures and works  
29 of improvement within the district including, but not limited to,  
30 engineering operations, methods of cultivation, the growing of  
31 vegetation, changes in use of land and the measures listed in  
32 subsection (c), section two of this article on lands owned or  
33 controlled by this state or any of its agencies with the consent  
34 and cooperation of the agency administering and having  
35 jurisdiction thereof and on any other lands within the district

36 upon obtaining the consent of the owner and occupier of such  
37 lands or the necessary rights or interests in such lands;

38 (4) To cooperate, or enter into agreements with, and within  
39 the limits of appropriations duly made available to it by law, to  
40 furnish financial or other aid to any agency, governmental or  
41 otherwise, or any occupier of lands within the district in the  
42 carrying on of erosion-control and prevention operations and  
43 works of improvement within the district, subject to such  
44 conditions as the supervisors may deem necessary to advance  
45 the purposes of this article;

46 (5) To obtain options upon and to acquire, by purchase,  
47 exchange, lease, gift, grant, bequest, devise or otherwise, any  
48 property, real or personal, or rights or interests therein; to  
49 institute condemnation proceedings to acquire any property,  
50 real or personal, or rights or interests therein, whether or not  
51 located in the district, required for works of improvement; to  
52 maintain, administer and improve any properties acquired, to  
53 receive income from such properties and to expend such  
54 income in carrying out the purposes and provisions of this  
55 article; and to sell, lease or otherwise dispose of any of its  
56 property or interests therein in furtherance of the purposes and  
57 the provisions of this article;

58 (6) To make available, on such terms as it shall prescribe,  
59 to land occupiers within the district agricultural and engineering  
60 machinery and equipment, fertilizer, seeds and seedlings and  
61 such other material or equipment as will assist such land  
62 occupiers to carry on operations upon their lands for the  
63 conservation of soil resources and for the prevention and  
64 control of soil erosion and for flood prevention or the conserva-  
65 tion, development, utilization and disposal of water;

66       (7) To construct, improve, operate and maintain such  
67 structures as may be necessary or convenient for the perfor-  
68 mance of any of the operations authorized in this article;

69       (8) To develop with the approval of the state committee  
70 comprehensive plans for the conservation of soil resources and  
71 for the control and prevention of soil erosion and for flood  
72 prevention or the conservation, development, utilization and  
73 disposal of water within the district, which plans shall specify,  
74 in such detail as may be possible, the acts, procedures, perfor-  
75 mances and avoidances which are necessary or desirable for the  
76 effectuation of such plans, including the specification of  
77 engineering operations, methods of cultivation, the growing of  
78 vegetation, cropping programs, tillage practices and changes in  
79 use of land; and to publish such plans and information and  
80 bring them to the attention of occupiers of lands within the  
81 district;

82       (9) To take over, by purchase, lease or otherwise, and to  
83 administer any soil-conservation, flood-prevention, drainage,  
84 irrigation, water-management, erosion-control or erosion-  
85 prevention project, or combinations thereof, located within its  
86 boundaries, undertaken by the United States or any of its  
87 agencies, or by this state or any of its agencies; to manage, as  
88 agent of the United States or any of its agencies, or of this state  
89 or any of its agencies, any soil-conservation, flood-prevention,  
90 drainage, irrigation, water-management, erosion-control or  
91 erosion-prevention project, or combinations thereof, within its  
92 boundaries; to act as agent for the United States or any of its  
93 agencies, or for this state or any of its agencies, in connection  
94 with the acquisition, construction, operation, or administration  
95 of any soil-conservation, flood-prevention, drainage, irrigation,  
96 water-management, erosion-control or erosion-prevention  
97 project, or combinations thereof, within its boundaries; to  
98 accept donations, gifts, contributions and grants in money,  
99 services, materials or otherwise, from the United States or any



100 of its agencies, or from this state or any of its agencies, or from  
101 any other source and to use or expend such money, services,  
102 materials or other contributions in carrying on its operations;

103 (10) To sue and be sued in the name of the district; to have  
104 a seal, which seal shall be judicially noticed; to have perpetual  
105 succession unless terminated as hereinafter provided; to make  
106 and execute contracts and other instruments, necessary or  
107 convenient to the exercise of its powers; to make and, from time  
108 to time, amend and repeal rules and regulations not inconsistent  
109 with this article to carry into effect its purposes and powers;

110 (11) As a condition to this extending of any benefits under  
111 this article to, or the performance of work upon, any lands, the  
112 supervisors may require contributions in money, services,  
113 materials or otherwise to any operations conferring such  
114 benefits and may require land occupiers to enter into and  
115 perform such agreements or covenants as to the permanent use  
116 of such lands as will tend to prevent or control erosion and  
117 prevent floodwater and sediment damage thereon;

118 (12) No provisions with respect to the acquisition, operation  
119 or disposition of property by other public bodies shall be  
120 applicable to a district organized hereunder in its acquisition,  
121 operation and disposition of property unless the Legislature  
122 shall specifically so state;

123 (13) To enter into contracts and other arrangements with  
124 agencies of the United States, with persons, firms or corpora-  
125 tions, including public corporations, with the state government  
126 of this state or other states, or any department or agency  
127 thereof, with governmental divisions, with soil conservation,  
128 drainage, flood control, soil erosion or other improvement  
129 districts in this state or other states, for cooperation or assis-  
130 tance in constructing, improving, operating or maintaining  
131 works of improvement within the district, or in preventing

132 floods, or in conserving, developing, utilizing and disposing of  
133 water in the district, or for making surveys, investigations or  
134 reports thereof; and to obtain options upon and acquire prop-  
135 erty, real or personal, or rights or interests therein, in other  
136 districts or states required for flood prevention or the conserva-  
137 tion, development, utilization and disposal of water within the  
138 district and to construct, improve, operate or maintain thereon  
139 or therewith works of improvement.

**§19-21A-10. Authority of supervisors in determining observance  
of land-use regulations; suits to enforce compli-  
ance.**

1 The supervisors shall have authority to go upon any lands  
2 within the district to determine whether land-use regulations  
3 adopted under the provisions of section nine of this article are  
4 being observed.

5 Where the supervisors of any district shall find that any of  
6 the provisions of land-use regulations adopted in accordance  
7 with the provisions of section nine hereof are not being ob-  
8 served on particular lands and that such nonobservance tends to  
9 increase erosion on such lands and is interfering with the  
10 prevention or control of erosion on other lands within the  
11 district, the supervisors may present to the circuit court for the  
12 county in which the lands of the defendant may lie, a bill in  
13 equity, duly verified, setting forth the adoption of the land-use  
14 regulations, the failure of the defendant land occupier to  
15 observe such regulations and to perform particular work,  
16 operations or avoidances as required thereby and that such  
17 nonobservance tends to increase erosion on such lands and is  
18 interfering with the prevention or control of erosion on other  
19 lands within the district and praying the court to require the  
20 defendant to perform the work, operations or avoidances within  
21 a reasonable time and to order that if the defendant shall fail so  
22 to perform, the supervisors may go on the land, perform the

23 work or other operations or otherwise bring the condition of  
24 such lands into conformity with the requirements of such  
25 regulations and recover the costs and expenses thereof, with  
26 interest, from the occupiers of such land. Upon the presentation  
27 of such bill in equity, the court shall cause process to be issued  
28 against the defendant and shall hear the case. If it shall appear  
29 to the court that testimony is necessary for the proper disposi-  
30 tion of the matter, it may take evidence, or appoint a special  
31 commissioner to take such evidence as it may direct, and report  
32 the same to the court with his or her findings of fact and  
33 conclusions of law which shall constitute a part of the proceed-  
34 ings upon which the determination of the court shall be made.  
35 In ascertaining whether the land-use regulations are reasonable  
36 and just, the court may inquire into the extent to which the  
37 supervisors have been guided by the administrative standards  
38 set forth in paragraph (E), section nine of this article. The court  
39 may dismiss the bill; or it may require the defendant to perform  
40 the work, operations or avoidances and may provide that upon  
41 the failure of the defendant to initiate such performance within  
42 the time specified in the decree of the court and to prosecute the  
43 same to completion with reasonable diligence, the supervisors  
44 may enter upon the lands involved and perform the work or  
45 operations or otherwise bring the condition of such lands into  
46 conformity with the requirements of the regulations and recover  
47 the costs and expenses thereof, with interest at the rate of five  
48 per centum per annum, from the occupier of such lands. In all  
49 cases where the person in possession of lands who shall fail to  
50 perform such work, operations or avoidances shall not be the  
51 owner, the owner of such lands shall be joined as party defen-  
52 dant.

53       The court shall retain jurisdiction of the case until after the  
54 work has been completed. Upon completion of such work  
55 pursuant to such decree of the court, the supervisors may apply  
56 to the court, notice thereof being served upon the defendant in  
57 the case, stating the costs and expenses sustained by them in the

58 performance of the work and praying judgment therefor with  
59 interest. The court shall have jurisdiction to enter judgment for  
60 the amount of such costs and expenses, with interest at the rate  
61 of five per centum per annum until paid, together with the costs  
62 of suit, including a reasonable attorney's fee to be fixed by the  
63 court.

**§19-21A-11. Board of adjustment.**

1 (a) Where the supervisors of any district organized under  
2 the provision of this article shall adopt any ordinance prescrib-  
3 ing land-use regulations in accordance with the provisions of  
4 section nine hereof, they shall further provide by ordinance for  
5 the establishment of a board of adjustment. Such board of  
6 adjustment shall consist of three members, each to be appointed  
7 for a term of three years, except that the members first ap-  
8 pointed shall be appointed for terms of one, two and three  
9 years, respectively. The members of each such board of  
10 adjustment shall be appointed by the state conservation com-  
11 mittee and shall serve at the will and pleasure of the committee.

12 Vacancies in the board of adjustment shall be filled in the  
13 same manner as original appointments and shall be for the  
14 unexpired term of the member whose term becomes vacant.  
15 Members of the state conservation committee and the supervi-  
16 sors of the district shall be ineligible to appointment as mem-  
17 bers of the board of adjustment during their tenure of such other  
18 office. The members of the board of adjustment shall receive no  
19 compensation for their services, but they shall be entitled to  
20 expenses, including traveling expenses, necessarily incurred in  
21 the discharge of their duties. The state committee shall pay the  
22 necessary administrative and other expenses of operation  
23 incurred by the board, upon the certificate of the chairman of  
24 the board.

25       (b) The board of adjustment shall adopt rules to govern its  
26 procedures, which rules shall be in accordance with the  
27 provisions of this article and with the provisions of any ordi-  
28 nance adopted pursuant to this section. The board shall desig-  
29 nate a chairman from among its members and may, from time  
30 to time, change such designation. Meetings of the board shall  
31 be held at the call of the chairman and at such other times as the  
32 board may determine. Any two members of the board shall  
33 constitute a quorum. The chairman, or in his or her absence  
34 such other member of the board as he or she may designate to  
35 serve as acting chairman, may administer oaths and compel the  
36 attendance of witnesses. All meetings of the board shall be open  
37 to the public. The board shall keep a full and accurate record of  
38 all proceedings, of all documents filed with it and of all orders  
39 entered which shall be filed in the office of the board and shall  
40 be a public record.

41       (c) Any land occupier may file a petition with the board of  
42 adjustment alleging that there are great practical difficulties or  
43 unnecessary hardship in the way of his or her carrying out upon  
44 his or her lands the land-use regulations prescribed by ordi-  
45 nance approved by the supervisors and praying the board to  
46 authorize a variance from the terms of the land-use regulations  
47 in the application of such regulations to the lands occupied by  
48 the petitioner. Copies of such petition shall be served by the  
49 petitioner upon the chairman of the supervisors of the district  
50 within which his or her lands are located and upon the chairman  
51 of the state conservation committee. The board of adjustment  
52 shall fix a time for the hearing of the petition and cause due  
53 notice of such hearing to be given. The supervisors of the  
54 district and the state conservation committee shall have the  
55 right to appear and be heard at such hearing. Any occupier of  
56 lands lying within the district who shall object to the authoriz-  
57 ing of the variance prayed for may intervene and become a  
58 party to the proceedings. Any party to the hearing before the  
59 board may appear in person, by agent or by attorney. If, upon

60 the facts presented at such hearing, the board shall determine  
61 that there are great practical difficulties or unnecessary hardship  
62 in the way of applying the strict letter of any of the land-use  
63 regulations upon the lands of the petitioner, it shall make and  
64 record such determination and shall make and record findings  
65 of fact as to the specific conditions which establish such great  
66 practical difficulties or unnecessary hardship. Upon the basis of  
67 such findings and determination, the board shall have power by  
68 order to authorize such variance from the terms of the land-use  
69 regulations, in their application to the lands of the petitioner, as  
70 will relieve such great practical difficulties or unnecessary  
71 hardship and will not be contrary to the public interest and such  
72 that the spirit of the land-use regulations shall be observed, the  
73 public health, safety and welfare secured and substantial justice  
74 done.

75 (d) Any petitioner aggrieved by an order of the board  
76 granting or denying, in whole or in part, the relief sought, the  
77 supervisors of the district or any intervening party may obtain  
78 a review of such order in the circuit court of the county in  
79 which the land lies, by filing in such a court a petition praying  
80 that the order of the board be modified or set aside. A copy of  
81 such petition shall forthwith be served upon the parties to the  
82 hearing before the board and thereupon the party seeking  
83 review shall file in the court a transcript of the entire record in  
84 the proceedings, certified by the board, including the documents  
85 and testimony upon which the order complained of was entered  
86 and the findings, determination and order of the board. Upon  
87 such filing, the court shall cause notice thereof to be served  
88 upon the parties and shall have jurisdiction of the proceedings  
89 and of the questions determined or to be determined therein and  
90 shall have power to grant such temporary relief as it deems just  
91 and proper and to make and enter a decree enforcing or setting  
92 aside, in whole or in part, the order of the board. No contention  
93 that has not been urged before the board shall be considered by  
94 the court unless the failure or neglect to urge such contention

95 shall be excused because of extraordinary circumstances. The  
96 findings of the board as to the facts, if supported by evidence,  
97 shall be conclusive. If any party shall apply to the court for  
98 leave to produce additional evidence and shall show to the  
99 satisfaction of the court that such evidence is material and that  
100 there were reasonable grounds for the failure to produce such  
101 evidence in the hearing before the board, the court may order  
102 such additional evidence to be taken before the board and to be  
103 made a part of the transcript. The board may modify its findings  
104 as to the facts or make new findings, taking into consideration  
105 the additional evidence so taken and filed, and it shall file such  
106 modified or new findings which, if supported by evidence, shall  
107 be conclusive and shall file with the court its recommendations,  
108 if any, for the setting aside of its original order. The jurisdiction  
109 of the court shall be conclusive and its judgment and decree  
110 shall be final, except that the same shall be subject to review in  
111 the same manner as are other judgments or decrees of the court.

**§19-21A-13a. Authority of governmental divisions to expend money for works of improvement; levy.**

1 The governing body of any governmental division which  
2 may reasonably be expected to receive a benefit from the  
3 construction, improvement, operation or maintenance of any  
4 works of improvement may expend money for such construc-  
5 tion, improvement, operation or maintenance if this expectation  
6 exists as to any part of the governmental division and even  
7 though such works of improvement are not located within the  
8 corporate limits of the governmental division or are not within  
9 this state: *Provided*, That if the expenditure is not made directly  
10 by the governmental division for such purpose, it shall be made  
11 only through a conservation district or watershed improvement  
12 district organized under the laws of this state, but it shall not be  
13 necessary that any part of the governmental division be within  
14 the limits of the district through which the expenditure is made.  
15 Such governing bodies or governmental divisions may set up in

16 their respective budgets funds to be spent for such purposes and  
17 municipalities and counties may levy and collect taxes for such  
18 purposes in the manner provided by law: *Provided, however,*  
19 That in case sufficient funds cannot be raised by ordinary  
20 levies, additional funds may be raised by municipalities and  
21 counties as provided by section sixteen, article eight, chapter  
22 eleven of this code.

**§19-21A-13b. Assurances of cooperation by governmental division.**

1 By vote of the governing body, any governmental division  
2 authorized to expend money on works of improvement by  
3 section thirteen-a of this article may alone, or in combination  
4 with any other governmental division or divisions so authorized  
5 to expend money on works of improvement, give assurances, by  
6 contract or otherwise, satisfactory to agencies of the United  
7 States, congressional committees or other proper federal  
8 authority and to conservation districts or watershed improve-  
9 ment districts organized under the laws of this state that the  
10 governmental division or divisions will construct, improve,  
11 operate or maintain works of improvement or will appropriate  
12 a sum or sums of money and expend it for such purposes as  
13 provided in section thirteen-a of this article.

14 The assurances, whether by contract or otherwise, shall be  
15 reduced to writing and before final approval of the governing  
16 bodies involved shall be submitted to the attorney general for  
17 approval. After approval by the attorney general and by the  
18 governing body or bodies concerned, certified copies of the  
19 assurances shall be filed in the office of the county clerk of the  
20 county or counties in which the governmental division is  
21 located and in the office of the state tax commissioner.

22 Any assurance hereunder may be valid and binding for a  
23 period of time not to exceed fifty years.



**§19-21A-13c. Contracts with district for construction of flood control projects; power to borrow money; levy.**

1       The county court of each county and the governing body of  
2 each municipality in the state is hereby authorized and empow-  
3 ered to enter into a contract or agreement with the conservation  
4 district or districts for the purpose of constructing flood control  
5 projects within their respective counties or municipalities or  
6 adjacent thereto and to use said projects as recreational areas or  
7 public parks. For the purpose of defraying the cost of any such  
8 project or projects, the county court or the governing body of  
9 any municipality is hereby authorized to borrow from the  
10 federal government or from any federal agency having money  
11 to loan, a sum sufficient to cover the cost of such project or  
12 projects. For the purpose of retiring any such indebtedness  
13 incurred under the provisions of this section, notwithstanding  
14 any other provisions of law, said county courts or the governing  
15 body of any municipality is hereby authorized to lay and  
16 impose a county or citywide levy as the case might be.

**§19-21A-14. Discontinuance of districts.**

1       At any time after five years following the organization of  
2 a district under the provisions of this article, any twenty-five  
3 owners of land lying within the boundaries of such district may  
4 file a petition with the state conservation committee praying  
5 that the operations of the district be terminated and the exist-  
6 tence of the district discontinued. The committee may conduct  
7 such public meetings and public hearings upon such petition as  
8 may be necessary to assist it in the consideration thereof.  
9 Within sixty days after such a petition has been received by the  
10 committee it shall give due notice of the holding of a referen-  
11 dum and shall supervise such referendum and issue appropriate  
12 regulations governing the conduct thereof. The questions shall  
13 be submitted by ballots upon which the words "For terminating  
14 the existence of the ..... (name of the conservation

15 district to be here inserted)” and “Against terminating the  
16 existence of the ..... (name of the conservation district to  
17 be here inserted)” shall appear, with a square before each  
18 proposition and a direction to insert an X mark in the square  
19 before one or the other of said propositions as the voter may  
20 favor or oppose discontinuance of such district. All owners of  
21 lands lying within the boundaries of the district shall be eligible  
22 to vote in such referendum. Only such landowners shall be  
23 eligible to vote. No informalities in the conduct of such  
24 referendum or in any matters relating thereto shall invalidate  
25 said referendum or the result thereof if notice thereof shall have  
26 been given substantially as herein provided and said referendum  
27 shall have been fairly conducted.

28       The committee shall publish the result of such referendum  
29 and shall thereafter consider and determine whether the  
30 continued operation of the district within the defined boundaries  
31 is administratively practicable and feasible. If the committee  
32 shall determine that the continued operation of such district is  
33 administratively practicable and feasible, it shall record such  
34 determination and deny the petition. If the committee shall  
35 determine that the continued operation of such district is not  
36 administratively practicable and feasible, it shall record such  
37 determination and shall certify such determination to the  
38 supervisors of the district. In making such determination the  
39 committee shall give due regard and weight to the attitudes of  
40 the owners of lands lying within the district, the number of  
41 landowners eligible to vote in such referendum who shall have  
42 voted, the proportion of the votes cast in such referendum in  
43 favor of the discontinuance of the district to the total number of  
44 votes cast, the approximate wealth and income of the land  
45 occupiers of the district, the probable expense of carrying on  
46 erosion-control operations within such district and such other  
47 economic and social factors as may be relevant to such determi-  
48 nation, having due regard to the legislative findings set forth in  
49 section two of this article: *Provided*, That the committee shall

50 not have authority to determine that the continued operation of  
51 the district is administratively practicable and feasible unless at  
52 least a majority of the votes cast in the referendum shall have  
53 been cast in favor of the continuance of such district.

54       Upon receipt from the state conservation committee of  
55 certification that the committee has determined that the  
56 continued operation of the district is not administratively  
57 practicable and feasible, pursuant to the provisions of this  
58 section, the supervisors shall forthwith proceed to terminate the  
59 affairs of the district. The supervisors shall dispose of all  
60 property belonging to the district at public auction and shall pay  
61 over the proceeds of such sale to be converted into the state  
62 treasury. The supervisors shall thereupon file an application,  
63 duly verified, with the secretary of state for the discontinuance  
64 of such district and shall transmit with such application the  
65 certificate of the state conservation committee setting forth the  
66 determination of the committee that the continued operation of  
67 such district is not administratively practicable and feasible.  
68 The application shall recite that the property of the district has  
69 been disposed of and the proceeds paid over as in this section  
70 provided, and shall set forth a full accounting of such properties  
71 and proceeds of the sale. The secretary of state shall issue to the  
72 supervisors a certificate of dissolution and shall record such  
73 certificate in an appropriate book of record in his or her office.

74       Upon issuance of a certificate of dissolution under the  
75 provisions of this section, all regulations theretofore adopted  
76 and in force within such district shall be of no further force and  
77 effect. All contracts theretofore entered into, to which the  
78 district or supervisors are parties, shall remain in force and  
79 effect for the period provided in such contracts. The state  
80 conservation committee shall be substituted for the district or  
81 supervisors as party to such contracts. The committee shall be  
82 entitled to all benefits and subject to all liabilities under such  
83 contracts and shall have the same right and liability to perform,  
84 to require performance, to sue and be sued thereon and to

85 modify or terminate such contracts by mutual consent or  
86 otherwise, as the supervisor of the district would have had.  
87 Such dissolution shall not affect the lien of any judgment  
88 entered under the provisions of section ten of this article, nor  
89 the pendency of any action instituted under the provisions of  
90 such section, and the committee shall succeed to all the rights  
91 and obligations of the district or supervisors as to such liens and  
92 actions.

93 The state conservation committee shall not entertain  
94 petitions for the discontinuance of any district nor conduct  
95 referenda upon such petitions nor make determinations pursuant  
96 to such petitions in accordance with the provisions of this  
97 article more often than once in three years.

---

## CHAPTER 9

(Com. Sub. for S. B. 530 — By Senator Anderson)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-two, article eight, chapter sixty of said code, all relating to wine and nonintoxicating beer generally; and allowing retailers of wine and nonintoxicating beer to pay distributors by electronic funds transfer.

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

That section eighteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-two, article eight,

chapter sixty of said code be amended and reenacted, all to read as follows:

**Chapter**

**11. Taxation.**

**60. State Control of Alcoholic Liquors.**

**CHAPTER 11. TAXATION.**

**ARTICLE 16. NONINTOXICATING BEER.**

**§11-16-18. Unlawful acts of licensees; criminal penalties.**

1 (a) It shall be unlawful:

2 (1) For any licensee, his, her, its or their servants, agents or  
3 employees to sell, give or dispense, or any individual to drink  
4 or consume, in or on any licensed premises or in any rooms  
5 directly connected therewith, nonintoxicating beer or cooler on  
6 weekdays between the hours of two o'clock a.m. and seven  
7 o'clock a.m., or between the hours of two o'clock a.m. and one  
8 o'clock p.m., on any Sunday, except in private clubs licensed  
9 under the provisions of article seven, chapter sixty of this code,  
10 where the hours shall conform with the hours of sale of alco-  
11 holic liquors;

12 (2) For any licensee, his, her, its or their servants, agents or  
13 employees to sell, furnish or give any nonintoxicating beer as  
14 defined in this article to any person visibly or noticeably  
15 intoxicated, or to any person known to be insane or known to be  
16 a habitual drunkard;

17 (3) For any licensee, his, her, its or their servants, agents or  
18 employees to sell, furnish or give any nonintoxicating beer as  
19 defined in this article to any person who is less than twenty-one  
20 years of age;

21 (4) For any distributor to sell or offer to sell, or any retailer  
22 to purchase or receive, any nonintoxicating beer as defined in  
23 this article, except for cash and no right of action shall exist to  
24 collect any claims for credit extended contrary to the provisions  
25 of this subdivision. Nothing herein contained shall prohibit a  
26 licensee from crediting to a purchaser the actual price charged  
27 for packages or containers returned by the original purchaser as  
28 a credit on any sale, or from refunding to any purchaser the  
29 amount paid or deposited for the containers when title is  
30 retained by the vendor: *Provided*, That a distributor may accept  
31 an electronic transfer of funds if the transfer of funds is initiated  
32 by an irrevocable payment order on the invoiced amount for the  
33 nonintoxicating beer. The cost of the electronic fund transfer  
34 shall be borne by the retailer and the distributor must initiate the  
35 transfer no later than noon of one business day after the  
36 delivery;

37 (5) For any brewer or distributor or brewpub or his, her, its  
38 or their agents to transport or deliver nonintoxicating beer as  
39 defined in this article to any retail licensee on Sunday;

40 (6) For any brewer or distributor to give, furnish, rent or  
41 sell any equipment, fixtures, signs or supplies directly or  
42 indirectly or through a subsidiary or affiliate to any licensee  
43 engaged in selling products of the brewing industry at retail, or  
44 to offer any prize, premium, gift or other similar inducement,  
45 except advertising matter of nominal value, to either trade or  
46 consumer buyers: *Provided*, That a distributor may offer, for  
47 sale or rent, tanks of carbonic gas. Nothing herein contained  
48 shall prohibit a brewer from sponsoring any professional or  
49 amateur athletic event or from providing prizes or awards for  
50 participants and winners in any events: *Provided, however*, That  
51 no event shall be sponsored which permits actual participation  
52 by athletes or other persons who are minors, unless specifically  
53 authorized by the commissioner;

54       (7) For any licensee to permit in his or her premises any  
55 lewd, immoral or improper entertainment, conduct or practice;

56       (8) For any licensee except the holder of a license to  
57 operate a private club issued under the provisions of article  
58 seven, chapter sixty of this code or a holder of a license or a  
59 private wine restaurant issued under the provisions of article  
60 eight of said chapter to possess a federal license, tax receipt or  
61 other permit entitling, authorizing or allowing such licensee to  
62 sell liquor or alcoholic drinks other than nonintoxicating beer;

63       (9) For any licensee to obstruct the view of the interior of  
64 his or her premises by enclosure, lattice, drapes or any means  
65 which would prevent plain view of the patrons occupying the  
66 premises. The interior of all licensed premises shall be ade-  
67 quately lighted at all times: *Provided*, That provisions of this  
68 subdivision do not apply to the premises of a Class B retailer,  
69 the premises of a private club licensed under the provisions of  
70 article seven, chapter sixty of this code or the premises of a  
71 private wine restaurant licensed under the provisions of article  
72 eight of said chapter;

73       (10) For any licensee to manufacture, import, sell, trade,  
74 barter, possess or acquiesce in the sale, possession or consump-  
75 tion of any alcoholic liquors on the premises covered by such  
76 license or on premises directly or indirectly used in connection  
77 therewith: *Provided*, That the prohibition contained in this  
78 subdivision with respect to the selling or possessing or to the  
79 acquiescence in the sale, possession or consumption of alco-  
80 holic liquors is not applicable with respect to the holder of a  
81 license to operate a private club issued under the provisions of  
82 article seven, chapter sixty of this code nor shall the prohibition  
83 be applicable to a private wine restaurant licensed under the  
84 provisions of article eight of said chapter insofar as such private  
85 wine restaurant is authorized to serve wine;

86 (11) For any retail licensee to sell or dispense nonintoxicating  
87 beer, as defined in this article, purchased or acquired from  
88 any source other than a distributor, brewer or manufacturer  
89 licensed under the laws of this state;

90 (12) For any licensee to permit loud, boisterous or disorderly  
91 conduct of any kind upon his or her premises or to permit  
92 the use of loud musical instruments if either or any of the same  
93 may disturb the peace and quietude of the community wherein  
94 the business is located: *Provided*, That no licensee may have in  
95 connection with his or her place of business any loudspeaker  
96 located on the outside of the licensed premises that broadcasts  
97 or carries music of any kind;

98 (13) For any person whose license has been revoked, as  
99 provided in this article, to obtain employment with any retailer  
100 within the period of one year from the date of the revocation, or  
101 for any retailer to knowingly employ that person within the  
102 specified time;

103 (14) For any distributor to sell, possess for sale, transport or  
104 distribute nonintoxicating beer except in the original container;

105 (15) For any licensee to knowingly permit any act to be  
106 done upon the licensed premises, the commission of which  
107 constitutes a crime under the laws of this state;

108 (16) For any Class B retailer to permit the consumption of  
109 nonintoxicating beer upon his or her licensed premises;

110 (17) For any Class A licensee, his, her, its or their servants,  
111 agents or employees, or for any licensee by or through any  
112 servants, agents or employees, to allow, suffer or permit any  
113 person less than eighteen years of age to loiter in or upon any  
114 licensed premises; except, however, that the provisions of this  
115 subdivision do not apply where a person under the age of  
116 eighteen years is in or upon the premises in the immediate



117 company of his or her parent or parents, or where and while a  
118 person under the age of eighteen years is in or upon the  
119 premises for the purpose of and actually making a lawful  
120 purchase of any items or commodities therein sold, or for the  
121 purchase of and actually receiving any lawful service therein  
122 rendered, including the consumption of any item of food, drink  
123 or soft drink therein lawfully prepared and served or sold for  
124 consumption on the premises;

125 (18) For any distributor to sell, offer for sale, distribute or  
126 deliver any nonintoxicating beer outside the territory assigned  
127 to any distributor by the brewer or manufacturer of nonintoxi-  
128 cating beer or to sell, offer for sale, distribute or deliver  
129 nonintoxicating beer to any retailer whose principal place of  
130 business or licensed premises is within the assigned territory of  
131 another distributor of such nonintoxicating beer: *Provided*, That  
132 nothing herein shall be deemed to prohibit sales of convenience  
133 between distributors licensed in this state wherein one distribu-  
134 tor sells, transfers or delivers to another distributor a particular  
135 brand or brands for sale at wholesale; and

136 (19) For any licensee or any agent, servant or employee of  
137 any licensee to knowingly violate any rule or regulation  
138 lawfully promulgated by the commissioner in accordance with  
139 the provisions of chapter twenty-nine-a of this code.

140 (b) Any person who violates any provision of this article  
141 including, but not limited to, any provision of this section, or  
142 any rule, regulation or order lawfully promulgated by the  
143 commissioner, or who makes any false statement concerning  
144 any material fact in submitting application for license or for a  
145 renewal of a license or in any hearing concerning the revocation  
146 thereof, or who commits any of the acts herein declared to be  
147 unlawful shall be guilty of a misdemeanor and shall be pun-  
148 ished for each offense by a fine of not less than twenty-five nor  
149 more than five hundred dollars, or imprisoned in the county jail

150 for not less than thirty days nor more than six months, or by  
151 both fine and imprisonment in the discretion of the court.  
152 Magistrates shall have concurrent jurisdiction with the circuit  
153 court and any other courts having criminal jurisdiction in their  
154 county for the trial of all misdemeanors arising under this  
155 article.

156 (c) Nothing in this article nor any rule or regulation of the  
157 commissioner shall prevent or be deemed to prohibit any  
158 licensee from employing any person who is at least eighteen  
159 years of age to serve in the licensee's lawful employ, including  
160 the sale or delivery of nonintoxicating beer as defined in this  
161 article. With the prior approval of the commissioner, a licensee  
162 whose principal business is the sale of food or consumer goods  
163 or the providing of recreational activities, including, but not  
164 limited to, nationally franchised fast food outlets, fam-  
165 ily-oriented restaurants, bowling alleys, drug stores, discount  
166 stores, grocery stores and convenience stores, may employ  
167 persons who are less than eighteen years of age but at least  
168 sixteen years of age: *Provided*, That the person's duties shall  
169 not include the sale or delivery of nonintoxicating beer or  
170 alcoholic liquors: *Provided, however*, That the authorization to  
171 employ persons under the age of eighteen years shall be clearly  
172 indicated on the licensee's license.

## CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

### ARTICLE 8. SALE OF WINES.

#### §60-8-22. Sales on credit prohibited; exception.

1 It shall be unlawful for a distributor to sell or offer to sell,  
2 or a retailer to purchase or receive, any wine except on a cash  
3 basis and no right of action exists to collect any claims for  
4 credit extended contrary to the provisions of this subdivision:  
5 *Provided*, That nothing herein prohibits, as a credit on any

6 subsequent sale, the crediting of the purchase price charged for  
7 wine returned by the purchaser because of damage, spoilage,  
8 erroneous shipments or orders and other such reasons custom-  
9 ary in the trade: *Provided, however,* That a distributor may  
10 accept an electronic transfer of funds if the transfer of funds is  
11 initiated by an irrevocable payment order on the invoiced  
12 amount for the wine. The cost of the electronic fund transfer  
13 must be borne by the retailer and the distributor must initiate  
14 the transfer no later than noon of one business day after the  
15 delivery.

---

## CHAPTER 10

**(Com. Sub. for H. B. 4335 — By Mr. Speaker, Mr. Kiss,  
and Delegates Spencer, Staton and Stemple)**

---

[Passed February 26, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen; and that article twelve, chapter eight of said code be amended by adding thereto a new section, designated section five-d, all relating to requiring any municipal or county ordinance or order concerning the regulation or placement of amateur radio antennas meet certain requirements and comply with Federal Communications Commission regulations, rulings and orders.

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

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirteen; and that article

twelve, chapter eight of said code be amended by adding thereto a new section, designated section five-d, all to read as follows:

**Chapter**

**7. County Commissions and Officers.**

**8. Municipal Corporations.**

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-13. Regulation of amateur radio antennas.**

1 (a) Any county ordinance or order concerning the regula-  
2 tion or placement of amateur radio antennas must:

3 (1) Comply with all Federal Communications Commission  
4 regulations and its rulings and orders;

5 (2) Reasonably accommodate amateur radio communica-  
6 tions; and

7 (3) Represent the minimum practicable regulation to  
8 accomplish the county's legitimate purpose.

9 (b) Nothing in this section shall be deemed to prohibit a  
10 county commission from taking action to protect or preserve  
11 historic buildings, structures, sites and districts that have been  
12 established by federal, state or local law.

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED  
RELATIONS OF MUNICIPALITIES, GOVERNING  
BODIES AND MUNICIPAL OFFICERS AND EMPLOY-  
EES; SUITS AGAINST MUNICIPALITIES.**

**§8-12-5d. Regulation of amateur radio antennas.**

1 (a) Any municipal ordinance or order concerning the  
2 regulation or placement of amateur radio antennas must:

3 (1) Comply with all Federal Communications Commission  
4 regulations and its rulings and orders;

5 (2) Reasonably accommodate amateur radio communica-  
6 tions; and

7 (3) Represent the minimum practicable regulation to  
8 accomplish the municipality's legitimate purpose.

9 (b) Nothing in this section shall be deemed to prohibit a  
10 municipal governing body from taking action to protect or  
11 preserve historic buildings, structures, sites and districts that  
12 have been established by federal, state or local law.

---

## CHAPTER 11

**(Com. Sub. for H. B. 4278 — By Delegates Fletcher, Anderson,  
Webster, Hrutkay, Amores and Michael)**

---

[Passed February 27, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections two, fourteen and fifteen, article ten, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections twelve-a, sixteen, seventeen and eighteen, all relating to amusement ride safety; defining terms; providing a criminal penalty for any person who operates or assembles an amusement ride while intoxicated; requiring notice of conviction be forwarded to commissioner of labor; allowing suspension and revocation of permits; establishing minimum age for amusement ride operators; providing civil penalties; and requiring deposit of civil penalties in special revenue account.

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

That sections two, fourteen and fifteen, article ten, chapter twenty-one of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections twelve-a, sixteen, seventeen and eighteen, all to read as follows:

**ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS  
SAFETY ACT.**

§21-10-2. Definitions.

§21-10-12a. Minimum age for operating amusement ride.

§21-10-14. Criminal penalty for violation.

§21-10-15. Operating or assembling an amusement ride while intoxicated; criminal penalty.

§21-10-16. Revocations and suspension of permits.

§21-10-17. Civil penalties for violations.

§21-10-18. Continuing authority of state fire marshal.

**§21-10-2. Definitions.**

1 As used in this article:

2 (a) "Amusement ride" means a mechanical device which  
3 carries or conveys passengers along, around or over a fixed or  
4 restricted route or course for the purpose of giving its passen-  
5 gers amusement, pleasure, thrills or excitement. The term  
6 includes carnival rides and fair rides of a temporary or portable  
7 nature which are assembled and reassembled or rides which are  
8 relocated from place to place. "Amusement ride" may not be  
9 construed to mean any mechanical device which is coin  
10 operated and does not include the operation of a ski lift, the  
11 operation of tramways at state parks, the operation of vehicles  
12 of husbandry incidental to any agricultural operations or the  
13 operation of amusement devices of a permanent nature which  
14 are subject to building regulations issued by cities or counties  
15 and existing applicable safety orders;

16 (b) "Amusement attraction" means any building or structure  
17 around, over or through which people may move or walk  
18 without the aid of any moving device integral to the building or  
19 structure that provides amusement, pleasure, thrills or excite-

20 ment, including those of a temporary or portable nature which  
21 are assembled and reassembled or which are relocated from  
22 place to place. The term does not include any enterprise  
23 principally devoted to the exhibition of products of agriculture,  
24 industry, education, science, religion or the arts and shall not be  
25 construed to include any concession stand or booth for the  
26 selling of food or drink or souvenirs;

27 (c) "Intoxicated" means influenced or affected by the  
28 ingestion of alcohol, a controlled substance, any intoxicant or  
29 any combination of alcohol, controlled substances and intoxi-  
30 cants.

31 (d) "Mobile amusement ride or mobile amusement attrac-  
32 tion" means an amusement ride or amusement attraction which  
33 is erected in a single physical location for a period of less than  
34 twelve consecutive months;

35 (e) "Operator" means the person having direct control of  
36 the starting, stopping and speed of an amusement ride or  
37 attraction.

38 (f) "Owner" means any person, corporation, partnership, or  
39 association who owns an amusement ride or attraction or, in the  
40 event that the amusement ride or attraction is leased, the lessee.

41 (g) "Stationary amusement ride or stationary amusement  
42 attraction" means an amusement ride or amusement attraction  
43 that is erected in a single physical location for a period of more  
44 than twelve consecutive months.

#### **§21-10-12a. Minimum age for operating amusement ride.**

1 No individual under the age of eighteen may be the operator  
2 of an amusement ride or attraction.

#### **§21-10-14. Criminal penalty for violation.**

1 Any operator or owner who knowingly permits the opera-  
2 tion of an amusement ride or amusement attraction in violation

3 of the provisions of sections six, seven, eight, nine, eleven,  
4 twelve or twelve-a of this article is guilty of a misdemeanor  
5 and, upon conviction thereof, shall be fined not less than two  
6 hundred fifty dollars nor more than one thousand dollars,  
7 confined in the county or regional jail not more than twelve  
8 months, or both. Each day that a violation continues shall be  
9 considered a separate violation.

**§21-10-15. Operating or assembling an amusement ride while  
intoxicated; criminal penalty.**

1 (a) A person may not operate or assemble an amusement  
2 ride or attraction while intoxicated.

3 (b) A person who violates subsection (a) of this section is  
4 guilty of a misdemeanor and, upon conviction thereof, shall be  
5 fined not less than one thousand dollars and not more than two  
6 thousand five hundred dollars, or confined in the county or  
7 regional jail for not less than thirty days and not more than one  
8 year, or both.

9 (c) The clerk of the magistrate court or circuit court in  
10 which a person is convicted of a violation of this section shall  
11 notify the commissioner within ten days of the conviction.

**§21-10-16. Revocation and suspension of permits.**

1 The commissioner may revoke or temporarily suspend the  
2 permit to operate issued pursuant to the provisions of section  
3 seven of this article to an owner or employee or contractor of an  
4 owner who is convicted of, or enters a guilty plea or a plea of  
5 nolo contendere to, a violation of subsection (a), section fifteen  
6 of this article.

**§21-10-17. Civil penalties for violations.**

1 (a) If an individual is convicted of, or enters a guilty plea or  
2 a plea of nolo contendere to, a violation of subsection (a),  
3 section fifteen of this article, and the individual was not the  
4 owner of the ride being operated or assembled, the commis-



5 sioner may impose a civil penalty not to exceed five thousand  
6 dollars on the owner of the ride being operated or assembled.

7 (b) All civil penalties collected by the commissioner shall  
8 be deposited into the amusement rides and amusement attrac-  
9 tions safety fund created in section four of this article.

**§21-10-18. Continuing authority of state fire marshal.**

1 Nothing in this article shall be construed to be in conflict  
2 with or to in any way limit the authority of the state fire marshal  
3 under the provisions of article three, chapter twenty-nine of this  
4 code pertaining to fire prevention and control.

---

## CHAPTER 12

(H. B. 4370 — By Delegates Compton, Fleischauer,  
Susman, C. White and Boggs)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section two, article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the revocation of an anatomical gift by persons other than the donor.

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

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

**ARTICLE 19. ANATOMICAL GIFT ACT.**

**§16-19-2. Making, amending, revoking, and refusing to make anatomical gifts by individual.**

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

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

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

6       (3) Refuse to make an anatomical gift.

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

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

22       (d) A document of gift may designate a particular physician  
23 or surgeon to carry out the appropriate procedures. In the  
24 absence of a designation or if the designee is not available, the  
25 donee or other person authorized to accept the anatomical gift  
26 may employ or authorize any physician, surgeon or technician  
27 to carry out the appropriate procedures.

28       (e) An anatomical gift by will takes effect upon certification  
29 of death of the testator, whether or not the will is probated. If,  
30 after certification of death, the will is declared invalid for  
31 testamentary purposes, the validity of the anatomical gift is  
32 unaffected.

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

35 (1) A signed statement;

36 (2) An oral statement made in the presence of two individu-  
37 als;

38 (3) Any form of communication during a terminal illness or  
39 injury addressed to a physician, surgeon or physician assistant;  
40 or

41 (4) The delivery of a signed statement to a specified donee  
42 to whom a document of gift had been delivered.

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

47 (h) An anatomical gift that is not revoked by the donor  
48 before death is irrevocable and does not require the consent or  
49 concurrence of any person after the donor's death. An anatomi-  
50 cal gift may not be revoked by the donor's next-of-kin or other  
51 persons identified in subsection (a), section three of this article,  
52 nor shall the consent of any of these persons, at the time of the  
53 donor's death or immediately thereafter, be necessary to render  
54 the gift valid and effective.

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

57 (1) A writing signed in the same manner as a document of  
58 gift;

59 (2) Any other writing used to identify the individual as  
60 refusing to make an anatomical gift; or

61 (3) If the individual is suffering from a terminal illness or  
62 injury, the refusal may be an oral statement or other form of  
63 communication.

64 (j) In the absence of contrary indications by the donor, an  
65 anatomical gift of a part is neither a refusal to give other parts  
66 nor a limitation on an anatomical gift under section three of this  
67 article or on a removal or release of other parts under section  
68 four of this article.

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

---

## CHAPTER 13

(Com. Sub. for S. B. 100 — By Senators Tomblin,  
Mr. President, and Sprouse)  
[By Request of the Executive]

---

[Passed March 17, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT making appropriations of public money out of the treasury  
in accordance with section fifty-one, article VI of the constitution.

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

**Title**

**I. General Provisions.**

**II. Appropriations.**

**III. Administration.**

### TITLE I—GENERAL PROVISIONS.

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.
- §5. Maximum expenditures.

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

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

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

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

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

9       The “fiscal year two thousand three” shall mean the period  
10 from the first day of July, two thousand two, through the  
11 thirtieth day of June, two thousand three.

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

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

19       “From collections” shall mean that part of the total appro-  
20 priation which must be collected by the spending unit to be  
21 available for expenditure. If the authorized amount of collec-  
22 tions is not collected, the total appropriation for the spending  
23 unit shall be reduced automatically by the amount of the  
24 deficiency in the collections. If the amount collected exceeds  
25 the amount designated “from collections,” the excess shall be

26 set aside in a special surplus fund and may be expended for the  
27 purpose of the spending unit as provided by article two, chapter  
28 five-a of the code.

1       **Sec. 3. Classification of appropriations.**—An appropria-  
2 tion for:

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

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

9       “Annual increment” shall mean funds appropriated for  
10 “eligible employees” and shall be disbursed only in accordance  
11 with article five, chapter five of the code.

12       Funds appropriated for “annual increment” shall be  
13 transferred to “personal services” or other designated items  
14 only as required.

15       “Employee benefits” shall mean social security matching,  
16 workers’ compensation, unemployment compensation, pension  
17 and retirement contributions, public employees insurance  
18 matching, personnel fees or any other benefit normally paid by  
19 the employer as a direct cost of employment. Should the  
20 appropriation be insufficient to cover such costs, the remainder  
21 of such cost shall be transferred by each spending unit from its  
22 “personal services” line item or its “unclassified” line item to  
23 its “employee benefits” line item. If there is no appropriation  
24 for “employee benefits,” such costs shall be paid by each  
25 spending unit from its “personal services” line item, its  
26 “unclassified” line item or other appropriate line item. Each  
27 spending unit is hereby authorized and required to make such

28 payments in accordance with the provisions of article two,  
29 chapter five-a of the code.

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

37 Should the appropriation for “BRIM Premiums” be  
38 insufficient to cover such cost, the remainder of such costs shall  
39 be transferred by each spending unit from its “personal  
40 services” line item, its “employee benefit” line item, its  
41 “unclassified” line item or any other appropriate line item to  
42 “BRIM Premiums” for payment to the Board of Risk and  
43 Insurance Management. Each spending unit is hereby autho-  
44 rized and required to make such payments.

45 Each spending unit shall be responsible for all contribu-  
46 tions, payments or other costs related to coverage and claims of  
47 its employees for unemployment compensation. Such expendi-  
48 tures shall be considered an employee benefit.

49 “Current expenses” shall mean operating costs other than  
50 personal services and shall not include equipment, repairs and  
51 alterations, buildings or lands.

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

56 “Equipment” shall mean equipment items which have an  
57 appreciable and calculable period of usefulness in excess of one  
58 year.

59 “Repairs and alterations” shall mean routine maintenance  
60 and repairs to structures and minor improvements to property  
61 which do not increase the capital assets.

62 “Buildings” shall include new construction and major  
63 alteration of existing structures and the improvement of lands  
64 and shall include shelter, support, storage, protection or the  
65 improvement of a natural condition.

66 “Lands” shall mean the purchase of real property or interest  
67 in real property.

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

72 From appropriations made to the spending units of state  
73 government, upon approval of the governor there may be  
74 transferred to a special account an amount sufficient to match  
75 federal funds under any federal act.

76 Appropriations classified in any of the above categories  
77 shall be expended only for the purposes as defined above and  
78 only for the spending units herein designated: *Provided*, That  
79 the secretary of each department and the commissioner of the  
80 bureau of commerce shall have the authority to transfer within  
81 the department or bureau those general revenue funds appropri-  
82 ated to the various agencies of the department or bureau:  
83 *Provided, however*, That no more than three percent of the  
84 general revenue funds appropriated to any one agency or board  
85 may be transferred to other agencies or boards within the  
86 department or bureau: *Provided further*, That the secretary of  
87 each department and the director, commissioner, executive  
88 secretary, superintendent, chairman or any other agency head  
89 not governed by a departmental secretary as established by  
90 chapter five-f of the code shall have the authority to transfer



91 funds appropriated to “personal services” and “employee  
92 benefits” to other lines within the same account and no funds  
93 from other lines shall be transferred to the “personal services”  
94 line: *And provided further*, That the secretary of each depart-  
95 ment and the director, commissioner, executive secretary,  
96 superintendent, chairman or any other agency head not gov-  
97 erned by a departmental secretary as established by chapter  
98 five-f of the code shall have the authority to transfer general  
99 revenue funds appropriated to “annual increment” to other  
100 general revenue accounts within the same department, bureau  
101 or commission for the purpose of providing an annual incre-  
102 ment in accordance with article five, chapter five of the code:  
103 *And provided further*, That if the Legislature by subsequent  
104 enactment consolidates agencies, boards or functions, the  
105 secretary may transfer the funds formerly appropriated to such  
106 agency, board or function in order to implement such consolida-  
107 tion. No funds may be transferred from a special revenue  
108 account, dedicated account, capital expenditure account or any  
109 other account or fund specifically exempted by the Legislature  
110 from transfer, except that the use of the appropriations from the  
111 state road fund for the office of the secretary of the department  
112 of transportation is not a use other than the purpose for which  
113 such funds were dedicated and is permitted.

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

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

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

## TITLE II—APPROPRIATIONS.

### §1. Appropriations from general revenue.

#### ADMINISTRATION, DEPARTMENT OF

Administration, Department of—Office of the Secretary—Fund No. 0186 . . . . .	110
Children’s Health Insurance Agency—Fund No. 0588 . . . . .	117
Committee for the Purchase of Commodities and Services from the Handicapped—Fund No. 0233 . . . . .	116
Consolidated Public Retirement Board—Fund No. 0195 . . . . .	111
Education and State Employees Grievance Board—Fund No. 0220 . . . . .	114
Ethics Commission—Fund No. 0223 . . . . .	115
Finance, Division of—Fund No. 0203 . . . . .	111
General Services, Division of—Fund No. 0230 . . . . .	112
Information Services and Communications, Division of—Fund No. 0583 . . . . .	112
Prosecuting Attorneys’ Institute, West Virginia— Fund No. 0557 . . . . .	116
Public Defender Services—Fund No. 0226 . . . . .	115
Public Employees Insurance Agency—Fund No. 0200 . . . . .	116
Purchasing, Division of—Fund No. 0210 . . . . .	113
Risk and Insurance Management, Board of— Fund No. 0217 . . . . .	114
Uniform State Laws, Commission on—Fund No. 0214 . . . . .	113

#### COMMERCE, BUREAU OF

Coal Mine Health and Safety, Board of— Fund No. 0280 . . . . .	147
Coal Mine Safety and Technical Review Committee—Fund No. 0285 . . . . .	148
Development Office, West Virginia —Fund No. 0256 . . . . .	144
Forestry, Division of—Fund No. 0250 . . . . .	142
Geological and Economic Survey—Fund No. 0253 . . . . .	143
Labor, Division of—Fund No. 0260 . . . . .	146

Miners' Health, Safety and Training, Division  
of—Fund No. 0277 ..... 147  
Natural Resources, Division of—Fund  
No. 0265 ..... 146

EDUCATION, DEPARTMENT OF

State Board of Education—Division of Educational  
Performance Audits—Fund No. 0573 ..... 121  
State Board of Education—Vocational  
Division—Fund No. 0390 ..... 120  
State Department of Education—Aid  
for Exceptional Children—Fund No. 0314 ..... 119  
State Department of Education—Fund No. 0313 ..... 118  
State Department of Education—School Lunch  
Program—Fund No. 0303 ..... 117  
State Department of Education—State Aid to  
Schools—Fund No. 0317 ..... 120  
State FFA-FHA Camp and Conference Center—  
Fund No. 0306 ..... 117  
West Virginia Schools for the Deaf and  
the Blind—Fund No. 0320 ..... 121

EDUCATION AND THE ARTS, DEPARTMENT OF

Culture and History, Division of —Fund  
No. 0293 ..... 123  
Educational Broadcasting Authority—Fund  
No. 0300 ..... 124  
Education and the Arts, Department of —Office  
of the Secretary—Fund No. 0294 ..... 122  
Library Commission—Fund No. 0296 ..... 123  
State Board of Rehabilitation—Division of  
Rehabilitation Services—Fund No. 0310 ..... 124

ENVIRONMENTAL PROTECTION, DEPARTMENT OF

Air Quality Board—Fund No. 0550 ..... 149  
Environmental Protection, Division of —Fund  
No. 0273 ..... 149  
Environmental Quality Board—Fund No. 0270 ..... 148  
Interstate Commission on Potomac River  
Basin—Fund No. 0263 ..... 148  
Ohio River Valley Water Sanitation  
Commission—Fund No. 0264 ..... 149

EXECUTIVE

Agriculture, Department of—Fund No. 0131 ..... 106  
Agriculture, Department of—Agricultural  
Awards—Fund No. 0136 ..... 108

Agriculture, Department of—Meat Inspection— Fund No. 0135 .....	108
Agriculture, Department of—State Soil Conservation Committee—Fund No. 0132 .....	107
Attorney General—Fund No. 0150 .....	108
Auditor's Office—General Administration— Fund No. 0116 .....	104
Governor's Office—Fund No. 0101 .....	102
Governor's Office—Civil Contingent Fund— Fund No. 0105 .....	104
Governor's Office—Custodial Fund—Fund No. 0102 .....	103
Governor's Office—Governor's Cabinet on Children and Families—Fund No. 0104 .....	103
Secretary of State—Fund No. 0155 .....	109
State Election Commission—Fund No. 0160 .....	110
Treasurer's Office—Fund No. 0126 .....	105
<b>HEALTH AND HUMAN RESOURCES, DEPARTMENT OF</b>	
Consolidated Medical Service Fund—Fund No. 0525 .....	127
Health and Human Resources, Department of— Office of the Secretary—Fund No. 0400 .....	125
Health, Division of—Central Office—Fund No. 0407 .....	125
Health, Division of—West Virginia Drinking Water Treatment—Fund No. 0561 .....	129
Human Services, Division of—Fund No. 0403 .....	130
Human Rights Commission—Fund No. 0416 .....	129
<b>HIGHER EDUCATION POLICY COMMISSION</b>	
Higher Education Policy Commission— Administration—Fund No. 0589 .....	150
Higher Education Policy Commission— Administration—Legislative Funding Priorities—Fund No. 0591 .....	155
Higher Education Policy Commission— Health Sciences Fund—Fund No. 0590 .....	154
Higher Education Policy Commission— System Control Account—Fund No. 0586 .....	151
<b>JUDICIAL</b>	
Supreme Court—General Judicial—Fund No. 0180 .....	101
<b>LEGISLATIVE</b>	
House of Delegates—Fund No. 0170 .....	98
Joint Expenses—Fund No. 0175 .....	99
Senate—Fund No. 0165 .....	96

## MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF

Adjutant General—State Militia—Fund	
No. 0433 .....	132
Corrections, Division of—Central Office—	
Fund No. 0446 .....	133
Corrections, Division of—Correctional Units—	
Fund No. 0450 .....	134
Criminal Justice Services, Division of—	
Fund No. 0546 .....	138
Fire Commission—Fund No. 0436 .....	138
Juvenile Services, Division of—Fund No. 0570 .....	139
Military Affairs and Public Safety, Department of—	
Office of the Secretary—Fund No. 0430 .....	131
Office of Emergency Services—Fund No. 0443 .....	133
Parole Board, West Virginia —Fund No. 0440 .....	132
Protective Services, Division of—Fund No. 0585 .....	139
State Police, West Virginia —Fund No. 0453 .....	136
Veterans Affairs, Division of—Fund No. 0456 .....	136
Veterans Affairs, Division of—Veterans Home—Fund No. 0460 .....	137

## SENIOR SERVICES, BUREAU OF

Senior Services, Bureau of —Fund No. 0420 .....	150
---	-----

## TAX AND REVENUE, DEPARTMENT OF

Professional and Occupational Licenses, Division of —State Athletic Commission—Fund No. 0523 .....	140
Tax Division—Fund No. 0470 .....	140

## TRANSPORTATION, DEPARTMENT OF

Aeronautics Commission—Fund No. 0582 .....	142
Public Port Authority—Fund No. 0581 .....	142
Public Transit, Division of—Fund No. 0510 .....	141
State Rail Authority—Fund No. 0506 .....	141

## §2. Appropriations from state road fund.

## TRANSPORTATION, DEPARTMENT OF

Highways, Division of—Fund No. 9017 .....	156
Motor Vehicles, Division of—Fund No. 9007 .....	156

## §3. Appropriations from other funds.

## ADMINISTRATION, DEPARTMENT OF

Finance, Division of—Public Employees Insurance Reserve Fund—Fund No. 2207 .....	164
---	-----

Information Services and Communications, Division of—Fund No. 2220 .....	164
Office of the Secretary—Tobacco Settlement Fund— Fund No. 2041 .....	164
Personnel, Division of—Fund No. 2440 .....	165
Prosecuting Attorneys’ Institute, West Virginia—Fund No. 2521 .....	165
 COMMERCE, BUREAU OF	
Development Office, West Virginia—Energy Assistance— Fund No. 3144 .....	190
Development Office, West Virginia—Office of Coal Field Community Development—Fund No. 3162 .....	190
Forestry, Division of—Fund No. 3081 .....	189
Forestry, Division of—Severance Tax Operations—Fund No. 3084 .....	189
Forestry, Division of—Timberland Enforcement Operations—Fund No. 3082 .....	189
Geological and Economic Survey—Fund No. 3100 .....	190
Labor, Division of—Amusement Rides/Amusement Attraction Safety Fund—Fund No. 3192 .....	192
Labor, Division of—Contractor Licensing Board Fund—Fund No. 3187 .....	191
Labor, Division of—Crane Operator Certification Fund—Fund No. 3191 .....	192
Labor, Division of—Elevator Safety Act— Fund No. 3188 .....	191
Natural Resources, Division of—Fund No. 3200 .....	192
Natural Resources, Division of—Game, Fish and Aquatic Life Fund—Fund No. 3202 .....	193
Natural Resources, Division of—Nongame Fund— Fund No. 3203 .....	193
Natural Resources, Division of—Planning and Development Division—Fund No. 3205 .....	193
Natural Resources, Division of—Recycling Assistance Fund—Fund No. 3254 .....	194
Natural Resources, Division of—Whitewater Advertising and Promotion Fund—Fund No. 3256 .....	194
Natural Resources, Division of—Whitewater Study and Improvement Fund—Fund No. 3253 .....	194
 EDUCATION, DEPARTMENT OF	
State Board of Education—Strategic Staff Development—Fund No. 3937 .....	166
State Department of Education—FFA-FHA Conference Center—Fund No. 3960 .....	167



Environmental Protection, Division of—	
Underground Storage Tanks Administrative	
Fund—Fund No. 3325 .....	197
Oil and Gas Conservation Commission—Fund	
No. 3371 .....	200
Solid Waste Management Board—Fund No. 3288 .....	195

## EXECUTIVE

Agriculture, Department of—Agricultural Fees	
Fund—Fund No. 1401 .....	161
Agriculture, Department of—Donated Food Fund—	
Fund No. 1446 .....	162
Agriculture, Department of—Farm Operating	
Fund—Fund No. 1412 .....	162
Agriculture, Department of—General John McCausland	
Memorial Farm—Fund No. 1409 .....	161
Agriculture, Department of—West Virginia Rural	
Rehabilitation Program—Fund No. 1408 .....	161
Attorney General—Anti-Trust Enforcement—	
Fund No. 1507 .....	162
Attorney General—Preneed Funeral Guarantee Fund—	
Fund No. 1514 .....	163
Attorney General—Preneed Funeral Regulation Fund—	
Fund No. 1513 .....	163
Auditor's Office—Land Operating Fund—	
Fund No. 1206 .....	159
Auditor's Office—Office of the Chief Inspector—	
Fund No. 1235 .....	160
Auditor's Office—Purchasing Card Administration	
Fund—Fund No. 1234 .....	160
Auditor's Office—Securities Regulation Fund—	
Fund No. 1225 .....	159
Auditor's Office—Technology Support and Acquisition—	
Fund No. 1233 .....	160
Chief Technology Officer Administration Fund—	
Fund No. 1028 .....	158
Secretary of State—Secure Fees and Collection	
Account—Fund No. 1612 .....	163
Treasurer's Office—Technology Support and	
Acquisition—Fund No. 1329 .....	160

## HEALTH AND HUMAN RESOURCES, DEPARTMENT OF

Barbers and Cosmetologists, Board of—	
Fund No. 5425 .....	168
Family Protection Services Board—Domestic	
Violence Legal Services Fund—Fund No. 5455 .....	176



Health Care Authority, West Virginia—Fund	
No. 5375 .....	174
Health, Division of—Health Facility	
Licensing—Fund No. 5172 .....	173
Health, Division of—Hepatitis B Vaccine—	
Fund No. 5183 .....	173
Health, Division of—Hospital Services Revenue	
Account (Special Fund) (Capital Improvement, Renovation and Operations)—Fund No. 5156 .....	171
Health, Division of—Laboratory Services—	
Fund No. 5163 .....	172
Health, Division of—Lead Abatement Fund—	
Fund No. 5204 .....	173
Health, Division of—Tobacco Settlement	
Expenditure Fund—Fund No. 5124 .....	169
Health, Division of—Vital Statistics—Fund	
No. 5144 .....	170
Human Services, Division of—Child Support	
Enforcement—Fund No. 5094 .....	175
Human Services, Division of—Health Care	
Provider Tax—Fund No. 5090 .....	174
Human Services, Division of—James “Tiger” Morton	
Catastrophic Illness Fund—Fund No. 5454 .....	176
Human Services, Division of—Medical Services	
Trust Fund—Fund No. 5185 .....	175
Medicine, West Virginia Board of—Fund No. 5106 .....	173

## HIGHER EDUCATION POLICY COMMISSION

Higher Education Policy Commission—1977 State	
System Registration Fee Refund Revenue	
Construction Fund—Fund No. 4905 .....	202
Higher Education Policy Commission—Marshall	
University Land Sale Account—Fund No. 4270 .....	204
Higher Education Policy Commission—Registration Fee—	
Capital Improvement Fund—Fund No. 4902 .....	201
Higher Education Policy Commission—Tuition Fee—	
Capital Improvement Fund—Fund No. 4903 .....	201
Higher Education Policy Commission—Tuition Fee—	
Revenue Bond Construction Fund—Fund No. 4906 .....	203
Higher Education Policy Commission—State University	
System Revenue Bond Construction Fund—	
Fund No. 4907 .....	204
Higher Education Policy Commission—West Virginia	
University Health Sciences Center—Fund No. 4179 .....	200

## LEGISLATIVE

Crime Victims Compensation Fund—Fund	
No. 1731 .....	158

## MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF

Corrections, West Virginia Division of—Parolee Supervision Fees—Fund No. 6362 .....	177
Corrections, West Virginia Division of—West Virginia Community Corrections Fund—Fund No. 6386 .....	181
Criminal Justice Services—Court Security Fund—Fund No. 6804 .....	181
Fire Commission—Fire Marshal Fees—Fund No. 6152 .....	180
Law Enforcement, Safety and Emergency Worker Funeral Expense Fund—Fund No. 6003 .....	176
Regional Jail and Correctional Facility Authority—Fund No. 6675 .....	180
State Armory Board—General Armory Fund— Fund No. 6057 .....	177
State Police, West Virginia—Academy Post Exchange Fund—Fund No. 6535 .....	180
State Police, West Virginia—Bail Bond Enforcer Fund—Fund No. 6532 .....	179
State Police, West Virginia—Central Abuse Registry Fund—Fund No. 6527 .....	179
State Police, West Virginia—Drunk Driving Prevention Fund—Fund No. 6513 .....	178
State Police, West Virginia—Motor Vehicle Inspection Fund—Fund No. 6501 .....	177
State Police, West Virginia—Surplus Real Property Proceeds Fund—Fund No. 6516 .....	178
State Police, West Virginia—Surplus Transfer Account—Fund No. 6519 .....	179
Veterans Affairs, Division of—Veterans Home—Fund No. 6754 .....	180

## MISCELLANEOUS BOARDS AND COMMISSIONS

Examiners for Speech-Language Pathology and Audiology, West Virginia Board of—Fund No. 8646 .....	208
Hospital Finance Authority—Fund No. 5475 .....	204
Licensed Dietitians, West Virginia Board of— Fund No. 8680 .....	208
Licensed Practical Nurses, West Virginia State Board of Examiners for —Fund No. 8517 .....	205
Massage Therapy Licensure—Fund No. 8671 .....	209
Municipal Bond Commission—Fund No. 7253 .....	205
Public Service Commission—Fund No. 8623 .....	205
Public Service Commission—Consumer Advocate— Fund No. 8627 .....	207

Public Service Commission—Gas Pipeline	
Division—Fund No. 8624 .....	206
Public Service Commission—Motor Carrier	
Division—Fund No. 8625 .....	207
Real Estate Commission—Fund No. 8635 .....	208
Registered Professional Nurses, West Virginia Board of	
Examiners for —Fund No. 8520 .....	205
Respiratory Care, West Virginia Board of —	
Fund No. 8676 .....	208
TAX AND REVENUE, DEPARTMENT OF	
Alcohol Beverage Control Administration—	
Fund No. 7352 .....	186
Alcohol Beverage Control Administration—	
Wine License Special Fund—Fund No. 7351 .....	185
Banking, Division of—Fund No. 3041 .....	182
Banking, Division of—Lending and Credit Rate	
Board—Fund No. 3040 .....	181
Insurance Commissioner—Fund No. 7152 .....	184
Insurance Commissioner—Consumer Advocate—	
Fund No. 7151 .....	183
Insurance Commissioner—Examination Revolving	
Fund—Fund No. 7150 .....	183
Racing Commission—Administration and	
Promotion—Fund No. 7304 .....	184
Racing Commission—Administration, Promotion	
and Education Fund—Fund No. 7307 .....	185
Racing Commission—General Administration—	
Fund No. 7305 .....	185
Racing Commission—Relief Fund—Fund No. 7300 .....	184
Tax Division—Cemetery Company Account—	
Fund No. 7071 .....	182
Tax Division—Special Audit and Investigative	
Unit—Fund No. 7073 .....	182
TRANSPORTATION, DEPARTMENT OF	
Highways, Division of—A. James Manchin Fund—	
Fund No. 8319 .....	188
Motor Vehicles, Division of—Dealer Recovery	
Fund—Fund No. 8220 .....	188
Motor Vehicles, Division of—Driver	
Rehabilitation—Fund No. 8214 .....	187
Motor Vehicles, Division of—Driver's License	
Reinstatement Fund—Fund No. 8213 .....	187
Motor Vehicles, Division of—Insurance	
Certificate Fees—Fund No. 8215 .....	188

Motor Vehicles, Division of—Motorboat Licenses—Fund No. 8216 .....	188
Motor Vehicles, Division of—Returned Check Fees—Fund No. 8217 .....	188

§4. Appropriations from lottery net profits.

Culture and History, Division of—Lottery Education Fund—Fund No. 3534 .....	214
Educational Broadcasting Authority—Lottery Education Fund—Fund No. 3587 .....	215
Education and the Arts, Department of—Office of the Secretary—Control Account—Lottery Education Fund—Fund No. 3508 .....	213
Education, Arts, Sciences and Tourism Debt Service Fund—Fund No. 2252 .....	209
Education, State Department of—Fund No. 3951 .....	211
Education, State Department of—School Building Authority—Debt Service Fund—Fund No. 3963 .....	213
Development Office, West Virginia—Division of Tourism—Fund No. 3067 .....	210
Higher Education Policy Commission—Lottery Education—Higher Education Policy Commission— Fund No. 4925 .....	217
Library Commission—Lottery Education Fund— Fund No. 3559 .....	215
Natural Resources, Division of—Fund No. 3267 .....	210
Senior Services, Bureau of—Fund No. 5405 .....	216

§5. Appropriations from state excess lottery revenue fund.

APPROPRIATION

Economic Improvement Fund—Fund No. 3167 .....	219
Education Improvement Fund—Fund No. 4295 .....	219
Governor's Office—Civil Contingent—Fund No. 1038 .....	221
Higher Education Improvement Fund—Fund No. 4297 .....	220
Lottery Commission—Fund No. 7206 .....	218
Lottery Commission—Excess Lottery Revenue Fund Surplus—Fund No. 7208 .....	222
Lottery Commission—Refundable Credit—Fund No. 7207 .....	221
School Building Authority—Fund No. 3514 .....	220
State Park Improvement Fund—Fund No. 3277 .....	221
West Virginia Infrastructure Council—Fund No. 3390 .....	220

§6. Appropriations of federal funds.

ADMINISTRATION, DEPARTMENT OF

Children's Health Insurance Agency—Fund No. 8838 .....	225
--	-----

Prosecuting Attorney's Institute—West Virginia— Fund No. 8834 .....	224
<b>COMMERCE, BUREAU OF</b>	
Development Office, West Virginia—Fund No. 8705 .....	231
Forestry, Division of—Fund No. 8703 .....	231
Geological and Economic Survey—Fund No. 8704 .....	231
Labor, Division of—Fund No. 8706 .....	231
Miners' Health, Safety and Training, Division of— Fund No. 8709 .....	232
Natural Resources, Division of—Fund No. 8707 .....	232
<b>EDUCATION, DEPARTMENT OF</b>	
State Board of Education—Vocational Division— Fund No. 8714 .....	225
State Department of Education—Fund No. 8712 .....	225
State Department of Education—Aid for Exceptional Children—Fund No. 8715 .....	226
State Department of Education—School Lunch Program—Fund No. 8713 .....	225
<b>EDUCATION AND THE ARTS, DEPARTMENT OF</b>	
Culture and History, Division of —Fund No. 8718 .....	226
Educational Broadcasting Authority— Fund No. 8721 .....	227
Education and the Arts, Department of—Office of the Secretary—Fund No. 8841 .....	226
Library Commission—Fund No. 8720 .....	226
Rehabilitation, State Board of—Division of Rehabilitation Services—Fund No. 8734 .....	227
<b>EMPLOYMENT PROGRAMS, BUREAU OF</b>	
Employment Programs, Bureau of—Fund No. 8835 .....	233
<b>ENVIRONMENTAL PROTECTION, DEPARTMENT OF</b>	
Environmental Protection, Division of— Fund No. 8708 .....	232
<b>EXECUTIVE</b>	
Agriculture, Department of—Fund No. 8736 .....	224
Agriculture, Department of—Meat Inspection— Fund No. 8737 .....	224
Agriculture, Department of—State Soil Conservation Committee—Fund No. 8783 .....	224
Auditor's Office—National White Collar Crime Center—Fund No. 8807 .....	223
Governor's Office—Commission for National and Community Service—Fund No. 8800 .....	223

Governor's Office—Governor's Cabinet on Children and Families—Fund No. 8792 .....	223
Governor's Office—Office of Economic Opportunity—Fund No. 8797 .....	223
<b>HEALTH AND HUMAN RESOURCES, DEPARTMENT OF</b>	
Consolidated Medical Service Fund—Fund No. 8723 .....	227
Health, Division of—Central Office—Fund No. 8802 .....	227
Health, Division of—West Virginia Safe Drinking Water Treatment—Fund No. 8824 .....	228
Human Services, Division of—Fund No. 8722 .....	228
Human Rights Commission—Fund No. 8725 .....	228
<b>LEGISLATIVE</b>	
Crime Victims Compensation Fund—Fund No. 8738 .....	222
<b>MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF</b>	
Adjutant General—State Militia—Fund No. 8726 .....	228
Corrections, Division of—Fund No. 8836 .....	229
Criminal Justice Services, Division of— Fund No. 8803 .....	229
Emergency Services, Office of—Fund No. 8727 .....	229
State Police, West Virginia—Fund No. 8741 .....	229
Veterans Affairs, Division of—Veterans Home—Fund No. 8728 .....	229
<b>MISCELLANEOUS BOARDS AND COMMISSIONS</b>	
Public Service Commission—Gas Pipeline Division—Fund No. 8744 .....	233
Public Service Commission—Motor Carrier Division—Fund No. 8743 .....	233
<b>SENIOR SERVICES, BUREAU OF</b>	
Senior Services, Bureau of—Fund No. 8724 .....	232
<b>TAX AND REVENUE, DEPARTMENT OF</b>	
Tax Division—Fund No. 7069 .....	230
<b>TRANSPORTATION, DEPARTMENT OF</b>	
Aeronautics Commission—Fund No. 8831 .....	231
Motor Vehicles, Division of—Fund No. 8787 .....	230
Public Port Authority—Fund No. 8830 .....	230
Public Transit, Division of—Fund No. 8745 .....	230

§7. Appropriations from federal block grants.	
Criminal Justice Services, Division of—Juvenile	
Accountability Incentive—Fund No. 8829 .....	236
Criminal Justice Services, Division of—Local	
Law Enforcement—Fund No. 8833 .....	237
Development Office, West Virginia—Community	
Development—Fund No. 8746 .....	234
Development Office, West Virginia—Workforce	
Investment Act—Fund No. 8848 .....	234
Education, State Department of—Education	
Grant—Fund No. 8748 .....	234
Governor’s Office—Office of Economic	
Opportunity—Fund No. 8799 .....	234
Health, Division of—Abstinence Education	
Program—Fund No. 8825 .....	235
Health, Division of—Community Mental Health	
Services—Fund No. 8794 .....	235
Health, Division of—Maternal and Child	
Health—Fund No. 8750 .....	235
Health, Division of—Preventive Health—	
Fund No. 8753 .....	235
Health, Division of—Substance Abuse Prevention	
and Treatment—Fund No. 8793 .....	235
Human Services, Division of—Child Care and	
Development—Fund No. 8817 .....	236
Human Services, Division of—Energy	
Assistance—Fund No. 8755 .....	236
Human Services, Division of—Social Services—	
Fund No. 8757 .....	236
Human Services, Division of—Temporary Assistance	
Needy Families—Fund No. 8816 .....	236
§8. Awards for claims against the state.	
§9. Appropriations from surplus accrued.	
West Virginia Development Office—Fund No. 0256 .....	237
§10. Special revenue appropriations.	
§11. State improvement fund appropriations.	
§12. Specific funds and collection accounts.	
§13. Appropriations for refunding erroneous payment.	
§14. Sinking fund deficiencies.	
§15. Appropriations for local governments.	
§16. Total appropriations.	
§17. General school fund.	

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

**LEGISLATIVE**

*1—Senate*

Fund 0165 FY 2003 Org 2100

	<b>Activity</b>	<b>General Revenue Fund</b>
1 Compensation of Members (R) . . . . .	003	\$ 1,010,000
2 Compensation and Per Diem of Officers 3 and Employees (R) . . . . .	005	3,003,210
4 Employee Benefits (R) . . . . .	010	597,712
5 Current Expenses and 6 Contingent Fund (R) . . . . .	021	700,000
7 Repairs and Alterations (R) . . . . .	064	450,000
8 Computer Supplies (R) . . . . .	101	40,000
9 Computer Systems (R) . . . . .	102	250,000
10 Printing Blue Book (R) . . . . .	103	150,000
11 Expenses of Members (R) . . . . .	399	700,000
12 BRIM Premium (R) . . . . .	913	<u>18,877</u>
13 Total . . . . .		\$ 6,919,799

14     The appropriations for the senate for the fiscal year 2002  
 15 are to remain in full force and effect and are hereby  
 16 reappropriated to June 30, 2003. Any balances so  
 17 reappropriated may be transferred and credited to the fiscal year  
 18 2003 accounts.



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

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

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

49       For duties imposed by law and by the senate, the clerk of  
50 the senate shall be paid a monthly salary as provided by the  
51 senate resolution, unless increased between sessions under the

52 authority of the president, payable out of the appropriation for  
 53 Compensation and Per Diem of Officers and Employees or  
 54 Current Expenses and Contingent Fund of the senate.

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

*2—House of Delegates*

Fund 0170 FY 2003 Org 2200

1	Compensation of Members (R) . . . . .	003	\$ 2,200,000
2	Compensation and Per Diem of Officers		
3	and Employees (R) . . . . .	005	600,000
4	Current Expenses and		
5	Contingent Fund (R) . . . . .	021	4,221,162
6	Expenses of Members (R) . . . . .	399	1,120,000
7	BRIM Premium (R) . . . . .	913	<u>19,329</u>
8	Total . . . . .		\$ 8,160,491

9 The appropriations for the house of delegates for the fiscal  
 10 year 2002 are to remain in full force and effect and are hereby  
 11 reappropriated to June 30, 2003. Any balances so  
 12 reappropriated may be transferred and credited to the fiscal year  
 13 2003 accounts.

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

18 The clerk of the house of delegates, with the approval of the  
 19 speaker, is authorized to draw his or her requisitions upon the  
 20 auditor, payable out of the Current Expenses and Contingent

21 Fund of the house of delegates, for any bills for supplies and  
22 services that may have been incurred by the house of delegates  
23 and not included in the appropriation bill, for bills for services  
24 and supplies incurred in preparation for the opening of the  
25 session and after adjournment, and for the necessary operation  
26 of the house of delegates' offices, the requisitions for which are  
27 to be accompanied by bills to be filed with the auditor.

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

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

### *3—Joint Expenses*

(WV Code Chapter 4)

Fund 0175 FY 2003 Org 2300

1	Joint Committee on		
2	Government and Finance (R) . . . . .	104	\$ 6,317,298
3	Legislative Printing (R) . . . . .	105	940,000
4	Legislative Rule-Making		
5	Review Committee (R) . . . . .	106	226,050
6	Legislative Computer System (R) . . . . .	107	1,138,121
7	Joint Standing Committee		
8	on Education (R) . . . . .	108	74,500
9	Tax Reduction and Federal Funding		
10	Increased Compliance		
11	(TRAFFIC) (R) . . . . .	642	6,000,000
12	BRIM Premium (R) . . . . .	913	<u>14,220</u>
13	Total . . . . .		\$ 14,710,189

14       The appropriations for the joint expenses for the fiscal year  
15 2002 are to remain in full force and effect and are hereby  
16 reappropriated to June 30, 2003. Any balances so  
17 reappropriated may be transferred and credited to the fiscal year  
18 2003 accounts.

19       Upon the written request of the clerk of the senate, with the  
20 approval of the president of the senate, and the clerk of the  
21 house of delegates, with the approval of the speaker of the  
22 house of delegates, and a copy to the legislative auditor, the  
23 auditor shall transfer amounts between items of the total  
24 appropriation in order to protect or increase the efficiency of  
25 the service.

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

**JUDICIAL***4—Supreme Court—**General Judicial*Fund 0180 FY 2003 Org 2400

1	Personal Services (R) . . . . .	001	\$ 40,723,078
2	Annual Increment (R) . . . . .	004	559,571
3	Social Security Matching (R) . . . . .	011	3,153,566
4	Public Employees' Insurance		
5	Matching (R) . . . . .	012	4,800,000
6	Public Employees' Retirement		
7	Matching (R) . . . . .	016	3,272,942
8	Other Expenses (R) . . . . .	029	7,239,482
9	Judges' Retirement System (R) . . . . .	110	5,500,000
10	Other Court Costs (R) . . . . .	111	3,100,000
11	Judicial Training Program (R) . . . . .	112	523,000
12	Mental Hygiene Fund (R) . . . . .	113	990,000
13	Guardian Ad Litem (R) . . . . .	265	10,000
14	Family Court Administration Fund . . . . .	524	650,000
15	Guardianship Attorney Fees (R) . . . . .	588	175,000
16	Family Court Fund (R) . . . . .	912	5,823,932
17	BRIM Premium (R) . . . . .	913	<u>231,608</u>
18	Total . . . . .		\$ 76,752,179

19       The appropriations to the supreme court of appeals for the  
20 fiscal years 2000, 2001 and 2002 are to remain in full force and  
21 effect and are hereby reappropriated to June 30, 2003. Any  
22 balances so reappropriated may be transferred and credited to  
23 the fiscal year 2003 accounts.

24       This appropriation shall be administered by the administra-  
25 tive director of the supreme court of appeals, who shall draw his  
26 or her requisitions for warrants in payment in the form of

27 payrolls, making deductions therefrom as required by law for  
28 taxes and other items.

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

**EXECUTIVE**

*5—Governor's Office*

(WV Code Chapter 5)

Fund 0101 FY 2003 Org 0100

1	Personal Services . . . . .	001	\$ 2,619,523
2	Salary of Governor . . . . .	002	90,000
3	Annual Increment . . . . .	004	18,595
4	Employee Benefits . . . . .	010	767,032
5	Unclassified (R) . . . . .	099	1,123,274
6	National Governors' Association . . . . .	123	71,600
7	Southern States Energy Board . . . . .	124	28,732
8	Southern Growth Policies Board . . . . .	299	24,339
9	Southern Technology Council . . . . .	308	15,000
10	Southern Governors' Association . . . . .	314	5,740
11	National Governors' Association for		
12	State Budget Officers . . . . .	315	12,700
13	Office of Fiscal and Risk Management . . . . .	361	251,884
14	BRIM Premium . . . . .	913	<u>195,286</u>
15	Total . . . . .		\$ 5,223,705

16 Any unexpended balances remaining in the appropriations  
17 for Unclassified (fund 0101, activity 099), and Publication of  
18 Papers and Transition Expenses (fund 0101, activity 465) at the

19 close of the fiscal year 2002 are hereby reappropriated for  
20 expenditure during the fiscal year 2003.

6—*Governor’s Office*—

*Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2003 Org 0100

1 Unclassified—Total . . . . . 096 \$ 530,410

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

7—*Governor’s Office*—

*Governor’s Cabinet on Children and Families*

(WV Code Chapter 5)

Fund 0104 FY 2003 Org 0100

1	Unclassified (R) . . . . .	099	\$	315,057
2	Family Resource Networks (R) . . . . .	274		1,489,950
3	Starting Points Centers and			
4	Parent Education Services (R) . . . . .	316		1,182,866
5	Family Violence Coordinating Council . .	362		0
6	Educare (R) . . . . .	895		<u>0</u>
7	Total . . . . .		\$	2,987,873

8 Any unexpended balances remaining in the appropriations  
9 for Unclassified (fund 0104, activity 099), Family Resource  
10 Networks (fund 0104, activity 274), Starting Points Centers and  
11 Parent Education Services (fund 0104, activity 316), and

12 Educare (fund 0104, activity 895) at the close of the fiscal year  
 13 2002 are hereby reappropriated for expenditure during the fiscal  
 14 year 2003.

*8—Governor’s Office—*

*Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2003 Org 0100

1	Civil Contingent Fund—Total (R) . . . . .	114	\$		0
---	---	-----	----	--	---

2 Any unexpended balances remaining in the appropriations  
 3 for Civil Contingent Fund—Total (fund 0105, activity 114),  
 4 Civil Contingent Fund—Total—Surplus (fund 0105, activity  
 5 238), and Civil Contingent Fund—Surplus (fund 0105, activity  
 6 263) at the close of the fiscal year 2002 are hereby  
 7 reappropriated for expenditure during the fiscal year 2003.

8 From this appropriation there may be expended, at the  
 9 discretion of the governor, an amount not to exceed one  
 10 thousand dollars as West Virginia’s contribution to the inter-  
 11 state oil compact commission.

12 The above appropriation is intended to provide contingency  
 13 funding for accidental, unanticipated, emergency or unplanned  
 14 events which may occur during the fiscal year and is not to be  
 15 expended for the normal day-to-day operations of the gover-  
 16 nor’s office.

*9—Auditor’s Office—*

*General Administration*

(WV Code Chapter 12)



Fund 0116 FY 2003 Org 1200

1	Personal Services .....	001	\$ 2,152,206
2	Salary of Auditor .....	002	70,000
3	Annual Increment .....	004	54,705
4	Employee Benefits .....	010	670,420
5	Unclassified (R) .....	099	711,436
6	Office Automation (R) .....	117	763,770
7	Social Security Repayment .....	256	0
8	Purchasing Card Program .....	711	0
9	BRIM Premium .....	913	<u>2,064</u>
10	Total .....		\$ 4,424,601

11 Any unexpended balances remaining in the appropriations  
 12 for Unclassified (fund 0116, activity 099), Office Automation  
 13 (fund 0116, activity 117), and Payroll System Acquisition (fund  
 14 0116, activity 594) at the close of the fiscal year 2002 are  
 15 hereby reappropriated for expenditure during the fiscal year  
 16 2003.

*10—Treasurer's Office*

(WV Code Chapter 12)

Fund 0126 FY 2003 Org 1300

1	Personal Services .....	001	\$ 2,071,667
2	Salary of Treasurer .....	002	70,000
3	Annual Increment .....	004	36,122
4	Employee Benefits .....	010	599,149
5	Unclassified (R) .....	099	1,392,890
6	Abandoned Property Program .....	118	295,098
7	Tuition Trust Fund (R) .....	692	157,916
8	School Building Sinking Fund		
9	Debt Service (R) .....	770	2,248,000
10	BRIM Premium .....	913	<u>19,434</u>
11	Total .....		\$ 6,890,276

12 Any unexpended balances remaining in the appropriations  
 13 for Unclassified (fund 0126, activity 099), Tuition Trust Fund  
 14 (fund 0126, activity 692), and School Building Sinking Fund  
 15 Debt Service (fund 0126, activity 770) at the close of the fiscal  
 16 year 2002 are hereby reappropriated for expenditure during the  
 17 fiscal year 2003.

*11—Department of Agriculture*

(WV Code Chapter 19)

Fund 0131 FY 2003 Org 1400

1	Personal Services . . . . .	001	\$ <del>3,766,415</del>
2			3,666,415*
3	Salary of Commissioner . . . . .	002	70,000
4	Annual Increment . . . . .	004	77,138
5	Employee Benefits . . . . .	010	1,321,831
6	State Farm Museum . . . . .	055	110,000
7	Unclassified (R) . . . . .	099	* <del>1,440,020</del>
8			1,004,020*
9	Gypsy Moth Program (R). . . . .	119	943,067
10	Huntington Farmers Market . . . . .	128	50,000
11	Black Fly Control (R) . . . . .	137	428,456
12	Mingo County Surface		
13	Mine Project (R) . . . . .	296	125,000
14	Tri-County Fair Association . . . . .	343	125,000
15	Donated Foods Program . . . . .	363	50,000
16	Predator Control . . . . .	470	140,000
17	Charleston Farmers Market (R) . . . . .	476	0
18	Bee Research . . . . .	691	70,000
19	Microbiology Program (R) . . . . .	785	152,680
20	Moorefield Agriculture Center (R) . . . . .	786	772,621
21	BRIM Premium . . . . .	913	<u>77,862</u>
22	Total . . . . .		\$ 9,178,094

\* CLERK'S NOTE: These line items were reduced by the Governor, but the total was left intact.

23 Any unexpended balances remaining in the appropriations  
 24 for Unclassified (fund 0131, activity 099), Gypsy Moth  
 25 Program (fund 0131, activity 119), Black Fly Control (fund  
 26 0131, activity 137), Mingo County Surface Mine Project (fund  
 27 0131, activity 296), Charleston Farmers Market (fund 0131,  
 28 activity 476), Capital Improvements—Total—Surplus (fund  
 29 0131, activity 672), Microbiology Program (fund 0131, activity  
 30 785), and Moorefield Agriculture Center (fund 0131, activity  
 31 786) at the close of the fiscal year 2002 are hereby  
 32 reappropriated for expenditure during the fiscal year 2003.

33 A portion of the Unclassified appropriation may be trans-  
 34 ferred to a special revenue fund for the purpose of matching  
 35 federal funds for marketing and development activities.

*12—Department of Agriculture—*

*State Soil Conservation Committee*

(WV Code Chapter 19)

Fund 0132 FY 2003 Org 1400

1	Personal Services .....	001	\$	464,113
2	Annual Increment .....	004		7,900
3	Employee Benefits .....	010		173,425
4	Unclassified (R) .....	099		347,960
5	Soil Conservation Projects (R) .....	120		3,310,798
6	BRIM Premium .....	913		3,444
7	Maintenance of Flood			
8	Control Projects (R) .....	522		<u>1,819,863</u>
9	Total .....		\$	6,127,503

10 Any unexpended balances remaining in the appropriations  
 11 for Unclassified (fund 0132, activity 099), Soil Conservation  
 12 Projects (fund 0132, activity 120), Conservation Reserve  
 13 Enhancement Program (fund 0132, activity 141), Soil Conser-

14 vation Projects—Surplus (fund 0132, activity 269), and  
 15 Maintenance of Flood Control Projects (fund 0132, activity  
 16 522) at the close of the fiscal year 2002 are hereby  
 17 reappropriated for expenditure during the fiscal year 2003.

*13—Department of Agriculture—*

*Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 2003 Org 1400

1	Personal Services .....	001	\$	388,195
2	Annual Increment .....	004		8,241
3	Employee Benefits .....	010		148,469
4	Unclassified .....	099		<u>70,842</u>
5	Total .....		\$	615,747

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

*14—Department of Agriculture—*

*Agricultural Awards*

(WV Code Chapter 19)

Fund 0136 FY 2003 Org 1400

1	Fairs and Festivals .....	122	\$	435,000
2	Commissioner's Awards and Programs ..	737		<u>87,300</u>
3	Total .....		\$	522,300

*15—Attorney General*

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

1	Personal Services (R) . . . . .	001	\$ 2,413,024
2	Salary of Attorney General . . . . .	002	75,000
3	Annual Increment (R) . . . . .	004	41,159
4	Employee Benefits (R) . . . . .	010	686,235
5	Unclassified (R) . . . . .	099	525,292
6	Better Government Bureau (R) . . . . .	740	300,000
7	BRIM Premium (R) . . . . .	913	<u>82,794</u>
8	Total . . . . .		\$ 4,123,504

9 Any unexpended balance remaining in the above appropria-  
 10 tion at the close of the fiscal year 2002 is hereby reappropriated  
 11 for expenditure during the fiscal year 2003.

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

16—*Secretary of State*

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2003 Org 1600

1	Personal Services . . . . .	001	\$ 626,211
2	Salary of Secretary of State . . . . .	002	65,000

110	APPROPRIATIONS	[Ch. 13
3	Annual Increment . . . . . 004	9,055
4	Employee Benefits . . . . . 010	219,178
5	Unclassified (R) . . . . . 099	318,985
6	Administrative Law	
7	Division Improvements (R) . . . . . 880	50,808
8	BRIM Premium . . . . . 913	<u>24,031</u>
9	Total . . . . .	\$ 1,313,268

10 Any unexpended balances remaining in the appropriations  
11 for Unclassified–Surplus (fund 0155, activity 097), Unclassified  
12 (fund 0155, activity 099), Technology Improvements (fund  
13 0155, activity 599), and Administrative Law Division Improve-  
14 ments (fund 0155, activity 880) and at the close of the fiscal  
15 year 2002 are hereby reappropriated for expenditure during the  
16 fiscal year 2003.

*17—State Election Commission*

(WV Code Chapter 3)

Fund 0160 FY 2003 Org 1601

1	Unclassified—Total . . . . . 096	\$ 11,291
---	----------------------------------	-----------

**DEPARTMENT OF ADMINISTRATION**

*18—Department of Administration—*

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2003 Org 0201

1	Unclassified . . . . . 099	\$ 296,215
2	Annual Increment . . . . . 004	7,750
3	Pay Equity Reserve (R) . . . . . 364	0
4	Lease Rental Payments . . . . . 516	12,697,125

5	BRIM Premium .....	913	<u>11,251</u>
6	Total .....		\$ 13,012,341

7 Any unexpended balance remaining in the appropriation for  
 8 Pay Equity Reserve (fund 0203, activity 364) at the close of the  
 9 fiscal year 2002 is hereby reappropriated for expenditure during  
 10 the fiscal year 2003.

11 The appropriation for Pay Equity Reserve shall be allocated  
 12 by the Secretary of Administration in accordance with a  
 13 collaborative methodology that will be developed and estab-  
 14 lished by state agencies, the division of personnel, and the equal  
 15 pay commission.

16 The appropriation for Lease Rental Payments shall be  
 17 disbursed as provided by chapter thirty-one, article fifteen,  
 18 section six-b of the code.

*19—Consolidated Public Retirement Board*

(WV Code Chapter 5)

Fund 0195 FY 2003 Org 0205

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

*20—Division of Finance*

(WV Code Chapter 5A)

Fund 0203 FY 2003 Org 0209

1	Personal Services .....	001	\$	555,986
2	Annual Increment .....	004		11,090
3	Employee Benefits .....	010		145,091
4	Unclassified .....	099		481,100
5	GAAP Project (R) .....	125		873,529
6	BRIM Premium .....	913		<u>58,889</u>
7	Total .....		\$	2,125,685

8 Any unexpended balance remaining in the appropriation for  
 9 GAAP Project (fund 0203, activity 125) at the close of the  
 10 fiscal year 2002 is hereby reappropriated for expenditure during  
 11 the fiscal year 2003.

*21—Division of Information Services and Communications*

(WV Code Chapter 5A)

Fund 0583 FY 2003 Org 0210

1 Any unexpended balance remaining in the appropriation for  
 2 Past Due Telephone Account (fund 0583, activity 262) at the  
 3 close of the fiscal year 2002 is hereby reappropriated for  
 4 expenditure during the fiscal year 2003 and redesignated as  
 5 claims against the state (fund 0175, fiscal year 2003, activity  
 6 319).

*22—Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 2003 Org 0211

1	Personal Services .....	001	\$	594,163
2	Annual Increment .....	004		20,300
3	Employee Benefits .....	010		228,101
4	Unclassified .....	099		782,839
5	Fire Service Fee .....	126		13,440



6	Capitol Complex—Capital Outlay (R) . . . 417	<u>0</u>
7	Total . . . . .	\$ 1,638,843

8 Any unexpended balances remaining in the appropriations  
 9 for Capitol Complex—Capital Outlay (fund 0230, activity 417),  
 10 Capitol Building Preservation (fund 0230, activity 503), Capitol  
 11 Complex Master Plan—Total—Surplus (fund 0230, activity  
 12 606), Capitol Building Preservation—Surplus (fund 0230,  
 13 activity 675), Capital Improvements—Capitol Com-  
 14 plex—Surplus (fund 0230, activity 676), and Capitol Building  
 15 Roof—Total—Surplus (fund 0230, activity 820) at the close of  
 16 the fiscal year 2002 are hereby reappropriated for expenditure  
 17 during the fiscal year 2003.

*23—Division of Purchasing*

(WV Code Chapter 5A)

Fund 0210 FY 2003 Org 0213

1	Personal Services . . . . . 001	\$ 653,966
2	Annual Increment . . . . . 004	12,435
3	Employee Benefits . . . . . 010	197,471
4	Unclassified . . . . . 099	119,646
5	BRIM Premium . . . . . 913	<u>2,633</u>
6	Total . . . . .	\$ 986,151

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

*24—Commission on Uniform State Laws*

(WV Code Chapter 29)

Fund 0214 FY 2003 Org 0217

1	Unclassified—Total .....	096	\$	29,342
2	To pay expenses for members of the commission on			
3	uniform state laws.			

*25—Board of Risk and Insurance Management*

(WV Code Chapter 29)

Fund 0217 FY 2003 Org 0218

1	Personal Services .....	001	\$	774,179
2	Annual Increment .....	004		6,965
3	Employee Benefits .....	010		215,373
4	Unclassified .....	099		92,253
5	Retro Payments .....	523		<u>1,907,904</u>
6	Total .....		\$	2,996,674

7 Any unexpended balance remaining in the appropriation for  
 8 Premium Enhancement (fund 0217, activity 346) at the close of  
 9 the fiscal year 2002 is hereby reappropriated for expenditure  
 10 during the fiscal year 2003.

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

*26—Education and State Employees' Grievance Board*

(WV Code Chapter 18)

Fund 0220 FY 2003 Org 0219

1	Personal Services .....	001	\$	659,973
---	-------------------------	-----	----	---------

Ch. 13]	APPROPRIATIONS	115
2	Annual Increment . . . . . 004	8,200
3	Employee Benefits . . . . . 010	173,245
4	Unclassified . . . . . 099	168,421
5	BRIM Premium . . . . . 913	<u>2,116</u>
6	Total . . . . .	\$ 1,011,955

27—*Ethics Commission*

(WV Code Chapter 6B)

Fund 0223 FY 2003 Org 0220

1	Personal Services . . . . . 001	\$ 241,569
2	Annual Increment . . . . . 004	2,008
3	Employee Benefits . . . . . 010	67,195
4	Unclassified . . . . . 099	52,072
5	BRIM Premium . . . . . 913	<u>2,251</u>
6	Total . . . . .	\$ 365,095

28—*Public Defender Services*

(WV Code Chapter 29)

Fund 0226 FY 2003 Org 0221

1	Personal Services . . . . . 001	\$ 536,035
2	Annual Increment . . . . . 004	4,250
3	Employee Benefits . . . . . 010	164,147
4	Unclassified (R) . . . . . 099	417,932
5	Appointed Counsel Fees and	
6	Public Defender Corporations (R) . . . 127	22,834,444
7	BRIM Premium . . . . . 913	<u>36,785</u>
8	Total . . . . .	\$ 23,993,593

9 Any unexpended balances remaining in the above appropri-  
10 ations for Unclassified (fund 0226, activity 099), and Appointed  
11 Counsel Fees and Public Defender Corporations (fund 0226,

12 activity 127) at the close of the fiscal year 2002 are hereby  
13 reappropriated for expenditure during the fiscal year 2003.

*29—Committee for the Purchase of*

*Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Fund 0233 FY 2003 Org 0224

1 Unclassified—Total . . . . . 096 \$ 4,381

*30—Public Employees Insurance Agency*

(WV Code Chapter 5)

Fund 0200 FY 2003 Org 0225

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

*31—West Virginia Prosecuting Attorneys' Institute*

Fund 0557 FY 2003 Org 0228

1	Forensic Medical Examinations (R) . . . .	683	\$	185,723
2	Federal Funds/Grant Match (R) . . . . .	749		<u>131,750</u>
3	Total . . . . .		\$	317,473

4 Any unexpended balances remaining in the appropriations  
5 for Forensic Medical Examinations (fund 0557, activity 683),  
6 and Federal Funds/Grant Match (fund 0557, activity 749) at the

7 close of the fiscal year 2002 are hereby reappropriated for  
8 expenditure during the fiscal year 2003.

*32—Children's Health Insurance Agency*

(WV Code Chapter 5)

Fund 0588 FY 2003 Org 0230

1 Unclassified—Total (R) . . . . . 096 \$ 4,843,475

2 Any unexpended balance remaining in the appropriation for  
3 Unclassified—Total (fund 0588, activity 096) at the close of the  
4 fiscal year 2002 is hereby reappropriated for expenditure during  
5 the fiscal year 2003.

**DEPARTMENT OF EDUCATION**

*33—State Department of Education—*

*School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2003 Org 0402

1	Personal Services . . . . .	001	\$	210,477
2	Annual Increment . . . . .	004		3,262
3	Employee Benefits . . . . .	010		76,688
4	Unclassified . . . . .	099		<u>1,746,341</u>
5	Total . . . . .		\$	2,036,768

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

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2003 Org 0402

1	Personal Services . . . . .	001	\$	618,053
---	-----------------------------	-----	----	---------

118	APPROPRIATIONS	[Ch. 13
2	Annual Increment . . . . . 004	11,100
3	Employee Benefits . . . . . 010	220,929
4	Unclassified . . . . . 099	224,572
5	BRIM Premium . . . . . 913	<u>25,949</u>
6	Total . . . . .	\$ 1,100,603

*35—State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2003 Org 0402

1	Personal Services . . . . . 001	\$ 2,891,266
2	Annual Increment . . . . . 004	39,118
3	Employee Benefits . . . . . 010	799,962
4	Unclassified (R) . . . . . 099	3,824,498
5	WV Education Information	
6	System (WVEIS) . . . . . 138	3,832,798
7	34/1000 Waiver . . . . . 139	400,000
8	Increased Enrollment (R) . . . . . 140	1,204,196
9	National Science Foundation Match . . . . . 142	0
10	Teacher Mentor (R) . . . . . 158	60,000
11	National Teacher Certification (R) . . . . . 161	50,000
12	Partnership Development/Staff . . . . . 171	273,699
13	Virtual School on Internet . . . . . 178	0
14	Allowance for County Transfers . . . . . 264	91,748
15	Curriculum Technology	
16	Resource Center . . . . . 300	256,370
17	HVAC Technicians . . . . . 355	408,513
18	Early Retirement	
19	Notification Incentive . . . . . 366	250,000
20	WV Literacy Council . . . . . 370	14,868
21	FBI Checks . . . . . 372	99,558
22	State Science Fair . . . . . 374	24,779
23	Governor's Honors Academy . . . . . 478	188,322
24	Micro Computer Network . . . . . 506	0

25	Adult Advisory Council . . . . .	621	289,041
26	Foreign Student Education (R) . . . . .	636	82,786
27	State Teacher of the Year . . . . .	640	36,661
28	Principals Mentorship . . . . .	649	74,337
29	Allowance for Work Based Learning . . .	744	198,940
30	Marshall Graduate College		
31	Writing Project . . . . .	807	25,000
32	Pickens School Support . . . . .	758	150,000
33	BRIM Premium . . . . .	913	<u>160,292</u>
34	Total . . . . .		\$ 15,726,752

35       The above appropriation includes the state board of  
36 education and their executive office.

37       Any unexpended balances remaining in the appropriations  
38 for Unclassified (fund 0313, activity 099), Increased Enrollment  
39 ment (fund 0313, activity 140), Teacher Mentor (fund 0313,  
40 activity 158), National Teacher Certification (fund 0313,  
41 activity 161), and Foreign Student Education (fund 0313,  
42 activity 636) at the close of the fiscal year 2002 are hereby  
43 reappropriated for expenditure during the fiscal year 2003.

*36—State Department of Education—*

*Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2003 Org 0402

1	Special Education—Counties . . . . .	159	\$ 7,271,757
2	Special Education—Institutions . . . . .	160	3,338,407
3	Educational Programs at Beckley		
4	Center . . . . .	192	367,048
5	Education of Juveniles Held in		
6	Predispositional Juvenile		
7	Detention Centers . . . . .	302	588,546

120 APPROPRIATIONS [Ch. 13

8	Education of Institutionalized		
9	Juvéniles and Adults .....	472	7,363,521
10	Potomac Center .....	810	<u>808,275</u>
11	Total .....		\$ 19,737,554

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

*37—State Department of Education—*

*State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2003 Org 0402

1	Other Current Expenses .....	022	\$ 124,149,988
2	Professional Educators .....	151	754,409,044
3	Service Personnel .....	152	249,841,497
4	Fixed Charges .....	153	89,779,998
5	Transportation .....	154	37,027,065
6	Administration .....	155	7,868,417
7	Improve Instructional Programs ....	156	<u>33,000,000</u>
8	Basic Foundation Allowances .....		1,296,076,009
9	Less Local Share .....		<u>(289,690,069)</u>
10	Total Basic State Aid .....		1,006,385,940
11	Public Employees'		
12	Insurance Matching .....	012	156,655,991
13	Teachers' Retirement System .....	019	273,804,000
14	School Building Authority .....	453	<u>23,352,220</u>
15	Total .....		\$ 1,460,198,151

*38—State Board of Education—*

*Vocational Division*



(WV Code Chapters 18 and 18A)

Fund 0390 FY 2003 Org 0402

1	Personal Services . . . . .	001	\$	936,510
2	Annual Increment . . . . .	004		14,737
3	Employee Benefits . . . . .	010		294,430
4	Unclassified . . . . .	099		1,110,000
5	Wood Products—Forestry			
6	Vocational Program . . . . .	146		62,467
7	Albert Yanni Vocational Program . . . . .	147		138,070
8	Vocational Aid . . . . .	148		14,267,020
9	Adult Basic Education . . . . .	149		3,276,216
10	Program Modernization . . . . .	305		0
11	Aquaculture Support . . . . .	769		<u>208,894</u>
12	Total . . . . .		\$	20,308,344

*39—State Board of Education—*

*Division of Educational Performance Audits*

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2003 Org 0402

1	Personal Services . . . . .	001	\$	491,559
2	Annual Increment . . . . .	004		3,250
3	Employee Benefits . . . . .	010		129,950
4	Unclassified . . . . .	099		<u>180,199</u>
5	Total . . . . .		\$	804,958

*40—West Virginia Schools for the Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2003 Org 0403

1	Personal Services . . . . .	001	\$	6,691,692
---	-----------------------------	-----	----	-----------

2	Annual Increment . . . . .	004	5,350
3	Employee Benefits . . . . .	010	2,434,699
4	Unclassified . . . . .	099	1,613,470
5	BRIM Premium . . . . .	913	<u>47,094</u>
6	Total . . . . .		\$ 10,792,305

7 Any unexpended balance remaining in the appropriation for  
 8 Capital Outlay, Repairs and Equipment—Surplus (fund 0320,  
 9 activity 677) at the close of the fiscal year 2002 is hereby  
 10 reappropriated for expenditure during the fiscal year 2003.

### DEPARTMENT OF EDUCATION AND THE ARTS

#### *41—Department of Education and the Arts—*

#### *Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2003 Org 0431

1	Unclassified (R) . . . . .	099	\$ 793,568
2	Center for Professional		
3	Development (R) . . . . .	115	1,709,960
4	WV Humanities Council . . . . .	168	0
5	Center for Professional Development—		
6	Principals' Academy (R) . . . . .	415	485,460
7	College Readiness . . . . .	579	0
8	Challenger Learning Center . . . . .	862	0
9	BRIM Premium . . . . .	913	<u>2,200</u>
10	Total . . . . .		\$ 2,991,188

11 Any unexpended balances remaining in the appropriations  
 12 for Unclassified (fund 0294, activity 099), Center for Profes-  
 13 sional Development (fund 0294, activity 115), Center for  
 14 Professional Development—Principals' Academy (fund 0294,  
 15 activity 415), and Community Schools/Mini Grants (fund 0294,

16 activity 530) at the close of the fiscal year 2002 are hereby  
17 reappropriated for expenditure during the fiscal year 2003.

*42—Division of Culture and History*

(WV Code Chapter 29)

Fund 0293 FY 2003 Org 0432

1	Personal Services . . . . .	001	\$ 2,209,152
2	Annual Increment . . . . .	004	37,830
3	Employee Benefits . . . . .	010	744,815
4	Unclassified . . . . .	099	455,309
5	Culture and History Programming . . . . .	732	275,000
6	BRIM Premium . . . . .	913	<u>34,436</u>
7	Total . . . . .		\$ 3,756,542

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

14 All federal moneys received as reimbursement to the  
15 division of culture and history for moneys expended from the  
16 general revenue fund for the arts fund and historical preserva-  
17 tion are hereby reappropriated for the purposes as originally  
18 made, including personal services, current expenses and  
19 equipment.

*43—Library Commission*

(WV Code Chapter 10)

Fund 0296 FY 2003 Org 0433

1	Personal Services . . . . .	001	\$ 1,153,194
---	-----------------------------	-----	--------------

124	APPROPRIATIONS	[Ch. 13
2	Annual Increment . . . . . 004	36,687
3	Employee Benefits . . . . . 010	390,694
4	Unclassified . . . . . 099	275,000
5	Services to Blind and Handicapped . . . . . 181	42,729
6	BRIM Premium . . . . . 913	<u>22,330</u>
7	Total . . . . .	\$ 1,920,634

*44—Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 2003 Org 0439

1	Personal Services . . . . . 001	\$ 3,336,259
2	Annual Increment . . . . . 004	58,700
3	Employee Benefits . . . . . 010	1,109,498
4	Unclassified . . . . . 099	<del>*701,086</del>
5		601,086*
6	Star Schools . . . . . 509	0
7	BRIM Premium . . . . . 913	<u>38,110</u>
8	Total . . . . .	\$ 5,242,653

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

*45—State Board of Rehabilitation—*

*Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 2003 Org 0932

1	Personal Services . . . . . 001	\$ 6,488,519
2	Annual Increment . . . . . 004	134,049
3	Employee Benefits . . . . . 010	2,623,325

---

\*CLERK'S NOTE: The Governor reduced this line item by \$100,000 but left the total intact.

Ch. 13]	APPROPRIATIONS	125
4	Unclassified . . . . . 099	164,100
5	Workshop Development . . . . . 163	1,816,149
6	Supported Employment	
7	Extended Services . . . . . 206	119,032
8	Ron Yost Personal Assistance Fund . . . . 407	300,000
9	Traumatic Brain and	
10	Spinal Cord Injury . . . . . 813	238,069
11	BRIM Premium . . . . . 913	<u>50,010</u>
12	Total . . . . .	\$ 11,933,253

13 Any unexpended balance remaining in the appropriation for  
14 Technology—Related Assistance Revolving Loan Fund for  
15 Individuals with Disabilities (fund 0310, activity 766) at the  
16 close of the fiscal year 2002 is hereby reappropriated for  
17 expenditure during the fiscal year 2003 and may be transferred  
18 to a special account for the purpose of disbursement or loan.

**DEPARTMENT OF HEALTH  
AND HUMAN RESOURCES**

*46—Department of Health and Human Resources—*

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 2003 Org 0501

1	Unclassified—Total . . . . . 096	\$	138,103
---	----------------------------------	----	---------

*47—Division of Health—*

*Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2003 Org 0506

1	Personal Services .....	001	\$ 8,298,367
2	Annual Increment .....	004	177,256
3	Employee Benefits .....	010	3,391,234
4	Unclassified .....	099	5,421,037
5	Appalachian State Low Level		
6	Radioactive Waste Commission .....	185	48,000
7	Safe Drinking Water Program .....	187	524,753
8	Pet Scan Support .....	209	200,000
9	Women, Infants and Children .....	210	45,000
10	Basic Public Health Services Support ...	212	4,335,811
11	Early Intervention .....	223	3,307,043
12	Cancer Registry .....	225	279,199
13	CARDIAC Project .....	375	220,000
14	State EMS Technical Assistance .....	379	1,413,020
15	EMS Agency Uncompensated		
16	Care Support .....	380	250,000
17	EMS Program for Children .....	381	50,804
18	Statewide EMS Program Support .....	383	562,910
19	Primary Care Centers—		
20	Mortgage Finance .....	413	550,000
21	Black Lung Clinics .....	467	200,000
22	Pediatric Dental Services .....	550	150,000
23	Vaccine for Children .....	551	434,019
24	Adult Influenza Vaccine .....	552	65,000
25	Tuberculosis Control .....	553	255,668
26	Maternal and Child Health Clinics,		
27	Clinicians and Medical Contracts		
28	and Fees (R) .....	575	4,629,636
29	Epidemiology Support .....	626	384,417
30	Primary Care Support .....	628	7,269,762
31	State Aid to Local Health Departments ..	702	9,257,684
32	Health Right Free Clinics .....	727	2,200,042
33	Osteoporosis Prevention Fund .....	729	308,879
34	Emergency Response Entities—		
35	Special Projects .....	822	1,000,000
36	Center for End of Life .....	545	200,000

37	BRIM Premium .....	913	<u>161,860</u>
38	Total .....		\$ 55,591,401

39 Any unexpended balances remaining in the appropriations  
 40 for Unclassified (fund 0407, activity 099, fiscal year 1997), and  
 41 Maternal and Child Health Clinics, Clinicians and Medical  
 42 Contracts and Fees (fund 0407, activity 575) at the close of the  
 43 fiscal year 2002 are hereby reappropriated for expenditure  
 44 during the fiscal year 2003.

45 From the Maternal and Child Health Clinics, Clinicians,  
 46 and Medical Contracts and Fees line item, \$400,000 shall be  
 47 transferred to the Breast and Cervical Cancer Diagnostic  
 48 Treatment Fund.

*48—Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 0525 FY 2003 Org 0506

1	Personal Services .....	001	\$ 548,281
2	Annual Increment .....	004	9,991
3	Employee Benefits .....	010	226,892
4	Special Olympics .....	208	26,074
5	Behavioral Health Program—		
6	Unclassified (R) .....	219	31,056,068
7	Family Support Act .....	221	1,095,136
8	Institutional Facilities Operations .....	335	21,164,135
9	Colin Anderson Community		
10	Placement (R) .....	803	3,264,325
11	Renaissance Program .....	804	194,000
12	Tobacco Education Program .....	906	8,242
13	BRIM Premium .....	913	<u>875,704</u>
14	Total .....		\$ 58,468,848

15 Any unexpended balances remaining in the appropriations  
16 for Behavioral Health Program—Unclassified (fund 0525,  
17 activity 219), and Colin Anderson Community Placement (fund  
18 0525, activity 803) at the close of the fiscal year 2002 are  
19 hereby reappropriated for expenditure during the fiscal year  
20 2003.

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

32 From the Colin Anderson Community Placement (fund  
33 0525, activity 803) funds may be both expended for the  
34 community placement costs of the Colin Anderson clients and  
35 transferred to the Medical Services Program Fund to pay the  
36 Medicaid state share of the Medicaid cost of Colin Anderson  
37 clients in the community.

38 From the above appropriation to Institutional Facilities  
39 Operations, together with available funds from the division of  
40 health—hospital services revenue account (fund 5156, activity  
41 335) and tobacco settlement expenditure fund (fund 5124,  
42 activity 335), on July 1, 2002, the sum of two hundred thousand  
43 dollars shall be transferred to the department of agricul-  
44 ture—land division as advance payment for the purchase of  
45 food products; actual payments for such purchases shall not be  
46 required until such credits have been completely expended.



47 Additional funds have been appropriated in fund 5124,  
 48 fiscal year 2003, organization 0506 and fund 5156, fiscal year  
 49 2003, organization 0506, for the operation of the institutional  
 50 facilities. The secretary of the department of health and human  
 51 resources is authorized to utilize up to ten percent of the funds  
 52 from the Institutional Facilities Operations line item to facilitate  
 53 cost effective and cost saving services at the community level.

*49—Division of Health—*

*West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Fund 0561 FY 2003 Org 0506

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

3 The above appropriation for Drinking Water Treatment  
 4 Revolving Fund—Transfer shall be transferred to the West  
 5 Virginia Drinking Water Treatment Revolving Fund or appro-  
 6 priate bank depository and the Drinking Water Treatment  
 7 Revolving—Administrative Expense Fund as provided by  
 8 chapter sixteen of the code.

*50—Human Rights Commission*

(WV Code Chapter 5)

Fund 0416 FY 2003 Org 0510

1	Personal Services . . . . .	001	\$	698,104
2	Annual Increment . . . . .	004		14,674
3	Employee Benefits . . . . .	010		244,420
4	Unclassified . . . . .	099		225,698
5	BRIM Premium . . . . .	913		<u>17,970</u>
6	Total . . . . .		\$	1,200,866

*51—Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2003 Org 0511

1	Personal Services . . . . .	001	\$ 22,809,759
2	Annual Increment . . . . .	004	648,734
3	Employee Benefits . . . . .	010	8,498,770
4	Unclassified . . . . .	099	20,243,274
5	Child Care Development . . . . .	144	1,454,206
6	Medical Services Contracts and Office		
7	of Managed Care . . . . .	183	2,337,706
8	Medical Services . . . . .	189	182,255,995
9	Women's Commission . . . . .	191	133,271
10	Social Services . . . . .	195	60,105,425
11	Family Preservation Program . . . . .	196	1,565,000
12	Domestic Violence Legal		
13	Services Fund . . . . .	384	150,000
14	James "Tiger" Morton Catastrophic		
15	Illness Fund . . . . .	455	940,000
16	Child Protective Services		
17	Case Workers . . . . .	468	9,024,303
18	Medical Services Trust Fund Transfer . .	512	5,000,000
19	OSCAR and RAPIDS . . . . .	515	3,499,928
20	Child Welfare System . . . . .	603	2,609,058
21	Commission for the Deaf and		
22	Hard of Hearing . . . . .	704	269,046
23	Child Support Enforcement . . . . .	705	2,803,180
24	Medicaid Auditing . . . . .	706	604,485
25	Temporary Assistance for Needy		
26	Families/Maintenance of Effort . . . .	707	23,587,807
27	Child Care—Maintenance of		
28	Effort and Match . . . . .	708	4,409,643
29	Grants for Licensed Domestic Violence		
30	Programs and Statewide Prevention .	750	1,000,000

Ch. 13]	APPROPRIATIONS	131
31	Women’s Right to Know . . . . .	546      275,000
32	WV Teaching Hospitals	
33	Tertiary/Safety Net . . . . .	547      1,750,000
34	Indigent Burials (R) . . . . .	851      1,274,000
35	BRIM Premium . . . . .	913 <u>667,631</u>
36	Total . . . . .	\$ 357,916,221

37      Any unexpended balance remaining in the appropriation for  
38 Indigent Burials (fund 0403, activity 851) at the close of the  
39 fiscal year 2002 is hereby reappropriated for expenditure during  
40 the fiscal year 2003.

41      The above appropriation for James “Tiger” Morton  
42 Catastrophic Illness Fund (activity 455) shall be transferred to  
43 the James “Tiger” Morton Catastrophic Illness Fund (fund  
44 5454) as provided by chapter sixteen, article five-q of the code.

45      The above appropriation for Domestic Violence Legal  
46 Services Fund (activity 384) shall be transferred to the Domes-  
47 tic Violence Legal Services Fund (fund 5455).

48      The secretary shall have authority to expend funds for the  
49 educational costs of those children residing in out-of-state  
50 placements, excluding the costs of special education programs.

**DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY**

*52—Department of Military Affairs and Public Safety—*

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 2003 Org 0601

1	Unclassified (R) . . . . .	099    \$    702,817
2	BRIM Premium . . . . .	913 <u>4,816</u>

3 Total . . . . . \$ 707,633

4 Any unexpended balance remaining in the appropriation for  
5 Unclassified (fund 0430, activity 099) at the close of the fiscal  
6 year 2002 is hereby reappropriated for expenditure during the  
7 fiscal year 2003.

*53—Adjutant General—*

*State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2003 Org 0603

1	Personal Services . . . . .	001	\$	387,196
2	Annual Increment . . . . .	004		7,963
3	Employee Benefits . . . . .	010		120,669
4	Unclassified (R) . . . . .	099		14,970,468
5	BRIM Premium . . . . .	913		<u>15,904</u>
6	Total . . . . .		\$	15,502,200

7 Any unexpended balance remaining in the appropriation for  
8 Unclassified (fund 0433, activity 099) at the close of the fiscal  
9 year 2002 is hereby reappropriated for expenditure during the  
10 fiscal year 2003.

11 From the above appropriation an amount approved by the  
12 adjutant general and the secretary of military affairs and public  
13 safety may be transferred to the State Armory Board for  
14 operation and maintenance of National Guard Armories.

*54—West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 2003 Org 0605

1	Personal Services . . . . .	001	\$	122,751
2	Annual Increment . . . . .	004		1,744
3	Employee Benefits . . . . .	010		115,679
4	Unclassified . . . . .	099		69,575
5	Salaries of Members of West Virginia			
6	Parole Board . . . . .	227		225,000
7	BRIM Premium . . . . .	913		<u>22,208</u>
8	Total . . . . .		\$	556,957

*55—Office of Emergency Services*

(WV Code Chapter 15)

Fund 0443 FY 2003 Org 0606

1	Personal Services . . . . .	001	\$	230,974
2	Annual Increment . . . . .	004		5,897
3	Employee Benefits . . . . .	010		86,189
4	Unclassified . . . . .	099		31,696
5	Federal Emergency Management			
6	Agency Match (R) . . . . .	188		210,937
7	Early Warning Flood System . . . . .	877		324,000
8	Radiological Emergency Preparedness . .	554		25,600
9	BRIM Premium . . . . .	913		<u>6,680</u>
10	Total . . . . .		\$	921,973

11 Any unexpended balances remaining in the appropriations  
 12 for Unclassified—Surplus (fund 0443, activity 097), Federal  
 13 Emergency Management Agency Match (fund 0443, activity  
 14 188), and Flood Reparations (fund 0443, activity 400) at the  
 15 close of the fiscal year 2002 are hereby reappropriated for  
 16 expenditure during the fiscal year 2003.

*56—Division of Corrections—*

*Central Office*

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

Fund 0446 FY 2003 Org 0608

1	Personal Services .....	001	\$	384,881
2	Annual Increment .....	004		5,475
3	Employee Benefits .....	010		116,910
4	Unclassified .....	099		<u>98,162</u>
5	Total .....		\$	605,428

6 Any unexpended balance remaining in the appropriation for  
 7 Management Information System (fund 0446, activity 398) at  
 8 the close of the fiscal year 2002 is hereby reappropriated for  
 9 expenditure during the fiscal year 2003.

*57—Division of Corrections—**Correctional Units*

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

Fund 0450 FY 2003 Org 0608

1	Employee Benefits .....	010	\$	247,367
2	Unclassified .....	099		726,000
3	Payments to Counties and/or			
4	Regional Jails .....	229		0
5	Payments to Federal, County and/or			
6	Regional Jails .....	555		7,303,000
7	Charleston Work Release .....	456		842,328
8	Beckley Correctional Center .....	490		917,400
9	Huntington Work Release .....	495		721,135
10	Anthony Center .....	504		4,060,261
11	Bureau of Prisons -			
12	Federal Prison Camp .....	505		0
13	Huttonsville Correctional Center .....	514		13,427,651
14	Eastern Regional Correctional Facility ..	519		0

15	Northern Correctional Facility . . . . .	534	5,956,185
16	Inmate Medical Expenses . . . . .	535	9,110,767
17	Pruntytown Correctional Center . . . . .	543	5,451,370
18	Corrections Academy . . . . .	569	992,962
19	Parole Services . . . . .	686	1,997,449
20	Special Services . . . . .	687	2,088,914
21	St. Mary's Correctional Facility . . . . .	881	10,026,900
22	Denmar Correctional Facility . . . . .	882	3,578,058
23	Ohio County Correctional Facility . . . . .	883	1,177,177
24	Mt. Olive Correctional Facility . . . . .	888	17,537,863
25	Lakin Correctional Facility . . . . .	896	7,380,917
26	BRIM Premium . . . . .	913	<u>560,889</u>
27	Total . . . . .		\$ 94,104,593

28 Any unexpended balance remaining in the appropriation for  
 29 Capital Outlay (fund 0450, activity 511) at the close of the  
 30 fiscal year 2002 is hereby reappropriated for expenditure during  
 31 the fiscal year 2003.

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

42 From the above appropriation to Unclassified, on July 1,  
 43 2002, the sum of three hundred thousand dollars shall be  
 44 transferred to the department of agriculture—land division as  
 45 advance payment for the purchase of food products; actual  
 46 payments for such purchases shall not be required until such  
 47 credits have been completely expended.

*58—West Virginia State Police*

(WV Code Chapter 15)

Fund 0453 FY 2003 Org 0612

1	Personal Services . . . . .	001	\$ 25,859,074
2	Annual Increment . . . . .	004	182,309
3	Employee Benefits . . . . .	010	5,499,738
4	Unclassified . . . . .	099	6,398,558
5	COPS Program Federal Match . . . . .	327	2,115,759
6	Vehicle Purchase . . . . .	451	1,000,000
7	Barracks Maintenance		
8	and Construction (R) . . . . .	494	1,719,388
9	Debt Payment/Capital Outlay . . . . .	520	0
10	Barracks Lease Payments . . . . .	556	318,768
11	Trooper Class . . . . .	521	2,220,534
12	Communications and		
13	Other Equipment (R) . . . . .	558	613,285
14	Trooper Retirement Fund . . . . .	605	22,380,530
15	Handgun Administration Expense . . . . .	747	70,375
16	Automated Fingerprint		
17	Identification System . . . . .	898	483,243
18	BRIM Premium . . . . .	913	<u>3,351,098</u>
19	Total . . . . .		\$ 72,212,659

20 Any unexpended balances remaining in the appropriations  
 21 for Barracks Maintenance and Construction (fund 0453, activity  
 22 494), Communications and Other Equipment (fund 0453,  
 23 activity 558), and Debt Payment/Capital Outlay, Renovations,  
 24 Repairs to Barracks (fund 0453, activity 751) at the close of the  
 25 fiscal year 2002 are hereby reappropriated for expenditure  
 26 during the fiscal year 2003.

*59—Division of Veterans' Affairs*

(WV Code Chapter 9A)



Fund 0456 FY 2003 Org 0613

1	Personal Services .....	001	835,535
2	Annual Increment .....	004	22,630
3	Employee Benefits .....	010	363,055
4	Unclassified .....	099	50,000
5	Veterans' Field Offices .....	228	129,692
6	Veterans' Toll Free Assistance Line ....	328	5,000
7	Veterans' Reeducation Assistance (R) ..	329	216,141
8	Veterans' Field		
9	Office Improvements (R) .....	331	59,434
10	Veterans' Grant Program (R) .....	342	150,000
11	Women's Veterans' Monument (R) ....	385	100,000
12	Memorial Day Patriotic Exercise .....	697	20,000
13	BRIM Premium .....	913	<u>23,741</u>
14	Total .....		\$ 1,975,228

15 Any unexpended balances remaining in the appropriations  
 16 for Veterans' Reeducation Assistance (fund 0456, activity 329),  
 17 Veterans' Field Office Improvements (fund 0456, activity 331),  
 18 Veterans' Grant Program (fund 0456, activity 342), Women's  
 19 Veterans' Monument (fund 0456, activity 385), and Veterans'  
 20 Monuments (fund 0456, activity 817) at the close of the fiscal  
 21 year 2002 are hereby reappropriated for expenditure during the  
 22 fiscal year 2003.

*60—Division of Veterans' Affairs—*

*Veterans' Home*

(WV Code Chapter 9A)

Fund 0460 FY 2003 Org 0618

1	Personal Services .....	001	\$ 668,382
2	Annual Increment .....	004	13,800
3	Employee Benefits .....	010	300,992

4	Unclassified .....	099	<u>149,495</u>
5	Total .....		\$ 1,132,669

*61—Fire Commission*

(WV Code Chapter 29)

Fund 0436 FY 2003 Org 0619

1	Personal Services .....	001	\$ 613,761
2	Annual Increment .....	004	11,478
3	Employee Benefits .....	010	222,360
4	Unclassified .....	099	146,248
5	State-Wide Hotline .....	347	0
6	Safe Schools Hotline .....	560	250,000
7	BRIM Premium .....	913	<u>20,940</u>
8	Total .....		\$ 1,264,787

*62—Division of Criminal Justice Services*

(WV Code Chapter 15)

Fund 0546 FY 2003 Org 0620

1	Personal Services .....	001	\$ 248,802
2	Annual Increment .....	004	3,645
3	Employee Benefits .....	010	83,776
4	Unclassified .....	099	155,775
5	Statistical Analysis Program .....	597	52,837
6	Community Corrections .....	561	100,000
7	BRIM Premium .....	913	<u>1,000</u>
8	Total .....		\$ 645,835

9 The above line item Community Corrections (fund 0546,  
10 activity 561) shall be used to supply grants for community  
11 corrections programs which are programs that provide criminal

- 12 sentencing options as alternatives to conventional sentences of  
 13 probation or incarceration.

*63—Division of Juvenile Services*

(WV Code Chapter 49)

Fund 0570 FY 2003 Org 0621

1	Personal Services .....	001	\$14,425,556
2	Annual Increment .....	004	76,015
3	Employee Benefits .....	010	4,721,374
4	Unclassified (R) .....	099	5,565,542
5	BRIM Premium .....	913	<u>20,930</u>
6	Total .....		\$24,809,417

- 7 Any unexpended balance remaining in the appropriation for  
 8 Unclassified (fund 0570, activity 099) at the close of the fiscal  
 9 year 2002 is hereby reappropriated for expenditure during the  
 10 fiscal year 2003.

- 11 From the above appropriation to Unclassified, on July 1,  
 12 2002, the sum of fifty thousand dollars shall be transferred to  
 13 the department of agriculture—land division as advance  
 14 payment for the purchase of food products; actual payments for  
 15 such purchases shall not be required until such credits have  
 16 been completely expended.

*64—Division of Protective Services*

(WV Code Chapter 15)

Fund 0585 FY 2003 Org 0622

1	Personal Services .....	001	\$ 826,051
2	Annual Increment .....	004	30,450
3	Employee Benefits .....	010	330,260
4	Equipment (R) .....	070	308,986

5	Unclassified (R) . . . . .	099	<u>243,500</u>
6	Total . . . . .		\$ 1,739,247

7 Any unexpended balances remaining in the appropriations  
 8 for Equipment (fund 0585, activity 070), Unclassified—Surplus  
 9 (fund 0585, activity 097), and Unclassified (fund 0585, activity  
 10 099) at the close of the fiscal year 2002 are hereby  
 11 reappropriated for expenditure during the fiscal year 2003.

**DEPARTMENT OF TAX AND REVENUE**

*65—Tax Division*

(WV Code Chapter 11)

Fund 0470 FY 2003 Org 0702

1	Personal Services . . . . .	001	\$ 11,250,978
2	Annual Increment . . . . .	004	259,060
3	Employee Benefits . . . . .	010	3,541,769
4	Unclassified . . . . .	099	7,690,365
5	Property Tax Valuation and		
6	Assessment System . . . . .	477	0
7	Remittance Processor . . . . .	570	74,449
8	GIS Development Project . . . . .	562	150,000
9	BRIM Premium . . . . .	913	<u>5,058</u>
10	Total . . . . .		\$ 22,971,679

11 Any unexpended balances remaining in the appropriations  
 12 for Property Tax Valuation and Assessment System (fund 0470,  
 13 activity 477), and Automation Project—Total—Surplus (fund  
 14 0470, activity 673) at the close of the fiscal year 2002 are  
 15 hereby reappropriated for expenditure during the fiscal year  
 16 2003.

*66—Division of Professional and Occupational Licenses—*

*State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 2003 Org 0933

1	Unclassified .....	099	\$	6,612
2	BRIM Premium .....	913		<u>1,388</u>
3	Total .....		\$	8,000

**DEPARTMENT OF TRANSPORTATION***67—State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2003 Org 0804

1	Unclassified .....	099	\$	3,568,405
2	BRIM Premium .....	913		<u>8,989</u>
3	Total .....		\$	3,577,394

*68—Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 2003 Org 0805

1	Unclassified (R) .....	099	\$	1,294,162
2	Grant Match (R) .....	388		<u>1,000,000</u>
3	Total .....		\$	2,294,162

4 Any unexpended balances remaining in the appropriations  
5 for Unclassified (fund 0510, activity 099), Grant Match (fund  
6 0510, activity 388), and Federal Funds/Grant Match (fund 0510,  
7 activity 749) at the close of the fiscal year 2002 are hereby  
8 reappropriated for expenditure during the fiscal year 2003.

*69—Public Port Authority*

(WV Code Chapter 17)

Fund 0581 FY 2003 Org 0806

1 Unclassified—Total (R) . . . . . 096 \$ 813,506

2 Any unexpended balance remaining in the appropriation for  
3 Unclassified—Total (fund 0581, activity 096) at the close of the  
4 fiscal year 2002 is hereby reappropriated for expenditure during  
5 the fiscal year 2003.

*70—Aeronautics Commission*

(WV Code Chapter 29)

Fund 0582 FY 2003 Org 0807

1 Unclassified (R) . . . . . 099 \$ 1,614,681  
2 Civil Air Patrol . . . . . 234 116,952  
3 Total . . . . . \$ 1,731,633

4 Any unexpended balances remaining in the appropriations  
5 for Unclassified—Total (fund 0582, activity 096), and Unclas-  
6 sified (fund 0582, activity 099) at the close of the fiscal year  
7 2002 are hereby reappropriated for expenditure during the fiscal  
8 year 2003.

**BUREAU OF COMMERCE**

*71—Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2003 Org 0305

1 Personal Services . . . . . 001 \$ 1,878,140

Ch. 13]	APPROPRIATIONS	143
2	Annual Increment . . . . . 004	41,692
3	Employee Benefits . . . . . 010	630,213
4	Unclassified . . . . . 099	249,463
5	Aerial Tanker Airplanes . . . . . 752	200,000
6	BRIM Premium . . . . . 913	<u>156,271</u>
7	Total . . . . .	\$ 3,155,779

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

*72—Geological and Economic Survey*  
(WV Code Chapter 29)

Fund 0253 FY 2003 Org 0306

1	Personal Services . . . . . 001	\$ 1,280,819
2	Annual Increment . . . . . 004	33,110
3	Employee Benefits . . . . . 010	408,037
4	Unclassified . . . . . 099	278,444
5	Mineral Mapping System (R) . . . . . 207	1,368,022
6	Geographic Information System (R) . . . . 214	294,031
7	Computer Upgrade . . . . . 349	1,125
8	BRIM Premium . . . . . 913	<u>16,044</u>
9	Total . . . . .	\$ 3,679,632

10           Any unexpended balances remaining in the appropriations  
11 for Mineral Mapping System (fund 0253, activity 207),  
12 Geographic Information System (fund 0253, activity 214), and  
13 Computer Upgrade—Surplus (fund 0253, activity 874), at the  
14 close of the fiscal year 2002 are hereby reappropriated for  
15 expenditure during the fiscal year 2003.

16           The above Unclassified appropriation includes funding to  
17 secure federal and other contracts and may be transferred to a

- 18 special revolving fund (fund 3105, activity 099) for the purpose  
 19 of providing advance funding for such contracts.

*73—West Virginia Development Office*

(WV Code Chapter 5B)

Fund 0256 FY 2003 Org 0307

1	Personal Services . . . . .	001	\$ 2,432,093
2	Annual Increment . . . . .	004	30,473
3	Employee Benefits . . . . .	010	708,066
4	Unclassified . . . . .	099	3,261,412
5	Partnership Grants (R) . . . . .	131	4,000,000
6	National Youth Science Camp . . . . .	132	188,180
7	Local Economic Development		
8	Partnerships (R) . . . . .	133	1,600,500
9	ARC Assessment . . . . .	136	167,308
10	Institute for Software Research . . . . .	217	94,090
11	West Virginia Steel Advisory . . . . .	230	75,272
12	Mid-Atlantic Aerospace Complex (R) . . . . .	231	218,250
13	Guaranteed Work Force Grant (R) . . . . .	242	3,417,606
14	Sunny Day Fund . . . . .	283	0
15	Small Business		
16	Financial Assistance (R) . . . . .	360	407,142
17	Robert C. Byrd Institute for Advanced/ 18 Flexible Manufacturing—Technology 19 Outreach and Programs for 20 Environmental and		
21	Advanced Technologies . . . . .	367	679,000
22	Advantage Valley . . . . .	389	97,000
23	Chemical Alliance Zone . . . . .	390	48,500
24	WV High Tech Consortium . . . . .	391	197,000
25	Charleston Farmers Market (R) . . . . .	476	100,000
26	Industrial Park Assistance (R) . . . . .	480	558,000
27	WV Film Development Office . . . . .	498	0



28	Leverage Technology and Small		
29	Business Development		
30	Program (R) . . . . .	525	798,265
31	International Offices (R) . . . . .	593	926,966
32	WV Manufacturing		
33	Extension Partnership . . . . .	731	188,180
34	Small Business Work Force (R) . . . . .	735	354,660
35	Polymer Alliance . . . . .	754	94,090
36	National Institute		
37	of Chemical Studies . . . . .	805	94,090
38	Local Economic		
39	Development Assistance (R) . . . . .	819	7,000,000
40	Community College		
41	Workforce Development (R) . . . . .	878	802,675
42	BRIM Premium . . . . .	913	<u>1,464</u>
43	Total . . . . .		\$ 28,540,282

44       Any unexpended balances remaining in the appropriations  
45 for Partnership Grants (fund 0256, activity 131), Local Eco-  
46 nomic Development Partnerships (fund 0256, activity 133),  
47 Mid Atlantic Aerospace Complex (fund 0256, activity 231),  
48 Guaranteed Work Force Grant (fund 0256, activity 242), Office  
49 of Coalfield Community Development (fund 0256, activity  
50 326), Small Business Financial Assistance (fund 0256, activity  
51 360), Industrial Park Assistance (fund 0256, activity 480),  
52 Leverage Technology and Small Business Development  
53 Program (fund 0256, activity 525), International Offices (fund  
54 0256, activity 593), Small Business Work Force (fund 0256,  
55 activity 735), Local Economic Development Assistance (fund  
56 0256, activity 819), Community College Workforce Develop-  
57 ment (fund 0256, activity 878), Economic Development  
58 Assistance (fund 0256, activity 900), and Technology Initia-  
59 tives (fund 0256, activity 901) at the close of the fiscal year  
60 2002 are hereby reappropriated for expenditure during the fiscal  
61 year 2003.

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

*74—Division of Labor*

(WV Code Chapters 21 and 47)

Fund 0260 FY 2003 Org 0308

1	Personal Services . . . . .	001	\$ 1,792,146
2	Annual Increment . . . . .	004	24,735
3	Employee Benefits . . . . .	010	644,621
4	Unclassified . . . . .	099	844,250
5	BRIM Premium . . . . .	913	<u>40,058</u>
6	Total . . . . .		\$ 3,345,810

*75—Division of Natural Resources*

(WV Code Chapter 20)

Fund 0265 FY 2003 Org 0310

1	Personal Services . . . . .	001	\$ 8,698,491
2	Annual Increment . . . . .	004	283,408
3	Employee Benefits . . . . .	010	3,490,759
4	Unclassified . . . . .	099	68,069
5	Litter Control Conservation Officers . . . .	564	220,284
6	Upper Mud River Flood Control . . . . .	654	194,776

7	Law Enforcement . . . . .	806	844,726
8	Law Enforcement-Federal Audit . . . . .	563	400,000
9	BRIM Premium . . . . .	913	<u>251,260</u>
10	Total . . . . .		\$ 14,451,773

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

16 The above appropriation for Law Enforcement-Federal  
 17 Audit (fund 0265, activity 563) shall only be expended after the  
 18 division of natural resources has executed the Memorandum of  
 19 Agreement resolving pending claims of the U.S. Fish and  
 20 Wildlife Service and upon written approval of the Commis-  
 21 sioner of the Bureau of Commerce.

*76—Division of Miners’ Health, Safety and Training*

(WV Code Chapter 22)

Fund 0277 FY 2003 Org 0314

1	Personal Services . . . . .	001	\$ 3,764,163
2	Annual Increment . . . . .	004	68,118
3	Employee Benefits . . . . .	010	1,182,820
4	Unclassified . . . . .	099	948,101
5	BRIM Premium . . . . .	913	<u>35,421</u>
6	Total . . . . .		\$ 5,998,623

*77—Board of Coal Mine Health and Safety*

(WV Code Chapter 22)

Fund 0280 FY 2003 Org 0319

1	Personal Services . . . . .	001	\$ 98,381
---	-----------------------------	-----	-----------

148	APPROPRIATIONS	[Ch. 13
2	Annual Increment . . . . .	004 700
3	Employee Benefits . . . . .	010 25,158
4	Unclassified . . . . .	099 <u>65,143</u>
5	Total . . . . .	\$ 189,382

*78—Coal Mine Safety and Technical Review Committee*

(WV Code Chapter 22)

Fund 0285 FY 2003 Org 0320

1	Unclassified—Total . . . . .	096 \$ 71,231
---	------------------------------	---------------

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

*79—Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2003 Org 0311

1	Personal Services . . . . .	001 \$ 101,289
2	Annual Increment . . . . .	004 655
3	Employee Benefits . . . . .	010 23,809
4	Unclassified . . . . .	099 <u>35,152</u>
5	Total . . . . .	\$ 160,905

*80—Interstate Commission on Potomac River Basin*

(WV Code Chapter 29)

Fund 0263 FY 2003 Org 0313

1	West Virginia's Contribution to the Interstate Commission	
2	on Potomac River Basin—Total . . . .	134 \$ 47,000

*81—Ohio River Valley Water Sanitation Commission*

(WV Code Chapter 29)

Fund 0264 FY 2003 Org 0313

1	West Virginia's Contribution to the		
2	Ohio River Valley Water		
3	Sanitation Commission—Total . . . . .	135	\$ 134,300

*82—Division of Environmental Protection*

(WV Code Chapter 22)

Fund 0273 FY 2003 Org 0313

1	Personal Services . . . . .	001	\$ 4,733,033
2	Annual Increment . . . . .	004	73,664
3	Employee Benefits . . . . .	010	1,499,753
4	Unclassified . . . . .	099	1,680,858
5	Dam Safety . . . . .	607	217,603
6	Office of Water Resources		
7	Non-Enforcement Activity . . . . .	855	1,179,111
8	BRIM Premium . . . . .	913	<u>12,462</u>
9	Total . . . . .		\$ 9,396,484
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 2002 is hereby		
13	reappropriated for expenditure during the fiscal year 2003.		

*83—Air Quality Board*

(WV Code Chapter 16)

Fund 0550 FY 2003 Org 0325

1	Unclassified . . . . .	099	\$ 99,548
2	BRIM Premium . . . . .	913	<u>2,586</u>
3	Total . . . . .		\$ 102,134

**BUREAU OF SENIOR SERVICES***84—Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 2003 Org 0508

1	Personal Services .....	001	\$	128,059
2	Annual Increment .....	004		2,031
3	Employee Benefits .....	010		51,031
4	Unclassified .....	099		580,314
5	Silver Haired Legislature .....	202		14,400
6	Area Agencies Administration .....	203		87,428
7	Alzheimers Respite Care .....	565		100,000
8	BRIM Premium .....	913		<u>2,075</u>
9	Total .....		\$	965,338

**HIGHER EDUCATION POLICY COMMISSION***85—Higher Education Policy Commission—**Administration—**Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2003 Org 0441

1	Unclassified .....	099	\$	3,064,688
2	EPSCOR Undergraduate Scientific			
3	Instrumentation Program .....	829		0
4	WVNET .....	169		2,697,851
5	Vice Chancellor for Health Sciences-			
6	Rural Health Initiative Program			
7	and Site Support .....	595		4,216,963
8	Vice Chancellor for Health Sciences-			

Ch. 13]	APPROPRIATIONS	151
9	Rural Health Residency Program . . . 601	200,000
10	Institutional Base Budget Partial	
11	Restoration . . . . . 602	4,350,000
12	West Virginia Council for Community	
13	and Technical Education (R) . . . . . 392	<u>227,609</u>
14	Total . . . . .	\$ 14,757,111

15 Any unexpended balances remaining in the appropriations  
16 for Tuition Contract Program (fund 0589, activity 165), and  
17 West Virginia Council for Community and Technical Education  
18 (fund 0589, activity 392) at the close of the fiscal year 2002 are  
19 hereby reappropriated for expenditure during the fiscal year  
20 2003.

*86—Higher Education Policy Commission—*

*System—*

*Control Account*

(WV Code Chapter 18B)

Fund 0586 FY 2003 Org 0442

1	Bluefield State College . . . . . 408	\$ 2,002,368
2	Bluefield State Community and	
3	Technical College . . . . . 409	5,456,232
4	Concord College . . . . . 410	9,608,593
5	Eastern West Virginia Community and	
6	Technical College . . . . . 412	2,034,966
7	Fairmont State College . . . . . 414	13,128,072
8	Fairmont State Community and	
9	Technical College . . . . . 421	7,064,695
10	Glenville State College . . . . . 428	4,919,258
11	Glenville State Community and	
12	Technical College . . . . . 430	2,908,427
13	Shepherd College . . . . . 432	9,731,906

14	Shepherd Community and		
15	Technical College . . . . .	434	2,131,072
16	West Liberty State College . . . . .	439	10,016,745
17	West Virginia State College . . . . .	441	11,178,647
18	West Virginia State Community and		
19	Technical College . . . . .	445	2,738,868
20	Southern West Virginia Community and		
21	Technical College . . . . .	446	7,403,952
22	West Virginia Northern Community and		
23	Technical College . . . . .	447	5,822,498
24	Marshall University . . . . .	448	46,349,693
25	Marshall Medical School . . . . .	173	12,137,291
26	Marshall University Medical School		
27	BRIM Subsidy . . . . .	449	627,468
28	Marshall University Community and		
29	Technical College . . . . .	487	5,278,380
30	West Virginia University . . . . .	459	119,376,858
31	WVU - School of Health Sciences . . . . .	174	43,745,897
32	WVU School of Health Sciences -		
33	Charleston Division . . . . .	175	4,173,084
34	West Virginia University School of		
35	Medicine BRIM Subsidy . . . . .	460	1,239,465
36	West Virginia University -		
37	Parkersburg . . . . .	471	8,359,912
38	Potomac State College of		
39	West Virginia University . . . . .	475	4,592,917
40	West Virginia University Institute		
41	for Technology . . . . .	479	7,197,379
42	West Virginia University Institute		
43	for Technology Community and		
44	Technical College . . . . .	486	3,303,009
45	Primary Health Education Medical School		
46	Program Support . . . . .	177	<u>2,200,000</u>
47	Total . . . . .		\$ 354,577,273



48 Any unexpended balances remaining in the appropriations  
49 for Marshall University—Southern WV Community and  
50 Technical College 2 + 2 Program (fund 0586, activity 170),  
51 Jackson’s Mill (fund 0586, activity 461), Marshall University  
52 Forensic Lab (fund 0586, activity 572), Jackson’s  
53 Mill—Surplus (fund 0586, activity 842), and WVU College of  
54 Engineering and Mineral Resources—Diesel Study (fund 0586,  
55 activity 852) at the close of fiscal year 2002 are hereby  
56 reappropriated for expenditure during the fiscal year 2003.

57 Included in the above appropriation for West Virginia  
58 University Medical School and Marshall University Medical  
59 School are \$1,015,590 and \$339,500, respectively, for Graduate  
60 Medical Education which may be transferred to the Department  
61 of Health and Human Resources’ Medical Service Fund (fund  
62 5084) for the purpose of matching federal or other funds to be  
63 used in support of graduate medical education, subject to the  
64 approval of the Vice-Chancellor for Health Sciences and the  
65 Secretary of the Department of Health and Human Resources.  
66 If approval is denied, the funds may be utilized by the respec-  
67 tive institutions for expenditure.

68 Included in the above appropriation for West Virginia  
69 University Medical School is \$511,105 for the WVU  
70 Charleston Division Poison Control Hotline, \$34,500 for the  
71 Marshall and WVU Faculty and Course Development Interna-  
72 tional Study Project, \$246,429 for the WVU Law  
73 School—Skills Program, \$147,857 for the WVU Coal and  
74 Energy Research Bureau, and \$19,714 for the WVU College of  
75 Engineering and Mineral Resources—Diesel Train-  
76 ing—Transfer.

77 Included in the above appropriation for Marshall University  
78 is \$181,280 for the Marshall University—Southern West  
79 Virginia Community and Technical College 2+2 Program,  
80 \$595,597 for the Marshall University Autism Training Center,

81 \$466,286 for the Marshall University Forensic Lab, and  
82 \$200,000 for the Marshall University Center for Rural Health.

83 Included in the above appropriation for Southern West  
84 Virginia Community and Technical College is \$373,774 for the  
85 Marshall University—Southern West Virginia Community and  
86 Technical College 2+2 Program.

87 The institutions operating from special revenue funds  
88 and/or federal funds shall pay their proportionate share of the  
89 Board of Risk and Insurance Management total insurance  
90 premium cost for their respective institutions.

*87—Higher Education Policy Commission—*

*Health Sciences—*

*Control Account*

(WV Code Chapter 18B)

Fund 0590 FY 2003 Org 0477

1 Any unexpended balances remaining in the appropriations  
2 for Primary Health Education Program Support (fund 0590,  
3 activity 177), Graduate Medical Education (fund 0590, activity  
4 197), Marshall University—Center for Rural Health (fund 0590,  
5 activity 198), Correctional Telemedicine Project (fund 0590,  
6 activity 406), WVU Charleston Division—Poison Control Hot  
7 Line (fund 0590, activity 510), Capital Outlay and Equipment  
8 (fund 0590, activity 542), and Rural Health Initiative Site  
9 Support Program (fund 0590, activity 853) at the close of the  
10 fiscal year 2002 are hereby reappropriated for expenditure  
11 during the fiscal year 2003.

*88—Higher Education Policy Commission—*

*Legislative—*

*Funding Priorities*

*Control Account*

(WV Code Chapter 18B)

Fund 0591 FY 2003 Org 0441

1	Peer Equity and Sustained		
2	Quality Support .....	489	\$ 4,550,000
3	Independently Accredited Community		
4	and Technical College		
5	Development (R) .....	491	2,500,000
6	Research Challenge (R) .....	502	<u>600,000</u>
7	Total .....		<u>\$ 7,650,000</u>

8       Any unexpended balances remaining in the appropriations  
9 for Independently Accredited Community and Technical  
10 College Development (fund 0581, activity 491), and Research  
11 Challenge (fund 0591, activity 502) at the close of the fiscal  
12 year 2002 are hereby reappropriated for expenditure during the  
13 fiscal year 2003.

14       The above appropriation shall be allocated only to the  
15 State's post-secondary institutions with compacts approved by  
16 the Higher Education Policy Commission, as stated in §18B-  
17 1A-5.

18	Total TITLE II, Section 1—		
19	General Revenue .....		\$ <u>2,929,317,582</u>

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

**DEPARTMENT OF TRANSPORTATION***89—Division of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2003 Org 0802

	Activity	State Road Fund
1	Personal Services . . . . . 001	\$ 12,428,017
2	Annual Increment . . . . . 004	151,000
3	Employee Benefits . . . . . 010	4,542,395
4	Unclassified . . . . . 099	20,429,482
5	International Fuel Tax Agreement . . . . . 536	<u>560,644</u>
6	Total . . . . .	\$ 38,111,538

*90—Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2003 Org 0803

1	Debt Service . . . . . 040	\$ 50,000,000
2	Maintenance . . . . . 237	243,700,000
3	Maintenance, Contract Paving and	
4	Secondary Road Maintenance . . . . . 272	45,000,000
5	Bridge Repair and Replacement . . . . . 273	34,000,000
6	Inventory Revolving . . . . . 275	2,000,000
7	Equipment Revolving . . . . . 276	15,000,000
8	General Operations . . . . . 277	43,768,000
9	Interstate Construction . . . . . 278	70,000,000
10	Other Federal Aid Programs . . . . . 279	325,700,000
11	Appalachian Programs . . . . . 280	225,000,000
12	Nonfederal Aid Construction . . . . . 281	20,000,000

13	Highway Litter Control . . . . .	282	<u>1,490,000</u>
14	Total . . . . .	\$	<u>1,075,658,000</u>

15       The above appropriations are to be expended in accordance  
 16 with the provisions of chapters seventeen and seventeen-c of  
 17 the code.

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

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

29       It is the intent of the Legislature to capture and match all  
 30 federal funds available for expenditure on the Appalachian  
 31 highway system at the earliest possible time. Therefore, should  
 32 amounts in excess of those appropriated be required for the  
 33 purposes of Appalachian programs, funds in excess of the  
 34 amount appropriated may be made available upon recommen-  
 35 dation of the commissioner and approval of the governor.  
 36 Further, for the purpose of Appalachian programs, funds  
 37 appropriated to line items may be transferred to other line items  
 38 upon recommendation of the commissioner and approval of the  
 39 governor.

40	Total TITLE II, Section 2—		
41	State Road Fund . . . . .	\$	<u>1,114,471,966</u>

1       **Sec. 3. Appropriations from other funds.**—From the  
 2 funds designated there are hereby appropriated conditionally

3 upon the fulfillment of the provisions set forth in article two,  
 4 chapter five-a of the code the following amounts, as itemized,  
 5 for expenditure during the fiscal year two thousand three.

### LEGISLATIVE

#### *91—Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2003 Org 2300

1		Activity	Other Funds
2			
3	Personal Services .....	001 \$	209,620
4	Annual Increment .....	004	5,040
5	Employee Benefits .....	010	63,377
6	Unclassified .....	099	432,762
7	Economic Loss Claim		
8	Payment Fund (R) .....	334	<u>1,941,500</u>
9	Total .....	\$	2,652,299

10 Any unexpended balance remaining in the appropriation for  
 11 Economic Loss Claim Payment Fund (fund 1731, activity 334)  
 12 at the close of the fiscal year 2002 is hereby reappropriated for  
 13 expenditure during the fiscal year 2003.

### EXECUTIVE

#### *92—Chief Technology Officer Administration Fund*

(WV Code Chapter 5)

Fund 1028 FY 2003 Org 0100

1	Unclassified .....	099 \$	1,872,961
2	EPSCOR Undergraduate Scientific		

Ch. 13]	APPROPRIATIONS	159
3	Instrumentation Program . . . . .	829 <u>150,000</u>
4	Total . . . . .	\$ 2,022,961

93—Auditor’s Office—

*Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2003 Org 1200

1	Personal Services . . . . .	001 \$ 188,705
2	Annual Increment . . . . .	004 4,400
3	Employee Benefits . . . . .	010 42,787
4	Unclassified . . . . .	099 <u>195,416</u>
5	Total . . . . .	\$ 431,308

6 There is hereby appropriated from this fund, in addition to  
7 the above appropriation, the necessary amount for the expendi-  
8 ture of funds other than personal services or employee benefits  
9 to enable the division to pay the direct expenses relating to land  
10 sales as provided in Chapter eleven-a of the West Virginia  
11 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.

94—Auditor’s Office—

*Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 2003 Org 1200

1	Personal Services . . . . .	001 \$ 723,298
2	Annual Increment . . . . .	004 4,722

160		APPROPRIATIONS		[Ch. 13
3	Employee Benefits .....	010		199,985
4	Unclassified .....	099		<u>515,873</u>
5	Total .....		\$	1,443,878

95—Auditor's Office—

*Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1233 FY 2003 Org 1200

1	Unclassified—Total .....	096	\$	747,168
---	--------------------------	-----	----	---------

96—Auditor's Office—

*Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2003 Org 1200

1	Unclassified—Total .....	096	\$	267,372
---	--------------------------	-----	----	---------

97—Auditor's Office—

*Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2003 Org 1200

1	Personal Services .....	001	\$	1,649,646
2	Annual Increment .....	004		22,900
3	Employee Benefits .....	010		521,289
4	Unclassified .....	099		<u>430,261</u>
5	Total .....		\$	2,624,096

98—Treasurer's Office—



*Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1329 FY 2003 Org 1300

1 Unclassified—Total . . . . . 096 \$ 100,000

*99—Department of Agriculture—*

*Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2003 Org 1400

1	Personal Services . . . . .	001	\$	826,844
2	Annual Increment . . . . .	004		10,550
3	Employee Benefits . . . . .	010		235,361
4	Unclassified . . . . .	099		<u>574,802</u>
5	Total . . . . .		\$	1,647,557

*100—Department of Agriculture—*

*West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2003 Org 1400

1 Student and Farm Loans—Total . . . . . 235 \$ 541,538

*101—Department of Agriculture—*

*General John McCausland Memorial Farm*

(WV Code Chapter 19)

Fund 1409 FY 2003 Org 1400

1 Unclassified—Total . . . . . 096 \$ 80,133

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

*102—Department of Agriculture—*

*Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2003 Org 1400

1 Unclassified—Total . . . . . 096 \$ 1,028,903

*103—Department of Agriculture—*

*Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2003 Org 1400

1 Unclassified—Total . . . . . 096 \$ 1,216,068

*104—Attorney General—*

*Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2003 Org 1500

1	Personal Services . . . . .	001	\$	220,551
2	Annual Increment . . . . .	004		935
3	Employee Benefits . . . . .	010		66,885
4	Unclassified . . . . .	099		<u>178,285</u>
5	Total . . . . .		\$	466,656

*105—Attorney General—**Preneed Funeral Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2003 Org 1500

1 Unclassified—Total ..... 096 \$ 227,284

*106—Attorney General—**Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2003 Org 1500

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

*107—Secretary of State—**Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2003 Org 1600

1	Personal Services .....	001	\$	961,482
2	Annual Increment .....	004		6,550
3	Employee Benefits .....	010		305,456
4	Unclassified .....	099		<u>1,080,525</u>
5	Total .....		\$	2,354,013

**DEPARTMENT OF ADMINISTRATION***108—Office of the Secretary—**Tobacco Settlement Fund*

(WV Code Chapter 4)

Fund 2041 FY 2003 Org 0201

1 Tobacco Settlement Fund—Transfer . . . 902 \$ 38,000,000

2 The above appropriation for Tobacco Settlement  
3 Fund—Transfer shall be transferred to the Division of Health  
4 (fund 5124, org 0506) for expenditure.

*109—Division of Finance—**Public Employees Insurance Reserve Fund*

(WV Code Chapter 5A)

Fund 2207 FY 2003 Org 0209

1 Public Employees Insurance Reserve

2 Fund—Transfer . . . . . 903 \$ 6,000,000

3 The above appropriation for Public Employees Insurance  
4 Reserve Fund—Transfer shall be transferred to the Medical  
5 Services Trust Fund (fund 5185, org 0511) for expenditure.

*110—Division of Information  
Services and Communications*

(WV Code Chapter 5A)

Fund 2220 FY 2003 Org 0210

1	Personal Services . . . . .	001	\$ 7,336,170
2	Annual Increment . . . . .	004	83,915
3	Employee Benefits . . . . .	010	2,032,841
4	Unclassified . . . . .	099	<u>2,559,969</u>
5	Total . . . . .		\$ 12,012,895

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

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

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

*111—Division of Personnel*

(WV Code Chapter 29)

Fund 2440 FY 2003 Org 0222

1	Personal Services .....	001	\$ 2,586,137
2	Annual Increment .....	004	48,200
3	Employee Benefits .....	010	757,432
4	Unclassified .....	099	<u>669,438</u>
5	Total .....		\$ 4,061,207

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

*112—WV Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 2521 FY 2003 Org 0228

1 Unclassified—Total (R) . . . . . 096 \$ 637,905

2 Any unexpended balance remaining in the appropriations  
 3 for Unclassified—Total (fund 2521, activity 096) at the close of  
 4 the fiscal year 2002 is hereby reappropriated for expenditure  
 5 during the fiscal year 2003.

**DEPARTMENT OF EDUCATION**

*113—State Board of Education—*

*Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2003 Org 0402

1 Unclassified—Total (R) . . . . . 096 \$ 501,987

2 Any unexpended balance remaining in the appropriation for  
 3 Unclassified—Total (fund 3937, activity 096) at the close of the  
 4 fiscal year 2002 is hereby reappropriated for expenditure during  
 5 the fiscal year 2003.

*114—State Department of Education—*

*School Building Authority*

(WV Code Chapter 18)

Fund 3959 FY 2003 Org 0402

1	Personal Services . . . . .	001	\$	662,869
2	Annual Increment . . . . .	004		5,750
3	Employee Benefits . . . . .	010		230,170
4	Unclassified . . . . .	099		<u>264,549</u>



5 Any unexpended balance remaining in the appropriation for  
 6 Unclassified-Total (fund 3508, activity 096) at the close of the  
 7 fiscal year 2002 is hereby reappropriated for expenditure during  
 8 the fiscal year 2003.

*117—Division of Culture and History—*

*Public Records and Preservation Revenue Fund*

(WV Code Chapters 18 and 18B)

Fund 3542 FY 2003 Org 0432

1	Unclassified-Total . . . . .	096	\$	322,364
---	------------------------------	-----	----	---------

*118—State Board of Rehabilitation—*

*Division of Rehabilitation Services—*

*West Virginia Rehabilitation Center—*

*Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2003 Org 0932

1	Unclassified . . . . .	099	\$	2,802,182
2	Workshop Development . . . . .	163		450,000
3	Workshop-Supported Employment . . . .	484		<u>50,000</u>
4	Total . . . . .		\$	3,302,182

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*119—Board of Barbers and Cosmetologists*

(WV Code Chapters 16 and 30)



Fund 5425 FY 2003 Org 0505

1	Personal Services .....	001	\$	235,246
2	Annual Increment .....	004		4,861
3	Employee Benefits .....	010		79,353
4	Unclassified .....	099		<u>124,738</u>
5	Total .....		\$	444,198

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

*120—Division of Health—*

*Tobacco Settlement Expenditure Fund*

(WV Code Chapter 4)

Fund 5124 FY 2003 Org 0506

1	ABCA Tobacco Retailer Education			
2	Program—Transfer .....	239	\$	200,000
3	Institutional Facilities			
4	Operations (R) .....	335		32,149,408
5	Tobacco Education Program (R) .....	906		<u>5,650,592</u>
6	Total .....		\$	38,000,000

7 Any unexpended balances remaining in the above appropri-  
 8 ations for Institutional Facilities Operations (fund 5124, activity  
 9 335), and Tobacco Education Program (fund 5124, activity 906)  
 10 at the close of the fiscal year 2002 are hereby reappropriated for  
 11 expenditure during the fiscal year 2003.

12 From the above appropriation for ABCA Tobacco Retailer  
 13 Education Program—Transfer, \$200,000 shall be transferred to  
 14 the Alcohol Beverage Control Administration (fund 7352, org  
 15 0708) for expenditure.

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

27       Additional funds have been appropriated in fund 0525,  
28 fiscal year 2003, organization 0506, and fund 5156, fiscal year  
29 2003, organization 0506, for the operation of the institutional  
30 facilities. The secretary of the department of health and human  
31 resources is authorized to utilize up to ten percent of the funds  
32 from the Institutional Facilities Operations line item to facilitate  
33 cost effective and cost saving services at the community level.

34       From the above appropriation to Institutional Facilities  
35 Operations, together with available funds from the division of  
36 health—hospital services revenue account (fund 5156, activity  
37 335) and consolidated medical services fund (fund 0525,  
38 activity 335), on July 1, 2002, the sum of two hundred thousand  
39 dollars shall be transferred to the department of agricul-  
40 ture—land division as advance payment for the purchase of  
41 food products; actual payments for such purchases shall not be  
42 required until such credits have been completely expended.

*121—Division of Health—*

*Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 2003 Org 0506

1	Personal Services .....	001	\$	263,211
2	Annual Increment .....	004		8,203
3	Employee Benefits .....	010		114,073
4	Unclassified. ....	099		<u>99,950</u>
5	Total .....		\$	485,437

*122—Division of Health—*

*Hospital Services Revenue Account*

*(Special Fund)*

*(Capital Improvement, Renovation and Operations)*

(WV Code Chapter 16)

Fund 5156 FY 2003 Org 0506

1	Debt Service (R) .....	040	\$	2,420,000
2	Institutional Facilities			
3	Operations (R) .....	335		34,591,434
4	Medical Services Trust Fund—			
5	Transfer (R) .....	512		<u>23,300,000</u>
6	Total .....		\$	60,311,434

7       Any unexpended balance remaining in the appropriation for  
8 hospital services revenue account at the close of the fiscal year  
9 2002 is hereby reappropriated for expenditure during the fiscal  
10 year 2003, except for fund 5156, activity 512 (fiscal year 2001)  
11 which shall expire on June 30, 2002.

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

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

22 Necessary funds from the above appropriation may be used  
 23 for medical facilities operations, either in connection with this  
 24 account or in connection with the line item designated Institu-  
 25 tional Facilities Operations in the consolidated medical service  
 26 fund (fund 0525, fiscal year 2003, organization 0506) and the  
 27 tobacco settlement expenditure fund (fund 5124, fiscal year  
 28 2003, organization 0506).

29 From the above appropriation to Institutional Facilities  
 30 Operations, together with available funds from the consolidated  
 31 medical services fund (fund 0525, activity 335) and the tobacco  
 32 settlement expenditure fund (fund 5124, activity 335), on July  
 33 1, 2002, the sum of two hundred thousand dollars shall be  
 34 transferred to the department of agriculture—land division as  
 35 advance payment for the purchase of food products; actual  
 36 payments for such purchases shall not be required until such  
 37 credits have been completely expended.

*123—Division of Health—*

*Laboratory Services*

(WV Code Chapter 16)

Fund 5163 FY 2003 Org 0506

1	Personal Services .....	001	\$	502,830
2	Annual Increment .....	004		9,450
3	Employee Benefits .....	010		183,491
4	Unclassified .....	099		<u>217,476</u>
5	Total .....		\$	913,247

*124—Division of Health—*

*Health Facility Licensing*

(WV Code Chapter 16)

Fund 5172 FY 2003 Org 0506

1	Personal Services .....	001	\$	201,430
2	Annual Increment .....	004		2,800
3	Employee Benefits .....	010		79,197
4	Unclassified .....	099		<u>89,585</u>
5	Total .....		\$	373,012

*125—Division of Health—*

*Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2003 Org 0506

1	Personal Services .....	001	\$	56,071
2	Annual Increment .....	004		1,150
3	Employee Benefits .....	010		20,804
4	Unclassified. ....	099		<u>2,996,821</u>
5	Total .....		\$	3,074,846

*126—Division of Health—*

*Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 2003 Org 0506

1	Unclassified—Total .....	096	\$	20,000
---	--------------------------	-----	----	--------

*127—WV Board of Medicine*

(WV Code Chapter 30)

Fund 5106 FY 2003 Org 0506

1 Unclassified—Total . . . . . 096 \$ 1,170,080

*128—West Virginia Health Care Authority*

(WV Code Chapter 16)

Fund 5375 FY 2003 Org 0507

1	Personal Services . . . . .	001	\$ 1,798,182
2	Annual Increment . . . . .	004	15,000
3	Employee Benefits . . . . .	010	544,157
4	Unclassified . . . . .	099	<u>2,373,951</u>
5	Total . . . . .		\$ 4,731,290

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

*129—Division of Human Services—*

*Health Care Provider Tax*

(WV Code Chapter 11)

Fund 5090 FY 2003 Org 0511

1 Unclassified—Total . . . . . 096 \$ 148,603,768

2 From the above appropriation, an amount not to exceed two  
3 hundred thousand dollars shall be transferred to a special  
4 revenue account in the treasury for use by the department of  
5 health and human resources for administrative purposes. The

6 remainder of all moneys deposited in the fund shall be trans-  
7 ferred to the West Virginia medical services fund.

*130—Division of Human Services—*

*Child Support Enforcement*

(WV Code Chapter 48A)

Fund 5094 FY 2003 Org 0511

1 Unclassified—Total (R) . . . . . 096 \$ 28,781,971

2 Any unexpended balance remaining in the appropriation for  
3 Unclassified—Total (fund 5094, activity 096) at the close of the  
4 fiscal year 2002 is hereby reappropriated for expenditure during  
5 the fiscal year 2003, except for fund 5094, activity 096 (fiscal  
6 year 2001) which shall expire on June 30, 2002.

*131—Division of Human Services—*

*Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 2003 Org 0511

1	Payment to Non-State Hospitals DPSH .	492	\$ 14,557,600
2	Eligibility Expansion . . . . .	582	1,958,066
3	State Institutions DPSH Payments . . . . .	583	6,566,355
4	Hospice Services . . . . .	584	342,975
5	Public Employees Insurance		
6	Reserve Fund- Transfer . . . . .	903	6,000,000
7	Match Drop . . . . .	585	<u>10,472,000</u>
8	Total . . . . .		\$ 39,896,996

9 The Match Drop line item above shall be used in conjunc-  
10 tion with funds appropriated to the division of human services

- 11 in the Medical Services line item (fund 0403, activity 189).
- 12 The remainder of all moneys deposited in the fund shall be
- 13 transferred to the division of human services accounts.

*132—Division of Human Services—*

*James “Tiger” Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2003 Org 0511

1 Unclassified—Total . . . . . 096 \$ 1,251,605

*133—Family Protection Services Board—*

*Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2003 Org 0511

1 Unclassified—Total . . . . . 096 \$ 208,000

**DEPARTMENT OF MILITARY  
AFFAIRS AND PUBLIC SAFETY**

*134—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 2003 Org 0601

1	Unclassified—Total .....	096	\$	20,000
---	--------------------------	-----	----	--------

*135—State Armory Board—**General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2003 Org 0603

1	Unclassified—Total .....	096	\$	458,250
---	--------------------------	-----	----	---------

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

(WV Code Chapter 62)

Fund 6362 FY 2003 Org 0608

1	Personal Services .....	001	\$	116,774
2	Annual Increment .....	004		1,466
3	Employee Benefits .....	010		52,038
4	Unclassified .....	099		<u>134,989</u>
5	Total .....		\$	305,267

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

(WV Code Chapter 17C)

Fund 6501 FY 2003 Org 0612

1	Personal Services .....	001	\$	1,135,817
2	Annual Increment .....	004		3,250
3	Employee Benefits .....	010		342,327

178	APPROPRIATIONS	[Ch. 13
4	Unclassified .....	099 595,036
5	BRIM Premium .....	913 <u>99,054</u>
6	Total .....	\$ 2,175,484

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

*138—West Virginia State Police—*

*Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2003 Org 0612

1	Unclassified .....	099 \$ 960,531
2	BRIM .....	913 <u>50,586</u>
3	Total .....	\$ 1,011,117

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

*139—West Virginia State Police—*

*Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2003 Org 0612

1	Unclassified .....	099 \$ 480,267
2	BRIM Premium .....	913 <u>25,291</u>
3	Total .....	\$ 505,558

*140—West Virginia State Police—*

*Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 2003 Org 0612

1	Unclassified (R) .....	099	\$	1,336,185
2	BRIM Premium .....	913		<u>17,706</u>
3	Total .....		\$	1,353,891

4 Any unexpended balances remaining in the appropriations  
 5 for Unclassified—Total (fund 6519, activity 096), and Unclas-  
 6 sified (fund 6519, activity 099) at the close of the fiscal year  
 7 2002 are hereby reappropriated for expenditure during the fiscal  
 8 year 2003.

*141—West Virginia State Police—*

*Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2003 Org 0612

1	Unclassified .....	099	\$	195,234
2	BRIM Premium .....	913		<u>6,066</u>
3	Total .....		\$	201,300

*142—West Virginia State Police—*

*Bail Bond Enforcer Fund*

(WV Code Chapter 15)

Fund 6532 FY 2003 Org 0612

1	Unclassified—Total .....	096	\$	20,000
---	--------------------------	-----	----	--------

*143—West Virginia State Police—**State Police Academy Post Exchange*

(WV Code Chapter 15)

Fund 6535 FY 2003 Org 0612

1 Unclassified—Total ..... 096 \$ 45,000

*144—Regional Jail and Correctional Facility Authority*

(WV Code Chapter 31)

Fund 6675 FY 2003 Org 0615

1	Personal Services .....	001	\$	1,215,646
2	Annual Increment .....	004		11,700
3	Employee Benefits .....	010		379,530
4	Debt Service .....	040		9,000,000
5	Unclassified .....	099		<u>672,126</u>
6	Total .....		\$	11,279,002

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

(WV Code Chapter 19A)

Fund 6754 FY 2003 Org 0618

1 Unclassified—Total ..... 096 \$ 466,000

*146—Fire Commission—**Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2003 Org 0619

1	Personal Services .....	001	\$	750,985
2	Annual Increment .....	004		7,000
3	Employee Benefits .....	010		271,206
4	Unclassified .....	099		<u>290,744</u>
5	Total .....		\$	1,319,935

6 Any unexpended cash balance remaining in fund 6152 at  
7 the close of the fiscal year 2002 is hereby available for expendi-  
8 ture as part of the fiscal year 2003 appropriation.

*147—Division of Criminal Justice Services—*

*WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2003 Org 0620

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

*148—Criminal Justice Services—*

*Court Security Fund*

(Executive Order)

Fund 6804 FY 2003 Org 0620

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

**DEPARTMENT OF TAX AND REVENUE**

*149—Division of Banking—*

*Lending and Credit Rate Board*

(WV Code Chapter 47A)

Fund 3040 FY 2003 Org 0303

1	Personal Services .....	001	\$	0
2	Employee Benefits .....	010		0
3	Unclassified .....	099		<u>0</u>
4	Total .....		\$	0

*150—Division of Banking*

(WV Code Chapter 31A)

Fund 3041 FY 2003 Org 0303

1	Personal Services .....	001	\$	1,383,680
2	Annual Increment .....	004		11,350
3	Employee Benefits .....	010		425,336
4	Unclassified .....	099		<u>609,298</u>
5	Total .....		\$	2,429,664

*151—Tax Division—**Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2003 Org 0702

1	Personal Services .....	001	\$	17,274
2	Annual Increment .....	004		100
3	Employee Benefits .....	010		5,384
4	Unclassified .....	099		<u>10,169</u>
5	Total .....		\$	32,927

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

(WV Code Chapter 11)

Fund 7073 FY 2003 Org 0702

1	Personal Services .....	001	\$	830,304
2	Annual Increment .....	004		14,800
3	Employee Benefits .....	010		254,407
4	Unclassified .....	099		<u>363,379</u>
5	Total .....		\$	1,462,890

*153—Insurance Commissioner—**Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2003 Org 0704

1	Personal Services .....	001	\$	556,330
2	Annual Increment .....	004		2,500
3	Employee Benefits .....	010		139,980
4	Unclassified .....	099		<u>491,000</u>
5	Total .....		\$	1,189,810

*154—Insurance Commissioner—**Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2003 Org 0704

1	Personal Services .....	001	\$	276,028
2	Annual Increment .....	004		1,250
3	Employee Benefits .....	010		77,385
4	Unclassified .....	099		<u>115,908</u>
5	Total .....		\$	470,571

*155—Insurance Commissioner*

(WV Code Chapter 33)

Fund 7152 FY 2003 Org 0704

1	Personal Services . . . . .	001	\$ 2,685,953
2	Annual Increment . . . . .	004	33,950
3	Employee Benefits . . . . .	010	766,382
4	Unclassified . . . . .	099	<u>1,589,722</u>
5	Total . . . . .		\$ 5,076,007

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.

*156—Racing Commission—**Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2003 Org 0707

1 Medical Expenses—Total . . . . . 245 \$ 57,000

2 The total amount of this appropriation shall be paid from  
3 the special revenue fund out of collections of license fees and  
4 fines as provided by law.

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

*157—Racing Commission—**Administration and Promotion*



(WV Code Chapter 19)

Fund 7304 FY 2003 Org 0707

1	Personal Services .....	001	\$	56,444
2	Annual Increment .....	004		1,000
3	Employee Benefits .....	010		24,152
4	Unclassified .....	099		<u>47,358</u>
5	Total .....		\$	128,954

*158—Racing Commission—**General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2003 Org 0707

1	Personal Services .....	001	\$	1,805,943
2	Annual Increment .....	004		20,250
3	Employee Benefits .....	010		450,303
4	Unclassified .....	099		<u>193,950</u>
5	Total .....		\$	2,470,446

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

(WV Code Chapter 19)

Fund 7307 FY 2003 Org 0707

1	Unclassified—Total .....	096	\$	65,000
---	--------------------------	-----	----	--------

*160—Alcohol Beverage Control Administration—**Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2003 Org 0708

1	Personal Services .....	001	\$	224,718
2	Annual Increment .....	004		3,200
3	Employee Benefits .....	010		78,856
4	Unclassified .....	099		<u>156,016</u>
5	Total .....		\$	462,790

6 To the extent permitted by law, four classified exempt  
7 positions shall be provided from Personal Services line item for  
8 field auditors.

*161—Alcohol Beverage Control Administration*

(WV Code Chapter 60)

Fund 7352 FY 2003 Org 0708

1	Personal Services .....	001	\$	3,700,114
2	Annual Increment .....	004		76,000
3	Employee Benefits .....	010		1,301,893
4	Unclassified (R) .....	099		<u>2,144,074</u>
5	Total .....		\$	7,222,081

6 Any unexpended balance remaining in Unclassified (fund  
7 7352, activity 099) at the close of the fiscal year 2002 is hereby  
8 reappropriated for expenditure during the fiscal year 2003.

9 From the above appropriation an amount of \$500,000 shall  
10 be used for the Tobacco/Alcohol Education Program. To the  
11 extent permitted by law, classified exempt positions shall be  
12 provided from Personal Services line item for the educator-  
13 inspector positions to be used in the education and enforcement  
14 activities relating to underage tobacco and alcohol use and  
15 sales.

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

18 The above appropriation includes the salary of the commis-  
19 sioner and the salaries, expenses and equipment of administra-  
20 tive offices, warehouses and inspectors.

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

**DEPARTMENT OF TRANSPORTATION**

*162—Division of Motor Vehicles—*

*Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Fund 8213 FY 2003 Org 0802

1	Personal Services . . . . .	001	\$	394,810
2	Annual Increment . . . . .	004		4,900
3	Employee Benefits . . . . .	010		146,188
4	Unclassified . . . . .	099		<u>297,624</u>
5	Total . . . . .		\$	843,522

*163—Division of Motor Vehicles—*

*Driver Rehabilitation*

(WV Code Chapter 17C)

Fund 8214 FY 2003 Org 0802

1	Unclassified—Total . . . . .	096	\$	182,194
---	------------------------------	-----	----	---------

*164—Division of Motor Vehicles—*

*Insurance Certificate Fees*

(WV Code Chapter 20)

Fund 8215 FY 2003 Org 0802

1	Personal Services .....	001	\$	632,056
2	Annual Increment .....	004		14,250
3	Employee Benefits .....	010		241,926
4	Unclassified .....	099		<u>55,229</u>
5	Total .....		\$	943,461

*165—Division of Motor Vehicles—*

*Motorboat Licenses*

(WV Code Chapter 20)

Fund 8216 FY 2003 Org 0802

1	Unclassified—Total .....	096	\$	247,704
---	--------------------------	-----	----	---------

*166—Division of Motor Vehicles—*

*Returned Check Fees*

(WV Code Chapter 17)

Fund 8217 FY 2003 Org 0802

1	Unclassified—Total .....	096	\$	16,000
---	--------------------------	-----	----	--------

*167—Division of Motor Vehicles—*

*Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2003 Org 0802

1 Unclassified—Total . . . . . 096 \$ 200,000

*168—Division of Highways—*

*A. James Manchin Fund*

(WV Code Chapter 17)

Fund 8319 FY 2003 Org 0803

1 Unclassified—Total . . . . . 096 \$ 3,625,000

**BUREAU OF COMMERCE**

*169—Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 2003 Org 0305

1	Personal Services . . . . .	001	\$	370,795
2	Annual Increment . . . . .	004		4,000
3	Employee Benefits . . . . .	010		164,933
4	Unclassified . . . . .	099		<u>280,553</u>
5	Total . . . . .		\$	820,281

*170—Division of Forestry—*

*Timberland Enforcement Operations*

(WV Code Chapter 19)

Fund 3082 FY 2003 Org 0305

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

*171—Division of Forestry—*

*Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2003 Org 0305

1 Unclassified—Total . . . . . 096 \$ 3,622,575

*172—Geological and Economic Survey*

(WV Code Chapter 29)

Fund 3100 FY 2003 Org 0306

1	Personal Services . . . . .	001	\$	42,818
2	Annual Increment . . . . .	004		558
3	Employee Benefits . . . . .	010		7,855
4	Unclassified . . . . .	099		<u>176,925</u>
5	Total . . . . .		\$	228,156

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

*173—West Virginia Development Office—*

*Energy Assistance*

(WV Code Chapter 5B)

Fund 3144 FY 2003 Org 0307

1 Any unexpended balance remaining in the appropriation for  
2 Energy Assistance—Total (fund 3144, activity 647) at the close  
3 of the fiscal year 2002 is hereby reappropriated for expenditure  
4 during the fiscal year 2003.

*174—West Virginia Development Office—*

*Office of Coal Field Community Development*

(WV Code Chapter 5B)

Fund 3162 FY 2003 Org 0307

1 Unclassified—Total (R) . . . . . 096 \$ 478,942

2 Any unexpended balance remaining in the above appropria-  
 3 tion for Unclassified—Total (fund 3162, activity 096) at the  
 4 close of the fiscal year 2002 is hereby reappropriated for  
 5 expenditure during the fiscal year 2003.

*175—Division of Labor—**Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2003 Org 0308

1	Personal Services . . . . .	001	\$	940,540
2	Annual Increment . . . . .	004		12,618
3	Employee Benefits . . . . .	010		343,416
4	Unclassified . . . . .	099		<u>595,112</u>
5	Total . . . . .		\$	1,891,686

*176—Division of Labor—**Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 2003 Org 0308

1	Personal Services . . . . .	001	\$	162,700
2	Annual Increment . . . . .	004		1,417
3	Employee Benefits . . . . .	010		60,306
4	Unclassified . . . . .	099		<u>91,638</u>
5	Total . . . . .		\$	316,061

*177—Division of Labor—*

*Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2003 Org 0308

1 Unclassified—Total . . . . . 096 \$ 77,834

*178—Division of Labor—*

*Amusement Rides/Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2003 Org 0308

1 Unclassified—Total . . . . . 096 \$ 76,854

*179—Division of Natural Resources*

(WV Code Chapter 20)

Fund 3200 FY 2003 Org 0310

1	Personal Services . . . . .	001	\$ 8,197,420
2	Annual Increment . . . . .	004	140,856
3	Employee Benefits . . . . .	010	2,825,193
4	Unclassified . . . . .	099	2,141,370
5	Capital Improvements and		
6	Land Purchase (R) . . . . .	248	<u>2,337,986</u>
7	Total . . . . .		\$ 15,642,825

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



11 Any unexpended balance remaining in the appropriation for  
 12 Capital Improvements and Land Purchase (fund 3200, activity  
 13 248) at the close of the fiscal year 2002 is hereby  
 14 reappropriated for expenditure during the fiscal year 2003.

*180—Division of Natural Resources—*

*Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Fund 3202 FY 2003 Org 0310

1	Unclassified—Total . . . . .	096	\$	20,000
---	------------------------------	-----	----	--------

*181—Division of Natural Resources—*

*Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2003 Org 0310

1	Personal Services . . . . .	001	\$	199,131
2	Annual Increment . . . . .	004		1,200
3	Employee Benefits . . . . .	010		66,769
4	Unclassified . . . . .	099		<u>100,540</u>
5	Total . . . . .		\$	367,640

*182—Division of Natural Resources—*

*Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2003 Org 0310

1	Personal Services . . . . .	001	\$	206,884
2	Annual Increment . . . . .	004		4,450

194		APPROPRIATIONS		[Ch. 13
3	Employee Benefits	010		72,145
4	Unclassified	099		<u>198,319</u>
5	Total		\$	481,798

*183—Division of Natural Resources—*

*Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2003 Org 0310

1	Unclassified—Total	096	\$	183,749
---	--------------------	-----	----	---------

*184—Division of Natural Resources—*

*Recycling Assistance Fund*

(WV Code Chapter 20)

Fund 3254 FY 2003 Org 0310

1	Personal Services	001	\$	201,775
2	Annual Increment	004		2,963
3	Employee Benefits	010		76,480
4	Unclassified (R)	099		<u>1,873,801</u>
5	Total		\$	2,155,019

6 Any unexpended balance remaining in the appropriation for  
7 Unclassified (fund 3254, activity 099) at the close of the fiscal  
8 year 2002 is hereby reappropriated for expenditure during the  
9 fiscal year 2003 with the exception of fund 3254, activity 099  
10 (fiscal year 2000 and fiscal year 2001) which shall expire on  
11 June 30, 2002.

*185—Division of Natural Resources—*

*Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2003 Org 0310

1 Unclassified—Total . . . . . 096 \$ 20,000

**BUREAU OF EMPLOYMENT PROGRAMS**

*186—Bureau of Employment Programs—*

*Workers' Compensation Fund*

(WV Code Chapter 23)

Fund 3440 FY 2003 Org 0322

1	Personal Services . . . . .	001	\$ 29,400,673
2	Annual Increment . . . . .	004	379,553
3	Employee Benefits . . . . .	010	8,295,189
4	Unclassified (R) . . . . .	099	31,184,316
5	Technology Improvements . . . . .	599	2,000,000
6	Employer Excess Liability Fund . . . . .	226	<u>117,197</u>
7	Total . . . . .		\$ 71,376,928

8 Any unexpended balance remaining in the appropriation for  
9 Unclassified (fund 3440, activity 099) at the close of the fiscal  
10 year 2002 is hereby reappropriated for expenditure during the  
11 fiscal year 2003.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*187—Solid Waste Management Board*

(WV Code Chapter 20)

Fund 3288 FY 2003 Org 0312

196	APPROPRIATIONS	[Ch. 13
1	Personal Services .....	001 \$ 601,015
2	Annual Increment .....	004 3,700
3	Employee Benefits .....	010 181,544
4	Unclassified .....	099 <u>1,933,789</u>
5	Total .....	\$ 2,720,048

*188—Division of Environmental Protection—*

*Special Reclamation Fund*

(WV Code Chapter 22A)

Fund 3321 FY 2003 Org 0313

1	Personal Services .....	001 \$ 518,828
2	Annual Increment .....	004 17,875
3	Employee Benefits .....	010 246,803
4	Unclassified .....	099 <u>17,720,262</u>
5	Total .....	\$ 18,503,768

*189—Division of Environmental Protection—*

*Oil and Gas Reclamation Trust*

(WV Code Chapter 22B)

Fund 3322 FY 2003 Org 0313

1	Unclassified—Total .....	096 \$ 300,000
---	--------------------------	----------------

*190—Division of Environmental Protection—*

*Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Fund 3323 FY 2003 Org 0313

1	Personal Services .....	001 \$ 221,600
---	-------------------------	----------------

2	Annual Increment .....	004	2,450
3	Employee Benefits .....	010	71,639
4	Unclassified .....	099	<u>468,772</u>
5	Total .....		\$ 764,461

*191—Division of Environmental Protection—*

*Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2003 Org 0313

1	Personal Services .....	001	\$ 7,075,674
2	Annual Increment .....	004	75,150
3	Employee Benefits .....	010	2,209,339
4	Unclassified .....	099	<u>3,333,800</u>
5	Total .....		\$ 12,693,963

*192—Division of Environmental Protection—*

*Underground Storage Tanks—*

*Administrative Fund*

(WV Code Chapter 20)

Fund 3325 FY 2003 Org 0313

1	Personal Services .....	001	\$ 300,313
2	Annual Increment .....	004	3,200
3	Employee Benefits .....	010	97,524
4	Unclassified .....	099	<u>130,370</u>
5	Total .....		\$ 531,407

*193—Division of Environmental Protection—*

*Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

Fund 3331 FY 2003 Org 0313

1	Personal Services .....	001	\$	525,160
2	Annual Increment .....	004		6,680
3	Employee Benefits .....	010		155,183
4	Unclassified .....	099		<u>937,073</u>
5	Total .....		\$	1,624,096

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

(WV Code Chapter 20)

Fund 3332 FY 2003 Org 0313

1	Personal Services .....	001	\$	219,626
2	Annual Increment .....	004		1,700
3	Employee Benefits .....	010		67,067
4	Unclassified .....	099		<u>1,032,943</u>
5	Total .....		\$	1,321,336

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

(WV Code Chapter 20)

Fund 3333 FY 2003 Org 0313

1	Personal Services .....	001	\$	1,560,096
2	Annual Increment .....	004		25,675
3	Employee Benefits .....	010		499,438
4	Unclassified .....	099		<u>627,750</u>
5	Total .....		\$	2,712,959

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

(WV Code Chapter 16)

Fund 3336 FY 2003 Org 0313

1	Personal Services . . . . .	001	\$	3,780,138
2	Annual Increment . . . . .	004		26,840
3	Employee Benefits . . . . .	010		1,181,228
4	Unclassified . . . . .	099		<u>2,163,172</u>
5	Total . . . . .		\$	7,151,378

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

(WV Code Chapter 22)

Fund 3340 FY 2003 Org 0313

1	Personal Services . . . . .	001	\$	119,559
2	Annual Increment . . . . .	004		1,850
3	Employee Benefits . . . . .	010		43,190
4	Unclassified . . . . .	099		<u>61,252</u>
5	Total . . . . .		\$	225,851

*198—Division of Environmental Protection—**Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2003 Org 0313

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

*199—Division of Environmental Protection—*

*Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2003 Org 0313

1 Unclassified—Total . . . . . 096 \$ 904,848

*200—Oil and Gas Conservation Commission*

(WV Code Chapter 22)

Fund 3371 FY 2003 Org 0315

1	Personal Services . . . . .	001	\$	155,069
2	Annual Increment . . . . .	004		1,800
3	Employee Benefits . . . . .	010		30,726
4	Unclassified . . . . .	099		<u>47,362</u>
5	Total . . . . .		\$	234,957

**HIGHER EDUCATION POLICY COMMISSION**

*201—Health Sciences—*

*West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2003 Org 0463

1 Unclassified—Total (R) . . . . . 096 \$ 15,359,467

2 Any unexpended balance remaining in the appropriation for  
3 the West Virginia University Health Sciences Center is hereby  
4 reappropriated for expenditure during the fiscal year 2003 with  
5 the exception of fiscal year 1997, fiscal year 1998 and fiscal  
6 year 1999 which shall expire on June 30, 2002.



*202—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 2003 Org 0442

1	Debt Service (R) . . . . .	040	\$ 5,632,612
2	General Capital Expenditures (R) . . . . .	306	<u>5,362,197</u>
3	Total . . . . .		\$ 10,994,809

4 Any unexpended balances remaining in the appropriations  
5 are hereby reappropriated for expenditure during the fiscal year  
6 2003.

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

12 The above appropriations, except for debt service, may be  
13 transferred to special revenue funds for capital improvement  
14 projects at the institutions.

*203—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 2003 Org 0442

1	Debt Service (R) . . . . .	040	\$ 14,985,421
2	General Capital Expenditures (R) . . . . .	306	13,636,487
3	Facilities Planning		
4	and Administration (R) . . . . .	386	<u>387,975</u>
5	Total . . . . .		\$ 29,009,883

6 Any unexpended balances remaining in the appropriations  
7 are hereby reappropriated for expenditure during the fiscal year  
8 2003.

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

13 The above appropriations, except for debt service, may be  
14 transferred to special revenue funds for capital improvement  
15 projects at the institutions.

*204—Higher Education Policy Commission—*

*1977 State System Registration Fee Refund Revenue Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4905 FY 2003 Org 0442

1 Any unexpended balance remaining in the appropriation at  
2 the close of the fiscal year 2002 is hereby reappropriated for  
3 expenditure during the fiscal year 2003.

4 The appropriation shall be paid from available unexpended  
5 cash balances and interest earnings accruing to the fund. The  
6 appropriation shall be expended at the discretion of the Higher  
7 Education Policy Commission and the funds may be allocated  
8 to any institution within the system.

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

*205—Higher Education Policy Commission—*

*Tuition Fee Revenue Bond Construction Fund*

*(WV Code Chapters 18 and 18B)*

Fund 4906 FY 2003 Org 0442

1 Any unexpended balance remaining in the appropriation at  
2 the close of the fiscal year 2002 is hereby reappropriated for  
3 expenditure during the fiscal year 2003.

4 The appropriation shall be paid from available unexpended  
5 cash balances and interest earnings accruing to the fund. The  
6 appropriation shall be expended at the discretion of the Higher  
7 Education Policy Commission and the funds may be allocated  
8 to any institution within the system.

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

206—Higher Education Policy Commission—

State University System Revenue Bond Construction Fund

(WV Code Chapter 18 and 18B)

Fund 4907 FY 2003 Org 0442

1 Any unexpended balance remaining in the appropriation at  
2 the close of the fiscal year 2002 is hereby reappropriated for  
3 expenditure during the fiscal year 2003.

207—Higher Education Policy Commission—

Marshall University Land Sale Account

(WV Code Chapter 18B)

Fund 4270 FY 2003 Org 0471

1 Land Sale—Total (R) . . . . . 493 \$ 400,000

2 Any unexpended balances remaining in the appropriations  
3 at the close of fiscal year 2002 are hereby reappropriated for  
4 expenditure during the fiscal year 2003.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

208—Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2003 Org 0509

1	Personal Services . . . . .	001	\$	46,074
2	Annual Increment . . . . .	004		650
3	Employee Benefits . . . . .	010		15,753
4	Unclassified. . . . .	099		<u>88,687</u>
5	Total . . . . .		\$	151,164

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

*209—Municipal Bond Commission*

(WV Code Chapter 13)

Fund 7253 FY 2003 Org 0706

1	Personal Services .....	001	\$	161,262
2	Annual Increment .....	004		2,950
3	Employee Benefits .....	010		58,504
4	Unclassified .....	099		<u>77,990</u>
5	Total .....		\$	300,706

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

(WV Code Chapter 30)

Fund 8517 FY 2003 Org 0906

1	Unclassified—Total .....	096	\$	348,090
---	--------------------------	-----	----	---------

*211—WV Board of Examiners for Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2003 Org 0907

1	Unclassified—Total .....	096	\$	882,136
---	--------------------------	-----	----	---------

*212—Public Service Commission*

(WV Code Chapter 24)

Fund 8623 FY 2003 Org 0926

1	Personal Services .....	001	\$ 7,872,790
2	Annual Increment .....	004	120,000
3	Employee Benefits .....	010	2,306,095
4	Unclassified .....	099	2,534,744
5	Debt Payment/Capital Outlay .....	520	350,000
6	BRIM Premium .....	913	<u>54,923</u>
7	Total .....		\$ 13,238,552

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

11       The Public Service Commission is authorized to spend up  
12 to \$250,000, from surplus funds in this account, to meet the  
13 expected deficiencies in the Motor Carrier Division account due  
14 to passage of enrolled house bill no. 2715, regular session,  
15 1997.

*213—Public Service Commission—*

*Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8624 FY 2003 Org 0926

1	Personal Services .....	001	\$ 146,426
2	Annual Increment .....	004	5,556
3	Employee Benefits .....	010	48,262
4	Unclassified .....	099	<u>89,378</u>
5	Total .....		\$ 289,622

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

214—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2003 Org 0926

1	Personal Services .....	001	\$ 1,582,433
2	Annual Increment .....	004	34,723
3	Employee Benefits .....	010	512,650
4	Unclassified .....	099	<u>615,301</u>
5	Total .....		\$ 2,745,107

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

215—Public Service Commission—

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2003 Org 0926

1	Personal Services .....	001	\$ 480,577
2	Annual Increment .....	004	4,800
3	Employee Benefits .....	010	130,883
4	Unclassified .....	099	290,671
5	BRIM Premium .....	913	<u>2,078</u>
6	Total .....		\$ 909,009

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

*216—Real Estate Commission*

(WV Code Chapter 47)

Fund 8635 FY 2003 Org 0927

1	Personal Services . . . . .	001	\$	340,695
2	Annual Increment . . . . .	004		4,900
3	Employee Benefits . . . . .	010		102,816
4	Unclassified . . . . .	099		<u>237,335</u>
5	Total . . . . .		\$	685,746

6     The total amount of this appropriation shall be paid out of  
7 collections of license fees as provided by law.

*217—WV Board of Examiners for Speech-Language Pathology and Audiology*

(WV Code Chapter 30)

Fund 8646 FY 2003 Org 0930

1	Unclassified—Total . . . . .	096	\$	54,945
---	------------------------------	-----	----	--------

*218—WV Board of Respiratory Care*

(WV Code Chapter 30)

Fund 8676 FY 2003 Org 0935

1	Unclassified—Total . . . . .	096	\$	114,642
---	------------------------------	-----	----	---------

*219—WV Board of Licensed Dietitians*

(WV Code Chapter 30)

Fund 8680 FY 2003 Org 0936

	Unclassified—Total . . . . .	096	\$	20,000
--	------------------------------	-----	----	--------



220—*Massage Therapy Licensure Board*

(WV Code Chapter 30)

Fund 8671 FY 2003 Org 0938

1	Unclassified—Total . . . . .	096	\$	<u>41,553</u>
2	Total TITLE II, Section 3—			
3	Other Funds . . . . .		\$	<u>690,662,462</u>

1       **Sec. 4. Appropriations from lottery net profits.**—Net  
2 profits of the lottery are to be deposited by the director of the  
3 lottery to the following accounts in the amounts indicated. The  
4 director of the lottery shall prorate each deposit of net profits in  
5 the proportion the appropriation for each account bears to the  
6 total of the appropriations for all accounts.

7       After first satisfying the requirements for Fund 2252 and  
8 Fund 3963 pursuant to section eighteen, article twenty-two,  
9 chapter twenty-nine of the code, the director of the lottery shall  
10 make available from the remaining net profits of the lottery any  
11 amounts needed to pay debt service for which the appropriation  
12 is made for Fund 3167, and is authorized to transfer any such  
13 amounts to Fund 3167 for that purpose. Upon receipt of  
14 reimbursement of amounts so transferred, the director of the  
15 lottery shall deposit the reimbursement amounts to the follow-  
16 ing accounts as required by this section.

221—*Education, Arts, Sciences and Tourism*—

*Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2003 Org 0211

			<b>Lottery Funds</b>
		<b>Activity</b>	
1	Debt Service—Total .....	310	\$ 10,000,000

*222—West Virginia Development Office—*

*Division of Tourism*

(WV Code Chapter 5B)

Fund 3067 FY 2003 Org 0304

1	Tourism—Telemarketing Center .....	463	\$ 100,000
2	Tourism—Advertising (R) .....	618	5,000,942
3	State Parks and Recreation		
4	Advertising (R) .....	619	760,000
5	Capitol Complex-Capital Outlay .....	417	1,000,000
6	WV Film Development Office .....	498	104,215
7	Motor Sports Council .....	513	100,000
8	Tourism-Special Projects .....	859	1,700,000
9	Tourism—Unclassified (R) .....	662	<u>3,722,882</u>
10	Total .....		\$ 12,488,039

11       Any unexpended balances remaining in the appropriations  
12 for Tourism—Advertising (fund 3067, activity 618), State  
13 Parks and Recreation Advertising (fund 3067, activity 619),  
14 Tourism—Unclassified (fund 3067, activity 662), Tour-  
15 ism—Special Projects (fund 3067, activity 859), and  
16 Tourism—Unclassified—Lottery Surplus (fund 3067, activity  
17 773) at the close of the fiscal year 2002 are hereby  
18 reappropriated for expenditure during the fiscal year 2003.

*223—Division of Natural Resources*

(WV Code Chapter 20)

Fund 3267 FY 2003 Org 0310

1	Unclassified (R) . . . . .	099	\$ 2,581,776
2	Pricketts Fort State Park . . . . .	324	120,000
3	Non-Game Wildlife . . . . .	527	550,000
4	Blackwater Falls State Park		
5	—Land Acquisition . . . . .	544	200,000
6	West Virginia Stream		
7	Partners Program . . . . .	637	100,000
8	State Parks—Special Projects (R) . . . . .	860	0
9	State Parks Repairs, Renovations,		
10	Maintenance and Life		
11	Safety Repairs (R) . . . . .	911	<u>0</u>
12	Total . . . . .		\$ 3,551,776

13 Any unexpended balances remaining in the appropriations  
14 for Unclassified (fund 3267, activity 099), State Recreation  
15 Area Improvements (fund 3267, activity 307), Capital  
16 Outlay—Parks (fund 3267, activity 288), Parks Opera-  
17 tions—Unclassified (fund 3267, activity 645), State  
18 Parks—Special Projects (fund 3267, activity 860), Computer-  
19 ized Lodging Reservation System (fund 3267, activity 910), and  
20 State Parks Repairs, Renovations, Maintenance and Life Safety  
21 Repairs (fund 3267, activity 911) at the close of the fiscal year  
22 2002 are hereby reappropriated for expenditure during the fiscal  
23 year 2003.

24 Any unexpended balance remaining in the appropriation for  
25 Canaan Valley—Land Acquisition (fund 3267, activity 710) at  
26 the close of the fiscal year 2002 is hereby reappropriated for  
27 expenditure during the fiscal year 2003 and redesignated  
28 Blackwater Falls State Park—Land Acquisition (fund 3267,  
29 activity 544).

*224—State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2003 Org 0402

1	Unclassified .....	099	\$ 1,000,000
2	Teachers' Retirement System .....	019	0
3	Safe Schools .....	143	2,000,000
4	Computer Basic Skills (R) .....	145	7,526,995
5	S.U.C.C.E.S.S (R) .....	255	8,563,965
6	Technology Repair and		
7	Modernization (R) .....	298	1,000,000
8	READS Program .....	365	300,000
9	MATH Program .....	368	300,000
10	Vocational Education		
11	Equipment Replacement .....	393	1,019,750
12	Bridges Program .....	394	300,000
13	Assessment Program .....	396	5,149,407
14	Employment Programs Rate Relief ....	401	758,703
15	Technology and Telecommunications		
16	Initiative (R) .....	596	2,013,733
17	Virtual Schools on the Internet .....	178	450,000
18	Micro Computer Network .....	506	148,675
19	Teacher Reimbursement .....	573	150,000
20	Teacher Relocation .....	574	50,000
21	National Science Foundation Match/WV		
22	Science .....	578	300,000
23	Program Modernization .....	305	725,000
24	Educational Developments .....	823	1,500,000
25	Three-Tier Funding .....	411	1,000,000
26	Educational Enhancements .....	695	2,427,000
27	Technology Demonstration		
28	Project (R) .....	639	<u>150,000</u>
29	Total .....		\$ 36,833,228

30 Any unexpended balances remaining in the appropriations  
31 for Computer Basic Skills (fund 3951, activity 145),  
32 S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair  
33 and Modernization (fund 3951, activity 298), Computer Basic  
34 Skills—Total (fund 3951, activity 567), Technology and  
35 Telecommunications Initiative (fund 3951, activity 596),

36 Technology Demonstration Project (fund 3951, activity 639),  
 37 and Educational Development (fund 3951, activity 823) at the  
 38 close of the fiscal year 2002 are hereby reappropriated for  
 39 expenditure during the fiscal year 2003.

*225—State Department of Education—*

*School Building Authority—*

*Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2003 Org 0402

1 Debt Service—Total . . . . . 310 \$ 18,000,000

*226—Department of Education and the Arts—*

*Office of the Secretary—*

*Control Account—*

*Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2003 Org 0431

1	Unclassified (R) . . . . .	099	\$	0
2	WVU University Affiliated Center			
3	for Developmental Disabilities . . . .	157		100,000
4	Commission for National			
5	Community Service . . . . .	193		160,050
6	Technical Preparation Program . . . . .	440		500,000
7	Arts Programs (R) . . . . .	500		40,000
8	Distance Learning . . . . .	533		0
9	Transfer to HEPC . . . . .	540		0

214	APPROPRIATIONS	[Ch. 13
10	Hospitality Training . . . . .	600 533,500
11	Energy Express . . . . .	861 500,000
12	Teacher Education Partnerships . . . . .	576 600,000
13	College Readiness . . . . .	579 200,000
14	LATA Access . . . . .	580 1,100,000
15	Challenger Learning Center . . . . .	862 60,000
16	WV Humanities Council . . . . .	168 350,000
17	Jobs for West Virginia Graduates . . . . .	863 <u>0</u>
18	Total . . . . .	\$ 4,143,550

19       Any unexpended balances remaining in the appropriations  
20 for Unclassified (fund 3508, activity 099), Technical Prepara-  
21 tion Program (fund 3508, activity 440), Arts Programs (fund  
22 3508, activity 500), and WV2001 Project (fund 3508, activity  
23 836) at the close of fiscal year 2002 are hereby reappropriated  
24 for expenditure during the fiscal year 2003.

*227—Division of Culture and History—*

*Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2003 Org 0432

1	Huntington Symphony . . . . .	027 \$ 75,000
2	Martin Luther King, Jr.	
3	Holiday Celebration . . . . .	031 14,550
4	Fairs and Festivals . . . . .	122 2,000,000
5	Archeological Curation/Capital	
6	Improvements (R) . . . . .	246 1,001,884
7	Historic Preservation Grants (R) . . . . .	311 500,000
8	West Virginia Public Theater . . . . .	312 300,000
9	George Tyler Moore Center for the	
10	Study of the Civil War . . . . .	397 70,000
11	Theater Arts of West Virginia . . . . .	464 420,000
12	Grants for Competitive	

Ch. 13]                                      APPROPRIATIONS                                      215

13	Arts Program (R) . . . . .	624	1,000,000
14	Contemporary American		
15	Theater Festival . . . . .	811	110,000
16	Independence Hall (R) . . . . .	812	50,000
17	Mountain State Forest Festival . . . . .	864	75,000
18	Project ACCESS (R) . . . . .	865	<u>300,000</u>
19	Total . . . . .		\$ 5,916,434

20        Any unexpended balances remaining in the appropriations  
21 for Archeological Curation/Capital Improvements (fund 3534,  
22 activity 246), Historic Preservation Grants (fund 3534, activity  
23 311), Capital Outlay, Repairs and Equipment (fund 3534,  
24 activity 589), Grants for Competitive Arts Program (fund 3534,  
25 activity 624), Independence Hall (fund 3534, activity 812), and  
26 Project ACCESS (fund 3534, activity 865) at the close of the  
27 fiscal year 2002 are hereby reappropriated for expenditure  
28 during the fiscal year 2003.

*228—Library Commission—*

*Lottery Education Fund*

*(WV Code Chapter 10)*

Fund 3559 FY 2003 Org 0433

1	Services to State Institutions . . . . .	180	\$             0
2	Books and Films . . . . .	179	150,000
3	Grants to Public Libraries . . . . .	182	7,348,884
4	Libraries—Special Projects . . . . .	625	1,100,000
5	Infomine Network . . . . .	884	<u>1,017,664</u>
6	Total . . . . .		\$ 9,616,548

*229—Educational Broadcasting Authority—*

*Lottery Education Fund*

(WV Code Chapter 10)

Fund 3587 FY 2003 Org 0439

1	Digital Conversion (R) . . . . .	247	\$ 2,400,000
2	Star Schools . . . . .	509	242,500
3	Mountain Stage . . . . .	249	<u>200,000</u>
4	Total . . . . .		\$ 2,842,500

5 Any unexpended balance remaining in the above appropria-  
6 tion for Digital Conversion (fund 3587, activity 247) at the  
7 close of the fiscal year 2002 is hereby reappropriated for  
8 expenditure during the fiscal year 2003.

*230—Bureau of Senior Services*

(WV Code Chapter 29)

Fund 5405 FY 2003 Org 0508

1	Local Programs Service		
2	Delivery Costs . . . . .	200	\$ 2,475,250
3	In-Home Services for Senior Citizens ..	224	700,000
4	Nutrition Services for the Elderly . . . . .	337	700,000
5	Senior Citizen Centers		
6	and Programs (R) . . . . .	462	4,500,000
7	Direct Services . . . . .	481	2,800,000
8	Transfer to Division of Human Services		
9	for Health Care and Title XIX Waiver		
10	for Senior Citizens . . . . .	539	13,000,000
11	Senior Services Medicaid Transfer . . . . .	871	10,300,000
12	Legislative Initiatives		
13	for the Elderly . . . . .	904	2,700,000
14	Long Term Care Ombudsmen . . . . .	905	<u>96,000</u>
15	Total . . . . .		\$ 37,271,250



16 Any unexpended balances remaining in the appropriations  
 17 for Senior Citizen Centers and Programs (fund 5405, activity  
 18 462), Holly Grove Mansion Restoration (fund 5405, activity  
 19 685), and Senior Citizens Centers, Maintenance and Repairs  
 20 (fund 5405, activity 848) at the close of the fiscal year 2002 are  
 21 hereby reappropriated for expenditure during the fiscal year  
 22 2003.

23 The above appropriation for Health Care and Title XIX  
 24 Waiver for Senior Citizens along with the federal monies  
 25 generated thereby shall be used for reimbursement for services  
 26 provided under the program. Further, the program shall be  
 27 preserved within the aggregate of these funds.

*231—Higher Education Policy Commission—*

*Lottery Education—*

*Higher Education Policy Commission—*

*Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2003 Org 0441

1	Unclassified (R) . . . . .	099	\$ 3,562,353
2	Higher Education Grant Program (R) ..	164	18,000,000
3	Tuition Contract Program (R) . . . . .	165	749,561
4	Minority Doctoral Fellowship (R) . . . . .	166	150,000
5	Underwood - Smith Scholarship		
6	Program—Student Awards (R) . . . . .	167	150,000
7	School of Osteopathic Medicine (R) . . .	172	7,113,795
8	School of Osteopathic Medicine BRIM		
9	Subsidy (R) . . . . .	403	100,277
10	Rural Health Initiative - Medical Schools		
11	Support . . . . .	581	536,161

12	Vice Chancellor for Health Sciences -		
13	Rural Health Initiative Program and		
14	Site Support . . . . .	595	868,000
15	Health Sciences Scholarship (R) . . . . .	176	148,500
16	Incentive for Institution Contribution		
17	to State Priorities . . . . .	404	550,000
18	Higher Education—		
19	Special Projects (R) . . . . .	488	3,884,800
20	MA Public Health Program and		
21	Health Science Technology (R) . . . . .	623	75,443
22	HEAPS Grant Program (R) . . . . .	867	3,000,000
23	WV Engineering, Science, and		
24	Technology Scholarship		
25	Program (R) . . . . .	868	500,000
26	Health Sciences Career		
27	Opportunities Program (R) . . . . .	869	75,580
28	Research Challenge . . . . .	502	800,000
29	HSTA Program (R) . . . . .	870	<u>1,154,379</u>
30	Total . . . . .		\$ <u>41,418,849</u>

31 Any unexpended balances remaining in the appropriations  
 32 at the close of fiscal year 2002 are hereby reappropriated for  
 33 expenditure during the fiscal year 2003.

34 Total TITLE II, Section 4—  
 35 Lottery Revenue . . . . . \$ 182,082,174

1 **Sec. 5. Appropriations from state excess lottery revenue**  
 2 **fund.**— In accordance with section eighteen-a, article twenty-  
 3 two, chapter twenty-nine of the code, the following appropria-  
 4 tions shall be deposited and disbursed by the director of the  
 5 lottery to the following accounts in this section in the amounts  
 6 indicated.

232—*Lottery Commission—*

*General Purpose Account*

Fund 7206 FY 2003 Org 0705

	<b>Activity</b>	<b>Funds</b>
1	Unclassified—Total—Transfer . . . . . 402	\$ 65,000,000

2       The above appropriation for Unclassified—Total—  
3       Transfer (activity 402) shall be transferred to the General  
4       Revenue Fund as determined by the director of the lottery.

*233—Economic Development Authority—*

*Economic Development Project Fund*

Fund 3167 FY 2003 Org 0307

1	Debt Service-Total . . . . . 310	\$ 19,000,000
---	----------------------------------	---------------

2       Pursuant to subsection (f), section eighteen-a, article  
3       twenty-two, chapter twenty-nine of the code, excess lottery  
4       revenues are authorized to be transferred to the lottery fund as  
5       reimbursement of amounts transferred to the economic develop-  
6       ment project fund pursuant to section four of this title and  
7       subsection (f), section eighteen, article twenty-two, chapter  
8       twenty-nine of the code.

*234—Education Improvement Fund*

Fund 4295 FY 2003 Org 0441

1	Unclassified—Total—Transfer (R) . . . . 402	\$ 10,000,000
---	---	---------------

2       Any unexpended balance remaining in the appropriation at  
3       the close of fiscal year 2002 is hereby reappropriated for  
4       expenditure during the fiscal year 2003.

5       The above appropriation for Unclassified—Total—  
6       Transfer (activity 402) shall be transferred to the PROMISE

7 Scholarship Fund (fund 4296, org 0441) established by chapter  
8 eighteen-c, article seven, section seven.

*235—School Building Authority*

Fund 3514 FY 2003 Org 0402

1 Unclassified—Total—Transfer (R) . . . . 402 \$ 20,000,000

2 Any unexpended balance remaining in the appropriation at  
3 the close of fiscal year 2002 is hereby reappropriated for  
4 expenditure during the fiscal year 2003.

5 The above appropriation for Unclassified—Total—  
6 Transfer (activity 402) shall be transferred to the School  
7 Building Debt Service Fund (fund 3515, org 0402) established  
8 by chapter eighteen, article nine-d, section six.

*236—West Virginia Infrastructure Council*

Fund 3390 FY 2003 Org 0316

1 Unclassified—Total—Transfer (R) . . . . 402 \$ 40,000,000

2 Any unexpended balance remaining in the appropriation at  
3 the close of the fiscal year 2002 is hereby reappropriated for  
4 expenditure during the fiscal year 2003.

5 The above appropriation for Unclassified—Total—  
6 Transfer (activity 402) shall be transferred to the West Virginia  
7 Infrastructure Fund (fund 3384, org 0316) created by chapter  
8 thirty-one, article fifteen-a, section nine of the code.

*237—Higher Education Improvement Fund*

Fund 4297 FY 2003 Org 0441

1 Unclassified—Total (R) . . . . . 096 \$ 10,000,000

2 Any unexpended balance remaining in the appropriation at  
 3 the close of the fiscal year 2002 is hereby reappropriated for  
 4 expenditure during the fiscal year 2003.

*238—State Park Improvement Fund*

Fund 3277 FY 2003 Org 0310

1 Unclassified—Total (R) . . . . . 096 \$ 5,000,000

2 Any unexpended balance remaining in the appropriation at  
 3 the close of the fiscal year 2002 is hereby reappropriated for  
 4 expenditure during the fiscal year 2003.

*239—Governor's Office—*

*Civil Contingent Fund*

(WV Code Chapter 5)

Fund 1038 FY 2003 Org 0100

1	Civil Contingent Fund (R) . . . . .	114	\$ 3,500,000
2	Business and Economic Development		
3	Stimulus . . . . .	586	<u>1,500,000</u>
4	Total . . . . .		\$ 5,000,000

*240—Lottery Commission—*

*Refundable Credit*

Fund 7207 FY 2003 Org 0705

1 Unclassified—Total—Transfer . . . . . 402 \$ 0

2 The above appropriation for Unclassified—Total—  
 3 Transfer (activity 402) shall be transferred to the General  
 4 Revenue Fund to provide reimbursement for the refundable

5 credit allowable under chapter eleven, article twenty-two,  
 6 section twenty-one of the code. The amount of the required  
 7 transfer shall be determined solely by the state tax commis-  
 8 sioner and shall be completed by the director of the lottery upon  
 9 the commissioners request.

*241—Lottery Commission—*

*Excess Lottery Revenue Fund Surplus*

Fund 7208 FY 2003 Org 0705

1 Unclassified—Total—Transfer . . . . . 402 \$ 55,700,000

2 The above appropriation for Unclassified—Total—  
 3 Transfer (activity 402) shall be transferred to the General  
 4 Revenue Fund only after all funding required by chapter  
 5 twenty-nine, article twenty-two, section eighteen-a of the code  
 6 has been satisfied as determined by the director of the lottery.

7 Total TITLE II, Section 5—Excess  
 8 Lottery Funds . . . . . \$ 229,700,000

1 **Sec. 6. Appropriations of federal funds.**—In accordance  
 2 with article eleven, chapter four of the code, from federal funds  
 3 there are hereby appropriated conditionally upon the fulfillment  
 4 of the provisions set forth in article two, chapter five-a of the  
 5 code the following amounts, as itemized, for expenditure during  
 6 the fiscal year two thousand three.

**LEGISLATIVE**

*242—Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 2003 Org 2300

	Activity		Federal Funds
1	Unclassified—Total . . . . .	096	\$ 922,453

**EXECUTIVE**

*243—Governor’s Office—*

*Governor’s Cabinet on Children and Families*

(WV Code Chapter 5)

Fund 8792 FY 2003 Org 0100

1	Unclassified—Total . . . . .	096	\$ 450,000
---	------------------------------	-----	------------

*244—Governor’s Office—*

*Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2003 Org 0100

1	Unclassified—Total . . . . .	096	\$ 5,000,000
---	------------------------------	-----	--------------

*245—Governor’s Office—*

*Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 2003 Org 0100

1	Unclassified—Total . . . . .	096	\$ 4,706,509
---	------------------------------	-----	--------------

*246—Auditor’s Office—*

*National White Collar Crime Center*

(WV Code Chapter 12)

Fund 8807 FY 2003 Org 1200

1 Unclassified—Total . . . . . 096 \$ 14,000,942

*247—Department of Agriculture*

(WV Code Chapter 19)

Fund 8736 FY 2003 Org 1400

1 Unclassified—Total . . . . . 096 \$ 4,101,795

*248—Department of Agriculture—*

*Meat Inspection*

(WV Code Chapter 19)

Fund 8737 FY 2003 Org 1400

1 Unclassified—Total . . . . . 096 \$ 818,829

*249—Department of Agriculture—*

*State Soil Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2003 Org 1400

1 Unclassified—Total . . . . . 096 \$ 341,174

**DEPARTMENT OF ADMINISTRATION**

*250—West Virginia Prosecuting Attorney’s Institute*



(WV Code Chapter 7)

Fund 8834 FY 2003 Org 0228

1 Unclassified—Total ..... 096 \$ 221,587

*251—Children’s Health Insurance Agency*

(WV Code Chapter 5)

Fund 8838 FY 2003 Org 0230

1 Unclassified—Total ..... 096 \$ 29,013,805

**DEPARTMENT OF EDUCATION**

*252—State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2003 Org 0402

1 Unclassified—Total ..... 096 \$ 49,000,000

*253—State Department of Education—*

*School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2003 Org 0402

1 Unclassified—Total ..... 096 \$ 78,011,163

*254—State Board of Education—*

*Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2003 Org 0402

1 Unclassified—Total . . . . . 096 \$ 20,699,807

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

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2003 Org 0402

1 Unclassified—Total . . . . . 096 \$ 67,000,000

**DEPARTMENT OF EDUCATION AND THE ARTS***256—Department of Education and the Arts—**Office of the Secretary*

(WV Code Chapter 5F)

Fund 8841 FY 2003 Org 0431

1 Unclassified—Total . . . . . 096 \$ 450,000

*257—Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 2003 Org 0432

1 Unclassified—Total . . . . . 096 \$ 2,096,767

*258—Library Commission*

(WV Code Chapter 10)

Fund 8720 FY 2003 Org 0433

1   Unclassified—Total . . . . . 096 \$ 1,932,637

*259—Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 8721 FY 2003 Org 0439

1   Unclassified—Total . . . . . 096 \$ 2,955,000

*260—State Board of Rehabilitation—*

*Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2003 Org 0932

1   Unclassified—Total . . . . . 096 \$ 46,323,075

**DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES**

*261—Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2003 Org 0506

1   Unclassified—Total . . . . . 096 \$ 4,808,797

*262—Division of Health—*

*Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2003 Org 0506

1 Unclassified—Total . . . . . 096 \$ 63,692,425

*263—Division of Health—*

*West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2003 Org 0506

1 Unclassified—Total . . . . . 096 \$ 16,000,000

*264—Human Rights Commission*

(WV Code Chapter 5)

Fund 8725 FY 2003 Org 0510

1 Unclassified—Total . . . . . 096 \$ 510,467

*265—Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2003 Org 0511

1 Unclassified—Total . . . . . 096 \$ 1,436,943,707

**DEPARTMENT OF MILITARY  
AFFAIRS AND PUBLIC SAFETY**

*266—Adjutant General—State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2003 Org 0603

1 Unclassified—Total . . . . . 096 \$ 29,471,873

*267—Office of Emergency Services*

(WV Code Chapter 15)

Fund 8727 FY 2003 Org 0606

1 Unclassified—Total . . . . . 096 \$ 2,353,164

*268—Division of Corrections*

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

Fund 8836 FY 2003 Org 0608

1 Unclassified—Total . . . . . 096 \$ 50,000

*269—West Virginia State Police*

(WV Code Chapter 15)

Fund 8741 FY 2003 Org 0612

1 Unclassified—Total . . . . . 096 \$ 1,547,540

*270—Division of Veterans' Affairs—*

*Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2003 Org 0618

1 Unclassified—Total . . . . . 096 \$ 785,880

*271—Division of Criminal Justice Services*

(WV Code Chapter 15)

Fund 8803 FY 2003 Org 0620

1 Unclassified—Total . . . . . 096 \$ 17,606,420

**DEPARTMENT OF TAX AND REVENUE**

*272—Tax Division—*

(WV Code Chapter 11)

Fund 7069 FY 2003 Org 0702

1 Unclassified—Total . . . . . 096 \$ 25,000

**DEPARTMENT OF TRANSPORTATION**

*273—Division of Public Transit*

(WV Code Chapter 17)

Fund 8745 FY 2003 Org 0805

1 Unclassified—Total . . . . . 096 \$ 11,602,638

*274—Public Port Authority*

(WV Code Chapter 17)

Fund 8830 FY 2003 Org 0806

1 Unclassified—Total . . . . . 096 \$ 4,000,000

*275—Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2003 Org 0802

1 Unclassified—Total . . . . . 096 \$ 10,385,131

*276—Aeronautics Commission*

(WV Code Chapter 29)

Fund 8831 FY 2003 Org 0807

1 Unclassified—Total . . . . . 096 \$ 450,000

**BUREAU OF COMMERCE**

*277—Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2003 Org 0305

1 Unclassified—Total . . . . . 096 \$ 1,885,559

*278—Geological and Economic Survey*

(WV Code Chapter 29)

Fund 8704 FY 2003 Org 0306

1 Unclassified—Total . . . . . 096 \$ 428,167

*279—West Virginia Development Office*

(WV Code Chapter 5B)

Fund 8705 FY 2003 Org 0307

1 Unclassified—Total . . . . . 096 \$ 7,896,764

*280—Division of Labor*

(WV Code Chapters 21 and 47)

Fund 8706 FY 2003 Org 0308

232 APPROPRIATIONS [Ch. 13

1 Unclassified—Total . . . . . 096 \$ 520,021

*281—Division of Natural Resources*

(WV Code Chapter 20)

Fund 8707 FY 2003 Org 0310

1 Unclassified—Total . . . . . 096 \$ 8,571,455

*282—Division of Miners' Health—*

*Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2003 Org 0314

1 Unclassified—Total . . . . . 096 \$ 590,765

**DEPARTMENT OF ENVIRONMENT**

*283—Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2003 Org 0313

1 Unclassified—Total . . . . . 096 \$ 133,802,758

**BUREAU OF SENIOR SERVICES**

*284—Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2003 Org 0508

1 Unclassified—Total . . . . . 096 \$ 13,139,100



**BUREAU OF EMPLOYMENT PROGRAMS**

*285—Bureau of Employment Programs*

(WV Code Chapter 21A)

Fund 8835 FY 2003 Org 0323

- 1   Unclassified—Total . . . . . 096 \$   512,657
- 2    Pursuant to the requirements of 42 U.S.C. 1103, Section 903
- 3    of the Social Security Act, as amended, and the provisions of
- 4    section nine, article nine, chapter twenty-one-a of the code of
- 5    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**

*286—Public Service Commission—*

*Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2003 Org 0926

- 1   Unclassified—Total . . . . . 096 \$   1,492,418

*287—Public Service Commission—*

*Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2003 Org 0926

1	Unclassified—Total . . . . .	096	\$	<u>268,253</u>
2	Total TITLE II, Section 6—			
3	Federal Funds . . . . .		\$	<u>2,097,386,502</u>

1       **Sec. 7. Appropriations from federal block grants.**—The  
 2 following items are hereby appropriated from federal block  
 3 grants to be available for expenditure during the fiscal year  
 4 2003.

*288—Governor’s Office—*

*Office of Economic Opportunity*

Fund 8799 FY 2003 Org 0100

1	Unclassified—Total . . . . .	096	\$	7,759,757
---	------------------------------	-----	----	-----------

*289—West Virginia Development Office—*

*Community Development*

Fund 8746 FY 2003 Org 0307

1	Unclassified—Total . . . . .	096	\$	28,330,852
---	------------------------------	-----	----	------------

*290—West Virginia Development Office—*

*Workforce Investment Act*

Fund 8848 FY 2003 Org 0307

1	Unclassified—Total . . . . .	096	\$	57,678,856
---	------------------------------	-----	----	------------

*291—State Department of Education—*

*Education Grant*

Fund 8748 FY 2003 Org 0402

1 Unclassified—Total ..... 096 \$ 112,028,444

292—*Division of Health—*

*Maternal and Child Health*

Fund 8750 FY 2003 Org 0506

1 Unclassified—Total ..... 096 \$ 8,878,891

293—*Division of Health—*

*Preventive Health*

Fund 8753 FY 2003 Org 0506

1 Unclassified—Total ..... 096 \$ 2,237,034

294—*Division of Health—*

*Substance Abuse Prevention and Treatment*

Fund 8793 FY 2003 Org 0506

1 Unclassified—Total ..... 096 \$ 11,557,304

295—*Division of Health—*

*Community Mental Health Services*

Fund 8794 FY 2003 Org 0506

1 Unclassified—Total ..... 096 \$ 3,314,733

296—*Division of Health—*

*Abstinence Education Program*

Fund 8825 FY 2003 Org 0506

1 Unclassified—Total . . . . . 096 \$ 976,837

*297—Division of Human Services—**Energy Assistance*Fund 8755 FY 2003 Org 0511

1 Unclassified—Total . . . . . 096 \$ 21,100,942

*298—Division of Human Services—**Social Services*Fund 8757 FY 2003 Org 0511

1 Unclassified—Total . . . . . 096 \$ 15,346,237

*299—Division of Human Services—**Temporary Assistance Needy Families*Fund 8816 FY 2003 Org 0511

1 Unclassified—Total . . . . . 096 \$ 225,398,932

*300—Division of Human Services—**Child Care and Development*Fund 8817 FY 2003 Org 0511

1 Unclassified—Total . . . . . 096 \$ 38,090,361

*301—Division of Criminal Justice Services—**Juvenile Accountability Incentive*

Fund 8829 FY 2003 Org 0620

1 Unclassified—Total ..... 096 \$ 2,203,438

*302—Division of Criminal Justice Services—*

*Local Law Enforcement*

Fund 8833 FY 2003 Org 0620

1 Unclassified—Total ..... 096 \$ 478,500

2 Total TITLE II, Section 7—

3 Federal Block Grants ..... \$ 535,381,118

1 **Sec. 8. Awards for claims against the state.**—There are  
2 hereby appropriated for fiscal year 2003, from the fund as  
3 designated, in the amounts as specified, general revenue funds  
4 in the amount of \$3,987,764 special revenue fund in the amount  
5 of \$83,548, state roads funds in the amount of \$702,429 and  
6 non-general revenue funds in the amount of \$1,896,887 for  
7 payment of claims against the state.

1 **Sec. 9. Appropriations from surplus accrued.** — The  
2 following items are hereby appropriated from the state fund,  
3 general revenue, and are to be available for expenditure during  
4 the fiscal year 2003 out of surplus funds only, accrued from the  
5 fiscal year ending the thirtieth day of June, two thousand two,  
6 subject to the terms and conditions set forth in this section.

7 It is the intent and mandate of the Legislature that the  
8 following appropriations be payable only from surplus accrued  
9 as of the thirty-first day of July, two thousand two from the  
10 fiscal year ending the thirtieth day of June two thousand two.

*303—West Virginia Development Office—*

(WV Code Chapter 5B)

Fund 0256 FY 2003 Org 0307

1	Southern West Virginia Career Center .	591	\$ <u>300,000</u>
2	Total TITLE II, Section 9-		
3	Surplus Accrued . . . . .		\$ 300,000

1       **Sec. 10. Special revenue appropriations.**—There are  
 2 hereby appropriated for expenditure during the fiscal year two  
 3 thousand three appropriations made by general law from special  
 4 revenue which are not paid into the state fund as general  
 5 revenue under the provisions of section two, article two, chapter  
 6 twelve of the code: *Provided*, That none of the money so  
 7 appropriated by this section shall be available for expenditure  
 8 except in compliance with and in conformity to the provisions  
 9 of articles two and three, chapter twelve and article two, chapter  
 10 five-a of the code, with due consideration to the digest of  
 11 legislative intent of the budget bill prepared pursuant to article  
 12 one, chapter four, unless the spending unit has filed with the  
 13 director of the budget and the legislative auditor prior to the  
 14 beginning of each fiscal year:

15       (a) An estimate of the amount and sources of all revenues  
 16 accruing to such fund;

17       (b) A detailed expenditure schedule showing for what  
 18 purposes the fund is to be expended.

1       **Sec. 11. State improvement fund appropria-**  
 2 **tions.**—Bequests or donations of nonpublic funds, received by  
 3 the governor on behalf of the state during the fiscal year two  
 4 thousand three, for the purpose of making studies and recom-  
 5 mendations relative to improvements of the administration and  
 6 management of spending units in the executive branch of state  
 7 government, shall be deposited in the state treasury in a  
 8 separate account therein designated state improvement fund.

9       There are hereby appropriated all moneys so deposited  
10 during the fiscal year two thousand three to be expended as  
11 authorized by the governor, for such studies and recommenda-  
12 tions which may encompass any problems of organization,  
13 procedures, systems, functions, powers or duties of a state  
14 spending unit in the executive branch, or the betterment of the  
15 economic, social, educational, health and general welfare of the  
16 state or its citizens.

1       **Sec. 12. Specific funds and collection accounts.**—A fund  
2 or collection account which by law is dedicated to a specific use  
3 is hereby appropriated in sufficient amount to meet all lawful  
4 demands upon the fund or collection account and shall be  
5 expended according to the provisions of article three, chapter  
6 twelve of the code.

1       **Sec. 13. Appropriations for refunding erroneous**  
2 **payment.**—Money that has been erroneously paid into the state  
3 treasury is hereby appropriated out of the fund into which it was  
4 paid, for refund to the proper person.

5       When the officer authorized by law to collect money for the  
6 state finds that a sum has been erroneously paid, he or she shall  
7 issue his or her requisition upon the auditor for the refunding of  
8 the proper amount. The auditor shall issue his or her warrant to  
9 the treasurer and the treasurer shall pay the warrant out of the  
10 fund into which the amount was originally paid.

1       **Sec. 14. Sinking fund deficiencies.**—There is hereby  
2 appropriated to the governor a sufficient amount to meet any  
3 deficiencies that may arise in the mortgage finance bond  
4 insurance fund of the West Virginia housing development fund  
5 which is under the supervision and control of the municipal  
6 bond commission as provided by section twenty-b, article  
7 eighteen, chapter thirty-one of the code, or in the funds of the  
8 municipal bond commission because of the failure of any state

9 agency for either general obligation or revenue bonds or any  
10 local taxing district for general obligation bonds to remit funds  
11 necessary for the payment of interest and sinking fund require-  
12 ments. The governor is authorized to transfer from time to time  
13 such amounts to the municipal bond commission as may be  
14 necessary for these purposes.

15 The municipal bond commission shall reimburse the state  
16 of West Virginia through the governor from the first remittance  
17 collected from the West Virginia housing development fund or  
18 from any state agency or local taxing district for which the  
19 governor advanced funds, with interest at the rate carried by the  
20 bonds for security or payment of which the advance was made.

1 **Sec. 15. Appropriations for local governments.**—There  
2 are hereby appropriated for payment to counties, districts and  
3 municipal corporations such amounts as will be necessary to  
4 pay taxes due counties, districts and municipal corporations and  
5 which have been paid into the treasury:

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.**—Where only a total sum  
2 is appropriated to a spending unit, the total sum shall include  
3 personal services, annual increment, employee benefits, current  
4 expenses, repairs and alterations, equipment and capital outlay,  
5 where not otherwise specifically provided and except as  
6 otherwise provided in TITLE I—GENERAL PROVISIONS,  
7 Sec. 3.

1 **Sec. 17. General school fund.**—The balance of the  
2 proceeds of the general school fund remaining after the  
3 payment of the appropriations made by this act is appropriated



- 4 for expenditure in accordance with section sixteen, article  
5 nine-a, chapter eighteen of the code.

**TITLE III—ADMINISTRATION.**

§1. Appropriations conditional.

§2. Legislative intent.

§3. Constitutionality.

1       **Section 1. Appropriations conditional.**—The expenditure  
2 of the appropriations made by this act, except those appropria-  
3 tions made to the legislative and judicial branches of the state  
4 government, are conditioned upon the compliance by the  
5 spending unit with the requirements of article two, chapter  
6 five-a of the code.

7       Where spending units or parts of spending units have been  
8 absorbed by or combined with other spending units, it is the  
9 intent of this act that reappropriations shall be to the succeeding  
10 or later spending unit created, unless otherwise indicated.

1       **Sec. 2. Legislative intent.**—It is the intent of the Legisla-  
2 ture that the duly appointed members of the conference  
3 committee on this bill may formulate and set forth in a budget  
4 digest recommendations for the expenditure of money appropri-  
5 ated by this bill after its enactment. It is the further intent of the  
6 Legislature that the recommendations set forth in the budget  
7 digest are an expression of legislative intent, do not have the  
8 force and effect of law, and may not be construed to alter the  
9 lawful enactment of this bill.

1       **Sec. 3. Constitutionality.**—If any part of this act is  
2 declared unconstitutional by a court of competent jurisdiction,  
3 its decision shall not affect any portion of this act which  
4 remains, but the remaining portion shall be in full force and  
5 effect as if the portion declared unconstitutional had never been  
6 a part of the act.

---

## CHAPTER 14

**(S. B. 253 — By Senators Craigo, Sharpe, Prezioso,  
Bowman, Anderson, Edgell, Unger and Minear)**

---

[Passed February 25, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the bureau of senior services, fund 0420, fiscal year 2002, organization 0508, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

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

That the items of the total appropriation from the state fund, general revenue, to the bureau of senior services, fund 0420, fiscal year 2002, organization 0508, be amended and reduced in the existing line items as follows:

- |   |  |
|---|--|
| 1 | TITLE II — APPROPRIATIONS.                             |
| 2 | <b>Section 1. Appropriations from general revenue.</b> |
| 3 | <b>BUREAU OF SENIOR SERVICES</b>                       |
| 4 | <i>89—Bureau of Senior Services</i>                    |
| 5 | (WV Code Chapter 29)                                   |
| 6 | Fund <u>0420</u> FY <u>2002</u> Org <u>0508</u>        |

7			<b>General</b>
8		<b>Act-</b>	<b>Revenue</b>
9		<b>ivity</b>	<b>Fund</b>

10	7	Foster Grandparents Stipends		
11		and Travel .....	205	\$ 50,000

12 And, that the items of the total appropriations from the state  
13 fund, general revenue, to the bureau of senior services, fund  
14 0420, fiscal year 2002, organization 0508, be amended and  
15 increased in the line item as follows:

16 TITLE II — APPROPRIATIONS.

17 Section 1. Appropriations from general revenue.

18 BUREAU OF SENIOR SERVICES

19 89—*Bureau of Senior Services*

20 (WV Code Chapter 29)

21 Fund 0420 FY 2002 Org 0508

22			<b>General</b>
23		<b>Act-</b>	<b>Revenue</b>
24		<b>ivity</b>	<b>Fund</b>

25	4	Unclassified .....	099	\$ 50,000
----	---	--------------------	-----	-----------

26 The purpose of this supplementary appropriation bill is to  
27 supplement, amend, reduce and increase items of existing  
28 appropriations in the aforesaid account for the designated  
29 spending unit. The item for foster grandparent stipends and  
30 travel is reduced by fifty thousand dollars. The item for  
31 unclassified is increased by fifty thousand dollars for expendi-  
32 ture during the fiscal year two thousand two with no new  
33 money being appropriated.

---

## CHAPTER 15

(S. B. 254 — By Senators Craigo, Sharpe, Prezioso, Bowman,  
Anderson, Edgell, Unger and Minear)

---

[Passed February 20, 2002; 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 tax and revenue—alcohol beverage control administration, fund 7352, fiscal year 2002, organization 0708, 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 tax and revenue—alcohol beverage control administration, fund 7352, fiscal year 2002, organization 0708, 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 the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 7352, fiscal year 2002, organization 0708, be supplemented and amended by increasing the total appropriation by two hundred thousand dollars as follows:

- 1                   TITLE II — APPROPRIATIONS.
- 2                   **Sec. 3. Appropriations from other funds.**
- 3                   **DEPARTMENT OF TAX AND REVENUE**

4            *177—Alcohol Beverage Control Administration*

5                            (WV Code Chapter 60)

6                            Fund 7352 FY 2002 Org 0708

7			<b>Act-</b>	<b>Other</b>
8			<b>ivity</b>	<b>Funds</b>

9	1	Personal Services . . . . .	001	\$	100,000
10	4	Unclassified . . . . .	099		100,000

11            The purpose of this supplementary appropriation bill is to  
 12 supplement this fund in the budget act for the fiscal year ending  
 13 the thirtieth day of June, two thousand two, by increasing the  
 14 existing appropriations for personal services by one hundred  
 15 thousand dollars and unclassified by one hundred thousand  
 16 dollars for expenditure during the fiscal year two thousand two.



# CHAPTER 16

(S. B. 509 — By Senators Sharpe, Love, Helmick, Bowman,  
 Anderson, Edgell, Unger, McCabe, Boley and Minear)

[Passed February 22, 2002; 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 administration—children’s health insurance agency fund 8838, fiscal year 2002, organization 0230, 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 8838, fiscal year 2002, organization 0230, be supplemented and amended by increasing the total appropriation by two million six hundred eighty thousand seven hundred thirty-nine dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF ADMINISTRATION

4 263—*Children’s Health Insurance Agency*

5 (WV Code Chapter 5)

6 Fund 8838 FY 2002 Org 0230

7	8	9	1	Unclassified—Total	.....	096	\$	2,680,739

10 The purpose of this supplementary appropriation bill is to  
 11 supplement this account in the budget act for the fiscal year  
 12 ending the thirtieth day of June, two thousand two, by increas-  
 13 ing the existing appropriation for unclassified—total by two  
 14 million six hundred eighty thousand seven hundred thirty-nine  
 15 dollars for expenditure during fiscal year two thousand two.

---

**CHAPTER 17**

**(S. B. 510 — By Senators Sharpe, Love, Helmick, Bowman,  
Anderson, Edgell, Unger, McCabe, Boley and Minear)**

---

[Passed February 25, 2002; 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 transportation—division of motor vehicles, fund 8787, fiscal year 2002, organization 0802, 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 8787, fiscal year 2002, organization 0802, be supplemented and amended by increasing the total appropriation by one million two thousand dollars as follows:

- 1                   **TITLE II—APPROPRIATIONS.**
- 2                   **Sec. 6. Appropriations of federal funds.**
- 3                   **DEPARTMENT OF TRANSPORTATION**

248

APPROPRIATIONS

[Ch. 18

4

286—*Division of Motor Vehicles*

5

(WV Code Chapter 17B)

6

Fund 8787 FY 2002 Org 0802

7

**Act-**

**Federal**

8

**ivity**

**Funds**

9

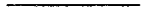
1 Unclassified—Total ..... 096 \$ 1,002,000

10 The purpose of this supplementary appropriation bill is to  
11 supplement this account in the budget act for the fiscal year  
12 ending the thirtieth day of June, two thousand two, by increas-  
13 ing the existing appropriation for unclassified—total by one  
14 million two thousand dollars for expenditure during fiscal year  
15 two thousand two.



## CHAPTER 18

**(S. B. 511 — By Senators Sharpe, Love, Helmick, Bowman,  
Anderson, Edgell, Unger, McCabe, Boley and Minear)**



[Passed February 22, 2002; 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 governor's office—commission for national and community service, fund 8800, fiscal year 2002, organization 0100, 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 8800, fiscal year 2002, organization 0100, be supplemented and amended by increasing the total appropriation by two hundred forty-one thousand six hundred seventy-five dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 EXECUTIVE

4 257—Governor’s Office—

5 Commission for National and Community Service

6 (WV Code Chapter 5)

7 Fund 8800 FY 2002 Org 0100

8			<b>Act-</b>	<b>Federal</b>
9			<b>ivity</b>	<b>Funds</b>

10	1	Unclassified—Total . . . . .	096	\$	241,675
----	---	------------------------------	-----	----	---------

11 The purpose of this supplementary appropriation bill is to  
12 supplement this account in the budget act for the fiscal year  
13 ending the thirtieth day of June, two thousand two, by increas-  
14 ing the existing appropriation for unclassified—total by two  
15 hundred forty-one thousand six hundred seventy-five dollars for  
16 expenditure during fiscal year two thousand two.

---

## CHAPTER 19

**(S. B. 512 — By Senators Sharpe, Love, Helmick, Bowman,  
Anderson, Edgell, Unger, McCabe, Boley and Minear)**

---

[Passed February 22, 2002; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of military affairs and public safety—division of veterans' affairs—veterans' home, fund 8728, fiscal year 2002, organization 0618, 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 during 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 8728, fiscal year 2002, organization 0618, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3            **DEPARTMENT OF MILITARY AFFAIRS**  
4            **AND PUBLIC SAFETY**

5                            *282—Division of Veterans' Affairs—*

6    *Veterans' Home*

7    (WV Code Chapter 9A)

8    Fund 8728 FY 2002 Org 0618

9	10	Act-	Federal
10	10	ivity	Funds
11	1	Unclassified—Total . . . . .	096 \$ 500,000

12            The purpose of this supplementary appropriation bill is to  
13 supplement this account in the budget act for the fiscal year  
14 ending the thirtieth day of June, two thousand two, by increas-  
15 ing the existing appropriation for unclassified—total by five  
16 hundred thousand dollars for expenditure during the fiscal year  
17 two thousand two.

---

**CHAPTER 20**

**(S. B. 702 — By Senators Craigo, Sharpe, Jackson, Prezioso,  
Plymale, Love, Helmick, Bowman, Anderson, Edgell,  
Unger, Boley, Minear and Sprouse)**

---

[Passed March 8, 2002; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of health and human re-

sources—division of human services—energy assistance, fund 8755, fiscal year 2002, organization 0511, 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 during 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 8755, fiscal year 2002, organization 0511, be supplemented and amended by increasing the total appropriation by four million two hundred sixteen thousand four hundred eleven dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 7. Appropriations from federal block grants.**

3 *310—Division of Human Services—*

4 *Energy Assistance*

5 Fund 8755 FY 2002 Org 0511

6	<b>Act-</b>	<b>Federal</b>
7	<b>ivity</b>	<b>Funds</b>
8	1 Unclassified—Total . . . . .	096 \$ 4,216,411

9 The purpose of this supplementary appropriation bill is to  
10 supplement this account in the budget act for the fiscal year  
11 ending the thirtieth day of June, two thousand two, by increas-  
12 ing the existing appropriation for unclassified—total by four  
13 million two hundred sixteen thousand four hundred eleven  
14 dollars for expenditure during fiscal year two thousand two.

---

## CHAPTER 21

**(S. B. 703 — By Senators Craigo, Sharpe, Jackson,  
Prezioso, Plymale, Love, Helmick, Bowman, Anderson,  
Edgell, Unger, Boley, Minear and Sprouse)**

---

[Passed March 8, 2002; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of health and human resources—division of human services, fund 8722, fiscal year 2002, organization 0511, 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 during 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 8722, fiscal year 2002, organization 0511, be supplemented and amended by increasing the total appropriation by one hundred thirty-five million dollars as follows:

- 1                    TITLE II—APPROPRIATIONS.
- 2                    **Sec. 6. Appropriations of federal funds.**

3

**DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES**

4

5

*277—Division of Human Services*

6

(WV Code Chapters 9, 48 and 49)

7

Fund 8722 FY 2002 Org 0511

8

**Act- Federal**

9

**ivity Funds**

10 1 Unclassified—Total . . . . . 096 \$135,000,000

11 The purpose of this supplementary appropriation bill is to  
12 supplement this account in the budget act for the fiscal year  
13 ending the thirtieth day of June, two thousand two, by increas-  
14 ing the existing appropriation for unclassified—total by one  
15 hundred thirty-five million dollars for expenditure during fiscal  
16 year two thousand two.



**CHAPTER 22**

**(S. B. 704 — By Senators Craig, Sharpe, Jackson,  
Prezioso, Plymale, Love, Helmick, Bowman, Anderson,  
Edgell, Unger, Boley, Minear and Sprouse)**



[Passed March 7, 2002; in effect from passage. Approved by the Governor.]



AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of seven hundred fifty thousand dollars from the insurance commissioner—insurance commission fund, fund 7152, fiscal year 2003, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commissioner—insurance commission fund, fund 7152, fiscal year 2003, organization 0704, will exceed that which is necessary for the purposes for which the account was established; therefore

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

1       That the balance of the funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, two thousand  
3 three, to the insurance commissioner—insurance commission  
4 fund, fund 7152, fiscal year 2003, organization 0704, be  
5 decreased by expiring the amount of seven hundred fifty  
6 thousand dollars to the unappropriated balance of the state fund,  
7 general revenue, to be available for appropriation during fiscal  
8 year two thousand three.

9       The purpose of this bill is to expire the sum of seven  
10 hundred fifty thousand dollars from the insurance commis-  
11 sioner—insurance commission fund, fund 7152, fiscal year  
12 2003, organization 0704, to the unappropriated balance in the  
13 state fund, general revenue, for the fiscal year ending the  
14 thirtieth day of June, two thousand three, to be available for  
15 appropriation during fiscal year two thousand three.

---

## CHAPTER 23

**(S. B. 705 — By Senators Craigo, Sharpe, Jackson, Prezioso,  
Plymale, Love, Helmick, Bowman, Anderson, Edgell,  
Unger, Boley, Minear and Sprouse)**

---

[Passed March 7, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of seven hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2003, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2003, organization 0926, will exceed that which is necessary for the purposes for which the account was established; therefore

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

1        That the balance of the funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, two thousand  
3 three, to the public service commission, fund 8623, fiscal year  
4 2003, organization 0926, be decreased by expiring the amount  
5 of seven hundred fifty thousand dollars to the unappropriated  
6 balance of the state fund, general revenue, to be available for  
7 appropriation during fiscal year two thousand three.

8        The purpose of this bill is to expire the sum of seven  
9 hundred fifty thousand dollars from the public service com  
10 mission, fund 8623, fiscal year 2003, organization 0926, to  
11 the unappropriated balance in the state fund, general revenue,  
12 for the fiscal year ending the thirtieth day of June, two thou  
13 sand three, to be available for appropriation during fiscal  
14 year two thousand three.

---

## CHAPTER 24

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

---

[Passed March 7, 2002; in effect from passage. Approved by the Governor.]

---



AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of one million five hundred thousand dollars from the board of risk and insurance management—premium tax savings fund, fund 2367, fiscal year 2003, organization 0218.

WHEREAS, The Legislature finds that the account balance in the board of risk and insurance management—premium tax savings fund, fund 2367, fiscal year 2003, organization 0218, will exceed that which is necessary for the purposes for which the account was established; therefore

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

1       That the balance of the funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, two thousand  
3 three, to the board of risk and insurance manage-  
4 ment—premium tax savings fund, fund 2367, fiscal year 2003,  
5 organization 0218, be decreased by expiring the amount of one  
6 million five hundred thousand dollars to the unappropriated  
7 balance of the state fund, general revenue, to be available for  
8 appropriation during fiscal year two thousand three.

9       The purpose of this bill is to expire the sum of one million  
10 five hundred thousand dollars from the board of risk and  
11 insurance management—premium tax savings fund, fund 2367,  
12 fiscal year 2003, organization 0218, to the unappropriated  
13 balance in the state fund, general revenue, for the fiscal year  
14 ending the thirtieth day of June, two thousand three, to be  
15 available for appropriation during fiscal year two thousand  
16 three.

---

## CHAPTER 25

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

---

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, fund 9017, fiscal year 2002, organization 0803, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand two.

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

That the items of the total appropriation from the state road fund, fund 9017, fiscal year 2002, organization 0803, be amended and reduced in the line items as follows:

- 1                    TITLE II—APPROPRIATIONS.
- 2                    **Sec. 2. Appropriations from state road fund.**
- 3                    **DEPARTMENT OF TRANSPORTATION**
- 4                                *97-Division of Highways*
- 5                                (WV Code Chapters 17 and 17C)
- 6                                Fund 9017 FY 2002 Org 0803

7				<b>State</b>
8			<b>Act-</b>	<b>Road</b>
9			<b>ivity</b>	<b>Fund</b>
10	7	Bridge Repair and Replacement . .	273	\$ 2,000,000
11	10	General Operations . . . . .	277	5,784,000
12	13	Appalachian Programs . . . . .	280	30,000,000

13 And, that the items of the total appropriations from the state  
 14 road fund, fund 9017, fiscal year 2002, organization 0803, be  
 15 amended and increased in the line items as follows:

16 TITLE II—APPROPRIATIONS.

17 Sec. 2. Appropriations from state road fund.

18 DEPARTMENT OF TRANSPORTATION

19 *97-Division of Highways*

20 (WV Code Chapters 17 and 17C)

21 Fund 9017 FY 2002 Org 0803

22				<b>State</b>
23			<b>Act-</b>	<b>Road</b>
24			<b>ivity</b>	<b>Fund</b>
25	2	Maintenance . . . . .	237	\$ 7,379,000
26	11	Interstate Construction . . . . .	278	4,000,000
27	14	Nonfederal Aid Construction . . . .	281	4,000,000

28 The purpose of this supplementary appropriation bill is to  
 29 supplement, amend, reduce and increase existing items in the  
 30 aforesaid account for the designated spending unit. The item  
 31 Bridge Repair and Replacement is reduced by two million  
 32 dollars, General Operations is reduced by five million seven  
 33 hundred eighty-four thousand dollars and Appalachian Pro-

34 grams is reduced by thirty million dollars. The item Mainte-  
35 nance is increased by seven million three hundred seventy-nine  
36 thousand dollars, Interstate Construction is increased by four  
37 million dollars and Nonfederal Aid Construction is increased by  
38 four million dollars, for expenditure during the fiscal year  
39 ending the thirtieth day of June, two thousand two.

---

## CHAPTER 26

(S. B. 744 — By Senators Craig, Sharpe, Jackson,  
Prezioso, Plymale, Love, Bowman, Anderson, Edgell,  
Unger, McCabe, Boley and Minear)

---

[Passed March 9, 2002; 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 one hundred nineteen thousand four hundred seventy-seven dollars and seventy-eight cents from the West Virginia cable television advisory board—cable advisory board fund, fund 8609, fiscal year 2002, organization 0924.

WHEREAS, The Legislature finds that the account balance in the West Virginia cable television advisory board—cable advisory board fund, fund 8609, fiscal year 2002, organization 0924, will exceed that which is necessary for the purposes for which the account was established; therefore

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

1 That the amount of one hundred nineteen thousand four  
2 hundred seventy-seven dollars and seventy-eight cents from the  
3 West Virginia cable television advisory board—cable advisory  
4 board fund, fund 8609, fiscal year 2002, organization 0924, be

5 decreased by expiring the above amount to the unappropriated  
6 surplus balance of the state fund, general revenue, to be  
7 available for appropriation during the fiscal year ending the  
8 thirtieth day of June, two thousand two.

9 The purpose of this bill is to expire the sum of one hundred  
10 nineteen thousand four hundred seventy-seven dollars and  
11 seventy-eight cents from the West Virginia cable television  
12 advisory board—cable advisory board fund, fund 8609, fiscal  
13 year 2002, organization 0924, to the unappropriated surplus  
14 balance in the state fund, general revenue, for the fiscal year  
15 ending the thirtieth day of June, two thousand two, to be  
16 available for appropriation during fiscal year two thousand two.

---

## CHAPTER 27

**(S. B. 745 — By Senators Craigo, Sharpe, Jackson,  
Prezioso, Plymale, Love, Bowman, Anderson,  
Edgell, McCabe, Boley and Minear)**

---

[Passed March 9, 2002; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of health and human resources—consolidated medical service fund, fund 8723, fiscal year 2002, organization 0506, 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 during 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 8723, fiscal year 2002, organization 0506, be supplemented and amended by increasing the total appropriation by eight hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF HEALTH AND  
4 HUMAN RESOURCES

5 273—*Consolidated Medical Service Fund*

6 (WV Code Chapter 16)

7 Fund 8723 FY 2002 Org 0506

8		<b>Act-</b>		<b>Federal</b>
9		<b>ivity</b>		<b>Funds</b>

10	1	Unclassified—Total . . . . .	096	\$	800,000
----	---	------------------------------	-----	----	---------

11 The purpose of this supplementary appropriation bill is to  
12 supplement this account in the budget act for the fiscal year  
13 ending the thirtieth day of June, two thousand two, by increas-  
14 ing the existing appropriation for unclassified—total by eight  
15 hundred thousand dollars for expenditure during fiscal year two  
16 thousand two.

---

## CHAPTER 28

**(S. B. 746 — By Senators Craig, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)**

---

[Passed March 9, 2002; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of health and human resources—division of health—central office, fund 8802, fiscal year 2002, organization 0506, 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 during 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 8802, fiscal year 2002, organization 0506, be supplemented and amended by increasing the total appropriation by two million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

**DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES**

*274—Division of Health—*

*Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2002 Org 0506

	<b>Act- ivity</b>	<b>Federal Funds</b>
11 1 Unclassified—Total . . . . .	096 \$	2,000,000

12 The purpose of this supplementary appropriation bill is to  
 13 supplement this account in the budget act for the fiscal year  
 14 ending the thirtieth day of June, two thousand two, by increas-  
 15 ing the existing appropriation for unclassified—total by two  
 16 million dollars for expenditure during fiscal year two thousand  
 17 two.

---

## CHAPTER 29

**(H. B. 4541 — By Delegates Boggs, Proudfoot, Compton,  
Stalnaker, H. White, Ashley and Warner)**

---

[Passed March 8, 2002; 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 the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 1446, fiscal year 2002, organization 1400, be supplemented and amended by increasing the total appropriation by seven hundred fifty-seven thousand dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 EXECUTIVE

4 111a—Department of Agriculture—

5 Donated Food Fund

6 (WV Code Chapter 19)

7 Fund 1446 FY 2002 Org 1400

8		Act-	Other
9		ivity	Funds
10	1 Unclassified—Total . . . . .	096	\$ 757,000

11 The purpose of this supplementary appropriation bill is to  
12 supplement this fund in the budget act for the fiscal year ending  
13 the thirtieth day of June, two thousand two, by increasing the  
14 existing appropriation for unclassified—total by seven hundred  
15 fifty-seven thousand dollars for expenditure during fiscal year  
16 two thousand two.

---

## CHAPTER 30

**(H. B. 4560 — By Delegates Compton,  
Proudfoot, Anderson and Doyle)**

---

[Passed March 8, 2002; 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 education and the arts—division of culture and history—public records and preservation revenue fund, fund 3542, fiscal year 2002, organization 0432, 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 education and the arts—division of culture and history—public records and preservation revenue fund, fund 3542, fiscal year 2002, organization 0432, 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 the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 3542, fiscal year 2002, organization 0432, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 127—Division of Culture and History—

5 Public Records and Preservation Revenue Fund

6 (WV Code Chapters 18 and 18B)

7 Fund 3542 FY 2002 Org 0432

8	9	Act- ivity	Other Funds
10	1 Unclassified—Total . . . . .	096	\$ 100,000

11 The purpose of this supplementary appropriation bill is to  
 12 supplement this fund in the budget act for the fiscal year ending  
 13 the thirtieth day of June, two thousand two, by increasing the  
 14 existing appropriation for unclassified—total by one hundred  
 15 thousand dollars for expenditure during the fiscal year two  
 16 thousand two.

---

## CHAPTER 31

(H. B. 4582 — By Delegates Michael, Boggs, Browning,  
 Warner, H. White, Ashley and G. White)

---

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT expiring funds to the department of administration - board of risk and insurance management - medical liability fund, fund 2368, fiscal year 2002, organization 0218, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of two hundred sixty-six thousand four hundred sixty dollars from the department of administration - board of risk and insurance

management - state special insurance fund, fund 2360, fiscal year 2002, organization 0218.

WHEREAS, The Legislature finds that the account in the department of administration - board of risk and insurance management - state special insurance fund, fund 2360, fiscal year 2002, organization 0218, exceeds that which is necessary for the purposes for which the account was established; therefore

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

1       That the balance of the funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, two thousand  
3 two, department of administration - board of risk and insurance  
4 management - state special insurance fund, fund 2360, fiscal  
5 year 2002, organization 0218, be decreased by expiring the  
6 amount of two hundred sixty-six thousand four hundred sixty  
7 dollars to the balance of the department of administration -  
8 board of risk and insurance management - medical liability  
9 fund, fund 2368, fiscal year 2002, organization 0218, during the  
10 fiscal year two thousand two.

11       The purpose of this bill is to expire the sum of two hundred  
12 sixty-six thousand four hundred sixty dollars from the depart-  
13 ment of administration - board of risk and insurance manage-  
14 ment - state special insurance fund, fund 2360, fiscal year 2002,  
15 organization 0218, to the balance of the department of the  
16 administration - board of risk and insurance management -  
17 medical liability fund, fund 2368, fiscal year 2002, organization  
18 0218, for the fiscal year ending the thirtieth day of June, two  
19 thousand two, to be available for expenditure during the fiscal  
20 year two thousand two.

---

## CHAPTER 32

**(H. B. 4672 — By Delegates Kominar, H. White, Browning,  
Frederick, Anderson, Stalnaker and Proudfoot)**

---

[Passed March 7, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT expiring funds to the balance of the West Virginia economic development authority, fund 3148, fiscal year 2002, organization 0307, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of one million five hundred thousand dollars from the Treasurer's Office - Abandoned Property Claims Trust Fund, fund 1324, fiscal year 2002, organization 1300.

WHEREAS, The Legislature finds that the account balance in the Treasurer's Office - Abandoned Property Claims Trust Fund, fund 1324, fiscal year 2002, organization 1300, will exceed that which is necessary for the purpose for which the account was established; therefore

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

1        That the balance of the West Virginia economic develop  
2        ment authority, fund 3148, fiscal year 2002, organization 0307,  
3        be increased by expiring to that fund one million five hundred  
4        thousand dollars from the Treasurer's Office - Abandoned  
5        Property Claims Trust Fund, fund 1324, fiscal year 2002,  
6        organization 1300 to be available for expenditure during the  
7        fiscal year two thousand two.

8        The purpose of this bill is to expire one million five  
9        hundred thousand dollars from the Treasurer's Office - Aban-  
10       doned Property Claims Trust Fund, fund 1324, fiscal year 2002,  
11       organization 1300 to the balance of the West Virginia economic  
12       development authority, fund 3148, fiscal year 2002, organiza-  
13       tion 0307, for the fiscal year ending the thirtieth day of June,  
14       two thousand two, to be available for expenditure during the  
15       fiscal year two thousand two.

---

## CHAPTER 33

(H. B. 4674 — By Delegates Compton, Boggs,  
Keener, Browning and Doyle)

---

[Passed March 9, 2002; 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 administration—division of finance—public employees insurance reserve fund, fund 2207, fiscal year 2002, organization 0209, 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 administration—division of finance—public employees insurance reserve fund, fund 2207, fiscal year 2002, organization 0209, 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 the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 2207, fiscal year 2002, organization 0209, be supplemented and amended by increasing the total appropriation by eight hundred thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3                    **DEPARTMENT OF ADMINISTRATION**

4                    *119—Division of Finance—*

5                    *Public Employees Insurance Reserve Fund*

6                    (WV Code Chapter 5A)

7                    Fund 2207 FY 2002 Org 0209

8			<b>Act-</b>		
9			<b>ivity</b>		<b>Other</b>
					<b>Funds</b>

10	1	Public Employees Insurance Reserve			
11	2	Fund—Transfer . . . . .	903	\$	800,000

12            The purpose of this supplementary appropriation bill is to  
 13 supplement this fund in the budget act for the fiscal year ending  
 14 the thirtieth day of June, two thousand two, by increasing the  
 15 existing appropriation for public employees insurance reserve  
 16 fund—transfer by eight hundred thousand dollars for expendi-  
 17 ture during the fiscal year two thousand two.

---

## CHAPTER 34

**(H. B. 4675 — By Delegates Hall, Keener and Ashley)**

---

[Passed March 9, 2002; 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 tax and revenue—tax division—special audit and investigative unit, fund 7073, fiscal year 2002, organization 0702, 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 tax and revenue—tax division—special audit and investigative unit, fund 7073, fiscal year 2002, organization 0702, 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 the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 7073, fiscal year 2002, organization 0702, be supplemented and amended by increasing the total appropriation by eighty-four thousand four hundred ninety-five dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF TAX AND REVENUE

4 168—Tax Division—

5 Special Audit and Investigative Unit

6 (WV Code Chapter 11)

7 Fund 7073 FY 2002 Org 0702

8	9		Act- ivity	Other Funds
10	1	Personal Services . . . . .	001	\$ 40,423
11	3	Employee Benefits . . . . .	010	6,872
12	4	Unclassified . . . . .	099	37,200



13       The purpose of this supplementary appropriation bill is to  
14 supplement this fund in the budget act for the fiscal year ending  
15 the thirtieth day of June, two thousand two, by increasing the  
16 existing appropriation for personal services by forty thousand  
17 four hundred twenty-three dollars, employee benefits by six  
18 thousand eight hundred seventy-two dollars and unclassified by  
19 thirty-seven thousand two hundred dollars for expenditure  
20 during the fiscal year two thousand two.

---

## CHAPTER 35

**(H. B. 4677 — By Delegates Campbell, Proudfoot,  
Leach, Stalnaker, Hall, Fletcher and Anderson)**

---

[Passed March 9, 2002; 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 education and the arts—office of the secretary—lottery education fund interest earnings—control account, fund 3508, fiscal year 2002, organization 0431, 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 education and the arts—office of the secretary—lottery education fund interest earnings—control account, fund 3508, fiscal year 2002, organization 0431, 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 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 two hundred sixty-nine thousand four hundred eighty-three dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 126—Office of the Secretary—

5 Lottery Education Fund Interest Earnings—

6 Control Account

7 (WV Code Chapter 29)

8 Fund 3508 FY 2002 Org 0431

9 10	Act- ivity	Other Funds
11 1a Division of Rehabilitation		
12 1b Services .....	XXX	\$269,483

13 The purpose of this supplementary appropriation bill is to  
14 supplement this account in the budget act for the fiscal year  
15 ending the thirtieth day of June, two thousand two, by adding  
16 two hundred sixty-nine thousand four hundred eighty-three  
17 dollars to a new line item of appropriation for division of  
18 rehabilitation services for expenditure during the fiscal year two  
19 thousand two.

---

## CHAPTER 36

(H. B. 4678 — By Delegates Doyle, Leach, Browning,  
Compton, Boggs, Hall and Ashley)

---

[Passed March 9, 2002; 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 health and human resources—West Virginia board of medicine, fund 5106, fiscal year 2002, organization 0506, 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 health and human resources—West Virginia board of medicine, fund 5106, fiscal year 2002, organization 0506, 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 the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 5106, fiscal year 2002, organization 0506, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars as follows:

1                    TITLE II—APPROPRIATIONS.

2                    **Sec. 3. Appropriations from other funds.**

3

**DEPARTMENT OF HEALTH**

4

**AND HUMAN RESOURCES**

5

*144—WV Board of Medicine*

6

(WV Code Chapter 30)

7

Fund 5106 FY 2002 Org 0506

8

**Act-**

**Other**

9

**ivity**

**Funds**

10 1 Unclassified—Total . . . . . 096 \$ 100,000

11 The purpose of this supplementary appropriation bill is to  
12 supplement this fund in the budget act for the fiscal year ending  
13 the thirtieth day of June, two thousand two, by increasing the  
14 existing appropriation for unclassified—total by one hundred  
15 thousand dollars for expenditure during the fiscal year two  
16 thousand two.



**CHAPTER 37**

**(S. B. 547— By Senators Bailey, Anderson, Unger and Caldwell)**



[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section seventeen, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for a monthly administrative allowance for certain members of rank in the West Virginia national guard.

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

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

**ARTICLE 1B. NATIONAL GUARD.**

**§15-1B-17. Command pay; inspections; compensation for clerical services and care of property.**

1       (a) There may be paid to each commander of a brigade,  
2 regiment, air wing, army group or other corresponding type  
3 organization one hundred dollars per month and to each  
4 commander of a battalion, army squadron, air group or other  
5 equivalent type organization fifty dollars per month and to each  
6 commander of a company, air squadron or other equivalent type  
7 organization twenty-five dollars per month, payable quarterly,  
8 to be known as command pay.

9       (b) There shall be allowed to each headquarters of a  
10 brigade, regiment, air wing, army group or equivalent type  
11 organization the sum of one hundred dollars per month and  
12 each headquarters of a battalion, army squadron, air group or  
13 corresponding type organization the sum of fifty dollars per  
14 month for clerical services; and to each company air squadron  
15 or corresponding type unit the sum of twenty-five dollars per  
16 month for like services, payable quarterly. The commandant of  
17 the West Virginia military academy shall be allowed the sum of  
18 twenty-five dollars a month, payable quarterly, for like services.

19       (c) At the discretion of the adjutant general, there may be  
20 paid to the enlisted man or woman who is directly responsible  
21 for the care and custody of the federal and state property of  
22 each organization or unit the sum of ten dollars per month,  
23 payable quarterly, upon the certificate of his or her command-  
24 ing officer that he or she has faithfully and satisfactorily  
25 performed the duties assigned him or her and accounted for all  
26 property entrusted to his or her care.

27 (d) The adjutant general shall determine the amount of  
28 entitlement to command pay and clerical pay, not to exceed the  
29 amounts set forth in subsections (a) and (b) of this section,  
30 using organizational charts showing chain of command and  
31 authorized strengths and defining other equivalent type organi-  
32 zations.

33 (e) Notwithstanding any other provision of this code, there  
34 shall be paid to the command administrative officer of the  
35 headquarters of the West Virginia army national guard and to  
36 the executive staff support officer of the headquarters of the  
37 West Virginia air national guard, or to the officer occupying a  
38 similar position, regardless of title, one hundred dollars per  
39 month, payable quarterly, to be known as an administrative  
40 allowance.

41 (f) The state command sergeant of the West Virginia army  
42 national guard and the command chief master sergeant of the  
43 West Virginia air national guard shall receive a monthly  
44 administrative allowance of one hundred dollars per month. The  
45 command sergeant major or command chief master sergeant of  
46 a unit authorized under the command of a commander in the  
47 rank of colonel shall receive a monthly administrative allow-  
48 ance of seventy-five dollars per month. The command sergeant  
49 major or command chief master sergeant of a unit authorized  
50 under the command of a commander in the rank of lieutenant  
51 colonel shall receive a monthly administrative allowance of  
52 forty-five dollars per month.

---

## CHAPTER 38

**(Com. Sub. for S. B. 501 — By Senator Tomblin, Mr. President)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirty-four, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment of employees of the state auditor to serve as deputy commissioners of delinquent and nonentered lands; exempting auditor's employees from residency requirements; and providing compensation be credited to the auditor.

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

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

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

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

1       (a) The auditor shall appoint for each county in the state a  
2 deputy commissioner of delinquent and nonentered lands. The  
3 auditor shall make new appointments, from time to time  
4 thereafter, whenever vacancies occur or when, in the auditor's  
5 judgment, it is advisable. The auditor may promulgate rules  
6 respecting the tenure of deputy commissioners. In the absence  
7 of rules, the deputy commissioner for each county shall, so long  
8 as he or she satisfies the requirements of this section in respect  
9 to professional qualifications and bonding, continue to act  
10 without reappointment until the auditor designates his or her  
11 successor.

12       (b) The auditor shall appoint deputy commissioners in such  
13 numbers and to serve such counties as the auditor considers  
14 advisable to effect the purposes of this article. Appointments,  
15 other than an employee of the auditor's office, shall be limited  
16 to persons duly licensed to practice law in this state. Except for  
17 an employee of the auditor's office, any person appointed as  
18 deputy commissioner for a single county shall reside in that  
19 county. Any person appointed as deputy commissioner for more  
20 than one county shall reside in one of the counties for which he  
21 or she has been appointed.

22 (c) Whenever in respect to any land the deputy commis-  
23 sioner, in his or her own judgment or in the opinion of the  
24 auditor, is disqualified or otherwise unable to serve because of  
25 his or her personal interest, because of his or her representation  
26 of clients in matters affecting the land, because of vacancies or  
27 failure to act, or whenever the auditor considers it in the best  
28 interest of the state, the auditor may appoint an employee of his  
29 or her office to serve as a deputy commissioner relating to the  
30 land. When a deputy commissioner is an employee of the  
31 auditor, all compensation and commissions that would other-  
32 wise be paid to a deputy commissioner shall be credited by the  
33 sheriff to the auditor for deposit into the operating fund created  
34 pursuant to section thirty-six of this article.

35 (d) The deputy commissioner is subject to the orders and  
36 control of the auditor, is accountable to him or her and serves  
37 as the auditor's local agent in the county. The deputy commis-  
38 sioner shall do whatever is required by the auditor or by the  
39 provisions of this article. The deputy commissioner, before  
40 entering upon his or her duties, shall give a bond, with satisfac-  
41 tory corporate surety, conditioned upon the faithful perfor-  
42 mance of his or her duties and the payment of any forfeitures  
43 incurred. The penalty of the bond shall be at least twenty-five  
44 thousand dollars and not more than one hundred thousand  
45 dollars, as the auditor may direct. The premium for the bond  
46 shall be paid by the auditor out of the operating fund for the  
47 land department in his or her office.

---

## CHAPTER 39

**(Com. Sub. for H. B. 4379 — By Delegate R. M. Thompson)**

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one, two, four, five, six, seven, eight, eleven and twelve, article seventeen, chapter thirty-



one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of mortgage brokers, lenders, servicers and loan originators; defining terms; requiring licensure of loan originators; increasing the bond amount required for mortgage brokers; creating licensing structure for loan originators; clarifying that only lender and broker licensees pay the per loan fee; providing for the refusal, revocation and suspension of loan originator licenses; providing for renewal of loan originator's license every five years or upon a change in the sponsoring mortgage broker; amending the continuing legal education requirements for brokers and loan originators; requiring a net tangible benefit to the borrower for all refinancings of mortgage loans within twenty-four months, and clarifying language relating to allowable charges by licensees.

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

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

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

- §31-17-1. Definitions and general provisions.
- §31-17-2. License required for lender, broker or loan originator; exemptions.
- §31-17-4. Applications for licences; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.
- §31-17-5. Refusal or issuance of license.
- §31-17-6. Minimum net worth to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.
- §31-17-7. Form of license; posting required; license not transferable or assignable; license may not be franchised; renewal of license.
- §31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

§31-17-11. Records and reports; examination of records; analysis.

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

**§31-17-1. Definitions and general provisions.**

1 As used in this article:

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

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

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

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

24 (5) "Broker" means any person acting in the regular course  
25 of business who, for a fee or commission or other consideration,  
26 negotiates or arranges, or who offers to negotiate or arrange, or  
27 originates, processes or assigns a primary or subordinate

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

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

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

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

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

56 (10) "Applicant" means a person who has applied for a  
57 lender's, broker's or loan originator's license;

58       (11) “Licensee” means any person duly licensed by the  
59 commissioner under the provisions of this article as a lender,  
60 broker or loan originator;

61       (12) “Amount financed” means the total of the following  
62 items to the extent that payment is deferred:

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

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

69       (c) If not included in the cash price:

70       (i) Any applicable sales, use, privilege, excise or documen-  
71 tary stamp taxes;

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

74       (iii) Additional charges permitted by this article;

75       (13) “Affiliated” means persons under the same ownership  
76 or management control. As to corporations, limited liability  
77 companies or partnerships, where common owners manage or  
78 control a majority of the stock, membership interests or general  
79 partnership interests of one or more such corporations, limited  
80 liability companies or partnerships, those persons are consid-  
81 ered affiliated. In addition, persons under the ownership or  
82 management control of the members of an immediate family  
83 shall be considered affiliated. For purposes of this section,  
84 “immediate family” means mother, stepmother, father, stepfa-  
85 ther, sister, stepsister, brother, stepbrother, spouse, child and  
86 grandchildren;

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

94 (15) "Loan originator" means an individual who, on behalf  
95 of a single licensed mortgage broker, under the direct supervi-  
96 sion and control of such mortgage broker, and in exchange for  
97 compensation by that broker, performs any of the services  
98 described in subsection (5) of this section.

**§31-17-2. License required for lender, broker or loan originator;  
exemptions.**

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

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

10 (1) Federally insured depository institutions;

11 (2) Regulated consumer lender licensees;

12 (3) Insurance companies;

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

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

19 (6) By a nonprofit community development organization  
20 making mortgage loans to promote home ownership or im-  
21 provements for the disadvantaged which loans are subject to  
22 federal, state, county or municipal government supervision and  
23 oversight; or

24 (7) Habitat for humanity international, inc. and its affiliates  
25 providing low-income housing within this state.

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

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

43 (d) The placement or sale for securitization of a primary or  
44 subordinate mortgage loan into a secondary market by a  
45 licensee may not subject the warehouser or final securitization  
46 holder or trustee to the provisions of this article: Provided, That  
47 the warehouser, final securitization holder or trustee under an

48 arrangement is either a licensee, or person or entity entitled to  
49 make exempt loans of that type under this section, or the loan  
50 is held with right of recourse to a licensee.

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

1 (a) Application for a lender's or broker's license shall each  
2 year be submitted in writing under oath, in the form prescribed  
3 by the commissioner, and shall contain the full name and  
4 address of the applicant and, if the applicant is a partnership,  
5 limited liability company or association, of every member  
6 thereof, and, if a corporation, of each officer, director and  
7 owner of ten percent or more of the capital stock thereof and  
8 further information as the commissioner may reasonably  
9 require. Any application shall also disclose the location at  
10 which the business of lender or broker is to be conducted.  
11 Application for a loan originator's license shall be initially  
12 submitted prior to the first day of September, two thousand two,  
13 and thereafter in every fifth year beginning in two thousand  
14 five. If the loan originator changes sponsoring mortgage  
15 brokers, a new application must be submitted in accordance  
16 with this article.

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

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

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

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

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

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

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

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

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



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

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

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

73       (d) Application for a loan originator license shall be  
74 submitted by the sponsoring mortgage broker prior to the loan  
75 originator engaging in mortgage activity, in writing under oath,  
76 on a form prescribed by the commissioner. At the time of  
77 making application for a loan originator license, the loan  
78 originator therefor shall:

79       (1) Submit a statement under oath that he or she originates  
80 loans exclusively for one broker, together with an acknowledg-  
81 ment of employment by the sponsoring mortgage broker;

82       (2) Pay to the commissioner a license fee of one hundred  
83 fifty dollars plus the actual cost of fingerprint processing;

84       (3) Disclose the location at which the business of the  
85 sponsoring mortgage broker is to be conducted by the licensed  
86 loan originator; and

87 (4) If at any time a loan originator ceases working for the  
88 sponsoring mortgage broker indicated on the license applica-  
89 tion, such loan originator and sponsoring mortgage broker shall  
90 notify the commissioner within fifteen business days and return  
91 the original loan originator license to the division of banking.  
92 The license of a loan originator is not effective during any  
93 period when that person is not employed by a sponsoring  
94 mortgage broker licensed under this article, and a loan origina-  
95 tor shall not be employed simultaneously by more than one  
96 sponsoring mortgage broker.

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

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

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

112 (h) Every broker and lender licensee shall pay a fee of five  
113 dollars for each residential mortgage loan originated, made or  
114 brokered in a calendar year. This fee shall be paid semiannually  
115 to the division of banking and remitted with the report required  
116 pursuant to subsection (b), section eleven of this article for  
117 loans made, brokered or originated during the last six months  
118 of the previous calendar year and with the lender or broker

119 license renewal application required pursuant to subsection (b),  
120 section seven of this article for the loans made, brokered or  
121 originated in the first six months of that calendar year. In the  
122 event a licensee ceases operation, it shall remit any fees due  
123 since the last reporting period when it relinquishes its license.

**§31-17-5. Refusal or issuance of license.**

1 (a) Upon an applicant's full compliance with the provisions  
2 of section four of this article, the commissioner shall investigate  
3 the relevant facts with regard to the applicant and his or her  
4 application for a lender's, broker's or loan originator's license,  
5 as the case may be. Upon the basis of the application and all  
6 other information before him or her, the commissioner shall  
7 make and enter an order denying the application and refusing  
8 the license sought if the commissioner finds that:

9 (1) The applicant does not have available the net worth  
10 required by the provisions of section four of this article, if  
11 applicable;

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

18 (3) The applicant has done any act or has failed or refused  
19 to perform any duty or obligation for which the license sought  
20 could be suspended or revoked were it then issued and out-  
21 standing.

22 Otherwise, the commissioner shall issue to the applicant a  
23 lender's, broker's or loan originator's license which shall entitle  
24 the applicant to engage in the business of lender, broker or loan

25 originator, as the case may be, during the period, unless sooner  
26 suspended or revoked, for which the license is issued.

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

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

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

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

1 (a) It shall be stated on the license, whether it is a lender's,  
2 broker's or loan originator's license, the location at which the  
3 business is to be conducted and the full name of the licensee. A  
4 broker's license shall be conspicuously posted in the licensee's  
5 place of business in this state and a lender's license shall be  
6 conspicuously posted in the licensee's place of business if in  
7 this state. No license shall be transferable or assignable. No

8 licensee may offer a franchise under that license to another  
9 person. The commissioner may allow licensees to have branch  
10 offices without requiring additional licenses provided the  
11 location of all branch offices is registered with the division of  
12 banking by the licensee. Whenever a licensee changes his or her  
13 place of business to a location other than that set forth in his or  
14 her license and branch registration, he or she shall give written  
15 notice thirty days prior to such change to the commissioner.

16 (b) Every lender's or broker's license shall, unless sooner  
17 suspended or revoked, expire on the thirty-first day of Decem-  
18 ber of each year and any license may be renewed each year in  
19 the same manner, for the same license fee or fees specified  
20 above and upon the same basis as an original license is issued  
21 in accordance with the provisions of section five of this article.  
22 Every loan originator's license shall, unless sooner suspended  
23 or revoked, expire on the thirtieth day of June of every fifth  
24 year beginning in two thousand five, and any license may be  
25 renewed in the same manner, for the same license fee specified  
26 above and in accordance with section five of this article. All  
27 applications for the renewal of licenses shall be filed with the  
28 commissioner at least ninety days before the expiration thereof.

29 (c) Beginning with renewal applications in the year two  
30 thousand two, a broker's license may not be renewed unless that  
31 licensee's executive officer certifies to the commissioner on the  
32 renewal application that every loan originator employed by that  
33 licensed broker has received at least seven hours of continuing  
34 education in the prior year. Both the course of instruction and  
35 the entity providing such continuing education must receive  
36 prior approval from the commissioner as satisfying the continu-  
37 ing education requirement established herein before the  
38 commissioner may accept a certification from a licensee. The  
39 commissioner shall make available a list of entities and courses  
40 that have been approved for continuing education hours.

**§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.**

1       (a) The maximum rate of finance charges on or in connection with any subordinate mortgage loan may not exceed  
2       eighteen percent per year on the unpaid balance of the amount  
3       financed.  
4

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

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

15       (d) Where loan origination fees, investigation fees or points  
16       have been charged by the licensee, the charges may not be  
17       imposed again in any refinancing of that loan or any additional  
18       loan on that property made within twenty-four months thereof,  
19       unless the new loan has a reasonable, tangible net benefit to the  
20       borrower considering all of the circumstances, including the  
21       terms of both the new and the refinanced loans, the cost of the  
22       new loan and the borrower's circumstances. The licensee shall  
23       document this benefit in writing on a form prescribed by the  
24       commissioner and maintain such documentation in the loan file.  
25       To the extent this subdivision overrides the preemption on  
26       limiting points and other charges on first lien residential  
27       mortgage loans contained in the United States Depository

28 Institutions Deregulation and Monetary Control Act of 1980, 12  
29 U.S.C. §1735f-7a, the state law limitations contained in this  
30 section shall apply.

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

39 (f) Hazard insurance may be required by the lender. The  
40 charges for any insurance shall not exceed the standard rate  
41 approved by the insurance commissioner for the insurance.  
42 Proof of all insurance in connection with primary and subordi-  
43 nate mortgage loans subject to this article shall be furnished to  
44 the borrower within thirty days from and after the date of  
45 application therefor by the borrower.

46 (g) Except for fees for services provided by unrelated third  
47 parties for appraisals, inspections, title searches and credit  
48 reports, no application fee may be allowed whether or not the  
49 mortgage loan is consummated; however, the borrower may be  
50 required to reimburse the licensee for actual expenses incurred  
51 by the licensee in a purchase money transaction after accep-  
52 tance and approval of a mortgage loan proposal made in  
53 accordance with the provisions of this article which is not  
54 consummated because of:

55 (1) The borrower’s willful failure to close the loan; or

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

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

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

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

69 (1) Any power of attorney to confess judgment;

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

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

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

81 (5) A requirement for compulsory arbitration which does  
82 not comply with federal law; or

83 (6) Blank or blanks to be filled in after the consummation  
84 of the loan. A borrower must be given a copy of every signed  
85 document executed by the borrower at the time of closing.



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

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

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

101 (1) Collect a fee not disclosed to the borrower; collect any  
102 attorney fee at closing in excess of the fee that has been or will  
103 be remitted to the attorney; collect a fee for a product or service  
104 where the product or service is not actually provided; misrep-  
105 resent the amount charged by or paid to a third party for a product  
106 or service; or collect duplicate fee or points to act as both  
107 broker and lender for the same mortgage loan, however, fees  
108 and points may be divided between the broker and the lender as  
109 they agree, but may not exceed the total charges otherwise  
110 permitted under this article: *Provided*, That the fact of any fee,  
111 point or compensation is disclosed to the borrower consistent  
112 with the solicitation representation made to the borrower;

113 (2) Compensate, whether directly or indirectly, coerce or  
114 intimidate an appraiser for the purpose of influencing the  
115 independent judgment of the appraiser with respect to the value  
116 of real estate that is to be covered by a deed of trust or is being

117 offered as security according to an application for a primary or  
118 subordinate mortgage loan;

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

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

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

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

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

163 (8) Secure a primary or subordinate mortgage loan in a  
164 principal amount that, when added to the aggregate total of the  
165 outstanding principal balances of all other primary or subordi-  
166 nate mortgage loans secured by the same property, exceeds the  
167 fair market value of the property on the date that the latest  
168 mortgage loan is made. For purposes of this paragraph, a broker  
169 or lender may rely upon a bona fide written appraisal of the  
170 property made by an independent third-party appraiser, duly  
171 licensed or certified by the West Virginia real estate appraiser  
172 licensing and certification board and prepared in compliance  
173 with the uniform standards of professional appraisal practice;

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

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

**§31-17-11. Records and reports; examination of records; analysis.**

1           (a) Every lender and broker licensee shall maintain at his or  
2 her place of business in this state, if any, or if he or she has no  
3 place of business in this state at his or her principal place of  
4 business outside this state, such books, accounts and records  
5 relating to all transactions within this article as are necessary to  
6 enable the commissioner to enforce the provisions of this  
7 article. All the books, accounts and records shall be preserved,  
8 exhibited to the commissioner and kept available as provided  
9 herein for the reasonable period of time as the commissioner  
10 may by rules require. The commissioner is hereby authorized  
11 to prescribe by rules the minimum information to be shown in  
12 the books, accounts and records.

13           (b) Each lender and broker licensee shall file with the  
14 commissioner on or before the fifteenth day of March of each  
15 year a report under oath or affirmation concerning his or her  
16 business and operations in this state for the preceding license  
17 year in the form prescribed by the commissioner.

18           (c) The commissioner may, at his or her discretion, make or  
19 cause to be made an examination of the books, accounts and  
20 records of every lender or broker licensee pertaining to primary  
21 and subordinate mortgage loans made in this state under the  
22 provisions of this article, for the purpose of determining  
23 whether each lender and broker licensee is complying with the  
24 provisions hereof and for the purpose of verifying each lender  
25 or broker licensee's annual report. If the examination is made  
26 outside this state, the lender or broker licensee shall pay the  
27 cost thereof in like manner as applicants are required to pay the  
28 cost of investigations outside this state.

29           (d) The commissioner shall publish annually an aggregate  
30 analysis of the information furnished in accordance with the  
31 provisions of subsection (b) or (c) of this section, but the

32 individual reports shall not be public records and shall not be  
33 open to public inspection.

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

1 (a) The commissioner may suspend or revoke any broker,  
2 lender, or loan originator license issued hereunder if he or she  
3 finds that the licensee or any owner, director, officer, member,  
4 partner, stockholder, employee or agent of the licensee:

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

8 (2) Has knowingly made any material misstatement in the  
9 application for the license; or

10 (3) Does not have available the net worth required by the  
11 provisions of section four of this article, if applicable; or

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

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

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

22 (7) Has otherwise demonstrated bad faith, dishonesty or any  
23 other quality indicating that the business of the licensee in this

24 state has not been or will not be conducted honestly or fairly  
25 within the purpose of this article. It shall be a demonstration of  
26 bad faith and an unfair or deceptive act or practice to engage in  
27 a pattern of making loans where the consumer has insufficient  
28 sources of income to timely repay the debt and the lender had  
29 the primary intent to acquire the property upon default rather  
30 than to derive profit from the loan. This section may not limit  
31 any right the consumer may have to bring an action for a  
32 violation of section one hundred four, article six, chapter forty-  
33 six-a of this code in an individual case.

34 The commissioner may also suspend or revoke the license  
35 of a licensee if he or she finds the existence of any ground upon  
36 which the license could have been refused or any ground which  
37 would be cause for refusing a license to the licensee were he or  
38 she then applying for the same. The commissioner may also  
39 suspend or revoke the license of a licensee pursuant to his or  
40 her authority under section thirteen, article two, chapter thirty-  
41 one-a of this code.

42 (b) The suspension or revocation of the license of any  
43 licensee shall not impair or affect the obligation of any preexist-  
44 ing lawful mortgage loan between the licensee and any obligor.

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

50 (d) In addition to the authority conferred under this section,  
51 the commissioner may impose a fine or penalty not exceeding  
52 one thousand dollars upon any lender or broker required to be  
53 licensed under this chapter who the commissioner determines  
54 has violated any of the provisions of this chapter. For the  
55 purposes of this section, each separate violation is subject to the

56 fine or penalty herein prescribed and each day after the date of  
57 notification, excluding Sundays and holidays, that an unli-  
58 censed person engages in the business or holds himself or  
59 herself out to the general public as a mortgage lender or broker  
60 shall constitute a separate violation.

---

## CHAPTER 40

(Com. Sub. for S. B. 282 — By Senators Minard,  
Kessler, Helmick and Hunter)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of the commissioner of banking; and eliminating the requirement that the commissioner maintain an office at the capitol complex.

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

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

### **ARTICLE 2. DIVISION OF BANKING.**

#### **§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.**

- 1 (a) Subject to the powers vested in the board by article three
- 2 of this chapter, the commissioner has supervision and jurisdic-
- 3 tion over state banks, regulated consumer lenders, second

4 mortgage lenders and brokers, credit unions and all other  
5 persons now or hereafter made subject to his or her supervision  
6 or jurisdiction. All powers, duties, rights and privileges vested  
7 in the division are hereby vested in the commissioner. He or she  
8 shall be the chief executive officer of the division of banking  
9 and is responsible for the division's organization, services and  
10 personnel and for the orderly and efficient administration,  
11 enforcement and execution of the provisions of this chapter and  
12 all laws vesting authority or powers in or prescribing duties or  
13 functions for the division or the commissioner.

14 (b) The commissioner shall:

15 (1) Maintain an office for the division and there keep a  
16 complete record of all the division's transactions, of the  
17 financial conditions of all financial institutions and records of  
18 the activities of other persons as the commissioner considers  
19 important. Notwithstanding any other provision of this code,  
20 heretofore or hereafter enacted, the records relating to the  
21 financial condition of any financial institution and any informa-  
22 tion contained in the records shall be confidential for the use of  
23 the commissioner and authorized personnel of the division of  
24 banking. No person shall divulge any information contained in  
25 any records except as authorized in this subdivision in response  
26 to a valid subpoena or subpoena duces tecum issued pursuant to  
27 law in a criminal proceeding or in a civil enforcement action  
28 brought by the state or federal regulatory authorities. Subpoenas  
29 shall first be directed to the commissioner, who shall authorize  
30 disclosure of relevant records and information from the records  
31 for good cause, upon imposing terms and conditions considered  
32 necessary to protect the confidential nature of the records, the  
33 financial integrity of the financial institution or the person to  
34 which the records relate, and the legitimate privacy interests of  
35 any individual named in the records. Conformity with federal  
36 procedures shall be sought where the institution maintains  
37 federal deposit insurance. The commissioner has and may



38 exercise reasonable discretion as to the time, manner and extent  
39 the other records in his or her office and the information  
40 contained in the records are available for public examination;

41 (2) Require all financial institutions to comply with all the  
42 provisions of this chapter and other applicable laws, or any rule  
43 promulgated or order issued thereunder;

44 (3) Investigate all alleged violations of this chapter and all  
45 other laws which he or she is required to enforce and of any rule  
46 promulgated or order issued thereunder; and

47 (4) Require a criminal background investigation, including  
48 fingerprint checks, of each: (A) Applicant seeking approval to  
49 charter and/or control a state bank, state credit union, or a  
50 foreign bank state agency or representative office; (B) applicant  
51 seeking a license to engage in the business of money transmis-  
52 sion, currency exchange, or other activity regulated under  
53 article two, chapter thirty-two-a of this code; (C) applicant  
54 subject to the commissioner's supervision seeking a license to  
55 engage in the business of regulated consumer lending, mortgage  
56 lending or brokering; and (D) division of banking financial  
57 institutions regulatory employee applicant, to be made through  
58 the West Virginia state police and the federal bureau of  
59 investigation: *Provided*, That where the applicant is a company  
60 or entity already subject to supervision and regulation by the  
61 federal reserve board or other federal bank, thrift or credit union  
62 regulator, or is a direct or indirect subsidiary of a company or  
63 entity subject to the supervision and regulation, or where the  
64 applicant is a company subject to the supervision and regulation  
65 of the federal securities and exchange commission whose stock  
66 is publicly traded on a registered exchange or through the  
67 national association of securities dealers automated quotation  
68 system, or the applicant is a direct or indirect subsidiary of such  
69 a company, the investigation into criminal background is not  
70 required. The provisions of this subdivision are not applicable

71 to applicants seeking interim bank charters organized solely for  
72 the purpose of facilitating the acquisition of another bank  
73 pursuant to section five, article four of this chapter: *Provided,*  
74 *however,* That where a nonexempt applicant under this subdivi-  
75 sion is not a natural person, the principals of the applicant are  
76 subject to the requirements of this subdivision. As used in this  
77 subdivision, the term "principals" means the chief executive  
78 officer, regardless of title, managing partner if a partnership,  
79 members of the organizing group if no chief executive officer  
80 has yet been appointed, trustee or other person controlling the  
81 conduct of the affairs of a licensee. A person controlling ten  
82 percent or more of the stock of any corporate applicant shall be  
83 considered to be a principal under this provision.

84 (c) In addition to all other authority and powers vested in  
85 the commissioner by provisions of this chapter and other  
86 applicable laws, the commissioner may:

87 (1) Provide for the organization of the division and the  
88 procedures and practices of the division and implement the  
89 procedures and practices by the promulgation of rules and  
90 forms as appropriate and the rules shall be promulgated in  
91 accordance with article three, chapter twenty-nine-a of this  
92 code;

93 (2) Employ, direct, discipline, discharge and establish  
94 qualifications and duties for all personnel for the division,  
95 including, but not limited to, examiners, assistant examiners,  
96 conservators and receivers, establish the amount and condition  
97 of bonds for the personnel he or she considers appropriate and  
98 pay the premiums on the bonds and, if he or she elects, have all  
99 personnel subject to and under the classified service of the state  
100 personnel division;

101 (3) Cooperate with organizations, agencies, committees and  
102 other representatives of financial institutions of the state in

103 connection with schools, seminars, conferences and other  
104 meetings to improve the responsibilities, services and stability  
105 of the financial institutions;

106 (4) In addition to the examinations required by section six  
107 of this article, inspect, examine and audit the books, records,  
108 accounts and papers of all financial institutions at such times as  
109 circumstances in his or her opinion may warrant;

110 (5) Call for and require any data, reports and information  
111 from financial institutions under his or her jurisdiction, at such  
112 times and in such form, content and detail considered necessary  
113 by him or her in the faithful discharge of his or her duties and  
114 responsibilities in the supervision of the financial institutions;

115 (6) Subject to the powers vested in the board by article  
116 three of this chapter, supervise the location, organization,  
117 practices and procedures of financial institutions and, without  
118 limitation on the general powers of supervision of financial  
119 institutions, require financial institutions to:

120 (A) Maintain their accounts consistent with rules prescribed  
121 by the commissioner and in accordance with generally accepted  
122 accounting practices;

123 (B) Observe methods and standards which he or she may  
124 prescribe for determining the value of various types of assets;

125 (C) Charge off the whole or any part of an asset which at  
126 the time of his or her action could not lawfully be acquired;

127 (D) Write down an asset to its market value;

128 (E) Record or file writings creating or evidencing liens or  
129 other interests in property;

130 (F) Obtain financial statements from prospective and  
131 existing borrowers;

132 (G) Obtain insurance against damage and loss to real estate  
133 and personal property taken as security;

134 (H) Maintain adequate insurance against other risks as he  
135 or she may determine to be necessary and appropriate for the  
136 protection of depositors and the public;

137 (I) Maintain an adequate fidelity bond or bonds on its  
138 officers and employees;

139 (J) Take other action that in his or her judgment is required  
140 of the institution in order to maintain its stability, integrity and  
141 security as required by law and all rules promulgated by him or  
142 her; and

143 (K) Verify any or all asset or liability accounts;

144 (7) Subject to the powers vested in the board by article  
145 three of this chapter, receive from any person or persons and  
146 consider any request, petition or application relating to the  
147 organization, location, conduct, services, policies and proce-  
148 dures of any financial institution and to act on the request,  
149 petition or application in accordance with any provisions of law  
150 applicable thereto;

151 (8) In connection with the investigations required by  
152 subdivision (3), subsection (b) of this section, issue subpoenas  
153 and subpoenas duces tecum, administer oaths, examine persons  
154 under oath, and hold and conduct hearings. Any subpoenas or  
155 subpoenas duces tecum shall be issued, served and enforced in  
156 the manner provided in section one, article five, chapter twenty-  
157 nine-a of this code. Any person appearing and testifying at a  
158 hearing may be accompanied by an attorney employed by him  
159 or her;

160 (9) Issue declaratory rulings in accordance with the  
161 provisions of section one, article four, chapter twenty-nine-a of  
162 this code;

163 (10) Study and survey the location, size and services of  
164 financial institutions, the geographic, industrial, economic and  
165 population factors affecting the agricultural, commercial and  
166 social life of the state and the needs for reducing, expanding or  
167 otherwise modifying the services and facilities of financial  
168 institutions in the various parts of the state and compile and  
169 keep current data thereon to aid and guide him or her in the  
170 administration of the duties of his or her office;

171 (11) Implement all of the provisions of this chapter, except  
172 the provisions of article three of this chapter, and all other laws  
173 which he or she is empowered to administer and enforce by the  
174 promulgation of rules in accordance with the provisions of  
175 article three, chapter twenty-nine-a of this code;

176 (12) Implement the provisions of chapter forty-six-a of this  
177 code applicable to consumer loans and consumer credit sales by  
178 the promulgation of rules in accordance with the provisions of  
179 article three, chapter twenty-nine-a of this code as long as the  
180 rules do not conflict with any rules promulgated by the state's  
181 attorney general;

182 (13) Foster and encourage a working relationship between  
183 the division of banking and financial institutions, credit,  
184 consumer, mercantile and other commercial and finance groups  
185 and interests in the state in order to make current appraisals of  
186 the quality, stability and availability of the services and  
187 facilities of financial institutions;

188 (14) Provide to financial institutions and the public copies  
189 of the West Virginia statutes relating to financial institutions,  
190 suggested drafts of bylaws commonly used by financial  
191 institutions and any other forms and printed materials found by

192 him or her to be helpful to financial institutions, their share-  
193 holders, depositors and patrons and make reasonable charges  
194 for the copies;

195 (15) Delegate the powers and duties of his or her office,  
196 other than the powers and duties excepted in this subdivision,  
197 to qualified division personnel who shall act under the direction  
198 and supervision of the commissioner and for whose acts he or  
199 she is responsible, but the commissioner may delegate to the  
200 deputy commissioner of banking and to no other division  
201 personnel the following powers, duties and responsibilities, all  
202 of which are hereby granted to and vested in the commissioner  
203 and for all of which the commissioner also is responsible. The  
204 commissioner shall:

205 (A) Order any person to cease violating any provision or  
206 provisions of this chapter or other applicable law or any rule  
207 promulgated or order issued thereunder;

208 (B) Order any person to cease engaging in any unsound  
209 practice or procedure which may detrimentally affect any  
210 financial institution or depositor of the financial institution;

211 (C) Revoke the certificate of authority, permit or license of  
212 any financial institution except a banking institution in accor-  
213 dance with the provisions of section thirteen of this article; and

214 (D) Accept an assurance in writing that the person will not  
215 in the future engage in the conduct alleged by the commissioner  
216 to be unlawful, which could be subject to an order under the  
217 provisions of this chapter. This assurance of voluntary compli-  
218 ance shall not be considered an admission of violation for any  
219 purpose, except that if a person giving the assurance fails to  
220 comply with its terms, the assurance is prima facie evidence  
221 that prior to this assurance the person engaged in conduct  
222 described in the assurance;

223 (16) Seek and obtain from courts civil penalties against any  
224 person who violates this chapter, the rules issued pursuant to  
225 this chapter, or any orders lawfully entered by the commis-  
226 sioner or board of banking and financial institutions in an  
227 amount not less than fifty dollars nor more than five thousand  
228 dollars for each violation;

229 (17) Receive from state banking institutions applications to  
230 change the locations of their principal offices and to approve or  
231 disapprove these applications; and

232 (18) Take other action as he or she may consider necessary  
233 to enforce and administer the provisions of this chapter, except  
234 the provisions of article three of this chapter, and all other laws  
235 which he or she is empowered to administer and enforce and  
236 apply to any court of competent jurisdiction for appropriate  
237 orders, writs, processes and remedies.

---

## CHAPTER 41

(H. B. 4354 — By Delegates R. M. Thompson,  
H. White, Harrison and Faircloth)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section forty, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permissive closing of bank branches.

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

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

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

**§31A-4-40. Permissive closing on fixed weekday or portions of weekdays; notice of closings; emergency closings; procedures.**

1           (a) In addition to Sundays and legal holidays any banking  
2 institution may remain closed on any one fixed weekday or  
3 portion of a day in each calendar week, or on any one fixed  
4 weekday and a portion of another weekday in each calendar  
5 week, or on portions of two weekdays in each calendar week,  
6 which day and/or portion or portions of the day or days when  
7 the institution is to remain closed shall be designated by a  
8 resolution adopted by the board of directors thereof. Prior to  
9 any such closing, the banking institution shall post a notice in  
10 a conspicuous place in its banking room stating that beginning  
11 on a day certain the banking institution will remain closed on a  
12 fixed weekday and/or portions thereof. Concurrently with the  
13 posting of the notice of closure, the banking institution shall  
14 cause a notice to be published as a Class II legal advertisement  
15 in compliance with the provisions of article three, chapter fifty-  
16 nine of this code, and the publication area for the publication  
17 shall be the county in which the principal office of the bank is  
18 located. The notice shall set forth the time or times on which  
19 the bank will remain closed and the date when the closing  
20 becomes effective. A certified copy of the resolution certified  
21 by the cashier or secretary of the banking institution, together  
22 with an affidavit of posting and proof of publication of the  
23 notice herein required, shall be filed with the commissioner of  
24 banking. Any banking institution may elect to operate branches  
25 that are open for business on the days and for the hours as  
26 determined appropriate by that banking institution.



27 (b) Any banking institution may close, without notice,  
28 during any period of actual or threatened enemy attack affecting  
29 the community in which the banking institution is located or  
30 during any period of other emergency including, but not limited  
31 to, fire, flood, hurricane, riot, snow or civil commotion:  
32 *Provided*, That the commissioner shall be notified of any  
33 closing made pursuant to this subsection as soon as practical  
34 thereafter.

35 (c) Any fixed weekday and/or portion of one or more  
36 weekdays on which any banking institution shall elect to close  
37 and any period during which the commissioner may permit it to  
38 close pursuant to the authority of this section shall constitute a  
39 legal holiday with respect to the banking institution and not a  
40 business day or banking day for the purposes of the law relating  
41 to negotiable instruments, and any act or contract authorized,  
42 required or permitted to be carried out or performed at, by or  
43 with respect to the banking institution may be performed on the  
44 next business or banking day, and no liability or loss of rights  
45 on the part of any person or banking institution shall result  
46 therefrom.

---

## CHAPTER 42

(Com. Sub. for H. B. 4543 — By Delegates R. M. Thompson  
and H. White)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section eight, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to frequency of meetings of bank directors.

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

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

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

**§31A-4-8. Directors, their qualifications and oaths.**

1 For every state-chartered banking institution there shall be  
2 a board of not less than five nor more than twenty-five direc-  
3 tors, who shall meet at least once each month and who shall  
4 have power to do, or cause to be done, all things that are proper  
5 to be done by the banking institution; and a majority of whom  
6 shall at all times be United States citizens and residents of this  
7 state: *Provided*, That the commissioner of banking, upon  
8 application from banking institutions with deposits greater than  
9 five hundred million dollars, may issue a waiver from the  
10 minimum number of meeting requirements established by this  
11 section and allow no fewer than four quarterly meetings for  
12 such institutions: *Provided, however*, That at least four of the  
13 board of directors meetings of any state-chartered banking  
14 institution shall be held within the state of West Virginia. Every  
15 such director shall own capital stock in the banking institution  
16 of which he is a director. Said director must own shares in the  
17 aggregate par value of not less than five hundred dollars, an  
18 exception being that if a bank holding company has control of  
19 that banking institution, shares owned by a director of the  
20 subsidiary bank in the controlling bank holding company will  
21 satisfy the requirements of this section: *Provided further*, That  
22 the director owns, in his own right, common or preferred stock  
23 of the controlling bank holding company in an amount equal to  
24 or greater than any one of the following: (i) Aggregate par  
25 value of five hundred dollars; (ii) aggregate shareholders'  
26 equity of five hundred dollars; or (iii) aggregate fair market  
27 value of five hundred dollars. Determination of the fair market  
28 value of the controlling bank holding company's stock shall be

29 based upon the value of that stock on the date it was purchased  
30 or on the date the person became a director, whichever is  
31 greater. If a bank holding company controls more than one bank  
32 subsidiary, a director owning at least five hundred dollars of the  
33 shares of a bank holding company is qualified, if otherwise  
34 permitted by applicable law, to serve as a director of every bank  
35 subsidiary controlled by that bank holding company. Before  
36 entering on the discharge of his duties as such director, he shall  
37 take an oath that he will, so far as the duty devolves upon him,  
38 diligently and honestly administer the affairs of the banking  
39 institution, and that he will not knowingly or willingly permit  
40 to be violated any of the provisions of the laws of this state  
41 relative to banking and banking institutions, and that the stock  
42 standing in his name upon the books of the banking institution  
43 is not hypothecated or pledged in any way as security for loans  
44 obtained from or debts owing to the banking institution of  
45 which he is a director, and that the number of shares necessary  
46 to qualify a stockholder to be a director are not now, and shall  
47 not at any time while he serves as a director be pledged or  
48 hypothecated in any manner for any debt or obligation of the  
49 director, or any other person; which oath subscribed by him and  
50 certified by the officer before whom it was taken shall be filed  
51 and preserved in the office of the commissioner of banking.  
52 Should a director fail to subscribe to or renew the oath herein  
53 provided within sixty days after notice of his election or re-  
54 election, or at any time after qualifying as such, sell or dispose  
55 of, or in any manner hypothecate or pledge as security for a  
56 debt or obligation, such qualifying shares, or any number  
57 thereof, necessary for his qualification, thereupon the remaining  
58 directors shall elect another director in his stead. No person  
59 shall serve as a director of any banking institution who has  
60 evidenced personal dishonesty and unfitness to serve as such  
61 director by his conduct or practice with another financial  
62 institution which resulted in a substantial financial loss or  
63 damage thereto or who has been convicted of any crime  
64 involving personal dishonesty.

---

## CHAPTER 43

(Com. Sub. for H. B. 4426 — By Delegates R. M. Thompson,  
H. White, Kominar and Harrison)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to the conversion of national banks to state-chartered banks; establishing a procedure for the conversion; and declaring a continuity of entity, assets and obligations from the national charter to the state charter.

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

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

**ARTICLE 4A. CONVERSION OF NATIONAL BANKS TO STATE-CHAR-  
TERED BANKS.**

- §31A-4A-1. Conversion of national bank into state bank authorized.
- §31A-4A-2. Procedure for conversion of national bank into state bank.
- §31A-4A-3. Effect of conversion of national bank into state bank.
- §31A-4A-4. Filing of incorporation.

**§31A-4A-1. Conversion of national bank into state bank autho-  
rized.**

- 1 Any bank organized under the laws of the United States
- 2 may, by a majority vote of the directors of the bank, convert
- 3 into a state bank with any name approved by the board of

4 banking and financial institutions in accordance with this  
5 article.

**§31A-4A-2. Procedure for conversion of national bank into state bank.**

1 (a) A national bank converting its charter to become a state  
2 bank shall file an application with the division on a form  
3 prescribed by the commissioner along with articles of incorpora-  
4 tion, by-laws for the proposed state bank and a check for two  
5 thousand five hundred dollars. The application shall declare that  
6 a majority of the national bank's board of directors has autho-  
7 rized the representatives of the bank to make such application  
8 and to convert the national bank into a state bank.

9 (b) The application to convert to a state bank shall be  
10 subject to the same requirements and procedures as established  
11 for a newly organizing state bank at sections five, six and  
12 seven, article four of this chapter.

13 (c) The examination and investigation by the board of  
14 banking and financial institutions pursuant to section six, article  
15 four of this chapter shall include an examination of the safety  
16 and soundness of the applicant national bank. The scope of the  
17 examination shall be determined at the discretion of the  
18 commissioner.

**§31A-4A-3. Effect of conversion of national bank into state bank.**

1 (a) When the board of banking and financial institutions has  
2 given to the bank an order that the provisions of this article  
3 have been complied with, the bank and all its stockholders,  
4 officers and employees shall have the same powers and  
5 privileges and shall be subject to the same duties, liabilities and  
6 regulations, in all respects, as shall have been prescribed for  
7 banks originally organized as banking corporations under the  
8 laws of West Virginia.

9 (b) At the time when such conversion of the national bank  
10 into a state bank, under the charter of the latter, becomes  
11 effective, all the property of the national bank, including all its  
12 rights, title and interest in and to all property of whatsoever  
13 kind, whether real, personal or mixed, and things in action, and  
14 every right, privilege, interest and asset of any conceivable  
15 value or benefit then existing, belonging or appertaining to it or  
16 which would inure to it, shall immediately, by act of law and  
17 without any conveyance or transfer and without any further act  
18 or deed, be vested in and become the property of the state bank,  
19 which shall have, hold and enjoy the same in its own right as  
20 fully and to the same extent as if the same were possessed, held  
21 and enjoyed by the national bank.

22 (c) Upon such conversion becoming effective, the state  
23 bank shall be considered to be a continuation of the entity and  
24 of the identity of the national bank and all the rights, obliga-  
25 tions and relations of the national bank to or in respect to any  
26 person, estate, creditor, depositor, trustee or beneficiary of any  
27 trust shall remain unimpaired. The state bank, as of the time the  
28 conversion takes place, shall succeed to all such rights, obliga-  
29 tions, relations and trusts and the duties and liabilities con-  
30 nected therewith and shall execute and perform each and every  
31 trust or relation in the same manner as if the state bank had  
32 itself originally assumed the trust or relation, including the  
33 obligations and liabilities connected therewith.

34 (d) Any reference to the national bank in any contract, will  
35 or document shall be considered a reference to the state bank  
36 unless expressly provided to the contrary in the contract, will or  
37 document.

#### **§31A-4A-4. Filing of incorporation.**

1 After the board of banking and financial institutions issues  
2 an order granting a state charter to the converting national bank,

3 the bank shall file in the office of the secretary of state a  
4 certificate of incorporation in compliance with the applicable  
5 provisions of chapter thirty-one of this code and section five,  
6 article four of this chapter.

---

## CHAPTER 44

(H. B. 4393 — By Delegate R. M. Thompson)

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one and two, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia lending and credit rate board; abolishing the lending and credit rate board revolving fund; and providing that the board use the division of banking special revenue account.

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

That sections one and two, article one, chapter forty-seven-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 1. LENDING AND CREDIT RATE BOARD.**

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; termination of board.

§47A-1-2. Board staff, offices, funding.

#### **§47A-1-1. Legislative findings; creation, membership, powers and duties of board; termination of board.**

1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in the permissible charges on loans, credit  
3 sales or transactions, forbearance or other similar transactions  
4 requires specialized knowledge of the needs of the citizens of  
5 West Virginia for credit for personal and commercial purposes  
6 and knowledge of the availability of such credit at reasonable  
7 rates to the citizens of this state while affording a competitive  
8 return to persons extending such credit;

9 (2) Maximum charges on loans, credit sales or transactions,  
10 forbearance or other similar transactions executed in this state  
11 should be prescribed from time to time to reflect changed  
12 economic conditions, current interest rates and finance charges  
13 throughout the United States and the availability of credit  
14 within the state in order to promote the making of such loans in  
15 this state; and

16 (3) The prescribing of such maximum interest rates and  
17 finance charges can be accomplished most effectively and  
18 flexibly by a board comprised of the heads of designated  
19 government agencies, university schools of business and  
20 administration and members of the public.

21 (b) In view of the foregoing findings, it is the purpose of  
22 this section to establish the West Virginia lending and credit  
23 rate board and authorize said board to prescribe semiannually  
24 the maximum interest rates and finance charges on loans, credit  
25 sales or transactions, forbearance or similar transactions made  
26 pursuant to this section subject to the provisions, conditions and  
27 limitations hereinafter set forth and to authorize lenders, sellers  
28 and other creditors to charge up to the maximum interest rates  
29 or finance charges so fixed. The rates prescribed by the board  
30 are alternative rates and any creditor may utilize either the rate  
31 or rates set by the board or any other rate or rates which the  
32 creditor is permitted to charge under any other provision of this  
33 code.



34 (c) The West Virginia lending and credit rate board shall be  
35 comprised of:

36 (1) The director of the governor's office of economic and  
37 community development;

38 (2) The West Virginia state treasurer;

39 (3) The West Virginia banking commissioner;

40 (4) The deans of the schools of business and administration  
41 at Marshall University and West Virginia University;

42 (5) The director of the division of consumer protection of  
43 the attorney general's office; and

44 (6) Three members of the public appointed by the governor  
45 with the advice and consent of the Senate. The members of the  
46 public shall be appointed for terms of six years each, and until  
47 their successors are appointed and qualified; except that of the  
48 members first appointed, one shall be appointed for a term of  
49 two years, one for a term of four years and one for a term of six  
50 years. A member who has served one full term of six years shall  
51 be ineligible for appointment for the next succeeding term.  
52 Vacancies shall be filled by appointment of the governor with  
53 the advice and consent of the Senate, or if any vacancy remains  
54 unfilled for three months, by a majority vote of the board. The  
55 West Virginia banking commissioner shall serve as chairperson  
56 of the board and the rate or rates set by the board shall be  
57 determined by a majority vote of those members of the board in  
58 attendance at the respective board meeting.

59 (d) The West Virginia lending and credit rate board is  
60 hereby authorized and directed to meet after the thirty-first day  
61 of December, one thousand nine hundred eighty-three, on the  
62 first Tuesday of April and on the first Tuesday of October of  
63 each year or more or less frequently as required by the circum-  
64 stances and to prescribe by order a maximum rate of interest

65 and finance charge for the next succeeding six months, effective  
66 on the first day of June and on the first day of December, for  
67 any loans, credit sales or transactions, forbearance or similar  
68 transactions made pursuant to this section. In fixing said  
69 maximum rates of interest and finance charge, the board shall  
70 take into consideration prevailing economic conditions,  
71 including the monthly index of long-term United States  
72 government bond yields for the preceding calendar month,  
73 yields on conventional commercial short-term loans and notes  
74 throughout West Virginia and throughout the United States and  
75 on corporate interest-bearing securities of high quality, the  
76 availability of credit at reasonable rates to the citizens of this  
77 state which afford a competitive return to persons extending  
78 such credit and such other factors as the board may determine.

79 (e) Any petition proposing a change in the prescribed  
80 maximum rates of interest and finance charges must be filed in  
81 the office of the banking commissioner no later than the  
82 fifteenth day of February in order to be voted on at the board  
83 meeting on the first Tuesday of April and no later than the  
84 fifteenth day of August in order to be voted on at the board  
85 meeting on the first Tuesday of October. Whenever any change  
86 in the prescribed maximum rates of interest and finance charges  
87 is proposed the board shall schedule a hearing, at least fifteen  
88 days prior to the board meeting at which the proposed rates of  
89 interest and finance charge will be voted on by the members of  
90 the board, and shall give all interested parties the opportunity to  
91 testify and to submit information at such public hearing that is  
92 relevant. Notice of the scheduled public hearing shall be issued  
93 and disseminated to the public at least twenty days prior to the  
94 scheduled date of the hearing.

95 (f) The board shall prescribe by order issued not later than  
96 the twentieth day of April and not later than the twentieth day  
97 of October, in accordance with the provisions of subsection (d)

98 of this section the maximum rates of interest and finance charge  
99 for the next succeeding six months for any loan, credit sale,  
100 forbearance or similar transaction made pursuant to this section  
101 and shall cause such maximum rate of interest and finance  
102 charge to be issued and disseminated to the public, such  
103 maximum rate of interest and finance charge to be effective on  
104 the first day of June and the first day of December for the next  
105 succeeding six months.

106 (g) Notwithstanding the other provisions of this chapter, the  
107 West Virginia lending and credit rate board shall not be  
108 required to meet if no petition has been filed with the board  
109 requesting a hearing and interest rates and economic conditions  
110 have not changed sufficiently to indicate that any change in the  
111 existing rate order would be required, and there are not at least  
112 two board members who concur that a meeting of the board is  
113 necessary. If the board does not meet, the maximum rates of  
114 interest and finance charges prescribed by the board in the  
115 existing rate order shall remain in full force and effect until the  
116 next time the board meets and prescribes different maximum  
117 rates of interest and finance charges.

118 (h) If circumstances and economic conditions require, the  
119 chairperson or any three board members, at any time, may call  
120 an emergency interim meeting of the West Virginia lending and  
121 credit rate board, at which time the chairperson shall give ten  
122 days' notice of the scheduled emergency meeting to the public.  
123 All interested parties shall have the opportunity to be heard and  
124 to submit information at such emergency meeting that is  
125 relevant. Any and all emergency rate board orders shall be  
126 effective within thirty days from the date of such emergency  
127 meeting.

128 (i) Each member of the board, except those whose regular  
129 salary is paid by the state of West Virginia, shall receive  
130 seventy-five dollars per diem while actually engaged in the

131 performance of the duties of the board. Each member shall be  
132 reimbursed for all reasonable and necessary expenses actually  
133 incurred during the performance of their duties, except that in  
134 the event the expenses are paid by a third party the members  
135 shall not be reimbursed by the state. The reimbursement shall  
136 be paid out of the special revenue account of the division of  
137 banking upon a requisition upon the state auditor, properly  
138 certified by the banking commissioner.

139 (j) In setting the maximum interest rates and finance  
140 charges, the board may set varying rates based on the type of  
141 credit transaction, the term of transaction, the type of debtor,  
142 the type of creditor and other factors relevant to determination  
143 of such rates. In addition, the board may set varying rates for  
144 ranges of principal balances within a single category of credit  
145 transactions.

146 (k) Pursuant to the provisions of article ten, chapter four of  
147 this code, the West Virginia lending and credit rate board shall  
148 continue to exist until the first day of July, two thousand five.

**§47A-1-2. Board staff, offices, funding.**

1 Under the direction of the chairperson of the board, the  
2 board shall be entitled to utilize the staff of the West Virginia  
3 banking department and the offices of the board shall be those  
4 of the West Virginia banking department, in order to defray the  
5 cost of the board's operations.

6 On or before the first day of July of each year, the commis-  
7 sioner of banking may charge and collect from each supervised  
8 financial organization and supervised lender a yearly fee of fifty  
9 dollars and pay it into the special revenue account of the  
10 division of banking. The fees paid into this account shall be  
11 utilized to pay the costs and expenses of the board and all  
12 incidental costs and expenses necessary for its operations.

---

## CHAPTER 45

(H. B. 4663 — By Delegates Michael, Doyle, Compton, Cann,  
R. M. Thompson, Anderson and Hall)

---

[Passed March 7, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the total tax credits available under the capital company act during the fiscal year beginning on the first day of July, two thousand two.

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

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

### ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

#### §5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a single  
2 qualified company may not exceed two million dollars.  
3 Capitalization of the company may be increased pursuant to  
4 rule of the authority.

5 (b)(1) The total credits authorized by the authority for all  
6 companies may not exceed a total of ten million dollars each  
7 fiscal year: *Provided*, That for the fiscal year beginning on the  
8 first day of July, one thousand nine hundred ninety-nine, the  
9 total credits authorized for all companies may not exceed a total  
10 of six million dollars: *Provided, however*, That for the fiscal  
11 year beginning on the first day of July, two thousand, the total

12 credits authorized for all companies may not exceed a total of  
13 four million dollars: *Provided further*, That for the fiscal year  
14 beginning on the first day of July, two thousand one, the total  
15 credits authorized for all companies may not exceed a total of  
16 four million dollars: *And provided further*, That for the fiscal  
17 year beginning on the first day of July, two thousand two, the  
18 total credits authorized for all companies may not exceed a total  
19 of three million dollars: *And provided further*, That the capital  
20 base of any qualified company shall be invested in accordance  
21 with the provisions of this article. The authority shall allocate  
22 these credits to qualified companies in the order that the  
23 companies are qualified.

24 (2) Not more than two million dollars of the credits allowed  
25 under subdivision (1) of this subsection may be allocated by the  
26 authority during each fiscal year to one or more small business  
27 investment companies described in this subdivision. The  
28 remainder of the tax credits allowed during the fiscal year shall  
29 be allocated by the authority under the provisions of section  
30 four, article two of this chapter. The portion of the tax credits  
31 allowed for small business investment companies described in  
32 this subdivision shall be allowed only if allocated by the  
33 authority during the first thirty days of the fiscal year, and may  
34 only be allocated to companies that: (A) Were organized on or  
35 after the first day of January, one thousand nine hundred ninety-  
36 nine; (B) are licensed by the small business administration as a  
37 small business investment company under the small business  
38 investment act; and (C) have certified in writing to the authority  
39 on the application for credits under this act that the company  
40 will diligently seek to obtain and thereafter diligently seek to  
41 invest leverage available to the small business investment  
42 companies under the small business investment act. These  
43 credits shall be allocated by the authority in the order that the  
44 companies are qualified. Any credits which have not been  
45 allocated to qualified companies meeting the requirements of

46 this subdivision relating to small business investment compa-  
47 nies during the first thirty days of the fiscal year shall be made  
48 available and allocated by the authority under the provisions of  
49 section four, article two of this chapter.

50 (c) Any investor, including an individual, partnership,  
51 limited liability company, corporation or other entity who  
52 makes a capital investment in a qualified West Virginia capital  
53 company, is entitled to a tax credit equal to fifty percent of the  
54 investment, except as otherwise provided in this section or in  
55 this article. The credit allowed by this article shall be taken  
56 after all other credits allowed by chapter eleven of this code. It  
57 shall be taken against the same taxes and in the same order as  
58 set forth in subsections (c) through (i), inclusive, section five,  
59 article thirteen-c, chapter eleven of this code. The credit for  
60 investments by a partnership, limited liability company, a  
61 corporation electing to be treated as a subchapter S corporation  
62 or any other entity which is treated as a pass through entity  
63 under federal and state income tax laws may be divided  
64 pursuant to election of the entity's partners, members, share-  
65 holders or owners.

66 (d) The tax credit allowed under this section is to be  
67 credited against the taxpayer's tax liability for the taxable year  
68 in which the investment in a qualified West Virginia capital  
69 company is made. If the amount of the tax credit exceeds the  
70 taxpayer's tax liability for the taxable year, the amount of the  
71 credit which exceeds the tax liability for the taxable year may  
72 be carried to succeeding taxable years until used in full, or until  
73 forfeited: *Provided*, That: (i) Tax credits may not be carried  
74 forward beyond fifteen years; and (ii) tax credits may not be  
75 carried back to prior taxable years. Any tax credit remaining  
76 after the fifteenth taxable year is forfeited.

77 (e) The tax credit provided for in this section is available  
78 only to those taxpayers whose investment in a qualified West

79 Virginia capital company occurs after the first day of July, one  
80 thousand nine hundred eighty-six.

81 (f) The tax credit allowed under this section may not be  
82 used against any liability the taxpayer may have for interest,  
83 penalties or additions to tax.

84 (g) Notwithstanding any provision in this code to the  
85 contrary, the tax commissioner shall publish in the state register  
86 the name and address of every taxpayer and the amount, by  
87 category, of any credit asserted under this article. The catego-  
88 ries by dollar amount of credit received are as follows:

89 (1) More than \$1.00, but not more than \$50,000;

90 (2) More than \$50,000, but not more than \$100,000;

91 (3) More than \$100,000, but not more than \$250,000;

92 (4) More than \$250,000, but not more than \$500,000;

93 (5) More than \$500,000, but not more than \$1,000,000; and

94 (6) More than \$1,000,000.

---

## CHAPTER 46

(S. B. 701 — By Senators Helmick, Ross, Mitchell,  
Bowman, Anderson, Plymale, Love, Rowe and Deem)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to powers of the director of the division of natural



resources to preserve the historical integrity of the town of Cass;  
and promulgating rules therefor.

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

That article five, 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 twenty-one, to read as follows:

**ARTICLE 5. PARKS AND RECREATION.**

**§20-5-21. Legislative findings relating to the historical town of Cass; powers of the director to preserve the integrity of the town and to promulgate rules therefor.**

1       (a) The Legislature finds:

2       (1) That preserving heritage is essential to promoting the  
3 education, prosperity and general welfare of the people of this  
4 state;

5       (2) That the town of Cass, in Pocahontas County, is one of  
6 the few remaining historical logging towns in the United States  
7 and has been recognized as such by the national registry of  
8 historic places;

9       (3) That the town of Cass is richly endowed with numerous  
10 historic buildings, structures and sites, both public and private,  
11 which are representative of the historical and cultural heritage  
12 of the state of West Virginia;

13       (4) That historic buildings, structures and sites in the town  
14 of Cass should be identified, studied, preserved and protected

15 for the general welfare of the residents of this state and this  
16 nation;

17 (5) That preserving and protecting the historical buildings,  
18 structures and sites in the town of Cass will aid economic  
19 development in Pocahontas County and surrounding areas, lead  
20 to the improvement of property values, enhance this state's  
21 attraction of tourists and visitors and contribute to education in  
22 this state by preserving such heritage for future generations; and

23 (6) That it is in the public policy and the public interest of  
24 this state to engage in a comprehensive program of historic  
25 preservation within the area designated as the town of Cass by  
26 the national registry of historic places and to promote the use  
27 and preservation of such heritage for the education and general  
28 welfare of the people of this state.

29 Accordingly, this section shall be broadly construed in  
30 order to accomplish the purposes herein set forth.

31 (b) To carry out the purposes of this section within the  
32 jurisdictional limits of the town of Cass as designated by the  
33 national registry of historic places, the director may:

34 (1) Make a survey of buildings, structures and sites and  
35 designate as historic landmarks those principal buildings,  
36 structures and sites that are of local, regional, statewide or  
37 national historical or architectural significance;

38 (2) Mark buildings, structures and sites with appropriately  
39 designated markers with the consent of the property owners;

40 (3) Acquire by purchase, gift or lease and administer  
41 historic landmarks, buildings, structures and sites;

42 (4) Review applications for certificates of appropriateness  
43 and grant or deny the same in accordance with the provisions of  
44 this section;

45 (5) Establish standards for the care and management of  
46 designated historic landmarks, buildings, structures and sites  
47 and, for failure of the owner to maintain the standards as  
48 prescribed, withdraw any certificate of appropriateness;

49 (6) Seek the advice and assistance of individuals, groups  
50 and government entities that are conducting historical preserva-  
51 tion programs and coordinate the same insofar as possible;

52 (7) Seek and accept grants, gifts, bequests, endowments or  
53 other funds to accomplish the purposes of this section; and

54 (8) Propose rules for legislative approval in accordance  
55 with the provisions of article three, chapter twenty-nine-a of  
56 this code for the protection of the historic integrity of the town  
57 of Cass and to effectuate the purposes of this section with  
58 regard to the use of lands both public and private within the  
59 town of Cass.

---

## CHAPTER 47

(H. B. 4402 — By Delegate Amores)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article thirteen, chapter thirty-seven of the code of  
West Virginia, one thousand nine hundred thirty-one, as amended,

by adding thereto a new section, designated section one-a; and to amend and reenact section seven of said article, all relating to procedures to be used whenever development on privately owned lands may disturb graves; and providing certain exemptions.

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

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

**ARTICLE 13. REMOVAL, TRANSFER AND DISPOSITION OF REMAINS  
IN GRAVES LOCATED UPON PRIVATELY OWNED  
LANDS.**

§37-13-1a. Improvement, construction or development upon privately owned lands containing graves.

§37-13-7. Remedy herein provided cumulative.

**§37-13-1a. Improvement, construction or development upon  
privately owned lands containing graves.**

1 No improvement, construction or development shall  
2 commence upon privately owned lands on which a cemetery or  
3 graves are located if such improvement, construction or  
4 development would destroy or otherwise physically disturb the  
5 cemetery or graves located on the land unless the owner first  
6 files a petition in accordance with the provisions of section two  
7 of this article and an order is entered pursuant to section five of  
8 this article providing for the disposition of the remains.

**§37-13-7. Remedy herein provided cumulative.**

1 This article and the rights and remedies herein provided for  
2 shall be cumulative and in addition to other existing rights. The  
3 right of eminent domain and the remedy of condemnation of

4 lands shall not be affected hereby. This article shall not apply  
5 to burial grounds governed by the provisions of article five,  
6 chapter thirty-five of this code or by the provisions of section  
7 eight-a, article one, chapter twenty-nine of this code.

---

## CHAPTER 48

(H. B. 4413 — By Delegates Fleischauer, Compton,  
C. White, Manuel, Fragale and Beach)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections five and six, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to charitable organizations generally, increasing contribution levels for certain charities eligible for exemption from being required to file annual registration statements; excluding certain charitable organizations that do not employ professional fund-raisers or receive public contributions from annual audit requirements; increasing the threshold before an independent audit is required; making technical changes relating to exemptions for charities that are an integral part of a church; and broadening types of charities eligible for certain exceptions.

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

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

**ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

§29-19-5. Registration of charitable organizations; fee.

§29-19-6. Certain persons and organizations exempt from registration.

**§29-19-5. Registration of charitable organizations; fee.**

1 (a) Every charitable organization, except as provided in  
2 section six of this article, which intends to solicit contributions  
3 within this state or to have funds solicited on its behalf shall,  
4 prior to any solicitation, file a registration statement with the  
5 secretary of state upon forms prescribed by him or her which  
6 shall be good for one full year and which shall be refiled in the  
7 next and each following year in which the charitable organiza-  
8 tion is engaged in solicitation activities. If an organization  
9 discontinues solicitation at any time after its last registration  
10 filing, then it shall file a registration statement reflecting its  
11 activities during its last fiscal year in which solicitation in West  
12 Virginia took place. It is the duty of the president, chairman or  
13 principal officer of the charitable organization to file the  
14 statements required under this article. The statements shall be  
15 sworn to and shall contain the following information:

16 (1) The name of the organization and the purpose for which  
17 it was organized;

18 (2) The principal address of the organization and the  
19 address of any offices in this state. If the organization does not  
20 maintain an office, the name and address of the person having  
21 custody of its financial records;

22 (3) The names and addresses of any chapters, branches or  
23 affiliates in this state;

24 (4) The place where and the date when the organization was  
25 legally established and the form of its organization;

26 (5) The names and addresses of the officers, directors,  
27 trustees and the principal salaried executive staff officer;

28       (6) A copy of a balance sheet and a statement or report of  
29 income and expenses for the organization's immediately  
30 preceding fiscal year or a financial statement reporting informa-  
31 tion showing the kind and amount of funds raised during the  
32 preceding fiscal year, the costs and expenses incidental to the  
33 fund raising and showing how the funds were disbursed or  
34 allocated for the same fiscal year: *Provided*, That for organiza-  
35 tions raising more than one hundred thousand dollars per year  
36 in contributions excluding grants from governmental agencies  
37 or private foundations, the balance sheet and income and  
38 expense statement, or financial statement provided, shall be  
39 audited by an independent public accountant. Organizations are  
40 required to report the amount of money raised in the state and  
41 the amount spent in the state for charitable purposes;

42       (7) A copy of any determination of the organization's tax  
43 exempt status under the provisions of 26 U.S.C. §501(c)(3) and  
44 a copy of the last filed Internal Revenue Service form 990 and  
45 Schedule A for every charitable organization and any parent  
46 organization;

47       (8) Whether the organization intends to solicit contributions  
48 from the public directly or have other solicitation done on its  
49 behalf by others;

50       (9) Whether the organization is authorized by any other  
51 governmental authority to solicit contributions and whether it  
52 is or has ever been enjoined by any court from soliciting  
53 contributions;

54       (10) The general purpose or purposes for which the  
55 contributions to be solicited shall be used;

56       (11) The name or names under which it intends to solicit  
57 contributions;

58 (12) The names of the individuals or officers of the  
59 organization who will have final responsibility for the custody  
60 of the contributions;

61 (13) The names of the individuals or officers of the  
62 organization responsible for the final distribution of the  
63 contributions; and

64 (14) Copies of all contract documentation from professional  
65 fund-raising counsels and professional solicitors as provided for  
66 in subsection (d), section seven of this article.

67 (b) Each chapter, branch or affiliate, except an independent  
68 member agency of a federated fund-raising organization, may  
69 separately report the information required by this section or  
70 report the information to its parent organization which shall  
71 then furnish the information regarding its West Virginia  
72 affiliates, chapters and branches in a consolidated form to the  
73 secretary of state. An independent member agency of a feder-  
74 ated fund-raising organization, as defined in section two of this  
75 article, shall comply with the provisions of this article inde-  
76 pendently. Each organization shall file a separate registration  
77 form for each name under which funds will be solicited.

78 (c) The registration forms and any other documents  
79 prescribed by the secretary of state shall be signed by an  
80 authorized officer or by an independent public accountant and  
81 by the chief fiscal officer of the charitable organization and  
82 shall be verified under oath.

83 (d) Every charitable organization collecting less than one  
84 million dollars during any year which submits an independent  
85 registration to the secretary of state shall pay an annual registra-  
86 tion fee of fifteen dollars; every charitable organization  
87 collecting more than one million dollars during one year which  
88 submits an independent registration to the secretary of state  
89 shall pay an annual registration fee of fifty dollars; and a parent



90 organization filing on behalf of one or more chapters, branches  
91 or affiliates or a single organization filing under different names  
92 shall pay a single annual registration fee of fifty dollars for  
93 itself and the chapters, branches or affiliates included in the  
94 registration statement. All fees and moneys collected by the  
95 secretary of state pursuant to the provisions of this article shall  
96 be deposited by the secretary of state as follows: One-half shall  
97 be deposited in the state general revenue fund and one-half shall  
98 be deposited in the services fees and collections account  
99 established by section two, article one, chapter fifty-nine of this  
100 code for the operation of the office of the secretary of state. The  
101 secretary of state shall dedicate sufficient resources from that  
102 fund or other funds to provide the services required in this  
103 article.

104 (e) For good cause shown, the secretary of state may extend  
105 the due date for the annual filing of a registration statement or  
106 report by a charitable organization or a professional fund-raiser  
107 for a period not to exceed ninety days. During that period, the  
108 previously filed registration statement or report of the charitable  
109 organization which has been granted the extension remains in  
110 effect.

111 (f) In addition to the registration fee required by this  
112 section, a charitable organization and/or professional fund-  
113 raiser, which fails to file a registration statement or report by  
114 the original or extended due date for filing as required by this  
115 section shall, for each month or part of the month thereafter in  
116 which the registration statement or report is not filed, pay an  
117 additional fee of twenty-five dollars: *Provided*, That the total  
118 amount of the additional fees for a registration statement or  
119 report required to be filed in any one year shall not exceed five  
120 hundred dollars. All fees and moneys collected by the secretary  
121 of state pursuant to the provisions of this article shall be  
122 deposited by the secretary of state as follows: One-half shall be  
123 deposited in the state general revenue fund and one-half shall

124 be deposited in the service fees and collections account  
125 established by section two, article one, chapter fifty-nine of this  
126 code for the operation of the office of the secretary of state.  
127 Any balance remaining on the thirtieth day of June, two  
128 thousand one, in the existing special revenue account entitled  
129 "charitable organization fund" as established by chapter thirty-  
130 four, acts of the Legislature, regular session, one thousand nine  
131 hundred ninety-two, shall be transferred to the service fees and  
132 collections account established by section two, article one,  
133 chapter fifty-nine of this code for the operation of the secretary  
134 of state. The secretary of state shall dedicate sufficient re-  
135 sources from that fund or other funds to provide the services  
136 required in this article.

**§29-19-6. Certain persons and organizations exempt from registration.**

1       The following charitable organizations shall not be required  
2 to file an annual registration statement with the secretary of  
3 state:

4       (1) Educational institutions, the curriculums of which, in  
5 whole or in part, are registered or approved by the state board  
6 of education, either directly or by acceptance of accreditation  
7 by an accrediting body recognized by the state board of  
8 education; and any auxiliary associations, foundations and  
9 support groups which are directly responsible to any such  
10 educational institutions;

11       (2) Persons requesting contributions for the relief of any  
12 individual specified by name at the time of the solicitation  
13 when all of the contributions collected without any deductions  
14 whatsoever are turned over to the named beneficiary for his or  
15 her use;

16       (3) Hospitals which are nonprofit and charitable;

17       (4) Organizations which solicit only within the membership  
18 of the organization by the members thereof: Provided, That the  
19 term “membership” shall not include those persons who are  
20 granted a membership upon making a contribution as the result  
21 of solicitation. For the purpose of this section, “member” means  
22 a person having membership in a nonprofit corporation, or other  
23 organization, in accordance with the provisions of its articles of  
24 incorporation, bylaws or other instruments creating its form and  
25 organization; and having bona fide rights and privileges in the  
26 organization, such as the right to vote, to elect officers, direc-  
27 tors and issues, to hold office or otherwise as ordinarily  
28 conferred on members of such organizations;

29       (5) Churches, synagogues, associations or conventions of  
30 churches, religious orders or religious organizations that are an  
31 integral part of a church which qualifies as tax exempt under  
32 the provisions of 26 U.S.C. §501(c)(3) and which qualifies as  
33 being exempt from filing an annual return under the provisions  
34 of 26 U.S.C. §6033;

35       (6) Any person, firm, corporation or organization that  
36 sponsors a single fund-raising event for the benefit of a named  
37 charitable organization where all or part of the funds collected  
38 are donated to the named charitable organization: *Provided,*  
39 That the named charitable organization receiving the funds is  
40 registered pursuant to this article, reports each of these dona-  
41 tions individually, and certifies that no funds were withheld by  
42 the organization that solicited the funds;

43       (7) Any charitable organization that does not employ a  
44 professional solicitor or fund-raiser and does not intend to  
45 solicit and receive and does not actually raise or receive  
46 contributions from the public in excess of twenty-five thousand  
47 dollars during a calendar year.

48 Charitable organizations which do not intend to solicit and  
49 receive in excess of twenty-five thousand dollars, but do receive  
50 in excess of that amount from the public, shall file the annual  
51 registration statement within thirty days after contributions are  
52 in excess of twenty-five thousand dollars.

---

## CHAPTER 49

(Com. Sub. for H. B. 4430 — By Delegates Douglas,  
Kuhn, Caputo and Tucker)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to repeal section six, article six, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five, seven, eight, eight-a, nine, ten and eleven of said article, all relating to the employment of children; prohibiting employment of children in certain occupations; providing for rule-making authority; and amending the criminal penalties for violation of this article.

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

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

**ARTICLE 6. CHILD LABOR.**

- §21-6-1. Employment of children under fourteen.
- §21-6-2. Employment of children under eighteen in certain occupations; determination as to other occupations; appeal to supreme court.
- §21-6-3. Issuance of work permit.
- §21-6-4. Contents of work permit; forms; filing; records; revocation.
- §21-6-5. Age certificate for employers; inquiry as to age; revocation of certificate; supervision by state superintendent of schools.
- §21-6-7. Hours and days of labor by minors.
- §21-6-8. Supervision permits.
- §21-6-8a. Blanket work permits.
- §21-6-9. Enforcement of article.
- §21-6-10. Offenses; penalties.
- §21-6-11. Rules.

**§21-6-1. Employment of children under fourteen.**

1        Except as permitted and authorized by the provisions of this  
2 article, a child under fourteen years of age shall only be  
3 employed or permitted to work the following jobs:

4        (1) Agriculture and horticulture activities which have not  
5 been declared hazardous by the secretary of the United States  
6 department of labor;

7        (2) Domestic services within the residence of the employer;

8        (3) Work for parents or legal guardian in their solely owned  
9 business, except those jobs set out in section two of this article;

10       (4) As actors or performers in motion pictures, theatrical,  
11 radio or television productions; and

12       (5) Newspaper delivery.

**§21-6-2. Employment of children under eighteen in certain occupations; determination as to other occupations; appeal to supreme court.**

1 (a) No child under eighteen years of age may be employed,  
2 permitted or suffered to work in, about, or in connection with  
3 any of the following occupations:

4 (1) Motor vehicle driver and outside helper whose work  
5 includes riding on a motor vehicle outside the cab for the  
6 purpose of assisting in transporting or delivery of goods;

7 (2) The manufacture, storage, handling or transportation of  
8 explosives or highly flammable substances;

9 (3) Ore reduction works, smelters, hot rolling mills,  
10 furnaces, foundries, forging shops, or in any other place in  
11 which the heating, melting or heat treatment of metals is carried  
12 on;

13 (4) Logging and saw milling occupations;

14 (5) Power-driven woodworking machine occupations;

15 (6) Occupations involving exposure to radioactive sub-  
16 stances and ionizing radiations;

17 (7) Power-driven hoisting apparatus occupations;

18 (8) Power-driven metal-forming, punching, and shearing  
19 machine occupations;

20 (9) Mining, including coal mining;

21 (10) Occupations involving slaughtering, meat-packing, or  
22 processing or rendering;

23 (11) Power-driven bakery machines;

24 (12) Power-driven paper-products machine occupations;

25 (13) Occupations involved in the manufacturing of brick,  
26 tile, and kindred products;

27 (14) Occupations involved in the operation of power-driven  
28 circular saws, band saws, and guillotine shears;

29 (15) Occupations involved in wrecking, demolition, and  
30 ship-breaking operations;

31 (16) Roofing operations above ground level; and

32 (17) Excavation operations.

33 (b) No child under eighteen years of age may be employed  
34 or permitted to work in a bar, or be permitted, employed or  
35 suffered to sell, dispense or serve alcoholic beverages in any  
36 place or establishment where the consumption of alcoholic  
37 beverages is permitted by law.

38 (c) No child under eighteen years of age may be employed  
39 or permitted to work in any occupation prohibited by law or  
40 determined by the commissioner to be dangerous or injurious:  
41 *Provided*, That a child between the ages of sixteen and eighteen  
42 years who has completed the minimum training requirements  
43 of the West Virginia University fire service extension  
44 firefighter training section one, or its equivalent, and who has  
45 the written consent of his or her parents or guardian may be  
46 employed by or elected as a member of a volunteer fire  
47 department to perform fire-fighting functions: *Provided*,  
48 *however*, That no child may be permitted to operate any  
49 fire-fighting vehicles, enter a burning building in the course of  
50 his or her employment or work or enter into any area deter-  
51 mined by the fire chief or fireman in charge at the scene of a  
52 fire or other emergency to be an area of danger exposing the  
53 child to physical harm by reason of impending collapse of a  
54 building or explosion, unless the child is under the immediate  
55 supervision of a fire line officer.

**§21-6-3. Issuance of work permit.**

1       (a) A child fourteen or fifteen years of age may be em-  
2       ployed or permitted to work in any gainful occupation, except  
3       as provided in section two of this article, when the person, firm  
4       or corporation by whom the child is employed or permitted to  
5       work, obtains and keeps on file and accessible to officers  
6       charged with the enforcement of this article, a work permit  
7       issued by the superintendent of schools of the county in which  
8       the child resides, or by some person authorized by him or her in  
9       writing. Whenever a work permit has been issued, or wherever  
10      an age certificate has been issued under the provisions of  
11      section five of this article, it shall be conclusive as to the age of  
12      the child on whose behalf the work permit or age certificate was  
13      issued.

14      (b) The superintendent of schools, or person authorized by  
15      him or her in writing, shall issue the work permit only upon  
16      receipt of the following documents:

17      (1) A written statement, signed by the person for whom the  
18      child expects to work, that he or she intends legally to employ  
19      the child;

20      (2) A brief written description of the job the child is  
21      expected to perform;

22      (3) A birth certificate, or attested transcript thereof, issued  
23      by the registrar of vital statistics or other officer charged with  
24      the duty of recording births;

25      (4) A certificate signed by the principal or registrar of the  
26      school attended showing that the child is attending school; and

27      (5) The written consent of the parent or parents, guardian or  
28      custodian of the child.



**§21-6-4. Contents of work permit; forms; filing; records; revocation.**

1 (a) A work permit issued under this article shall set forth  
2 the full name and the date and place of birth of the child, with  
3 the name and address of his or her parents or parent, guardian  
4 or custodian. It shall certify that the child has appeared before  
5 the officer issuing the permit and submitted proofs of age,  
6 school attendance, prospective employment, brief description  
7 of job and parental or other consent required in section three.

8 (b) The state commissioner of labor shall prepare printed  
9 forms for work permits and furnish them to the superintendents  
10 of schools in the counties of the state. A copy of each permit  
11 issued shall be forwarded to the state commissioner of labor  
12 within four days after its issuance. A record of all permits  
13 granted and of all applications denied as well as all certificates  
14 of age, and documents evidencing school attendance, prospec-  
15 tive employment, brief description of job and parental or other  
16 consent submitted by the applicants for permits shall be kept in  
17 the office of the issuing officer.

18 (c) The state commissioner of labor may at any time revoke  
19 a permit if in his or her judgment it was improperly issued, and  
20 for this purpose he or she is authorized to investigate the true  
21 age of any child employed, to hear evidence, and to require the  
22 production of relevant books and documents. If a permit is  
23 revoked, the issuing officer shall be notified of the action, and  
24 the child may not thereafter be employed or permitted to labor  
25 until a new permit has been legally obtained or until the child  
26 is to be outside the operation of this article.

**§21-6-5. Age certificate for employers; inquiry as to age; revocation of certificate; supervision by state superintendent of schools.**

1 (a) Upon request of any employer who is desirous of  
2 employing a child who represents his or her age to be sixteen  
3 years or over, the officer charged with the issuance of work  
4 permits shall require of the child the proof of age specified in  
5 section three of this article, and, upon receipt thereof, if it be  
6 found that the child is actually sixteen years of age or over,  
7 shall issue to the employer a certificate showing the age and  
8 date and place of birth of the child. The age certificate, when  
9 filed in the office of the employer, must be accepted by an  
10 officer charged with the enforcement of this article as evidence  
11 of the age of the child in whose name it was issued.

12 (b) Any officer charged with the enforcement of this article  
13 may inquire into the true age of a child apparently under the age  
14 of sixteen years who is employed or permitted to work in any  
15 gainful occupation and for whom no work permit or age  
16 certificate is on file; and if the age of the child is found to be  
17 actually under sixteen years, the employment of the child shall  
18 be considered a violation of the provisions of this article.

19 (c) The state commissioner of labor may at any time revoke  
20 any age certificate if in his or her judgment it was improperly  
21 issued, and for this purpose he or she is authorized to investi-  
22 gate the true age of any child employed as in the case of work  
23 permits.

24 (d) The issuance of work permits and of age certificates  
25 shall be under the supervision of the state superintendent of  
26 schools.

#### **§21-6-7. Hours and days of labor by minors.**

1 (a) No child under the age of sixteen who is employed or  
2 permitted to work in accordance with the provisions of this  
3 article shall work:

4 (1) During school hours, except as provided in work  
5 experience and career exploration programs approved by the  
6 United States Secretary of Labor;

7 (2) Before seven o'clock antemeridian or after seven  
8 o'clock postmeridian: *Provided*, That a child under the age of  
9 sixteen may work until nine o'clock postmeridian from the first  
10 day of June through Labor Day;

11 (3) More than three hours per day, on days in which public  
12 schools are in session;

13 (4) More than eighteen hours per week, in weeks in which  
14 public schools are in session;

15 (5) More than eight hours, on days in which public schools  
16 are not in session;

17 (6) More than forty hours per week, in weeks in which  
18 public schools are not in session; or

19 (7) More than five hours continuously without an interval  
20 of at least thirty minutes for a lunch period.

21 (b) The provisions of subsection (a) of this section do not  
22 apply to children under sixteen performing the jobs set out in  
23 section one of this article.

#### **§21-6-8. Supervision permits.**

1 (a) The commissioner is authorized to prescribe and issue  
2 supervision permits to meet special circumstances, and to  
3 prescribe the terms and conditions thereof.

4 (b) The provisions of sections two, three and seven of this  
5 article do not apply to a child's employment under a supervi-  
6 sion permit issued by the commissioner under this section. The

7 commissioner shall issue a supervision permit only if he or she  
8 finds, after careful investigation, as follows:

9 (1) That the child, in performance of the work contem-  
10 plated, will be supervised by a responsible party;

11 (2) That the employer for whom the child will be employed  
12 is not subject to federal regulation regarding child labor; and

13 (3) That the issuance of the supervision permit will promote  
14 the best interests of the child.

15 A supervision permit is valid only so long as the employ-  
16 ment is in compliance with the terms and conditions prescribed  
17 by the commissioner and contained therein.

**§21-6-8a. Blanket work permits.**

1 (a) Blanket work permits are authorized when twenty-five  
2 or more minors are to be employed for a period of ninety days  
3 or less by an employer.

4 The employer, or person authorized by him or her in  
5 writing, shall forward to the commissioner of labor the follow-  
6 ing information:

7 (1) A letter from the employer stating that he or she is  
8 familiar with the child labor law of West Virginia and will  
9 abide by the law.

10 (2) A list containing the names, birthdates, ages, and job  
11 classifications of each minor.

12 (b) The minors to be covered by the blanket work permit  
13 may not be employed until the employer receives the permit  
14 from the commissioner of labor.

15       The commissioner of labor shall acknowledge the receipt  
16 of the information with a letter which shall be retained on file  
17 by the employer for the duration of the minors' employment.  
18 The commissioner of labor, after making proper inquiry, may  
19 issue a blanket work permit for an employer for a period not to  
20 exceed ninety days.

**§21-6-9. Enforcement of article.**

1       It is the duty of the state commissioner of labor, and of his  
2 or her authorized representatives within the division of labor, to  
3 enforce the provisions of this article. To aid in enforcement, the  
4 commissioner and his or her representatives are authorized to  
5 enter and inspect any place or establishment covered by this  
6 article, and to have access to all files and records of employers  
7 the inspection of which is pertinent to the objects and purposes  
8 of this article. School officials, including truancy officers, shall  
9 lend to the commissioner all possible assistance toward  
10 effectuating such objects and purposes.

**§21-6-10. Offenses; penalties.**

1       (a) Any person who violates a provision of this article, or  
2 any parent, guardian or custodian of a child, who permits the  
3 child to work in violation of the provisions of this article, or any  
4 school official who illegally issues a work permit, or any person  
5 who furnishes false evidence in reference to the age, birthplace,  
6 job description, consent or educational qualifications of a child  
7 under this article, shall be guilty of a misdemeanor and, upon  
8 conviction thereof, shall for the first offense be fined not less  
9 than fifty nor more than two hundred dollars.

10       (b) For the second or subsequent offense, a person con-  
11 victed of violating a provision of this article shall be fined not  
12 less than two hundred nor more than one thousand dollars, or  
13 confined in the county or regional jail for not more than six  
14 months, or both fined and imprisoned.

**§21-6-11. Rules.**

1       The commissioner of the division of labor may propose  
2 rules for legislative approval in accordance with the provisions  
3 of article three, chapter twenty-nine-a of this code, to effectuate  
4 the provisions of this article. The rules may include provisions  
5 prohibiting the employment of children in occupations deter-  
6 mined to be dangerous or injurious.

---

**CHAPTER 50**

**(Com. Sub. for S. B. 215— By Senators Redd, Burnette, Caldwell,  
Hunter, Minard, Rowe, Snyder, Wooton and Mitchell)**

---

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to repeal section fifteen, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section four, article ten, chapter fifty-six of said code; and to amend and reenact section fourteen, article ten, chapter forty-four of said code, relating to the settlement of claims for damages on behalf of minor children; permitting a parent or next friend to negotiate a settlement on behalf of a minor; allowing a petition to approve a settlement to be filed in the county in which the minor resides or in which venue lies for an action to recover damages for the injuries to the minor; requiring a motion to approve a settlement to be filed in a civil action seeking damages for injuries to a minor; setting forth the contents of a petition to approve a settlement; setting forth duties of guardian ad litem; permitting the court to require the minor to testify or appear at the hearing on the petition or motion to approve the proposed settlement; prescribing form of release;

permitting release to be executed by any person authorized by the court; requiring certain findings and other provisions in the order approving a settlement; establishing circumstances that the court must consider in considering a settlement proposal; permitting the court to authorize a person to pay certain initial expense payments; designating proceeds of a settlement remaining after the payment of initial expenses as net settlement trust proceeds; permitting deposit of net settlement proceeds of less than twenty-five thousand dollars into a regulated state bank payable to the minor on reaching majority; requiring the filing of acknowledgment by the bank of receipt of funds and that funds may only be withdrawn by the minor upon reaching majority; requiring initial statement of initial expense payments to be filed; authorizing the appointment of a conservator; providing for bond of a conservator; requiring clerk of the circuit court to send copy of order approving settlement to fiduciary commissioner; and permitting the court to waive bond by a conservator or other filing requirements under certain circumstances.

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

That section fifteen, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four, article ten, chapter fifty-six of said code be repealed; and that section fourteen, article ten, chapter forty-four of said code be amended and reenacted to read as follows:

**ARTICLE 10. GUARDIANS AND WARDS GENERALLY.**

**§44-10-14. Minor settlement proceedings.**

1       This section shall be known as the “Minor Settlement  
2 Proceedings Reform Act”.

3       (a) If a minor suffers injury to his or her person or property,  
4 the parent, guardian or next friend of the minor may negotiate

5 a settlement of the minor's claim for damages prior to or  
6 subsequent to the filing of an action for damages.

7 (b) *Filing of petition or motion.* — In order to secure a  
8 release of the party or parties allegedly responsible for the  
9 injury or loss, the parent, next friend or guardian of the minor  
10 shall file a verified petition in the circuit court of the county in  
11 which the minor resides or in which an action for damages may  
12 be filed in accordance with the provisions of section one, article  
13 one, chapter fifty-six of this code: *Provided*, That if an action  
14 for damages of the minor is pending in circuit court, the petition  
15 shall be filed, verified and served as a motion in the pending  
16 action and may be filed by a parent, guardian or next friend.

17 (c) *Contents of petition or motion.* — The petition or  
18 motion shall request approval by the court of the terms of the  
19 proposed settlement, the release of liability and the manner of  
20 distribution of settlement proceeds. The petition or motion  
21 shall also state the following:

22 (1) The name, gender and age of the minor;

23 (2) The facts of the injury and damages of the minor relied  
24 upon in requesting the court to consider and approve the  
25 proposed settlement and release;

26 (3) The circumstances and events leading to the injury or  
27 loss at issue and the identities of the persons or entities alleged  
28 to be responsible for the injury or loss;

29 (4) The identities of the persons or entities to be released;

30 (5) The circumstances of the minor at the time of the  
31 petition or motion;

32 (6) The relationship of the petitioner or moving party to the  
33 minor;



34 (7) The nature and effect of the injury;

35 (8) The sum of expenses expended for the treatment and  
36 care of the minor for the injuries at issue;

37 (9) An estimate of future expenses for the treatment and  
38 care of the minor related to the injury and how such expenses  
39 would be satisfied from the settlement proceeds;

40 (10) A proposal as to how the costs and expenses of  
41 processing the settlement and release are to be satisfied;

42 (11) A proposal for distribution of other settlement pro-  
43 ceeds; and

44 (12) A request for such other relief as the court may  
45 determine is appropriate in the best interests of the child.

46 (d) *Guardian ad litem*. — Upon the filing of a petition or  
47 motion, the court shall appoint a guardian ad litem to:

48 (1) Review and confirm the facts set forth in the petition  
49 and the facts and circumstances of the minor, including the  
50 injuries and losses of the minor alleged to have been caused by  
51 the party or parties to be released as alleged in the petition or  
52 motion; the treatment and conditions past, present and in the  
53 foreseeable future of the minor as a result of the injuries and  
54 losses at issue; the proposed amounts and procedures for  
55 distribution of settlement proceeds; and other relevant informa-  
56 tion appearing in the petition or motion or otherwise; and

57 (2) File an answer to the petition or motion on behalf of the  
58 minor, stating the opinion of the guardian ad litem as to whether  
59 or not the proposed settlement and release and the proposed  
60 distribution of proceeds are in the best interest of the minor.

61 (e) *Hearing*. — A hearing shall be conducted on the petition  
62 or motion, at which time the court shall take testimony and

63 consider arguments regarding the alleged injuries or losses and  
 64 the proposals for the settlement, release, initial payment of  
 65 expenses and the distribution of settlement proceeds: *Provided*,  
 66 That the court may order that the minor appear and testify if the  
 67 court finds that his or her appearance or testimony is appropri-  
 68 ate for consideration by the court of the proposed settlement.

69 (f) *Release form.* — If the court grants the requested relief,  
 70 a release of the claim of the minor against the persons or  
 71 entities alleged to be responsible for the injuries or losses and  
 72 who are identified in the petition or motion to be released from  
 73 liability, any other persons or entities making payment on  
 74 behalf of those persons or entities and any subsidiaries or  
 75 successor persons or entities shall be executed by a party  
 76 authorized by the court to execute the release. The release shall  
 77 be in form or effect as follows:

78 I, ....., the [guardian or other person authorized to  
 79 execute the release] of ....., a minor, in consideration of  
 80 the sum of \$....., and under authority of an order of the  
 81 Circuit Court of ..... County, entered on the ..... day of  
 82 ....., 20....., pursuant to West Virginia Code 44-10-14, do  
 83 hereby release ..... from all claims and demands on  
 84 account of injuries allegedly inflicted upon the minor and any  
 85 property of the minor on the ..... day of .....,  
 86 ....., at .....

87 \_\_\_\_\_ (Signature)

88 [Guardian or other person authorized by the court to  
 89 execute the release] of .....

90 (g) *Order approving or rejecting settlement.* — The court  
 91 shall enter an order with findings of fact and granting or  
 92 rejecting the proposed settlement, release and distribution of  
 93 settlement proceeds. If the requested relief is granted, the court  
 94 shall provide by order that an attorney appearing in the proceed-

95 ing or other responsible person shall negotiate, satisfy and pay  
96 initial expense payments from settlement proceeds, the costs  
97 and fees incurred for the settlement and any bond required  
98 therefor, expenses for treatment of the minor related to the  
99 injury at issue, payments to satisfy any liens on settlement  
100 proceeds, if any, and such other directives as the court finds  
101 appropriate to complete the settlement and secure the proceeds  
102 for the minor.

103 (1) In allowing the payment of settlement proceeds for  
104 attorney fees, legal expenses, court costs and other costs of  
105 securing the settlement in such reasonable amounts as the court  
106 finds in its discretion to be appropriate, the court shall consider  
107 the amount to be paid as damages, the age and necessities of the  
108 minor, the nature of the injury, the difficulties involved in  
109 effecting the settlement, legal expenses and fees paid to  
110 attorneys in similar cases and any other matters which the court  
111 determines should be considered in achieving a proper and  
112 equitable distribution of settlement proceeds.

113 (2) In allowing any sums to be paid to the minor or to  
114 another person to be used for the immediate personal benefit of  
115 the minor, the court shall state further the terms under which  
116 such payments shall be made, including the use for which such  
117 sums may be expended and the times on which such payments  
118 shall be made: *Provided*, That such payments shall be made no  
119 later than twenty-four months after entry of the order.

120 (3) The order shall provide that settlement proceeds  
121 remaining after the initial payment of expenses shall be deemed  
122 net settlement trust proceeds.

123 (4) If the net settlement proceeds are less than twenty-five  
124 thousand dollars, the court may order that the person authorized  
125 to pay the initial expenses deposit net settlement trust proceeds  
126 into a regulated financial institution or institutions with a

127 principal place of business in this state, in interest bearing  
128 certificates of deposit or accounts or securities that are fully  
129 insured by federal deposit insurance, in the name of the minor  
130 and payable by the financial institution only to the minor upon  
131 presentation of proper identification after the minor attains the  
132 age of majority: *Provided*, That such person may be authorized  
133 by the court to transfer funds to a substitute qualified institution  
134 or institutions from the financial institution or institutions  
135 initially selected: *Provided, however*, That any substitution  
136 shall be reported to any fiduciary commissioner or supervisor  
137 of the county that the court has designated to review of the  
138 status of the investment and security of net settlement trust  
139 proceeds: *Provided further*, That whenever net settlement trust  
140 proceeds are deposited into a bank pursuant to the provisions of  
141 this paragraph, such bank shall, within ten days of receipt of  
142 such funds, file with the clerk of the court an acknowledgment  
143 that the funds have been received and that such funds may be  
144 withdrawn only by the minor upon his or her reaching the age  
145 of majority or upon order of the court.

146 (5) The order shall provide that within sixty days of the  
147 entry of the order, a statement of initial expense payments and  
148 an inventory of net settlement trust proceeds and any income  
149 earned thereon shall be filed by the person authorized to pay  
150 initial expenses with the fiduciary commissioner or supervisor  
151 of the county commission designated by the court to review the  
152 status of settlement proceeds for the minor.

153 (6) The order shall direct that a certified copy of the order  
154 of the court approving the settlement be provided by the clerk  
155 of the circuit court to the fiduciary commissioner or supervisor  
156 designated by the court to review the status of settlement  
157 proceeds.

158 (h) *Appointment of conservator and reports to fiduciary*  
159 *officers.* — The court may appoint a conservator to serve as the

160 person responsible for investment and control of net settlement  
161 trust proceeds until the minor attains the age of majority or at  
162 such later time as the court may order upon terms the court  
163 finds to be in the best interest of the minor, taking into consid-  
164 eration any special needs of the minor at any age. The conser-  
165 vator may be a guardian appointed pursuant to section three of  
166 this article or other responsible person.

167 (1) Neither the corpus nor income accumulated on net  
168 settlement trust proceeds shall be used for the maintenance or  
169 care of the minor during his or her minority, absent unusual  
170 circumstances or special needs of the minor specified in the  
171 order approving the settlement. The corpus or income earned  
172 thereon may not be invaded, revised or subjected to assignment,  
173 levy, garnishment or other order, except as shall be first  
174 approved by order of the court approving the settlement.

175 (2) The court shall determine the amount and necessity for  
176 bond of the conservator and for any surety of the bond of the  
177 conservator, payable on behalf of the minor in an amount  
178 sufficient to protect the principal of net settlement trust pro-  
179 ceeds, unless the court finds the conservator is already under  
180 bond and surety of bond sufficient for the purpose. The bond of  
181 the conservator and surety for the bond of the conservator shall  
182 be in form and type acceptable to the fiduciary commissioner  
183 or supervisor of the county commission designated by the court  
184 to review the reports of the conservator and shall be conditioned  
185 to account for and pay over the amount of net settlement trust  
186 proceeds as provided for by the order of the court. The clerk of  
187 the circuit court shall provide to the office of such fiduciary  
188 commissioner or supervisor a certified copy of the court's order  
189 approving the settlement and distribution of proceeds and such  
190 fiduciary commissioner or supervisor shall file and record the  
191 order with any bond of the conservator that may be required by  
192 the court approving the settlement and distribution of proceeds.

193 (3) A report of net settlement trust proceeds and income  
194 earned thereon for each calender year shall be filed by the  
195 conservator by the first day of February next following the end  
196 of the calendar year in the order approving the settlement is  
197 entered and every year thereafter in accordance with the terms  
198 of the court order.

199 (4) If the amount of net settlement trust proceeds is less  
200 than twenty-five thousand dollars, the court may include in the  
201 order approving the settlement a waiver of any or all of the  
202 requirements regarding reference to a fiduciary officer, the  
203 filing of the order or of any other reports or statements of  
204 accounts with a fiduciary commissioner or supervisor of the  
205 county commission designated by the court, the posting of bond  
206 and corporate or other surety of bond of the conservator and any  
207 listing and publication of accounts.

---

## CHAPTER 51

**(S. B. 733 — By Senators Wooton, Hunter, Minard, Ross and Rowe)**

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section fourteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the criteria and procedure for removal of a child from a foster home; and establishing time period for termination of foster care arrangements subsequent to termination of parental rights.

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

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

**ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.**

**§49-2-14. Criteria and procedure for removal of child from foster home; notice of child's availability for placement; limitations.**

1       (a) The state department may temporarily remove a child  
2 from a foster home based on an allegation of abuse or neglect,  
3 including sexual abuse, that occurred while the child resided in  
4 the home. If the department determines that reasonable cause  
5 exists to support the allegation, the department shall remove all  
6 foster children from the arrangement and preclude contact  
7 between the children and the foster parents. If, after investiga-  
8 tion, the allegation is determined to be true by the department  
9 or after a judicial proceeding a court finds the allegation to be  
10 true or if the foster parents fail to contest the allegation in  
11 writing within twenty calendar days of receiving written notice  
12 of said allegations, the department shall permanently terminate  
13 all foster care arrangements with said foster parents: *Provided,*  
14 That if the state department determines that the abuse occurred  
15 due to no act or failure to act on the part of the foster parents  
16 and that continuation of the foster care arrangement is in the  
17 best interests of the child, the department may, in its discretion,  
18 elect not to terminate the foster care arrangement or arrange-  
19 ments.

20       (b) When a child has been placed in a foster care arrange-  
21 ment for a period in excess of eighteen consecutive months and  
22 the state department determines that the placement is a fit and  
23 proper place for the child to reside, the foster care arrangement  
24 may not be terminated unless such termination is in the best  
25 interest of the child and:

26 (1) The foster care arrangement is terminated pursuant to  
27 subsection (a) of this section;

28 (2) The foster care arrangement is terminated due to the  
29 child being returned to his or her parent or parents;

30 (3) The foster care arrangement is terminated due to the  
31 child being united or reunited with a sibling or siblings;

32 (4) The foster parent or parents agree to the termination in  
33 writing;

34 (5) The foster care arrangement is terminated at the written  
35 request of a foster child who has attained the age of fourteen; or

36 (6) A circuit court orders the termination upon a finding  
37 that the state department has developed a more suitable  
38 long-term placement for the child upon hearing evidence in a  
39 proceeding brought by the department seeking removal and  
40 transfer.

41 (c) When a child has been residing in a foster home for a  
42 period in excess of six consecutive months in total and for a  
43 period in excess of thirty days after the parental rights of the  
44 child's biological parents have been terminated and the foster  
45 parents have not made an application to the department to  
46 establish an intent to adopt the child within thirty days of  
47 parental rights being terminated, the state department may  
48 terminate the foster care arrangement if another, more benefi-  
49 cial, long-term placement of the child is developed: *Provided*,  
50 That if the child is twelve years of age or older, the child shall  
51 be provided the option of remaining in the existing foster care  
52 arrangement if the child so desires and if continuation of the  
53 existing arrangement is in the best interest of the child.



54 (d) When a child is placed into foster care or becomes  
55 eligible for adoption and a sibling or siblings have previously  
56 been placed in foster care or have been adopted, the department  
57 shall notify the foster parents or adoptive parents of the  
58 previously placed or adopted sibling or siblings of the child's  
59 availability for foster care placement or adoption to determine  
60 if the foster parents or adoptive parents are desirous of seeking  
61 a foster care arrangement or adoption of the child. Where a  
62 sibling or siblings have previously been adopted, the depart-  
63 ment shall also notify the adoptive parents of a sibling of the  
64 child's availability for foster care placement in that home and  
65 a foster care arrangement entered into to place the child in the  
66 home if the adoptive parents of the sibling are otherwise  
67 qualified or can become qualified to enter into a foster care  
68 arrangement with the department and if such arrangement is in  
69 the best interests of the child: *Provided*, That the department  
70 may petition the court to waive notification to the foster parents  
71 or adoptive parents of the child's siblings. This waiver may be  
72 granted, *ex parte*, upon a showing of compelling circumstances.

73 (e) When a child is in a foster care arrangement and is  
74 residing separately from a sibling or siblings who are in another  
75 foster home or who have been adopted by another family and  
76 the parents with whom the placed or adopted sibling or siblings  
77 reside have made application to the department to establish an  
78 intent to adopt or to enter into a foster care arrangement  
79 regarding a child so that said child may be united or reunited  
80 with a sibling or siblings, the state department shall upon a  
81 determination of the fitness of the persons and household  
82 seeking to enter into a foster care arrangement or seek an  
83 adoption which would unite or reunite siblings, and if termina-  
84 tion and new placement are in the best interests of the children,  
85 terminate the foster care arrangement and place the child in the  
86 household with the sibling or siblings: *Provided*, That if the

87 department is of the opinion based upon available evidence that  
88 residing in the same home would have a harmful physical,  
89 mental or psychological effect on one or more of the sibling  
90 children or if the child has a physical or mental disability which  
91 the existing foster home can better accommodate, or if the  
92 department can document that the reunification of the siblings  
93 would not be in the best interest of one or all of the children, the  
94 state department may petition the circuit court for an order  
95 allowing the separation of the siblings to continue: *Provided,*  
96 *however,* That if the child is twelve years of age or older, the  
97 state department shall provide the child the option of remaining  
98 in the existing foster care arrangement if remaining is in the  
99 best interests of the child. In any proceeding brought by the  
100 department to maintain separation of siblings, such separation  
101 may be ordered only if the court determines that clear and  
102 convincing evidence supports the department's determination.  
103 In any proceeding brought by the department seeking to  
104 maintain separation of siblings, notice shall be afforded, in  
105 addition to any other persons required by any provision of this  
106 code to receive notice, to the persons seeking to adopt a sibling  
107 or siblings of a previously placed or adopted child and said  
108 persons may be parties to any such action.

109 (f) Where two or more siblings have been placed in separate  
110 foster care arrangements and the foster parents of the siblings  
111 have made application to the department to enter into a foster  
112 care arrangement regarding the sibling or siblings not in their  
113 home or where two or more adoptive parents seek to adopt a  
114 sibling or siblings of a child they have previously adopted, the  
115 department's determination as to placing the child in a foster  
116 care arrangement or in an adoptive home shall be based solely  
117 upon the best interests of the siblings.

---

**CHAPTER 52**

**(Com. Sub. for H. B. 4429 — By Delegates Boggs, Michael and Cann)**

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the division of juvenile services to have access to relevant court records concerning a juvenile offender adjudicated delinquent.

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

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

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-13. Disposition of juvenile delinquents; appeal.**

1       (a) In aid of disposition of juvenile delinquents, the juvenile  
2       probation officer assigned to the court shall, upon request of the  
3       court, make an investigation of the environment of the juvenile  
4       and the alternative dispositions possible. The court, upon its  
5       own motion, or upon request of counsel, may order a psycho-  
6       logical examination of the juvenile. The report of such exami-  
7       nation and other investigative and social reports shall not be  
8       made available to the court until after the adjudicatory hearing.  
9       Unless waived, copies of the report shall be provided to counsel  
10      for the petitioner and counsel for the juvenile no later than  
11      seventy-two hours prior to the dispositional hearing.

12 (b) Following the adjudication, the court shall conduct the  
13 dispositional proceeding, giving all parties an opportunity to be  
14 heard. In disposition the court shall not be limited to the relief  
15 sought in the petition and shall, in electing from the following  
16 alternatives, consider the best interests of the juvenile and the  
17 welfare of the public:

18 (1) Dismiss the petition;

19 (2) Refer the juvenile and the juvenile's parent or custodian  
20 to a community agency for needed assistance and dismiss the  
21 petition;

22 (3) Upon a finding that the juvenile is in need of ex-  
23 tra-parental supervision: (A) Place the juvenile under the  
24 supervision of a probation officer of the court or of the court of  
25 the county where the juvenile has his or her usual place of  
26 abode or other person while leaving the juvenile in custody of  
27 his or her parent or custodian; and (B) prescribe a program of  
28 treatment or therapy or limit the juvenile's activities under  
29 terms which are reasonable and within the child's ability to  
30 perform, including participation in the litter control program  
31 established pursuant to section twenty-five, article seven,  
32 chapter twenty of this code, or other appropriate programs of  
33 community service;

34 (4) Upon a finding that a parent or custodian is not willing  
35 or able to take custody of the juvenile, that a juvenile is not  
36 willing to reside in the custody of his parent or custodian, or  
37 that a parent or custodian cannot provide the necessary supervi-  
38 sion and care of the juvenile, the court may place the juvenile  
39 in temporary foster care or temporarily commit the juvenile to  
40 the department or a child welfare agency. The court order shall  
41 state that continuation in the home is contrary to the best  
42 interest of the juvenile and why; and whether or not the  
43 department made a reasonable effort to prevent the placement

44 or that the emergency situation made such efforts unreasonable  
45 or impossible. Whenever the court transfers custody of a youth  
46 to the department, an appropriate order of financial support by  
47 the parents or guardians shall be entered in accordance with  
48 section five, article seven of this chapter and guidelines  
49 promulgated by the supreme court of appeals;

50 (5) Upon a finding that the best interests of the juvenile or  
51 the welfare of the public require it, and upon an adjudication of  
52 delinquency pursuant to subdivision (1), section four, article  
53 one of this chapter, the court may commit the juvenile to the  
54 custody of the director of the division of juvenile services for  
55 placement in a juvenile services facility for the treatment,  
56 instruction and rehabilitation of juveniles: *Provided*, That the  
57 court maintains discretion to consider alternative sentencing  
58 arrangements. Notwithstanding any provision of this code to the  
59 contrary, in the event that the court determines that it is in the  
60 juvenile's best interests or required by the public welfare to  
61 place the juvenile in the custody of the division of juvenile  
62 services, the court shall provide the division of juvenile services  
63 with access to all relevant court orders and records involving  
64 the underlying offense or offenses for which the juvenile was  
65 adjudicated delinquent, including sentencing and presentencing  
66 reports and evaluations, and provide the division with access to  
67 school records, psychological reports and evaluations, medical  
68 reports and evaluations or any other such records as may be in  
69 the court's possession as would enable the division of juvenile  
70 services to better assess and determine the appropriate counsel-  
71 ing, education and placement needs for the juvenile offender.  
72 Commitments shall not exceed the maximum term for which an  
73 adult could have been sentenced for the same offense and any  
74 such maximum allowable sentence to be served in a juvenile  
75 correctional facility may take into account any time served by  
76 the juvenile in a detention center pending adjudication, disposi-  
77 tion or transfer. The order shall state that continuation in the  
78 home is contrary to the best interests of the juvenile and why;

79 and whether or not the state department made a reasonable  
80 effort to prevent the placement or that the emergency situation  
81 made such efforts unreasonable or impossible; or

82 (6) After a hearing conducted under the procedures set out  
83 in subsections (c) and (d), section four, article five, chapter  
84 twenty-seven of this code, commit the juvenile to a mental  
85 health facility in accordance with the juvenile's treatment plan;  
86 the director of the mental health facility may release a juvenile  
87 and return him or her to the court for further disposition. The  
88 order shall state that continuation in the home is contrary to the  
89 best interests of the juvenile and why; and whether or not the  
90 state department made a reasonable effort to prevent the  
91 placement or that the emergency situation made such efforts  
92 unreasonable or impossible.

93 (c) The disposition of the juvenile shall not be affected by  
94 the fact that the juvenile demanded a trial by jury or made a  
95 plea of denial. Any dispositional order is subject to appeal to  
96 the supreme court of appeals.

97 (d) Following disposition, the court shall inquire whether  
98 the juvenile wishes to appeal and the response shall be tran-  
99 scribed; a negative response shall not be construed as a waiver.  
100 The evidence shall be transcribed as soon as practicable and  
101 made available to the juvenile or his or her counsel, if the same  
102 is requested for purposes of further proceedings. A judge may  
103 grant a stay of execution pending further proceedings.

104 (e) Notwithstanding any other provision of this code to the  
105 contrary, if a juvenile charged with delinquency under this  
106 chapter is transferred to adult jurisdiction and there tried and  
107 convicted, the court may make its disposition in accordance  
108 with this section in lieu of sentencing such person as an adult.

---

**CHAPTER 53**

**(S. B. 620 — By Senators Wooton, Craig Jackson,  
Mitchell, Prezioso, Redd, McKenzie and Plymale)**

---

[Passed March 5, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirteen-a, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to examination, diagnosis and classification of juveniles; and increasing the time of the period of custody.

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

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

**ARTICLE 5. JUVENILE PROCEEDINGS.**

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

1       As a part of the dispositional proceeding for a juvenile who  
 2 has been adjudicated delinquent, the court may, upon its own  
 3 motion or upon request of counsel, order the juvenile to be  
 4 delivered into the custody of the director of the division of  
 5 juvenile services, who shall cause the juvenile to be transferred  
 6 to a juvenile diagnostic center for a period not to exceed sixty  
 7 days. During this period, the juvenile shall undergo examina-  
 8 tion, diagnosis, classification and a complete medical examina-  
 9 tion and shall at all times be kept apart from the general

10 juvenile inmate population in the director's custody. Not later  
11 than sixty days after commitment pursuant to this section the  
12 juvenile shall be remanded and delivered to the custody of the  
13 director, an appropriate agency or any other person that the  
14 court by its order directs. Within ten days after the end of the  
15 examination, diagnosis and classification, the director of the  
16 division of juvenile services shall make or cause to be made a  
17 report to the court containing the results, findings, conclusions  
18 and recommendations of the director with respect to that  
19 juvenile.

---

## CHAPTER 54

**(S. B. 717 — By Senators Wooton, Caldwell, Facemyer, Hunter,  
Minard, Redd, Ross, Rowe and Snyder)**

---

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section two, article five-e, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying the authority of the director of the division of juvenile services to determine the facility in which to place children ordered into his or her custody.

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

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

**ARTICLE 5E. DIVISION OF JUVENILE SERVICES.**



**§49-5E-2. Division created; transfer of functions; employment of comprehensive strategy.**

1       (a) There is hereby created the division of juvenile services  
2 within the department of military affairs and public safety. The  
3 director shall be appointed by the governor with the advice and  
4 consent of the Senate and shall be responsible for the control  
5 and supervision of each of its offices. The director may appoint  
6 deputy directors and assign them duties as may be necessary for  
7 the efficient management and operation of the division.

8       (b) The division of juvenile services shall consist of two  
9 subdivisions:

10       (1) The office of juvenile detention, which shall assume  
11 responsibility for operating and maintaining centers for the  
12 predispositional detention of juveniles, including juveniles who  
13 have been transferred to adult criminal jurisdiction under  
14 section ten, article five of this chapter and juveniles who are  
15 awaiting transfer to a juvenile corrections facility; and

16       (2) The office of juvenile corrections, which shall assume  
17 responsibility for operating and maintaining juvenile correc-  
18 tions facilities.

19       (c) Notwithstanding any provisions of this code to the  
20 contrary, whenever a juvenile is ordered into the custody of the  
21 division of juvenile services, the director shall have the  
22 authority to place the juvenile while he or she is in the divi-  
23 sion's custody at whichever facility operated by the division is  
24 deemed by the director to be most appropriate considering the  
25 juvenile's well-being and any recommendations of the court  
26 placing the juvenile in the division's custody.

---

## CHAPTER 55

**(Com. Sub. for S. B. 445 — By Senator Chafin)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections five and eight, article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the disposition of abused or neglected children; and providing that all placement alternatives be found by the court to be unsuitable and contrary to the best interests of the child before long-term or permanent foster care be considered.

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

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

**ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

§49-6-5. Disposition of neglected or abused children.

§49-6-8. Foster care review; annual reports to the court.

**§49-6-5. Disposition of neglected or abused children.**

- 1           (a) Following a determination pursuant to section two of
- 2 this article wherein the court finds a child to be abused or
- 3 neglected, the department shall file with the court a copy of the
- 4 child's case plan, including the permanency plan for the child.
- 5 The term case plan means a written document that includes,
- 6 where applicable, the requirements of the family case plan as
- 7 provided for in section three, article six-d of this chapter and
- 8 that also includes at least the following: A description of the

9 type of home or institution in which the child is to be placed,  
10 including a discussion of the appropriateness of the placement  
11 and how the agency which is responsible for the child plans to  
12 assure that the child receives proper care and that services are  
13 provided to the parents, child and foster parents in order to  
14 improve the conditions in the parent(s) home; facilitate return  
15 of the child to his or her own home or the permanent placement  
16 of the child; and address the needs of the child while in foster  
17 care, including a discussion of the appropriateness of the  
18 services that have been provided to the child. The term "perma-  
19 nency plan" refers to that part of the case plan which is de-  
20 signed to achieve a permanent home for the child in the least  
21 restrictive setting available. The plan must document efforts to  
22 ensure that the child is returned home within approximate time  
23 lines for reunification as set out in the plan. Reasonable efforts  
24 to place a child for adoption or with a legal guardian may be  
25 made at the same time reasonable efforts are made to prevent  
26 removal or to make it possible for a child to safely return home.  
27 If reunification is not the permanency plan for the child, the  
28 plan must state why reunification is not appropriate and detail  
29 the alternative placement for the child to include approximate  
30 time lines for when such placement is expected to become a  
31 permanent placement. This case plan shall serve as the family  
32 case plan for parents of abused or neglected children. Copies of  
33 the child's case plan shall be sent to the child's attorney and  
34 parent, guardian or custodian or their counsel at least five days  
35 prior to the dispositional hearing. The court shall forthwith  
36 proceed to disposition giving both the petitioner and respon-  
37 dents an opportunity to be heard. The court shall give prece-  
38 dence to dispositions in the following sequence:

39 (1) Dismiss the petition;

40 (2) Refer the child, the abusing parent or other family  
41 members to a community agency for needed assistance and  
42 dismiss the petition;

43 (3) Return the child to his or her own home under supervi-  
44 sion of the department;

45 (4) Order terms of supervision calculated to assist the child  
46 and any abusing parent or parents or custodian which prescribe  
47 the manner of supervision and care of the child and which are  
48 within the ability of any parent or parents or custodian to  
49 perform;

50 (5) Upon a finding that the abusing parent or parents are  
51 presently unwilling or unable to provide adequately for the  
52 child's needs, commit the child temporarily to the custody of  
53 the state department, a licensed private child welfare agency or  
54 a suitable person who may be appointed guardian by the court.  
55 The court order shall state: (A) That continuation in the home  
56 is contrary to the best interests of the child and why; (B)  
57 whether or not the department has made reasonable efforts, with  
58 the child's health and safety being the paramount concern, to  
59 preserve the family and to prevent or eliminate the need for  
60 removing the child from the child's home and to make it  
61 possible for the child to safely return home; (C) what efforts  
62 were made or that the emergency situation made such efforts  
63 unreasonable or impossible; and (D) the specific circumstances  
64 of the situation which made such efforts unreasonable if  
65 services were not offered by the department. The court order  
66 shall also determine under what circumstances the child's  
67 commitment to the department shall continue. Considerations  
68 pertinent to the determination include whether the child should:  
69 (i) Be continued in foster care for a specified period; (ii) be  
70 considered for adoption; (iii) be considered for legal guardian-  
71 ship; (iv) be considered for permanent placement with a fit and  
72 willing relative; or (v) be placed in another planned permanent  
73 living arrangement, but only in cases where the department has  
74 documented to the circuit court a compelling reason for  
75 determining that it would not be in the best interests of the child  
76 to follow one of the options set forth in subparagraphs (i), (ii),

77 (iii) or (iv) of this paragraph. The court may order services to  
78 meet the special needs of the child. Whenever the court  
79 transfers custody of a youth to the department, an appropriate  
80 order of financial support by the parents or guardians shall be  
81 entered in accordance with section five, article seven of this  
82 chapter; or

83 (6) Upon a finding that there is no reasonable likelihood  
84 that the conditions of neglect or abuse can be substantially  
85 corrected in the near future and, when necessary for the welfare  
86 of the child, terminate the parental, custodial or guardianship  
87 rights and/or responsibilities of the abusing parent and commit  
88 the child to the permanent sole custody of the nonabusing  
89 parent, if there be one, or, if not, to either the permanent  
90 guardianship of the department or a licensed child welfare  
91 agency. If the court shall so find, then in fixing its dispositional  
92 order the court shall consider the following factors: (A) The  
93 child's need for continuity of care and caretakers; (B) the  
94 amount of time required for the child to be integrated into a  
95 stable and permanent home environment; and (C) other factors  
96 as the court considers necessary and proper. Notwithstanding  
97 any other provision of this article, the court shall give consider-  
98 ation to the wishes of a child fourteen years of age or older or  
99 otherwise of an age of discretion as determined by the court  
100 regarding the permanent termination of parental rights. No  
101 adoption of a child shall take place until all proceedings for  
102 termination of parental rights under this article and appeals  
103 thereof are final. In determining whether or not parental rights  
104 should be terminated, the court shall consider the efforts made  
105 by the department to provide remedial and reunification  
106 services to the parent. The court order shall state: (i) That  
107 continuation in the home is not in the best interest of the child  
108 and why; (ii) why reunification is not in the best interests of the  
109 child; (iii) whether or not the department made reasonable  
110 efforts, with the child's health and safety being the paramount  
111 concern, to preserve the family and to prevent the placement or

112 to eliminate the need for removing the child from the child's  
113 home and to make it possible for the child to safely return  
114 home, or that the emergency situation made such efforts  
115 unreasonable or impossible; and (iv) whether or not the  
116 department made reasonable efforts to preserve and reunify the  
117 family including a description of what efforts were made or that  
118 such efforts were unreasonable due to specific circumstances.

119 (7) For purposes of the court's consideration of the disposi-  
120 tion custody of a child pursuant to the provisions of this  
121 subsection, the department is not required to make reasonable  
122 efforts to preserve the family if the court determines:

123 (A) The parent has subjected the child to aggravated  
124 circumstances which include, but are not limited to, abandon-  
125 ment, torture, chronic abuse and sexual abuse;

126 (B) The parent has:

127 (i) Committed murder of another child of the parent;

128 (ii) Committed voluntary manslaughter of another child of  
129 the parent;

130 (iii) Attempted or conspired to commit such a murder or  
131 voluntary manslaughter or been an accessory before or after the  
132 fact to either such crime; or

133 (iv) Committed a felonious assault that results in serious  
134 bodily injury to the child or to another child of the parent; or

135 (C) The parental rights of the parent to a sibling have been  
136 terminated involuntarily.

137 (b) As used in this section, "no reasonable likelihood that  
138 conditions of neglect or abuse can be substantially corrected"

139 shall mean that, based upon the evidence before the court, the  
140 abusing adult or adults have demonstrated an inadequate  
141 capacity to solve the problems of abuse or neglect on their own  
142 or with help. Such conditions shall be considered to exist in the  
143 following circumstances, which shall not be exclusive:

144 (1) The abusing parent or parents have habitually abused or  
145 are addicted to alcohol, controlled substances or drugs, to the  
146 extent that proper parenting skills have been seriously impaired  
147 and such person or persons have not responded to or followed  
148 through the recommended and appropriate treatment which  
149 could have improved the capacity for adequate parental  
150 functioning;

151 (2) The abusing parent or parents have willfully refused or  
152 are presently unwilling to cooperate in the development of a  
153 reasonable family case plan designed to lead to the child's  
154 return to their care, custody and control;

155 (3) The abusing parent or parents have not responded to or  
156 followed through with a reasonable family case plan or other  
157 rehabilitative efforts of social, medical, mental health or other  
158 rehabilitative agencies designed to reduce or prevent the abuse  
159 or neglect of the child, as evidenced by the continuation or  
160 insubstantial diminution of conditions which threatened the  
161 health, welfare or life of the child;

162 (4) The abusing parent or parents have abandoned the child;

163 (5) The abusing parent or parents have repeatedly or  
164 seriously injured the child physically or emotionally, or have  
165 sexually abused or sexually exploited the child, and the degree  
166 of family stress and the potential for further abuse and neglect  
167 are so great as to preclude the use of resources to mitigate or

168 resolve family problems or assist the abusing parent or parents  
169 in fulfilling their responsibilities to the child; or

170 (6) The abusing parent or parents have incurred emotional  
171 illness, mental illness or mental deficiency of such duration or  
172 nature as to render such parent or parents incapable of exercis-  
173 ing proper parenting skills or sufficiently improving the  
174 adequacy of such skills.

175 (c) The court may, as an alternative disposition, allow the  
176 parents or custodians an improvement period not to exceed six  
177 months. During this period the court shall require the parent to  
178 rectify the conditions upon which the determination was based.  
179 The court may order the child to be placed with the parents, or  
180 any person found to be a fit and proper person, for the tempo-  
181 rary care of the child during the period. At the end of the  
182 period, the court shall hold a hearing to determine whether the  
183 conditions have been adequately improved and at the conclu-  
184 sion of the hearing shall make a further dispositional order in  
185 accordance with this section.

**§49-6-8. Foster care review; annual reports to the court.**

1 (a) If, twelve months after receipt by the department or its  
2 authorized agent of physical custody of a child either by a court  
3 ordered placement or by a voluntary agreement, the department  
4 has not placed a child in an adoptive home or placed the child  
5 with a natural parent or placed the child in legal guardianship  
6 or permanently placed the child with a fit and willing relative,  
7 the department shall file with the court a petition for review of  
8 the case. The department shall also file with the court a report  
9 detailing the efforts that have been made to place the child in a  
10 permanent home and copies of the child's case plan, including  
11 the permanency plan as defined in section five, article six of  
12 this chapter. Copies of the report shall be sent to the child's



13 attorney and be made available to the child's parent(s) or  
14 guardian. The court shall schedule a hearing in chambers,  
15 giving notice and the right to be present to: The child's attor-  
16 ney; the child, if twelve years of age or older; the child's  
17 parents; the child's guardians; the child's foster parents; any  
18 preadoptive parent or any relative providing care for the child;  
19 and such other persons as the court may, in its discretion, direct.  
20 The child's presence may be waived by the child's attorney at  
21 the request of the child or if the child would suffer emotional  
22 harm. The purpose of the hearing is to review the child's case,  
23 to determine whether and under what conditions the child's  
24 commitment to the department shall continue and to determine  
25 what efforts are necessary to provide the child with a permanent  
26 home. At the conclusion of the hearing the court shall, in  
27 accordance with the best interests of the child, enter an appro-  
28 priate order of disposition. The court order shall state: (1)  
29 Whether or not the department made reasonable efforts to  
30 preserve the family and to prevent out-of-home placement or  
31 that the specific situation made such effort unreasonable; (2) the  
32 permanency plan for the child; and (3) services required to meet  
33 the child's needs: *Provided*, That the department is not required  
34 to make reasonable efforts to preserve the family if the court  
35 determines any of the conditions set forth in subdivision (7),  
36 subsection (a), section five of this article exist. The court shall  
37 possess continuing jurisdiction over cases reviewed under this  
38 section for so long as a child remains in temporary foster care  
39 or, when a child is returned to his or her natural parents subject  
40 to conditions imposed by the court, for so long as the conditions  
41 are effective.

42 (b) The state department shall file a supplementary petition  
43 for review with the court within twelve months and every  
44 twelve months thereafter for every child that remains in the  
45 physical or legal custody of the state department until the child  
46 is placed in an adoptive home or returned to his or her parents

47 or placed in legal guardianship or permanently placed with a fit  
48 and willing relative.

49 (c) The state department shall annually report to the court  
50 the current status of the placements of children in permanent  
51 care and custody of the state department who have not been  
52 adopted.

53 (d) The state department shall file a report with the court in  
54 any case where any child in the temporary or permanent  
55 custody of the state receives more than three placements in one  
56 year no later than thirty days after the third placement. This  
57 report shall be provided to all parties and their counsel. Upon  
58 motion by any party, the court shall review these placements  
59 and determine what efforts are necessary to provide the child  
60 with a stable foster or temporary home: *Provided*, That no  
61 report shall be provided to any parent or parent's attorney  
62 whose parental rights have been terminated pursuant to this  
63 article.

64 (e) The state department shall notify, in writing, the court,  
65 the child, if over the age of twelve, the child's attorney, the  
66 parents and the parents' attorney forty-eight hours prior to the  
67 move if this is a planned move, or within forty-eight hours of  
68 the next business day after the move if this is an emergency  
69 move, except where such notification would endanger the child  
70 or the foster family. This notice shall not be required in any  
71 case where the child is in imminent danger in the child's current  
72 placement. The location of the child need not be disclosed, but  
73 the purpose of the move should be. This requirement is not  
74 waived by placement of the child in a home or other residence  
75 maintained by a private provider. No notice shall be provided  
76 pursuant to this provision to any parent or parent's attorney  
77 whose parental rights have been terminated pursuant to this  
78 article.

79 (f) Nothing in this article precludes any party from petition-  
80 ing the court for review of the child's case at any time. The  
81 court shall grant such petition upon a showing that there is a  
82 change in circumstance or needs of the child that warrants court  
83 review.

---

## CHAPTER 56

(S. B. 584 — By Senators Love, Helmick, Sharpe and Edgell)

---

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

### CLAIMS AGAINST THE STATE.

**§1. Finding and declaring certain claims against the adjutant general; air quality board; alcohol beverage control administration; appraisers licensing board; attorney general; auditor's office; board of accountancy; board of coal mine health and safety; board of embalmers and funeral directors; board of architects; West Virginia state board of examiners for licensed practical nurses; board of optometry; board of pharmacy; board of physical therapy; board of professional engineers; board of psychologists; board of radiologic technologists; West Virginia board of examiners for registered professional nurses; West Virginia board of respiratory care; board of risk and insurance management; board of social work examiners; board of veterinary medicine; bureau of employment programs; bureau of senior services; consolidated public retirement**

board; department of administration; department of agriculture; department of education; department of education and the arts; department of health and human resources; department of military affairs and public safety; department of tax and revenue; West Virginia development office; division of banking; division of corrections; division of criminal justice services; division of culture and history; division of environmental protection; division of finance; division of forestry; division of highways; division of juvenile services; division of labor; division of motor vehicles; division of natural resources; division of personnel; division of protective services; West Virginia development office-division of tourism; educational broadcasting authority; environmental quality board; fire commission; division of general services; geological and economic survey; governor's office; education and state employees' grievance board; West Virginia health care authority; higher education policy commission; hospital finance authority; human rights commission; division of human services; division of information services and communications; insurance commissioner; joint expenses; library commission; lottery commission; massage therapy licensure board; division of miners' health, safety and training; municipal bond commission; office of emergency services; West Virginia prosecuting attorneys institute; public defender services; public employees insurance agency; public service commission; division of public transit; racing commission; real estate commission; regional jail and correctional facility authority; division of rehabilitation services; secretary of state; solid waste management board; supreme court; treasurer's office; division of veterans' affairs; veterans' home; water development authority; workers' compensation; ethics commission; West Virginia network; West Virginia parole board and the West Virginia state police to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and  
 2 recommendations reported to it by the court of claims concern-  
 3 ing various claims against the state and agencies thereof, and in  
 4 respect to each of the following claims the Legislature adopts  
 5 those findings of fact as its own, and in respect of certain claims  
 6 herein, the Legislature has independently made findings of fact  
 7 and determinations of award and hereby declares it to be the  
 8 moral obligation of the state to pay each such claim in the  
 9 amount specified below and directs the auditor to issue warrants  
 10 for the payment thereof out of any fund appropriated and  
 11 available for the purpose.

12 (a) *Claims against the Adjutant General:*

13 (TO BE PAID FROM GENERAL REVENUE FUND)

14 (1) AT&T Corporation ..... \$ 178.83  
 15 (2) Verizon West Virginia, Inc. .... \$ 352.48

16 (TO BE PAID FROM NON GENERAL REVENUE FUND)

17 (3) AT&T Corporation ..... \$ 6,644.47  
 18 (4) Citizens Communications Company of  
 19 West Virginia ..... \$ 8,133.32  
 20 (5) Verizon West Virginia, Inc. .... \$ 30,264.07

21 (b) *Claim against the Air Quality Board:*

22 (TO BE PAID FROM GENERAL REVENUE FUND)

23 (1) Verizon West Virginia, Inc. .... \$ 6.68

24 (c) *Claims against the Alcohol Beverage Control Administra-*  
 25 *tion:*

26 (TO BE PAID FROM NON GENERAL REVENUE FUND)

27 (1) AT&T Corporation ..... \$ 1,545.33  
 28 (2) Verizon West Virginia, Inc. .... \$ 10,053.99

29 (TO BE PAID FROM SPECIAL REVENUE FUND)

30	(3) Division of Highways .....	\$ 1,179.38
31	(4) Gordon W. Lewis, Jr.,	
32	and Lilly M. Lewis .....	\$ 58,750.75

33 (d) *Claims against the Appraisers Licensing Board:*

34 (TO BE PAID FROM NON GENERAL REVENUE FUND)

35	(1) AT&T Corporation .....	\$ 175.53
36	(2) Verizon West Virginia, Inc. ....	\$ 406.44

37 (e) *Claims against the Attorney General:*

38 (TO BE PAID FROM GENERAL REVENUE FUND)

39	(1) AT&T Corporation .....	\$ 5,387.80
40	(2) Euro Suites Hotel .....	\$ 225.00
41	(3) Verizon West Virginia, Inc. ....	\$ 10,812.35

42 (f) *Claims against the Auditor's Office:*

43 (TO BE PAID FROM GENERAL REVENUE FUND)

44	(1) AT&T Corporation .....	\$ 3,882.71
45	(2) Verizon West Virginia, Inc. ....	\$ 11,430.64

46 (g) *Claims against the Board of Accountancy:*

47 (TO BE PAID FROM NON GENERAL REVENUE FUND)

48	(1) AT&T Corporation .....	\$ 41.88
49	(2) Verizon West Virginia, Inc. ....	\$ 81.56

50 (h) *Claim against the Board of Coal Mine Health and Safety:*

51 (TO BE PAID FROM GENERAL REVENUE FUND)

52 (1) Citizens Communications Company  
 53 of West Virginia ..... \$ 2,039.35

54 (i) *Claims against the Board of Embalmers and Funeral*  
 55 *Directors:*

56 (TO BE PAID FROM NON GENERAL REVENUE FUND)

57 (1) AT&T Corporation ..... \$ 68.67

58 (2) Verizon West Virginia, Inc. .... \$ 137.87

59 (j) *Claims against the Board of Architects:*

60 (TO BE PAID FROM NON GENERAL REVENUE FUND)

61 (1) AT&T Corporation ..... \$ 128.22

62 (2) Verizon West Virginia, Inc. .... \$ 295.63

63 (k) *Claims against the West Virginia Board of Examiners for*  
 64 *Licensed Practical Nurses:*

65 (TO BE PAID FROM NON GENERAL REVENUE FUND)

66 (1) AT&T Corporation ..... \$ 112.76

67 (2) Verizon West Virginia, Inc. .... \$ 268.36

68 (l) *Claims against the Board of Optometry:*

69 (TO BE PAID FROM NON GENERAL REVENUE FUND)

70 (1) AT&T Corporation ..... \$ 157.19

71 (2) Verizon West Virginia, Inc. .... \$ 379.67

72 (m) *Claims against the Board of Pharmacy:*

73 (TO BE PAID FROM NON GENERAL REVENUE FUND)

74 (1) AT&T Corporation ..... \$ 302.86

75 (2) Verizon West Virginia, Inc. .... \$ 657.50

76 (n) *Claims against the Board of Physical Therapy:*

77 (TO BE PAID FROM NON GENERAL REVENUE FUND)

78 (1) AT&T Corporation ..... \$ 182.91

79 (2) Verizon West Virginia, Inc. .... \$ 373.72

80 (o) *Claims against the Board of Professional Engineers:*

81 (TO BE PAID FROM NON GENERAL REVENUE FUND)

82 (1) AT&T Corporation ..... \$ 57.60

83 (2) Verizon West Virginia, Inc. .... \$ 132.74

84 (p) *Claims against the Board of Psychologists:*

85 (TO BE PAID FROM NON GENERAL REVENUE FUND)

86 (1) AT&T Corporation ..... \$ 111.19

87 (2) Verizon West Virginia, Inc. .... \$ 152.56

88 (q) *Claims against the Board of Radiologic Technologists:*

89 (TO BE PAID FROM NON GENERAL REVENUE FUND)

90 (1) AT&T Corporation ..... \$ 2.56

91 (2) Verizon West Virginia, Inc. .... \$ 83.18

92 (r) *Claims against the West Virginia Board of Examiners for  
93 Registered Professional Nurses:*

94 (TO BE PAID FROM NON GENERAL REVENUE FUND)

95 (1) AT&T Corporation ..... \$ 321.74

96 (2) Verizon West Virginia, Inc. .... \$ 707.91

97 (s) *Claims against the Board of Respiratory Care:*

98 (TO BE PAID FROM NON GENERAL REVENUE FUND)



99 (1) AT&T Corporation . . . . . \$ 56.60  
100 (2) Verizon West Virginia, Inc. . . . . \$ 1,715.76

101 (t) *Claims against the Board of Risk and Insurance Manage-*  
102 *ment:*

103 (TO BE PAID FROM NON GENERAL REVENUE FUND)

104 (1) AT&T Corporation . . . . . \$ 556.68  
105 (2) Verizon West Virginia, Inc. . . . . \$ 1,353.68

106 (u) *Claims against the Board of Social Work Examiners:*

107 (TO BE PAID FROM NON GENERAL REVENUE FUND)

108 (1) AT&T Corporation . . . . . \$ 308.45  
109 (2) Verizon West Virginia, Inc. . . . . \$ 620.42

110 (v) *Claims against the Board of Veterinary Medicine:*

111 (TO BE PAID FROM NON GENERAL REVENUE FUND)

112 (1) AT&T Corporation . . . . . \$ 79.05  
113 (2) Verizon West Virginia, Inc. . . . . \$ 89.95

114 (w) *Claims against the Bureau of Employment Programs:*

115 (TO BE PAID FROM NON GENERAL REVENUE FUND)

116 (1) AT&T Corporation . . . . . \$ 37,545.69  
117 (2) Citizens Communications Company  
118 of West Virginia . . . . . \$ 47,070.16  
119 (3) Verizon West Virginia, Inc. . . . . \$140,167.14

120 (x) *Claims against the Bureau of Senior Services:*

121 (TO BE PAID FROM GENERAL REVENUE FUND)

122 (1) AT&T Corporation . . . . . \$ 1,627.37  
123 (2) Verizon West Virginia, Inc. . . . . \$ 3,156.34

124 (y) *Claims against the Consolidated Public Retirement Board:*

125 (TO BE PAID FROM NON GENERAL REVENUE FUND)

126 (1) AT&T Corporation ..... \$ 3,058.18

127 (2) Verizon West Virginia, Inc. .... \$ 5,107.34

128 (z) *Claims against the Department of Administration:*

129 (TO BE PAID FROM GENERAL REVENUE FUND)

130 (1) AT&T Corporation ..... \$ 14,633.20

131 (2) Citizens Communications Company

132 of West Virginia ..... \$ 23,779.19

133 (3) Verizon West Virginia, Inc. .... \$ 27,684.20

134 (TO BE PAID FROM NON GENERAL REVENUE FUND)

135 (4) AT&T Corporation ..... \$ 658.44

136 (5) Verizon West Virginia, Inc. .... \$ 1,231.29

137 (aa) *Claims against the Department of Agriculture:*

138 (TO BE PAID FROM GENERAL REVENUE FUND)

139 (1) AT&T Corporation ..... \$ 7,178.18

140 (2) Verizon West Virginia, Inc. .... \$ 16,447.84

141 (TO BE PAID FROM NON GENERAL REVENUE FUND)

142 (3) AT&T Corporation ..... \$ 1,203.58

143 (4) Verizon West Virginia, Inc. .... \$ 3,333.02

144 (TO BE PAID FROM SPECIAL REVENUE FUND)

145 (5) Bruceton Ag Services, Inc. .... \$ 1,583.40

146 (bb) *Claims against the Department of Education:*

147 (TO BE PAID FROM GENERAL REVENUE FUND)

148 (1) AT&T Corporation . . . . . \$ 10,863.10

149 (2) Verizon West Virginia, Inc. . . . . \$ 22,706.66

150 (TO BE PAID FROM NON GENERAL REVENUE FUND)

151 (3) AT&T Corporation . . . . . \$ 8,780.14

152 (4) Verizon West Virginia, Inc. . . . . \$ 17,874.40

153 (cc) *Claims against the Department of Education and the Arts:*

154 (TO BE PAID FROM GENERAL REVENUE FUND)

155 (1) AT&T Corporation . . . . . \$ 35.59

156 (2) Verizon West Virginia, Inc. . . . . \$ 784.52

157 (TO BE PAID FROM NON GENERAL REVENUE FUND)

158 (3) Verizon West Virginia, Inc. . . . . \$ 11,629.00

159 (dd) *Claims against the Department of Health and Human*  
160 *Resources:*

161 (TO BE PAID FROM GENERAL REVENUE FUND)

162 (1) AT&T Corporation . . . . . \$ 51,414.02

163 (2) Citizens Communications Company  
164 of West Virginia . . . . . \$ 71,548.86

165 (3) Verizon West Virginia, Inc. . . . . \$137,654.01

166 (TO BE PAID FROM NON GENERAL REVENUE FUND)

167 (4) AT&T Corporation . . . . . \$ 12,418.07

168 (5) Citizens Communications Company  
169 of West Virginia . . . . . \$ 20,941.12

170 (6) Verizon West Virginia, Inc. . . . . \$ 35,031.44

171 (ee) *Claims against the Department of Military Affairs and*  
172 *Public Safety:*

173 (TO BE PAID FROM GENERAL REVENUE FUND)

174	(1) AT&T Corporation .....	\$ 115.12
175	(2) Verizon West Virginia, Inc. ....	\$ 206.93

176 (ff) *Claims against the Department of Tax & Revenue:*

177 (TO BE PAID FROM GENERAL REVENUE FUND)

178	(1) AT&T Corporation .....	\$ 13,840.40
179	(2) Citizens Communications Company	
180	of West Virginia .....	\$ 3,315.84
181	(3) Verizon West Virginia, Inc. ....	\$155,497.91

182 (TO BE PAID FROM NON GENERAL REVENUE FUND)

183	(4) Citizens Communications Company	
184	of West Virginia .....	\$160,724.29
185	(5) Verizon West Virginia, Inc. ....	\$ 23,078.49

186 (gg) *Claims against the West Virginia Development Office:*

187 (TO BE PAID FROM GENERAL REVENUE FUND)

188	(1) AT&T Corporation .....	\$ 9,721.29
189	(2) Verizon West Virginia, Inc. ....	\$ 19,543.20

190 (hh) *Claims against the Division of Banking:*

191 (TO BE PAID FROM NON GENERAL REVENUE FUND)

192	(1) AT&T Corporation .....	\$ 778.55
193	(2) Verizon West Virginia, Inc. ....	\$ 1,474.49

194 (TO BE PAID FROM GENERAL REVENUE FUND)

195	(3) WV State College/WV EDNET .....	\$ 45.75
-----	-------------------------------------	----------

196 (ii) *Claims against the Division of Corrections:*

197	(TO BE PAID FROM GENERAL REVENUE FUND)	
198	(1) Alltel Corporation .....	\$ 600.00
199	(2) AT&T Corporation .....	\$ 15,267.54
200	(3) Avaya, Inc. ....	\$ 62.61
201	(4) Barbour County Commission .....	\$ 8,714.00
202	(5) Center for Family Medicine .....	\$ 3,960.00
203	(6) Citizens Communications Company	
204	of West Virginia .....	\$ 34,785.55
205	(7) Com-Tec, Incorporated .....	\$ 3,413.04
206	(8) Correctional Food Service Management	\$ 3,489.02
207	(9) Division of Environmental Protection ..	\$ 189.00
208	(10) Division of Highways .....	\$ 539.80
209	(11) Flat Iron Drug Store, Inc. ....	\$ 103.59
210	(12) Aubrey N. Jackson, DDS .....	\$ 256.00
211	(13) Marion County Commission .....	\$ 1,089.92
212	(14) Mason County Commission .....	\$ 3,200.00
213	(15) Tony McFarlin .....	\$ 993.10
214	(16) Radiology, Inc. ....	\$ 67.00
215	(17) Randolph County Commission .....	\$ 800.00
216	(18) Regional Jail and Correctional	
217	Facility Authority .....	\$ 1,712,838.00
218	(19) Robert C. Byrd Clinic .....	\$ 21.00
219	(20) James Timothy Samples .....	\$ 383.44
220	(21) Statewide Service, Inc. ....	\$ 2,838.19
221	(22) Taylor County Emergency Squad ....	\$ 470.00
222	(23) USA Clean - Carman .....	\$ 240.00
223	(24) Verizon West Virginia, Inc. ....	\$ 43,939.11
224	(25) WV Correctional Industries .....	\$ 2,072.00
225	(26) West Group, A Thomson Company ..	\$ 161.00
226	(27) Wood County Commission .....	\$ 43,015.51
227	(28) John Workman .....	\$ 17.75
228	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
229	(29) AT&T Corporation .....	\$ 1,293.12
230	(30) Verizon West Virginia, Inc. ....	\$ 2,182.40

390

CLAIMS

[Ch. 56

231 (jj) *Claims against the Division of Criminal Justice Services:*

232 (TO BE PAID FROM GENERAL REVENUE FUND)

233 (1) AT&T Corporation ..... \$ 23.86

234 (2) Verizon West Virginia, Inc. .... \$ 22.60

235 (TO BE PAID FROM NON GENERAL REVENUE FUND)

236 (3) AT&T Corporation ..... \$ 1,487.61

237 (4) Verizon West Virginia, Inc. .... \$ 3,373.67

238 (kk) *Claims against the Division of Culture and History:*

239 (TO BE PAID FROM GENERAL REVENUE FUND)

240 (1) AT&T Corporation ..... \$ 3,025.37

241 (2) Verizon West Virginia, Inc. .... \$ 7,062.10

242 (3) Wiseman Construction, Inc. .... \$ 80,212.00

243 (TO BE PAID FROM NON GENERAL REVENUE FUND)

244 (4) AT&T Corporation ..... \$ 145.87

245 (ll) *Claims against the Division of Environmental Protection:*

246 (TO BE PAID FROM GENERAL REVENUE FUND)

247 (1) AT&T Corporation ..... \$ 5,898.89

248 (2) Verizon West Virginia, Inc. .... \$ 13.42

249 (TO BE PAID FROM NON GENERAL REVENUE FUND)

250 (3) AT&T Corporation ..... \$ 10,191.90

251 (4) Citizens Communications Company

252 of West Virginia ..... \$ 22,626.36

253 (5) Verizon West Virginia, Inc. .... \$ 50,535.97

254 (mm) *Claims against the Division of Finance:*

255	(TO BE PAID FROM GENERAL REVENUE FUND)	
256	(1) AT&T Corporation .....	\$ 2,918.18
257	(2) Verizon West Virginia, Inc. ....	\$ 5,855.83
258	(nn) <i>Claims against the Division of Forestry:</i>	
259	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
260	(1) AT&T Corporation .....	\$ 3,838.83
261	(2) Verizon West Virginia, Inc. ....	\$ 17,241.65
262	(oo) <i>Claims against the Division of Highways:</i>	
263	(TO BE PAID FROM STATE ROAD FUND)	
264	(1) Dennis Albright and Elizabeth Brooks .	\$ 250.00
265	(2) Barry M. Alford .....	\$ 2,201.00
266	(3) AT&T Corporation .....	\$ 72,093.53
267	(4) James N. Bartram, dba	
268	B&M Wrecker Service .....	\$ 4,031.30
269	(5) John Bettem III .....	\$ 482.51
270	(6) Kellie M. Bettinger .....	\$ 1,060.00
271	(7) Carlene Bragg .....	\$ 89.50
272	(8) Gary H. (B.C.) Braithwaite .....	\$ 119.31
273	(9) Etta M. Branham .....	\$ 6,000.00
274	(10) Dottie Carpenter .....	\$ 250.00
275	(11) Tammy Jo Carpenter .....	\$ 237.13
276	(12) Melissa D. Christian .....	\$ 730.00
277	(13) Citizens Communications Company	
278	of West Virginia .....	\$ 59,852.44
279	(14) Robert D. Cleek .....	\$ 250.00
280	(15) Alfred E. Collins .....	\$ 7,800.00
281	(16) Nancy C. Collins .....	\$ 76,800.00
282	(17) Ronald Colpo, Sr. ....	\$ 264.00
283	(18) James D. Cox .....	\$ 91.63
284	(19) Katrina S. Craddock .....	\$ 200.00
285	(20) Amanda D. Cross .....	\$ 631.76

286	(21) Michael Thomas Darden		
287	and Lisa Darden . . . . .	\$	284.84
288	(22) Nancy L. Faulkner . . . . .	\$	290.31
289	(23) Westley Fraley . . . . .	\$	285.11
290	(24) Jesse Freeman . . . . .	\$	700.00
291	(25) John F. Godbey . . . . .	\$	106.00
292	(26) Robert W. Golden and Linda L. Golden	\$	250.00
293	(27) Silas Thomas Hall . . . . .	\$	911.69
294	(28) Patty L. Harrington and		
295	Paul K. Harrington . . . . .	\$	286.96
296	(29) Peter D. Hopper and		
297	Kathleen F. Hopper . . . . .	\$	272.39
298	(30) Eleanor Jacob . . . . .	\$	450.00
299	(31) Ramesh Jain . . . . .	\$	423.81
300	(32) Tony L. Jeffrey . . . . .	\$	225.00
301	(33) Arthur J. Karlen, Jr. . . . .	\$	347.36
302	(34) William D. Kelley and Janet Kelley . .	\$	39,220.00
303	(35) James Lamont . . . . .	\$	3,714.06
304	(36) Martha Leatherman . . . . .	\$	2,000.00
305	(37) Steven D. Leftwich . . . . .	\$	339.84
306	(38) Drusilla Marie Lemley . . . . .	\$	1,254.09
307	(39) David Joseph Marino . . . . .	\$	182.27
308	(40) Brenda K. Marshall . . . . .	\$	198.18
309	(41) Violet Maynard . . . . .	\$	500.00
310	(42) David Ryan Mick . . . . .	\$	862.70
311	(43) Stanley D. Miller . . . . .	\$	67.43
312	(44) Rose Anna Morris . . . . .	\$	500.00
313	(45) Renee L. Myers and Galen R. Myers .	\$	708.45
314	(46) Mary Katherine O'Neal . . . . .	\$	3,000.00
315	(47) Morris H. Pettus . . . . .	\$	167.48
316	(48) Katy L. Prichard and		
317	Charles E. Prichard . . . . .	\$	6,000.00
318	(49) Ann R. Roberts . . . . .	\$	89.04
319	(50) Ralph Sprigle and Cheryl Sprigle . . .	\$	813.86
320	(51) Rebecca Stalnaker-Jones . . . . .	\$	181.26



321	(52) Richard L. Stroupe, Sr. and		
322	Bonnie Sue Stroupe .....	\$	3,489.49
323	(53) Becky Tallman .....	\$	100.00
324	(54) Tire Centers, Inc. ....	\$	32,112.56
325	(55) Truth Ministries, Inc.,		
326	dba Faith Mission .....	\$	505.30
327	(56) William E. Ullum and Loretta Ullum	\$	3,680.00
328	(57) Verizon West Virginia, Inc. ....	\$	252,363.62
329	(58) Gerald J. Warner .....	\$	250.00
330	(59) Mindy Weasenforth .....	\$	858.44
331	(60) Henry S. Williams .....	\$	208.50
332	(61) Steven G. Woodall .....	\$	3,551.22
333	(62) Thomas L. Young .....	\$	180.00
334	(pp) <i>Claims against the Division of Juvenile Services:</i>		
335	(TO BE PAID FROM GENERAL REVENUE FUND)		
336	(1) Alltel Corporation .....	\$	66.52
337	(2) AT&T Corporation .....	\$	6,861.45
338	(3) Brewer & Company of		
339	West Virginia, Inc. ....	\$	500.00
340	(4) Charleston Psychiatric Group, Inc. ...	\$	1,300.00
341	(5) Department of Administration .....	\$	7,649.73
342	(6) Division of Lifelong Learning -		
343	Ohio University .....	\$	3,700.00
344	(7) EMP of Kanawha County .....	\$	930.30
345	(8) Emergency Medicine Physicians		
346	of Ohio County, PLLC .....	\$	1,346.40
347	(9) Kanawha Valley Radiologists, Inc. ...	\$	116.00
348	(10) Carlos Naranjo, M.D. ....	\$	185.00
349	(11) Ohio Valley Medical Center .....	\$	416.58
350	(12) Patterson's Drug Store, Inc. ....	\$	702.15
351	(13) Pitney Bowes Credit Corporation ...	\$	639.02
352	(14) Verizon West Virginia, Inc. ....	\$	13,922.05
353	(15) West Virginia Correctional Industries	\$	320.00

394

CLAIMS

[Ch. 56

354 (qq) *Claims against the Division of Labor:*

355 (TO BE PAID FROM GENERAL REVENUE FUND)

356 (1) AT&T Corporation ..... \$ 7,427.59

357 (2) Ralph O. Smith ..... \$ 1,000.00

358 (3) Verizon West Virginia, Inc. .... \$ 12,151.65

359 (rr) *Claims against the Division of Motor Vehicles:*

360 (TO BE PAID FROM STATE ROAD FUND)

361 (1) AT&T Corporation ..... \$ 11,291.61

362 (2) Citizens Communications Company

363 of West Virginia ..... \$ 53,990.29

364 (3) Myra K. Rine ..... \$ 120.00

365 (4) Jose Antonio Santiago ..... \$ 1,200.00

366 (5) Verizon West Virginia, Inc. .... \$ 40,461.30

367 (ss) *Claims against the Division of Natural Resources:*

368 (TO BE PAID FROM SPECIAL REVENUE FUND)

369 (1) Alltel Corporation ..... \$ 6,916.59

370 (TO BE PAID FROM NON GENERAL REVENUE FUND)

371 (2) AT&T Corporation ..... \$ 20,437.25

372 (3) Verizon West Virginia, Inc. .... \$ 46,991.75

373 (tt) *Claims against the Division of Personnel:*

374 (TO BE PAID FROM NON GENERAL REVENUE FUND)

375 (1) AT&T Corporation ..... \$ 1,559.13

376 (2) Verizon West Virginia, Inc. .... \$ 3,302.08

377 (uu) *Claims against the Division of Protective Services:*

378 (TO BE PAID FROM GENERAL REVENUE FUND)

379 (1) AT&T Corporation ..... \$ 164.33

380 (2) Verizon West Virginia, Inc. .... \$ 166.74

381 (vv) *Claims against the West Virginia Development Of-*  
382 *fice-Division of Tourism:*

383 (TO BE PAID FROM NON GENERAL REVENUE FUND)

384 (1) AT&T Corporation ..... \$ 2,856.77

385 (2) Citizens Communications Company  
386 of West Virginia ..... \$ 5,163.50

387 (3) Verizon West Virginia, Inc. .... \$ 6,280.75

388 (ww) *Claims against Educational Broadcasting Authority:*

389 (TO BE PAID FROM NON GENERAL REVENUE FUND)

390 (1) AT&T Corporation ..... \$ 1,371.66

391 (2) Verizon West Virginia, Inc. .... \$ 31,299.68

392 (xx) *Claims against the Environmental Quality Board:*

393 (TO BE PAID FROM GENERAL REVENUE FUND)

394 (1) AT&T Corporation ..... \$ 130.47

395 (2) Verizon West Virginia, Inc. .... \$ 321.47

396 (yy) *Claims against the Fire Commission:*

397 (TO BE PAID FROM GENERAL REVENUE FUND)

398 (1) AT&T Corporation ..... \$ 2,349.07

399 (2) Verizon West Virginia, Inc. .... \$ 5,110.03

400 (zz) *Claims against the Division of General Services:*

401 (TO BE PAID FROM NON GENERAL REVENUE FUND)

396	CLAIMS	[Ch. 56
402	(1) AT&T Corporation .....	\$ 426.84
403	(2) Verizon West Virginia, Inc. ....	\$ 1,087.71
404	<i>(aaa) Claims against Geological and Economic Survey:</i>	
405	(TO BE PAID FROM GENERAL REVENUE FUND)	
406	(1) AT&T Corporation .....	\$ 662.01
407	(2) Verizon West Virginia, Inc. ....	\$ 1,640.64
408	<i>(bbb) Claims against the Governor's Office:</i>	
409	(TO BE PAID FROM GENERAL REVENUE FUND)	
410	(1) AT&T Corporation .....	\$ 9,338.87
411	(2) Verizon West Virginia, Inc. ....	\$ 27,197.22
412	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
413	(3) AT&T Corporation .....	\$ 2,004.91
414	(4) Verizon West Virginia, Inc. ....	\$ 1,755.72
415	<i>(ccc) Claims against the Education and State Employees'</i>	
416	<i>Grievance Board:</i>	
417	(TO BE PAID FROM GENERAL REVENUE FUND)	
418	(1) AT&T Corporation .....	\$ 1,556.40
419	(2) Verizon West Virginia, Inc. ....	\$ 4,360.70
420	<i>(ddd) Claims against West Virginia Health Care Authority:</i>	
421	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
422	(1) AT&T Corporation .....	\$ 907.67
423	(2) Verizon West Virginia, Inc. ....	\$ 1,775.11
424	<i>(eee) Claims against the Higher Education Policy Commis-</i>	
425	<i>sion:</i>	

426	(TO BE PAID FROM NON GENERAL REVENUE FUND)		
427	(1) AT&T Corporation .....	\$	18,718.23
428	(2) Citizens Communications Company		
429	of West Virginia .....	\$	13,066.33
430	(3) Verizon West Virginia, Inc. ....	\$	409,689.75
431	(TO BE PAID FROM SPECIAL REVENUE FUND)		
432	(4) Grant Kevins .....	\$	350.00
433	(5) Jon Scragg .....	\$	300.00
434	(fff) <i>Claims against the Hospital Finance Authority:</i>		
435	(TO BE PAID FROM NON GENERAL REVENUE FUND)		
436	(1) AT&T Corporation .....	\$	18.43
437	(2) Verizon West Virginia, Inc. ....	\$	39.42
438	(ggg) <i>Claims against the Human Rights Commission:</i>		
439	(TO BE PAID FROM GENERAL REVENUE FUND)		
440	(1) AT&T Corporation .....	\$	1,135.38
441	(2) Verizon West Virginia, Inc. ....	\$	2,419.90
442	(hhh) <i>Claims against Division of Human Services:</i>		
443	(TO BE PAID FROM GENERAL REVENUE FUND)		
444	(1) AT&T Corporation .....	\$	79,671.83
445	(2) Citizens Communications Company		
446	of West Virginia .....	\$	190,136.63
447	(3) Verizon West Virginia, Inc. ....	\$	267,613.58
448	(iii) <i>Claims against Division of Information Services and</i>		
449	<i>Communications:</i>		
450	(TO BE PAID FROM NON GENERAL REVENUE FUND)		

398	CLAIMS	[Ch. 56
451	(1) AT&T Corporation .....	\$ 1,545.55
452	(2) Verizon West Virginia, Inc. ....	\$ 38,825.02
453	<i>(jjj) Claims against the Insurance Commissioner:</i>	
454	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
455	(1) AT&T Corporation .....	\$ 1,421.31
456	(2) Verizon West Virginia, Inc. ....	\$ 2,999.10
457	<i>(kkk) Claims against Joint Expenses:</i>	
458	(TO BE PAID FROM GENERAL REVENUE FUND)	
459	(1) AT&T Corporation .....	\$ 326.93
460	(2) Verizon West Virginia, Inc. ....	\$ 727.42
461	<i>(lll) Claims against the Library Commission:</i>	
462	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
463	(1) AT&T Corporation .....	\$ 4,889.31
464	(2) Citizens Communications Company	
465	of West Virginia .....	\$ 70,637.76
466	(3) Verizon West Virginia, Inc. ....	\$ 29,779.86
467	<i>(mmm) Claims against the Lottery Commission:</i>	
468	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
469	(1) AT&T Corporation .....	\$ 4,457.06
470	(2) Citizens Communications Company	
471	of West Virginia .....	\$ 3,695.88
472	(3) Verizon West Virginia, Inc. ....	\$ 9,853.64
473	<i>(nnn) Claims against the Massage Therapy Licensure Board:</i>	
474	(TO BE PAID FROM NON GENERAL REVENUE FUND)	

475	(1) AT&T Corporation .....	\$	150.11
476	(2) Verizon West Virginia, Inc. ....	\$	160.03

477 (ooo) *Claims against Division of Miners' Health, Safety and*  
 478 *Training:*

479 (TO BE PAID FROM GENERAL REVENUE FUND)

480	(1) AT&T Corporation .....	\$	1,782.68
481	(2) Verizon West Virginia, Inc. ....	\$	5,978.87

482 (ppp) *Claims against the Municipal Bond Commission:*

483 (TO BE PAID FROM NON GENERAL REVENUE FUND)

484	(1) AT&T Corporation .....	\$	61.94
485	(2) Verizon West Virginia, Inc. ....	\$	115.96

486 (qqq) *Claims against the Office of Emergency Services:*

487 (TO BE PAID FROM NON GENERAL REVENUE FUND)

488	(1) AT&T Corporation .....	\$	873.24
489	(2) Verizon West Virginia, Inc. ....	\$	1,759.05

490 (rrr) *Claims against the West Virginia Prosecuting Attorneys*  
 491 *Institute:*

492 (TO BE PAID FROM NON GENERAL REVENUE FUND)

493	(1) AT&T Corporation .....	\$	961.30
494	(2) Verizon West Virginia, Inc. ....	\$	1,840.05

495 (sss) *Claims against Public Defender Services:*

496 (TO BE PAID FROM GENERAL REVENUE FUND)

497	(1) AT&T Corporation .....	\$	1,707.43
498	(2) Verizon West Virginia, Inc. ....	\$	5,077.05

400	CLAIMS	[Ch. 56]
499	(ttt) <i>Claims against the Public Employees Insurance Agency:</i>	
500	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
501	(1) AT&T Corporation	\$ 4,862.30
502	(2) Verizon West Virginia, Inc.	\$ 10,848.87
503	(uuu) <i>Claims against the Public Service Commission:</i>	
504	(TO BE PAID FROM SPECIAL REVENUE FUND)	
505	(1) Allegheny Voice & Data, Inc.	\$ 1,031.86
506	(2) Division of Highways	\$ 100.72
507	(3) Johnson Controls, Inc.	\$ 2,504.25
508	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
509	(4) AT&T Corporation	\$ 7,515.64
510	(5) Verizon West Virginia, Inc.	\$ 20,992.47
511	(vvv) <i>Claims against Division of Public Transit:</i>	
512	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
513	(1) AT&T Corporation	\$ 419.18
514	(2) Verizon West Virginia, Inc.	\$ 852.95
515	(www) <i>Claims against the Racing Commission:</i>	
516	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
517	(1) AT&T Corporation	\$ 700.73
518	(2) Verizon West Virginia, Inc.	\$ 1,323.61
519	(TO BE PAID FROM SPECIAL REVENUE FUND)	
520	(3) Jon Day, DVM	\$ 8,280.00
521	(4) Mark Dunnett	\$ 2,125.00



522 (xxx) *Claims against the Real Estate Commission:*

523 (TO BE PAID FROM NON GENERAL REVENUE FUND)

524	(1) AT&T Corporation . . . . .	\$ 275.73
525	(2) Verizon West Virginia, Inc. . . . .	\$ 564.75

526 (yyy) *Claims against the Regional Jail and Correctional Facility Authority:*

528 (TO BE PAID FROM NON GENERAL REVENUE FUND)

529	(1) AT&T Corporation . . . . .	\$ 6,808.40
530	(2) Citizens Communications Company	
531	of West Virginia . . . . .	\$ 1,026.68
532	(3) Verizon West Virginia, Inc. . . . .	\$ 16,131.31

533 (TO BE PAID FROM SPECIAL REVENUE FUND)

534	(4) Harold Billingsley . . . . .	\$ 123.00
535	(5) Mark E. Ingram . . . . .	\$ 79.50
536	(6) Lawrence Morris . . . . .	\$ 200.00
537	(7) Sonya Simms . . . . .	\$ 23.90

538 (zzz) *Claim against Division of Rehabilitation Services:*

539 (TO BE PAID FROM NON GENERAL REVENUE FUND)

540	(1) AT&T Corporation . . . . .	\$ 22,846.04
541	(2) Citizens Communications Company	
542	of West Virginia . . . . .	\$ 25,264.82
543	(3) Verizon West Virginia, Inc. . . . .	\$ 95,481.05

544 (aaaa) *Claims against the Secretary of State:*

545 (TO BE PAID FROM GENERAL REVENUE FUND)

546	(1) AT&T Corporation . . . . .	\$ 2,658.90
547	(2) Verizon West Virginia, Inc. . . . .	\$ 4,699.93

548 (bbbb) *Claims against the Solid Waste Management Board:*

549 (TO BE PAID FROM NON GENERAL REVENUE FUND)

550 (1) AT&T Corporation ..... \$ 283.50

551 (2) Verizon West Virginia, Inc. .... \$ 12,229.38

552 (cccc) *Claims against the Supreme Court:*

553 (TO BE PAID FROM GENERAL REVENUE FUND)

554 (1) AT&T Corporation ..... \$ 5,298.15

555 (2) Verizon West Virginia, Inc. .... \$ 10,632.84

556 (dddd) *Claims against the Treasurer's Office:*

557 (TO BE PAID FROM GENERAL REVENUE FUND)

558 (1) AT&T Corporation ..... \$ 1,275.32

559 (2) Verizon West Virginia, Inc. .... \$ 20,560.22

560 (TO BE PAID FROM NON GENERAL REVENUE FUND)

561 (3) AT&T Corporation ..... \$ 2,564.33

562 (4) Verizon West Virginia, Inc. .... \$ 5,234.34

563 (eeee) *Claims against Division of Veterans' Affairs:*

564 (TO BE PAID FROM GENERAL REVENUE FUND)

565 (1) AT&T Corporation ..... \$ 1,489.00

566 (2) Verizon West Virginia, Inc. .... \$ 3,524.84

567 (TO BE PAID FROM NON GENERAL REVENUE FUND)

568 (3) Verizon West Virginia, Inc. .... \$ 2,373.15

569 (ffff) *Claims against Veterans' Home:*

570 (TO BE PAID FROM GENERAL REVENUE FUND)

Ch. 56]	CLAIMS	403
571	(1) AT&T Corporation .....	\$ 218.83
572	(2) Verizon West Virginia, Inc. ....	\$ 523.85
573	<i>(gggg) Claims against the Water Development Authority:</i>	
574	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
575	(1) AT&T Corporation .....	\$ 485.82
576	(2) Verizon West Virginia, Inc. ....	\$ 2,896.07
577	<i>(hhhh) Claims against Workers' Compensation:</i>	
578	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
579	(1) AT&T Corporation .....	\$ 45,801.44
580	(2) Verizon West Virginia, Inc. ....	\$108,005.93
581	<i>(iiii) Claims against the Ethics Commission:</i>	
582	(TO BE PAID FROM GENERAL REVENUE FUND)	
583	(1) AT&T Corporation .....	\$ 248.16
584	(2) Verizon West Virginia, Inc. ....	\$ 486.19
585	<i>(jjjj) Claims against the WV Network:</i>	
586	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
587	(1) AT&T Corporation .....	\$ 167.75
588	(2) Verizon West Virginia, Inc. ....	\$ 46,368.11
589	<i>(kkkk) Claims against the WV Parole Board:</i>	
590	(TO BE PAID FROM GENERAL REVENUE FUND)	
591	(1) AT&T Corporation .....	\$ 666.12
592	(2) Verizon West Virginia, Inc. ....	\$ 1,268.63
593	<i>(llll) Claims against the WV State Police:</i>	

404

CLAIMS

[Ch. 57

594

(TO BE PAID FROM GENERAL REVENUE FUND)

595

(1) AT&T Corporation . . . . . \$ 25,967.08

596

(2) Citizens Communications Company

597

of West Virginia . . . . . \$ 3,255.22

598

(3) Verizon West Virginia, Inc. . . . . \$ 59,346.45

599

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payments to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.



# CHAPTER 57

**(H. B. 4409 — By Delegates Kominar, Cann, Keener, Evans and Hall)**



[Passed March 5, 2002; in effect from passage. Approved by the Governor.]



AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

**CLAIMS AGAINST THE STATE.**

**§1. Finding and declaring certain claims against the division of corrections to be moral obligations of the state and directing payments thereof.**

1 The Legislature has heretofore made findings of fact that  
2 the state has received the benefit of the commodities received  
3 and/or services rendered by certain claimants herein and has  
4 considered these claims against the state, and agencies thereof,  
5 which have arisen due to overexpenditures of the departmental  
6 appropriations by officers of the state spending units, the claims  
7 having been previously considered by the court of claims which  
8 also found that the state has received the benefit of the com-  
9 modities received and/or services rendered by the claimants, but  
10 were denied by the court of claims on the purely statutory  
11 grounds that to allow the claims would be condoning illegal  
12 acts contrary to the laws of the state. The Legislature, pursuant  
13 to its findings of fact and also by the adoption of the findings of  
14 fact by the court of claims as its own, while not condoning such  
15 illegal acts, hereby declares it to be the moral obligation of the  
16 state to pay these claims in the amounts specified below and  
17 directs the auditor to issue warrants upon receipt of properly  
18 executed requisitions supported by itemized invoices, state-  
19 ments or other satisfactory documents as required by section  
20 ten, article three, chapter twelve of the code of West Virginia,  
21 one thousand nine hundred thirty-one as amended, for the  
22 payments thereof out of any fund appropriated and available for  
23 the purpose.

24 (a) *Claims against the Division of Corrections:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26	(1) American Medical Billing/Rose	
27	Associated Radiologists . . . . .	\$ 553.00
28	(2) Anthony Creek Rescue Squad . . . . .	\$ 276.50
29	(3) Aramak Correctional Food Service . . . . .	\$ 6,646.18
30	(4) Associated Emergency Physicians, Inc. . . . .	\$ 99.00
31	(5) Associated Radiologists, Inc. . . . .	\$ 13,664.00

32	(6) Sammar Atassi, M.D. . . . .	\$ 862.50
33	(7) T. Bobbitt, DDS . . . . .	\$ 590.00
34	(8) Carilion Patient Transportation, LLC . . . . .	\$ 10,489.00
35	(9) Central WV Medcorp, Inc. . . . .	\$ 395.00
36	(10) Charleston Area Medical Center, Inc. . . . .	\$ 291,732.26
37	(11) Charleston Cardiology Group . . . . .	\$ 2,208.29
38	(12) Charleston Heart Specialists . . . . .	\$ 2,825.00
39	(13) Clarksburg Anesthesia Associates . . . . .	\$ 261.00
40	(14) Core Health Care, PLLC . . . . .	\$ 327.00
41	(15) Correctional Medical Services, Inc. . . . .	\$ 67,872.01
42	(16) Kevin Cox, M.D. . . . .	\$ 2,375.00
43	(17) Davis Memorial Hospital . . . . .	\$ 51,902.33
44	(18) Doddridge County Emergency Squad . . . . .	\$ 540.00
45	(19) EMP of Harrison County . . . . .	\$ 767.80
46	(20) EMP of Wood County . . . . .	\$ 226.40
47	(21) Ear, Nose & Throat Associates	
48	of Clarksburg . . . . .	\$ 120.00
49	(22) Emergency Medicine Physicians of Ohio	
50	County PLLC . . . . .	\$ 639.70
51	(23) Fairmont General Hospital . . . . .	\$ 8,795.74
52	(24) General Anesthesia Services . . . . .	\$ 25,708.34
53	(25) Angelo Georges, M.D. . . . .	\$ 160.00
54	(26) Grafton City Hospital . . . . .	\$ 67,175.64
55	(27) Greenbrier Physicians, Inc. . . . .	\$ 6,193.00
56	(28) Shashi Gupta, M.D. . . . .	\$ 1,270.00
57	(29) Carl S. High, M.D. . . . .	\$ 299.00
58	(30) Integrated Healthcare Providers . . . . .	\$ 35,290.71
59	(31) Jan Care Ambulance . . . . .	\$ 4,256.00
60	(32) Kanawha Nephrology, Inc. . . . .	\$ 671.00
61	(33) Karim A. Katrib, M.D. . . . .	\$ 1,260.94
62	(34) Kelly Medical Corporation . . . . .	\$ 30.80
63	(35) Marlinton Volunteer Fire Department . . . . .	\$ 752.50
64	(36) McDowell County Ambulance Service	
65	Authority, Inc. . . . .	\$ 1,105.00
66	(37) M.J. McGinnis, M.D. . . . .	\$ 350.00
67	(38) Medbrook Medical Associates . . . . .	\$ 162.00

68	(39) Monongalia Emergency Medical		
69	Services . . . . .	\$	440.70
70	(40) Montgomery General Hospital . . . . .	\$	236,206.44
71	(41) Montgomery Med Corp, Inc. . . . .	\$	5,223.27
72	(42) Montgomery Radiologists, Inc. . . . .	\$	1,250.94
73	(43) Nephrology Associates, Inc. . . . .	\$	515.00
74	(44) Ohio Valley Anesthesiologists . . . . .	\$	975.00
75	(45) Oncology Hematology Associates . . . . .	\$	73.00
76	(46) Herbert P. Oye, D.O. . . . .	\$	7,360.00
77	(47) Parkersburg Pathology, MFC		
78	Corporation . . . . .	\$	183.00
79	(48) Parkersburg Radiology Services, Inc. . . . .	\$	591.00
80	(49) Pocahontas Memorial Hospital . . . . .	\$	13,400.40
81	(50) Premier Medical Group . . . . .	\$	108.00
82	(51) Professional Anesthesia Services . . . . .	\$	1,440.00
83	(52) Radiological Physicians		
84	Associates, Inc. . . . .	\$	5,886.00
85	(53) Randolph County Emergency Squad . . . . .	\$	340.00
86	(54) Rose Associated Radiologists . . . . .	\$	85.00
87	(55) Melvin T. Saludes, M.D. . . . .	\$	360.00
88	(56) Lisa Skinner, M.D. . . . .	\$	3,000.00
89	(57) Taylor County Emergency Squad . . . . .	\$	270.00
90	(58) Thomas Memorial Hospital . . . . .	\$	35,206.13
91	(59) Thoracic & Cardiovascular		
92	Associates, Inc. . . . .	\$	9,909.80
93	(60) Tygart Valley Total Care Clinic . . . . .	\$	2,508.00
94	(61) United Hospital Center . . . . .	\$	54,781.11
95	(62) University Health Associates . . . . .	\$	64,677.34
96	(63) University Health Associates		
97	- Dental . . . . .	\$	725.00
98	(64) University Medical Laboratories . . . . .	\$	304.76
99	(65) Welch Community Hospital . . . . .	\$	19,341.00
100	(66) West Virginia University		
101	Hospitals, Inc. . . . .	\$	486,224.12
102	(67) Westbrook Health Services, Inc. . . . .	\$	73.50
103	(68) Wheeling Medical Park Hospital . . . . .	\$	1,850.25

---

## CHAPTER 58

(S. B. 698 — By Senators Tomblin, Mr. President,  
Plymale, Jackson, McCabe, Bailey, Wooton and Chafin)

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to repeal section seven, article two-a, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections five, eight, nine and twelve of said article, all relating to duties of the office of coalfield community development; removing requirements for the office to develop coalfield community impact statements; and authorizing emergency rulemaking.

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

That section seven, article two-a, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections five, eight, nine and twelve of said article be amended and reenacted, all to read as follows:

### **ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.**

- §5B-2A-5. Powers and duties.
- §5B-2A-8. Determining and developing needed community assets.
- §5B-2A-9. Securing developing land and infrastructure.
- §5B-2A-12. Rulemaking.

#### **§5B-2A-5. Powers and duties.**

- 1 The office has and may exercise the following duties,
- 2 powers and responsibilities:



3       (1) To establish a procedure for developing a community  
4 impact statement as provided in section six of this article and to  
5 administer the procedure so established;

6       (2) To establish a procedure for determining the assets that  
7 could be developed in and maintained by the community to  
8 foster its long-term viability as provided in section eight of this  
9 article and to administer the procedure so established;

10       (3) To establish a procedure for determining the land and  
11 infrastructure needs in the general area of the surface mining  
12 operations as provided in section nine of this article and to  
13 administer the procedure so established;

14       (4) To establish a procedure to develop action reports and  
15 annual updates as provided in section ten of this article and to  
16 administer the procedure so established;

17       (5) To determine the need for meetings to be held among  
18 the various interested parties in the communities impacted by  
19 surface mining operations and, when appropriate, to facilitate  
20 the meetings;

21       (6) To establish a procedure to assist property owners in the  
22 sale of their property as provided in section eleven of this  
23 article and to administer the procedure so established;

24       (7) In conjunction with the division, to maintain and  
25 operate a system to receive and address questions, concerns and  
26 complaints relating to surface mining; and

27       (8) On its own initiative or at the request of a community in  
28 close proximity to a mining operation, or a mining operation,  
29 offer assistance to facilitate the development of economic or  
30 community assets. Such assistance may include the preparation  
31 of a master land use plan pursuant to the provisions of section  
32 nine of this article.

**§5B-2A-8. Determining and developing needed community assets.**

1 (a) The office shall determine the community assets that  
2 may be developed by the community, county or region to foster  
3 its viability when surface mining operations are completed.

4 (b) Community assets to be identified pursuant to subsec-  
5 tion (a) of this section may include the following:

6 (1) Water and wastewater services;

7 (2) Developable land for housing, commercial development  
8 or other community purposes;

9 (3) Recreation facilities and opportunities; and

10 (4) Education facilities and opportunities.

11 (c) The operator shall be required to prepare and submit to  
12 the office the information set forth in this subsection as follows:

13 (1) A map of the area for which a permit under article three,  
14 chapter twenty-two of this code is being sought or has been  
15 obtained;

16 (2) The names of the surface and mineral owners of the  
17 property to be mined pursuant to the permit; and

18 (3) A statement of the post-mining land use for all land  
19 which may be affected by the mining operations.

20 (d) In determining the nature and extent of the needed  
21 community assets, the office shall consider at least the follow-  
22 ing:

23 (1) An evaluation of the future of the community once  
24 mining operations are completed;

25       (2) The prospects for the long-term viability of any asset  
26 developed under this section;

27       (3) The desirability of foregoing some or all of the asset  
28 development required by this section in lieu of the requirements  
29 of section nine of this article; and

30       (4) The extent to which the community, local, state or the  
31 federal government may participate in the development of  
32 assets the community needs to assure its viability.

**§5B-2A-9. Securing developable land and infrastructure.**

1       (a) The office shall determine the land and infrastructure  
2 needs in the general area of the surface mining operations.

3       (b) For the purposes of this section, the term “general area”  
4 shall mean the county or counties in which the mining opera-  
5 tions are being conducted or any adjacent county.

6       (c) To assist the office the operator shall be required to  
7 prepare and submit to the office the information set forth in this  
8 subsection as follows:

9       (1) A map of the area for which a permit under article three,  
10 chapter twenty-two of this code is being sought or has been  
11 obtained;

12       (2) The names of the surface and mineral owners of the  
13 property to be mined pursuant to the permit; and

14       (3) A statement of the post-mining land use for all land  
15 which may be affected by the mining operations.

16       (d) In making a determination of the land and infrastructure  
17 needs in the general area of the mining operations, the office  
18 shall consider at least the following:

19 (1) The availability of developable land in the general area;

20 (2) The needs of the general area for developable land;

21 (3) The availability of infrastructure, including, but not  
22 limited to, access roads, water service, wastewater service and  
23 other utilities;

24 (4) The amount of land to be mined and the amount of  
25 valley to be filled;

26 (5) The amount, nature and cost to develop and maintain  
27 the community assets identified in section eight of this article;  
28 and

29 (6) The availability of federal, state and local grants and  
30 low-interest loans to finance all or a portion of the acquisition  
31 and construction of the identified land and infrastructure needs  
32 of the general area.

33 (e) In making a determination of the land and infrastructure  
34 needs in the general area of the surface mining operations, the  
35 office shall give significant weight to developable land on or  
36 near existing or planned multilane highways.

37 (f) The office may secure developable land and infrastruc-  
38 ture for a development office or county through the preparation  
39 of a master land use plan for inclusion into a reclamation plan  
40 prepared pursuant to the provisions of section ten, article three,  
41 chapter twenty-two of this code. No provision of this section  
42 may be construed to modify requirements of article three of  
43 said chapter. Participation in a master land use plan is volun-  
44 tary.

45 (1) State, local, county or regional development or redevelop-  
46 ment authorities may determine land and infrastructure needs  
47 within their jurisdictions through the development of a master

48 land use plan which incorporates post-mining land use needs  
49 that include industrial uses, commercial uses, agricultural uses,  
50 public facility uses or recreational facility uses.

51 (2) A master land use plan must be reviewed by the office  
52 of coalfield community development and approved by the  
53 division of environmental protection pursuant to section ten,  
54 article three, chapter twenty-two of this code before the master  
55 land use plan can be implemented.

56 (3) The required infrastructure component standards needed  
57 to accomplish the designated post-mining land uses identified  
58 in subdivision one of this subsection shall be developed by the  
59 relevant state, local, county or regional development or redevelop-  
60 ment authority. These standards must be in place before the  
61 respective state, local, county or regional development or  
62 redevelopment authority can accept ownership of property  
63 donated pursuant to a master land use plan. Acceptance of  
64 ownership of such property by a state, local, county or regional  
65 development or redevelopment authority may not occur unless  
66 it is determined that: (a) The property use is compatible with  
67 adjacent land uses; (b) the use satisfies the relevant develop-  
68 ment or redevelopment authority's anticipated need and market  
69 use; (c) the property has in place necessary infrastructure  
70 components needed to achieve the anticipated use; (d) the use  
71 is supported by all other appropriate public agencies; (e) the  
72 property is eligible for bond release in accordance with section  
73 twenty-three, article three, chapter twenty-two of this code; and  
74 (f) the use is feasible. Required infrastructure component  
75 standards require approval of the relevant county commission  
76 or commissions before such standards are accepted. County  
77 commission approval may be rendered only after a reasonable  
78 public comment period.

79 (4) The provisions of this subsection shall not take effect  
80 until legislative rules are promulgated pursuant to paragraph

81 (C), subdivision (1), subsection (c), section twenty-three, article  
82 three, chapter twenty-two of this code governing bond releases  
83 which assure sound future maintenance by the local or regional  
84 economic development, redevelopment or planning agencies.

**§5B-2A-12. Rulemaking.**

1 (a) The office shall propose rules for legislative approval in  
2 accordance with article three, chapter twenty-nine-a of this code  
3 to establish, implement and enforce the provisions of this  
4 article, which rules shall include, but not be limited to:

5 (1) The development of standards for establishing the value  
6 of property by the office; and

7 (2) Criteria for the development of a master plan by local,  
8 county, regional or redevelopment authorities which coordi-  
9 nates the permitting and reclamation requirements of the  
10 division of environmental protection with these authorities.

11 (b) The office is authorized to promulgate emergency rules,  
12 prior to the first day of July, two thousand two, to incorporate  
13 the revisions to this article enacted during the two thousand two  
14 regular legislative session.

---

## CHAPTER 59

**(Com. Sub. for S. B. 719 — By Senators Bowman, Bailey, Burnette,  
Kessler, Minard, Redd, Rowe, Snyder, Boley and Sprouse)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend chapter twenty-nine of the code of West Virginia,  
one thousand nine hundred thirty-one, as amended, by adding

thereto a new article, designated article twenty-seven, relating to the creation of the national coal heritage area authority and board; appointment, composition, terms and expenses of board; appointment of executive director; powers and duties of authority, board and executive director; rulemaking authority; authority to assess fees; and continuation of legal obligations.

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

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

**ARTICLE 27. NATIONAL COAL HERITAGE AREA AUTHORITY.**

§29-27-1. Legislative findings.

§29-27-2. Definitions.

§29-27-3. Creation; appointment of board; terms; expenses; executive director.

§29-27-4. Board; quorum; chairperson; bylaws.

§29-27-5. Powers of authority.

§29-27-6. Continuation of legal obligations.

**§29-27-1. Legislative findings.**

1       The West Virginia Legislature finds that there is a signifi-  
2 cant need for a public body to promote and enhance historic  
3 preservation, tourism and economic development activities that  
4 relate to the state's history as a coal producing state within the  
5 counties of Boone, Cabell, Fayette, Logan, McDowell, Mercer,  
6 Mingo, Raleigh, Summers, Wayne and Wyoming.

7       The Legislature further finds that the creation and empow-  
8 ering of a statutory corporation to work with the landowners,  
9 county officials and community leaders, state and federal  
10 government agencies, and other interested parties to enable and  
11 facilitate the development of the national coal heritage area will  
12 greatly assist in the realization of these potential benefits.

**§29-27-2. Definitions.**

1 Unless the context clearly requires a different meaning, the  
2 terms used in this article have the following meanings:

3 (a) "Authority" means the national coal heritage area  
4 authority;

5 (b) "Board" means the board of the national coal heritage  
6 area authority; and

7 (c) "National coal heritage area" means and is comprised of  
8 the counties of Boone, Cabell, Fayette, Logan, McDowell,  
9 Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming.

**§29-27-3. Creation; appointment of board; terms; expenses;  
executive director.**

1 (a) There is hereby created the "national coal heritage area  
2 authority" which is a public corporation and a government  
3 instrumentality existing for the purposes of providing direction  
4 to and assistance with state and federal historic preservation,  
5 economic development, and tourism projects in the national  
6 coal heritage area and aiding in the development and implemen-  
7 tation of integrated cultural, historical, and land resource  
8 management policies and programs in order to retain, enhance,  
9 and interpret the significant values of the lands, waters and  
10 structures in the national coal heritage area.

11 (b) The authority board shall be comprised of seventeen  
12 members. The following six persons shall be non-voting  
13 members and shall serve by virtue of their offices and may be  
14 represented at meetings of the board by designees: The secre-  
15 tary of the department of education and the arts, the commis-  
16 sioner of the bureau of the environment, the commissioner of  
17 the division of tourism, the commissioner of the division of  
18 culture and history, the director of the division of natural



19 resources and the executive director of the West Virginia  
20 development office. The remaining eleven members shall be  
21 appointed for terms of four years by the governor with the  
22 advice and consent of the Senate. Of the eleven members  
23 appointed by the governor, one member must reside in Boone  
24 County; one member must reside in Cabell County; one mem-  
25 ber must reside in Fayette County; one member must reside in  
26 Logan County; one member must reside in McDowell County;  
27 one member must reside in Mercer County; one member must  
28 reside in Mingo County; one member must reside in Raleigh  
29 County; one member must reside in Summers County; one  
30 member must reside in Wayne County; one member must  
31 reside in Wyoming County; and the appointees must be  
32 representative of the tourism industry, the coal industry, the  
33 united mine workers of America, economic development  
34 activity, historic preservation activity and higher education.

35 (c) Of the eleven members first appointed to the board, two  
36 shall be appointed for a term ending the thirtieth day of June,  
37 two thousand three, and three members for terms ending one,  
38 two and three years thereafter as the governor shall designate at  
39 the time of the appointments. Thereafter, the terms of office  
40 shall be four years. No appointed member may serve more than  
41 two consecutive full terms. A member shall continue to serve  
42 until his or her successor has been appointed and qualified.

43 (d) If an appointed member is unable to complete a term,  
44 the governor shall appoint a person to complete the unexpired  
45 term. Each vacancy occurring on the board must be filled  
46 within sixty days after the vacancy is created.

47 (e) Any appointed member of the board shall immediately  
48 and automatically forfeit his or her membership on the board if  
49 he or she becomes a nonresident of the county from which he  
50 or she was appointed.

51 (f) Each member of the board shall serve without compen-  
52 sation, but shall receive expense reimbursement for all reason-  
53 able and necessary expenses actually incurred in the perfor-  
54 mance of the duties of the office, in the same amount paid to  
55 members of the Legislature for their interim duties as recom-  
56 mended by the citizens legislative compensation commission  
57 and authorized by law: *Provided*, That no member shall be  
58 reimbursed for expenses paid by a third party.

59 (g) The board shall appoint an executive director to act as  
60 its chief executive officer, to serve at the will and pleasure of  
61 the board. The board, acting through its executive director, may  
62 employ any other personnel considered necessary and may  
63 appoint staff for the authority and retain such temporary  
64 consultants or technicians as may be required for any special  
65 study or survey consistent with the provisions of this article.  
66 The executive director shall carry out plans to implement the  
67 provisions of this article and to exercise those powers. The  
68 executive director shall prepare annually a budget to be  
69 submitted to the board for its review and approval.

**§29-27-4. Board; quorum; chairperson; bylaws.**

1 (a) The board is the governing body of the authority and the  
2 board shall exercise all the powers given the authority in this  
3 article.

4 (b) A chairperson shall be appointed by and shall serve at  
5 the will and pleasure of the governor, with the advice and  
6 consent of the Senate. The authority shall meet at such times as  
7 shall be specified by the chairperson, but in no case less than  
8 once each three months. Notice of the meeting must be given in  
9 accordance with the provisions of section three, article nine-a,  
10 chapter six of this code. A majority of the members may also  
11 call a meeting upon such notice as provided in this section. Six  
12 appointed members shall constitute a quorum for the transac-

13 tion of business. The chairperson of the board shall appoint  
14 from the membership of the authority certain members to serve  
15 as secretary and as treasurer.

16 (c) The board shall prescribe, amend and repeal bylaws and  
17 rules governing the manner in which the business of the  
18 authority is conducted, shall keep a record of its proceedings,  
19 and shall review and approve an annual budget.

**§29-27-5. Powers of authority.**

1 The authority, as a public corporation and governmental  
2 instrumentality exercising public powers of the state, may  
3 exercise all powers necessary or appropriate to carry out the  
4 purposes of this article, including, but not limited to, the power:

5 (1) To assist in the development and implementation of  
6 integrated cultural, historical and land resource management  
7 policies and programs in the national coal heritage area;

8 (2) To advise the executive director of the national coal  
9 heritage authority in retaining, enhancing and interpreting the  
10 significant values of the lands, waters and structures of the area;

11 (3) To enter into partnerships with various preservation  
12 groups, landmark commissions, certified local governments,  
13 county commissions and other entities to undertake the preser-  
14 vation, restoration, maintenance, operation, development,  
15 interpretation and promotion of lands and structures that  
16 possess unique and significant historic, architectural and  
17 cultural value associated with the coal mining heritage of the  
18 national coal heritage area;

19 (4) To make, amend, repeal and adopt bylaws for the  
20 management and regulation of its affairs;

21 (5) To appoint officers, agents and employees, and to  
22 contract for and engage the services of consultants;

23 (6) To execute contracts necessary or convenient for  
24 carrying on its business, including contracts with any other  
25 governmental agency of this state or of the federal government  
26 or with any person, individual, partnership or corporation to  
27 effect any or all of the purposes of this article;

28 (7) Without in any way limiting any other subdivision of  
29 this section, to accept grants and loans from and enter into  
30 contracts and other transactions with any federal agency;

31 (8) To maintain an office at such places within the state as  
32 it may designate;

33 (9) To accept gifts or grants of property, funds, money,  
34 materials, labor, supplies or services from the federal govern-  
35 ment or from any governmental unit or any person, firm or  
36 corporation;

37 (10) To construct, reconstruct, improve, maintain, repair,  
38 operate and manage certain facilities in the national coal  
39 heritage area as may be determined by the authority;

40 (11) To enter into contract with landowners and other  
41 persons holding an interest in the land being used for its  
42 recreational facilities to hold those landowners and other  
43 persons harmless with respect to any claim in tort growing out  
44 of the use of the land for public recreation or growing out of the  
45 public activities operated or managed by the authority from any  
46 claim except a claim for damages proximately caused by the  
47 willful or malicious conduct of the landowner or other person  
48 or any of his or her agents or employees;

49 (12) To assess and collect a reasonable fee from those  
50 persons who use the designated facilities which are part of the

51 national coal heritage area, and to retain and utilize that revenue  
52 for any purposes consistent with this article; and

53 (13) To propose rules for legislative approval in accordance  
54 with the provisions of article three, chapter twenty-nine-a of  
55 this code, as are necessary to effectuate the provisions of this  
56 article.

### **§29-27-6. Continuation of legal obligations.**

1 Nothing in this article shall be considered as superseding,  
2 amending, modifying or repealing any contract or agreement  
3 entered into for the benefit of the national coal heritage area  
4 prior to the date of enactment of this article.

---

## CHAPTER 60

**(Com. Sub. for S. B. 686 — By Senators Helmick, Fanning,  
Love, Anderson, Unger, Chafin, Edgell, Minard, McCabe,  
Bowman, Plymale, Snyder, Sharpe, Ross, Mitchell, Boley,  
Deem, Oliverio, Hunter and Rowe)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-eight, relating to creating the coal heritage highway authority and board; powers and duties of authority, board and executive director; board composition, terms and expenses; authority of board to adopt bylaws and rules; rulemaking authority; user fees; limited liability; insurance policies; exemptions from taxation; establishing special revenue fund; annual report; and limitation of article.

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

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

**ARTICLE 28. COAL HERITAGE HIGHWAY AUTHORITY.**

- §29-28-1. Legislative findings.
- §29-28-2. Definitions.
- §29-28-3. Authority created.
- §29-28-4. Appointment of board; terms.
- §29-28-5. Board; quorum; bylaws.
- §29-28-6. Executive director; powers and duties.
- §29-28-7. Board expenses.
- §29-28-8. Powers of authority.
- §29-28-9. Limiting liability; insurance exemption for certain horseman.
- §29-28-10. Insurance policies.
- §29-28-11. Exemption from taxation.
- §29-28-12. Fund established; authorized expenditures; annual report.
- §29-28-13. Continuation of legal obligations.

**§29-28-1. Legislative findings.**

1       The Legislature finds that the creation and empowering of  
2 a statutory corporation to work with landowners, county and  
3 municipal officials and community leaders, state and federal  
4 government agencies, recreational user groups, persons  
5 interested in historic preservation and other interested parties to  
6 enable and facilitate acquisition, development, preservation and  
7 enhancement of facilities and resources proximate to or  
8 associated with the coal heritage trail, a national scenic byway  
9 in West Virginia, will greatly assist in the economic develop-  
10 ment of the state through increased tourism.

**§29-28-2. Definitions.**

1       Unless the context clearly requires a different meaning, the  
2 terms used in this article have the following meanings:

3       (1) “Authority” means the coal heritage highway authority.

4       (2) “Board” means the board of the coal heritage highway  
5 authority.

6       (3) “Coal heritage trail” means that part of West Virginia  
7 route 16 connecting Beckley and Welch, and United States  
8 route 52, connecting Bluefield and Welch, all designated as a  
9 national scenic byway, and existing within the counties of  
10 Mercer, McDowell, Raleigh and Wyoming, and those routes  
11 that comprise the National Coal Heritage Trail Scenic Byway,  
12 as designated by the United States department of transportation,  
13 traversing the counties of Fayette, Mercer, McDowell, Raleigh  
14 and Wyoming.

**§29-28-3. Authority created.**

1       (a) There is hereby created the “Coal Heritage Highway  
2 Authority” which is a public corporation and a government  
3 instrumentality to promote economic development and tourism  
4 in areas along the national scenic byway, designated the coal  
5 heritage trail, and aid in the development, preservation,  
6 restoration or enhancement of roads, trails, lands and structures,  
7 including areas or structures associated with surface transporta-  
8 tion, which have unique and significant historic, architectural  
9 or cultural importance associated with the area’s heritage of  
10 coal production and which are located in one or more of the  
11 counties of Fayette, Mercer, McDowell, Raleigh and Wyoming.

12       (b) The authority shall cooperate with counties, municipali-  
13 ties, state and federal agencies, public nonprofit corporations,  
14 private corporations, associations, partnerships and individuals

15 for the purpose of planning, assisting and establishing recre-  
16 ational, tourism, industrial, economic and community develop-  
17 ment of the coal heritage trail for the benefit of West Virginia.

**§29-28-4. Appointment of board; terms.**

1 (a) The authority shall be governed by a board of six  
2 members. All members shall be appointed before the first day  
3 of July, two thousand two.

4 (b) Each of the county commissions of the counties of  
5 Fayette, Mercer, McDowell, Raleigh and Wyoming shall  
6 appoint one member each to the board. The appointees must be  
7 affiliated with or knowledgeable in tourism, economic develop-  
8 ment or heritage preservation. The sixth member shall be  
9 appointed by the secretary of education and the arts and shall be  
10 the chair. Of the members first appointed by the county  
11 commissions, the members representing Fayette, Mercer and  
12 Raleigh counties shall be appointed to terms ending the thirtieth  
13 day of June, two thousand three, and the members representing  
14 McDowell and Wyoming counties shall be appointed to terms  
15 ending the thirtieth day of June, two thousand four. Thereafter,  
16 persons appointed or reappointed to the board, by the county  
17 commissions or the secretary of education and the arts, shall be  
18 appointed for terms of two years.

19 (c) Any appointed member whose term has expired shall  
20 serve until his or her successor has been duly appointed. Should  
21 a vacancy occur, the person appointed to fill the vacancy shall  
22 serve only for the unexpired portion thereof. All members are  
23 eligible for reappointment.

24 (d) Any appointed member of the board shall immediately  
25 and automatically forfeit his or her membership on the board if  
26 he or she becomes a nonresident of the county from which he  
27 or she was appointed.



28 (e) Each member of the board shall serve without compen-  
29 sation, but shall receive expense reimbursement for all reason-  
30 able and necessary expenses actually incurred in the perfor-  
31 mance of the duties of the office, in the same amount paid to  
32 members of the Legislature for their interim duties as recom-  
33 mended by the citizens legislative compensation commission  
34 and authorized by law: *Provided*, That no member shall be  
35 reimbursed for expenses paid by a third party.

**§29-28-5. Board; quorum; bylaws.**

1 (a) The board is the governing body of the authority and the  
2 board shall exercise all the powers given the authority in this  
3 article. The board shall meet at least quarterly.

4 (b) A majority of the members of the board constitutes a  
5 quorum and a quorum must be present for the board to conduct  
6 business. Unless the bylaws require a larger number, action  
7 may be taken by majority vote of the members present.

8 (c) The board shall adopt bylaws and rules, as may be  
9 necessary for its operation and management, governing the  
10 manner in which the business of the authority is conducted and  
11 shall review and approve an annual budget.

**§29-28-6. Executive director; powers and duties.**

1 (a) The board shall appoint an executive director to act as  
2 its chief executive officer, to serve at the will and pleasure of  
3 the board. The executive director may be employed on a full-  
4 time or part-time basis. The board, in consultation with its  
5 executive director, may employ any other necessary personnel.  
6 The board shall set the compensation of authority employees.

7 (b) The executive director shall carry out plans to imple-  
8 ment the provisions of this article and exercise those powers  
9 enumerated in the bylaws. The executive director shall prepare

10 an annual budget to be submitted to the board for its review and  
11 approval.

**§29-28-7. Board expenses.**

1 (a) Unless otherwise prohibited by law, the board may  
2 appoint counsel and legal staff for the authority and retain  
3 temporary engineering, financial and other consultants or  
4 technicians as may be required for any special study or survey  
5 consistent with the provisions of this article.

6 (b) All costs incidental to the administration of the author-  
7 ity, including office expenses, personal services expense and  
8 current expense, shall be paid in accordance with guidelines  
9 issued by the board from funds accruing to the authority.

10 (c) All expenses incurred in carrying out the provisions of  
11 this article are payable solely from funds provided under the  
12 authority of this article and no liability or obligation may be  
13 incurred by the authority under this article beyond the extent to  
14 which moneys have been provided under the authority of this  
15 article.

**§29-28-8. Powers of authority.**

1 The authority, as a public corporation and governmental  
2 instrumentality exercising public powers of the state, may  
3 exercise all powers necessary or appropriate to carry out the  
4 purposes of this article, except the power of eminent domain.  
5 Powers of the authority include, but are not limited to, the  
6 power:

7 (1) To undertake promotion and advocacy of projects,  
8 programs or facilities related to the coal heritage highway and  
9 the purposes of this article and to make grants consistent with  
10 the purposes and goals of the board;

11       (2) To directly operate and manage historic, cultural,  
12 architectural and recreational activities and facilities consistent  
13 with the purposes of the authority and this article;

14       (3) To cooperate with the state of Virginia and appropriate  
15 state and local officials and community leaders in Virginia to  
16 enhance the effectiveness of trails or other authority projects or  
17 facilities which may be located on the border which may  
18 connect to similar projects across the state border;

19       (4) To sue and be sued, implead and be impleaded and  
20 complain and defend in any court;

21       (5) Unless otherwise prohibited by law, to contract for the  
22 provision of legal services by private counsel and, notwith-  
23 standing the provisions of article three, chapter five of this  
24 code, the counsel may, in addition to the provisions of other  
25 legal services, represent the authority in court, negotiate  
26 contracts and other agreements on behalf of the authority,  
27 render advice to the authority on any matter relating to the  
28 authority, prepare contracts and other agreements and provide  
29 other legal services requested by the authority;

30       (6) To adopt, use and alter at will a corporate seal;

31       (7) To make, amend, repeal and adopt bylaws for the  
32 management and regulation of its affairs;

33       (8) To appoint an executive director and other employees  
34 or agents and to contract for and engage the services of consul-  
35 tants;

36       (9) To execute contracts necessary or convenient for  
37 carrying on its business, including contracts with any other  
38 governmental agency of this state or of the federal government  
39 or with any person, individual, partnership or corporation to  
40 effect any or all of the purposes of this article;

41 (10) Without in any way limiting any other subdivision of  
42 this section, to accept grants and loans from and enter into  
43 contracts and other transactions with any federal agency;

44 (11) To maintain an office at such places within the state as  
45 it may designate;

46 (12) To accept gifts or grants of property, funds, money,  
47 materials, labor, supplies or services from the federal govern-  
48 ment or from any governmental unit or any person, firm or  
49 corporation;

50 (13) To propose rules for legislative approval in accordance  
51 with the provisions of article three, chapter twenty-nine-a of  
52 this code as necessary to implement and make effective the  
53 powers, duties and responsibilities invested in the authority by  
54 the provisions of this article and otherwise by law;

55 (14) To construct, reconstruct, improve, maintain, repair,  
56 operate and manage certain facilities on the coal heritage trail,  
57 as determined by the authority;

58 (15) To develop, maintain and operate or to contract for the  
59 development, maintenance and operation of projects appropri-  
60 ate to the authority;

61 (16) To enter into contract with landowners and other  
62 persons holding an interest in the land being used for its  
63 historic, cultural or tourist facilities and to hold those landown-  
64 ers and other persons harmless with respect to any claim in tort  
65 growing out of the use of the land for public tourism or growing  
66 out of the tourism activities operated or managed by the  
67 authority from any claim except a claim for damages proximi-  
68 mately caused by the willful or malicious conduct of the  
69 landowner or other person or any of his or her agents or  
70 employees;

71 (17) To assess and collect a reasonable fee from those  
72 persons who use trails, parking facilities, visitor centers or other  
73 facilities operated by the authority and to retain and use that  
74 revenue for any purposes consistent with this article;

75 (18) To enter into contracts or other appropriate legal  
76 arrangements with landowners under which their land is made  
77 available for use consistent with the purposes of the authority  
78 and this article; and

79 (19) To make funds in excess of current needs available for  
80 investment in accordance with the provisions of article six,  
81 chapter twelve of this code.

**§29-28-9. Limiting liability; insurance exemption for certain  
horsemen.**

1 (a) Notwithstanding the provisions of section three, article  
2 twenty-five, chapter nineteen of this code, an owner of land  
3 used by or for the stated purposes of the authority, whether with  
4 or without charge, owes no duty of care to keep the premises  
5 safe for entry or use by others for recreational purposes or to  
6 give any warning of a dangerous or hazardous condition, use,  
7 structure or activity on the premises to persons entering for  
8 those purposes.

9 (b) Notwithstanding the provisions of section three, article  
10 twenty-five, chapter nineteen of this code, the landowner or  
11 lessor of the property used by the authority for purposes of this  
12 article does not thereby:

13 (1) Extend any assurance that the premises are safe for any  
14 purpose;

15 (2) Confer upon persons the legal status of an invitee or  
16 licensee to whom a duty of care is owed; or

17 (3) Assume responsibility for or incur liability for any  
18 injury to person or property caused by an act or omission of  
19 these persons.

20 (c) Unless otherwise agreed in writing, an owner who  
21 grants a license of land to the authority for purposes provided  
22 in this article owes no duty of care to keep that land safe for  
23 entry or use by others or to give warning to persons entering or  
24 going upon the land of any dangerous or hazardous conditions,  
25 uses, structures or activities thereon.

26 (d) An owner who grants a license of land to the authority  
27 for recreational purposes does not by giving a lease, easement  
28 or license:

29 (1) Extend any assurance to any person using the land that  
30 the premises are safe for any purpose;

31 (2) Confer upon those persons the legal status of an invitee  
32 or licensee to whom a duty of care is owed; or

33 (3) Assume responsibility for or incur liability for any  
34 injury to person or property caused by an act or omission of a  
35 person who enters upon the land.

36 (e) The provisions of this section apply whether the person  
37 entering upon the land is an invitee, licensee, trespasser or  
38 otherwise.

39 (f) Nothing herein limits in any way any liability which  
40 otherwise exists for deliberate, willful or malicious infliction of  
41 injury to persons or property: *Provided*, That nothing herein  
42 limits in any way the obligation of a person entering upon or  
43 using the land of another for recreational purposes to exercise  
44 due care in his or her use of the land and in his or her activities  
45 thereon, so as to prevent the creation of hazards or the commis-  
46 sion of waste by himself or herself: *Provided, however*, That

47 horsemen, as defined in section two, article four, chapter twenty  
48 of this code, who are using land or facilities held or operated  
49 pursuant to this article for equestrian activities and who are in  
50 compliance with rules proposed by the authority and approved  
51 by the Legislature, but who are not engaged in a commercial  
52 profit-making venture are exempt from the provisions of  
53 subsection (d), section five of said article.

**§29-28-10. Insurance policies.**

1 Any policy or contract of liability insurance providing  
2 coverage for liability sold, issued or delivered in this state to  
3 any owner of lands covered under the provisions of this article  
4 shall be read so as to contain a provision or endorsement  
5 whereby the company issuing the policy waives or agrees not  
6 to assert as a defense on behalf of the policyholder or any  
7 beneficiary thereof, to any claim covered by the terms of the  
8 policy within the policy limits, the immunity from liability of  
9 the insured by reason of the use of the insured's land for  
10 recreational purposes, unless the provision or endorsement is  
11 rejected in writing by the named insured.

**§29-28-11. Exemption from taxation.**

1 Revenues, properties, operations and activities of the  
2 authority are exempt from the payment of any taxes or fees to  
3 the state or any of its political subdivisions.

**§29-28-12. Fund established; authorized expenditures; annual report.**

1 (a) There is established in the state treasury a special  
2 revenue fund designated the "Coal Heritage Highway Authority  
3 Fund", which shall be administered by the coal heritage  
4 highway authority board.

5 (b) All funds accruing to the authority pursuant to the  
6 provisions of this article shall be deposited into the fund and  
7 expended in accordance with provisions of this article.

8 (c) Any remaining balance, including accrued interest, in  
9 the fund at the end of the fiscal year shall not revert to the  
10 general revenue fund, but shall remain in the account.

11 (d) On or before the first day of January of each year, the  
12 board shall submit to the Legislature an annual fiscal year  
13 report on the funds and the activities of the authority including,  
14 but not limited to, the previous fiscal year's receipts and  
15 expenditures and projected receipts and expenditures for the  
16 current and next fiscal years. The board shall send the report to  
17 the legislative librarian.

**§29-28-13. Continuation of legal obligations.**

1 Nothing in this article shall be deemed as superseding,  
2 amending, modifying or repealing any contract or agreement  
3 entered into for the benefit of the coal heritage trail prior to the  
4 effective date of this article.

---

## CHAPTER 61

(S. B. 345 — By Senators Kessler and Edgell)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to repeal section thirty-two, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting the burial of deceased inmates within the city of Moundsville.



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

**ARTICLE 5. THE PENITENTIARY.**

**§1. Repeal of section relating to prohibiting the burial of inmates within the city of Moundsville.**

1 Section thirty-two, article five, chapter twenty-eight of the  
2 code of West Virginia, one thousand nine hundred thirty-one,  
3 as amended, is hereby repealed.

---

**CHAPTER 62**

**(Com. Sub. for H. B. 4446 — By Delegates Beane, Browning, Staton, R. M. Thompson and G. White)**

---

[Passed March 4, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to repeal article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limited benefits accident and sickness insurance policies and certificates.

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

**§1. Repeal of article relating to limited benefits accident and sickness insurance policies and certificates.**

1 Article sixteen-e, chapter thirty-three of the code of West  
2 Virginia, one thousand nine hundred thirty-one, as amended, is  
3 hereby repealed.

---

## CHAPTER 63

(Com. Sub. for H. B. 3142 — By Delegates Proudfoot, Amores,  
Douglas, Manuel, Compton and Fahey)

---

[Passed February 11, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto a new section, designated section three-ii; and to amend and reenact section five, article twelve, chapter eight of said code, all relating to authorizing counties and municipalities to require visible posting of addresses for factory-built homes in a factory-built home rental community with at least ten factory-built homes situated on the premises of the community; and providing that the county or municipality may assign a numeric designation for an address if none exists for a factory-built home.

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

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

### **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

#### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3ii. Authority to require posting of commercial and residential addresses within municipal boundaries.**

1 In addition to all other powers now conferred by law upon  
2 county commissions, the commissions are hereby authorized to  
3 require owners, residents or occupants of factory-built homes  
4 situated in a factory-built home rental community with at least  
5 ten factory-built homes to visibly post the specific numeric  
6 portion of the address of each factory-built home on the  
7 immediate premises of the factory-built home of sufficient size  
8 to be visible from the adjoining street: *Provided*, That if no  
9 numeric or other specific designation of an address exists for a  
10 factory-built home subject to the authorization granted by this  
11 section, the commission has the authority to provide a numeric  
12 or other specific designation of an address for the factory-built  
13 home and require that it be posted in accordance with the  
14 authority otherwise granted by this section.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOY- EES; SUITS AGAINST MUNICIPALITIES.**

#### **§8-12-5. General powers of every municipality and the governing body thereof.**

1 In addition to the powers and authority granted by: (i) The  
2 constitution of this state; (ii) other provisions of this chapter;  
3 (iii) other general law; and (iv) any charter, and to the extent  
4 not inconsistent or in conflict with any of the foregoing except  
5 special legislative charters, every municipality and the govern-  
6 ing body thereof shall have plenary power and authority therein  
7 by ordinance or resolution, as the case may require, and by  
8 appropriate action based thereon:

9 (1) To lay off, establish, construct, open, alter, curb, recurb,  
10 pave or repave and keep in good repair, or vacate, discontinue  
11 and close, streets, avenues, roads, alleys, ways, sidewalks,

12 drains and gutters, for the use of the public, and to improve and  
13 light the same, and have them kept free from obstructions on or  
14 over them which have not been authorized pursuant to the  
15 succeeding provisions of this subdivision; and, subject to such  
16 terms and conditions as the governing body shall prescribe, to  
17 permit, without in any way limiting the power and authority  
18 granted by the provisions of article sixteen of this chapter, any  
19 person to construct and maintain a passageway, building or  
20 other structure overhanging or crossing the airspace above a  
21 public street, avenue, road, alley, way, sidewalk or crosswalk,  
22 but before any permission for any person to construct and  
23 maintain a passageway, building or other structure overhanging  
24 or crossing any airspace is granted, a public hearing thereon  
25 shall be held by the governing body after publication of a notice  
26 of the date, time, place and purpose of the public hearing has  
27 been published as a Class I legal advertisement in compliance  
28 with the provisions of article three, chapter fifty-nine of this  
29 code and the publication area for the publication shall be the  
30 municipality: *Provided*, That any permit so granted shall  
31 automatically cease and terminate in the event of abandonment  
32 and nonuse thereof for the purposes intended for a period of  
33 ninety days, and all rights therein or thereto shall revert to the  
34 municipality for its use and benefit;

35 (2) To provide for the opening and excavation of streets,  
36 avenues, roads, alleys, ways, sidewalks, crosswalks and public  
37 places belonging to the municipality and regulate the conditions  
38 under which any such opening may be made;

39 (3) To prevent by proper penalties the throwing, depositing  
40 or permitting to remain on any street, avenue, road, alley, way,  
41 sidewalk, square or other public place any glass, scrap iron,  
42 nails, tacks, wire, other litter or any offensive matter or any-  
43 thing likely to injure the feet of individuals or animals or the  
44 tires of vehicles;

45 (4) To regulate the use of streets, avenues, roads, alleys,  
46 ways, sidewalks, crosswalks and public places belonging to the  
47 municipality, including the naming or renaming thereof, and to  
48 consult with local postal authorities, the division of highways  
49 and the directors of county emergency communications centers  
50 to assure uniform, nonduplicative addressing on a permanent  
51 basis;

52 (5) To regulate the width of streets, avenues and roads, and,  
53 subject to the provisions of article eighteen of this chapter, to  
54 order the sidewalks, footways and crosswalks to be paved,  
55 repaved, curbed or recurbed and kept in good order, free and  
56 clean, by the owners or occupants thereof or of the real property  
57 next adjacent thereto;

58 (6) To establish, construct, alter, operate and maintain, or  
59 discontinue, bridges, tunnels and ferries and approaches thereto;

60 (7) To provide for the construction and maintenance of  
61 water drains, the drainage of swamps or marshlands and  
62 drainage systems;

63 (8) To provide for the construction, maintenance and  
64 covering over of watercourses;

65 (9) To control and administer the waterfront and waterways  
66 of the municipality and to acquire, establish, construct, operate  
67 and maintain and regulate flood control works, wharves and  
68 public landings, warehouses and all adjuncts and facilities for  
69 navigation and commerce and the utilization of the waterfront  
70 and waterways and adjacent property;

71 (10) To prohibit the accumulation and require the disposal  
72 of garbage, refuse, debris, wastes, ashes, trash and other similar  
73 accumulations whether on private or public property: *Provided,*  
74 *That, in the event the municipality annexes an area which has*  
75 *been receiving solid waste collection services from a certifi-*

76 cated solid waste motor carrier, the municipality and the solid  
77 waste motor carrier may negotiate an agreement for continua-  
78 tion of the private solid waste motor carrier services for a  
79 period of time, not to exceed three years, during which time the  
80 certificated solid waste motor carrier may continue to provide  
81 exclusive solid waste collection services in the annexed  
82 territory;

83 (11) To construct, establish, acquire, equip, maintain and  
84 operate incinerator plants and equipment and all other facilities  
85 for the efficient removal and destruction of garbage, refuse,  
86 wastes, ashes, trash and other similar matters;

87 (12) To regulate or prohibit the purchase or sale of articles  
88 intended for human use or consumption which are unfit for use  
89 or consumption, or which may be contaminated or otherwise  
90 unsanitary;

91 (13) To prevent injury or annoyance to the public or  
92 individuals from anything dangerous, offensive or unwhole-  
93 some;

94 (14) To regulate the keeping of gunpowder and other  
95 combustibles;

96 (15) To make regulations guarding against danger or  
97 damage by fire;

98 (16) To arrest, convict and punish any individual for  
99 carrying about his or her person any revolver or other pistol,  
100 dirk, bowie knife, razor, slingshot, billy, metallic or other false  
101 knuckles or any other dangerous or other deadly weapon of like  
102 kind or character;

103 (17) To arrest, convict and punish any person for importing,  
104 printing, publishing, selling or distributing any pornographic  
105 publications;

106 (18) To arrest, convict and punish any person for keeping  
107 a house of ill fame, or for letting to another person any house or  
108 other building for the purpose of being used or kept as a house  
109 of ill fame, or for knowingly permitting any house owned by  
110 him or her or under his or her control to be kept or used as a  
111 house of ill fame, or for loafing, boarding or loitering in a house  
112 of ill fame, or frequenting same;

113 (19) To prevent and suppress conduct and practices which  
114 are immoral, disorderly, lewd, obscene and indecent;

115 (20) To prevent the illegal sale of intoxicating liquors,  
116 drinks, mixtures and preparations;

117 (21) To arrest, convict and punish any individual for  
118 driving or operating a motor vehicle while intoxicated or under  
119 the influence of liquor, drugs or narcotics;

120 (22) To arrest, convict and punish any person for gambling  
121 or keeping any gaming tables, commonly called "A, B, C," or  
122 "E, O," table or faro bank or keno table, or table of like kind,  
123 under any denomination, whether the gaming table be played  
124 with cards, dice or otherwise, or any person who shall be a  
125 partner or concerned in interest, in keeping or exhibiting the  
126 table or bank, or keeping or maintaining any gaming house or  
127 place, or betting or gambling for money or anything of value;

128 (23) To provide for the elimination of hazards to public  
129 health and safety and to abate or cause to be abated anything  
130 which in the opinion of a majority of the governing body is a  
131 public nuisance;

132 (24) To license, or for good cause to refuse to license in a  
133 particular case, or in its discretion to prohibit in all cases, the  
134 operation of pool and billiard rooms and the maintaining for  
135 hire of pool and billiard tables notwithstanding the general law  
136 as to state licenses for any such business and the provisions of

137 section four, article thirteen of this chapter; and when the  
138 municipality, in the exercise of its discretion, refuses to grant a  
139 license to operate a pool or billiard room, mandamus may not  
140 lie to compel the municipality to grant the license unless it shall  
141 clearly appear that the refusal of the municipality to grant a  
142 license is discriminatory or arbitrary; and in the event that the  
143 municipality determines to license any business, the municipal-  
144 ity has plenary power and authority and it shall be the duty of  
145 its governing body to make and enforce reasonable ordinances  
146 regulating the licensing and operation of the businesses;

147 (25) To protect places of divine worship and to preserve  
148 peace and order in and about the premises where held;

149 (26) To regulate or prohibit the keeping of animals or fowls  
150 and to provide for the impounding, sale or destruction of  
151 animals or fowls kept contrary to law or found running at large;

152 (27) To arrest, convict and punish any person for cruelly,  
153 unnecessarily or needlessly beating, torturing, mutilating,  
154 killing, or overloading or overdriving or willfully depriving of  
155 necessary sustenance any domestic animal;

156 (28) To provide for the regular building of houses or other  
157 structures, for the making of division fences by the owners of  
158 adjacent premises and for the drainage of lots by proper drains  
159 and ditches;

160 (29) To provide for the protection and conservation of  
161 shade or ornamental trees, whether on public or private prop-  
162 erty, and for the removal of trees or limbs of trees in a danger-  
163 ous condition;

164 (30) To prohibit with or without zoning the location of  
165 occupied house trailers or mobile homes in certain residential  
166 areas;



167 (31) To regulate the location and placing of signs, bill-  
168 boards, posters and similar advertising;

169 (32) To erect, establish, construct, acquire, improve,  
170 maintain and operate a gas system, a waterworks system, an  
171 electric system or sewer system and sewage treatment and  
172 disposal system, or any combination of the foregoing (subject  
173 to all of the pertinent provisions of articles nineteen and twenty  
174 of this chapter and particularly to the limitations or qualifica-  
175 tions on the right of eminent domain set forth in articles  
176 nineteen and twenty), within or without the corporate limits of  
177 the municipality, except that the municipality may not erect any  
178 system partly without the corporate limits of the municipality  
179 to serve persons already obtaining service from an existing  
180 system of the character proposed and where the system is by the  
181 municipality erected, or has heretofore been so erected, partly  
182 within and partly without the corporate limits of the municipal-  
183 ity, the municipality has the right to lay and collect charges for  
184 service rendered to those served within and those served  
185 without the corporate limits of the municipality and to prevent  
186 injury to the system or the pollution of the water thereof and its  
187 maintenance in a healthful condition for public use within the  
188 corporate limits of the municipality;

189 (33) To acquire watersheds, water and riparian rights, plant  
190 sites, rights-of-way and any and all other property and appurte-  
191 nances necessary, appropriate, useful, convenient or incidental  
192 to any system, waterworks or sewage treatment and disposal  
193 works, as aforesaid, subject to all of the pertinent provisions of  
194 articles nineteen and twenty of this chapter;

195 (34) To establish, construct, acquire, maintain and operate  
196 and regulate markets and prescribe the time of holding the  
197 same;

198            (35) To regulate and provide for the weighing of articles  
199 sold or for sale;

200            (36) To establish, construct, acquire, maintain and operate  
201 public buildings, municipal buildings or city halls, auditoriums,  
202 arenas, jails, juvenile detention centers or homes, motor vehicle  
203 parking lots or any other public works;

204            (37) To establish, construct, acquire, provide, equip,  
205 maintain and operate recreational parks, playgrounds and other  
206 recreational facilities for public use and in this connection also  
207 to proceed in accordance with the provisions of article two,  
208 chapter ten of this code;

209            (38) To establish, construct, acquire, maintain and operate  
210 a public library or museum or both for public use;

211            (39) To provide for the appointment and financial support  
212 of a library board in accordance with the provisions of article  
213 one, chapter ten of this code;

214            (40) To establish and maintain a public health unit in  
215 accordance with the provisions of section two, article two,  
216 chapter sixteen of this code, which unit shall exercise its powers  
217 and perform its duties subject to the supervision and control of  
218 the West Virginia board of health and state bureau for public  
219 health;

220            (41) To establish, construct, acquire, maintain and operate  
221 hospitals, sanitarium and dispensaries;

222            (42) To acquire, by purchase, condemnation or otherwise,  
223 land within or near the corporate limits of the municipality for  
224 providing and maintaining proper places for the burial of the  
225 dead and to maintain and operate the same and regulate  
226 interments therein upon terms and conditions as to price and  
227 otherwise as may be determined by the governing body and, in

228 order to carry into effect the authority, the governing body may  
229 acquire any cemetery or cemeteries already established;

230 (43) To exercise general police jurisdiction over any  
231 territory without the corporate limits owned by the municipality  
232 or over which it has a right-of-way;

233 (44) To protect and promote the public morals, safety,  
234 health, welfare and good order;

235 (45) To adopt rules for the transaction of business and the  
236 government and regulation of its governing body;

237 (46) Except as otherwise provided, to require and take  
238 bonds from any officers, when considered necessary, payable  
239 to the municipality, in its corporate name, with such sureties  
240 and in a penalty as the governing body may see fit, conditioned  
241 upon the faithful discharge of their duties;

242 (47) To require and take from the employees and contrac-  
243 tors such bonds in a penalty, with such sureties and with such  
244 conditions, as the governing body may see fit;

245 (48) To investigate and inquire into all matters of concern  
246 to the municipality or its inhabitants;

247 (49) To establish, construct, require, maintain and operate  
248 such instrumentalities, other than free public schools, for the  
249 instruction, enlightenment, improvement, entertainment,  
250 recreation and welfare of the municipality's inhabitants as the  
251 governing body may consider necessary or appropriate for the  
252 public interest;

253 (50) To create, maintain and operate a system for the  
254 enumeration, identification and registration, or either, of the  
255 inhabitants of the municipality and visitors thereto, or the  
256 classes thereof as may be considered advisable;

257 (51) To require owners, residents or occupants of factory-  
258 built homes situated in a factory-built rental home community  
259 with at least ten factory-built homes, to visibly post the specific  
260 numeric portion of the address of each factory-built home on  
261 the immediate premises of the factory-built home of sufficient  
262 size to be visible from the adjoining street: *Provided*, That in  
263 the event no numeric or other specific designation of an address  
264 exists for a factory-built home subject to the authorization  
265 granted by this subdivision, the municipality has the authority  
266 to provide a numeric or other specific designation of an address  
267 for the factory-built home and require that it be posted in  
268 accordance with the authority otherwise granted by this section.

269 (52) To appropriate and expend not exceeding twenty-five  
270 cents per capita per annum for advertising the municipality and  
271 the entertainment of visitors;

272 (53) To conduct programs to improve community relations  
273 and public relations generally and to expend municipal revenue  
274 for such purposes;

275 (54) To reimburse applicants for employment by the  
276 municipality for travel and other reasonable and necessary  
277 expenses actually incurred by the applicants in traveling to and  
278 from the municipality to be interviewed;

279 (55) To provide revenue for the municipality and appropri-  
280 ate the same to its expenses;

281 (56) To create and maintain an employee benefits fund  
282 which may not exceed one tenth of one percent of the annual  
283 payroll budget for general employee benefits and which is set  
284 up for the purpose of stimulating and encouraging employees  
285 to develop and implement cost-saving ideas and programs and  
286 to expend moneys from the fund for these purposes;

287 (57) To enter into reciprocal agreements with governmental  
288 subdivisions or agencies of any state sharing a common border

289 for the protection of people and property from fire and for  
290 emergency medical services and for the reciprocal use of  
291 equipment and personnel for these purposes; and

292 (58) To provide penalties for the offenses and violations of  
293 law mentioned in this section, subject to the provisions of  
294 section one, article eleven of this chapter, and such penalties  
295 may not exceed any penalties provided in this chapter and  
296 chapter sixty-one of this code for like offenses and violations.

---

## CHAPTER 64

**(Com. Sub. for S. B. 289 — By Senators Tomblin, Mr. President,  
Chafin, Plymale, Sprouse, Bailey, Edgell, Kessler, Minard,  
Ross, Caldwell, Sharpe, Hunter, Helmick, Fanning, Bowman,  
Mitchell, Rowe, Unger, Anderson, McCabe, Burnette and Prezioso)**

---

[Passed March 6, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one, two and three, article four-b, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the state computer donation program; expanding the eligible recipient organizations to include educational facilities, nonprofit organizations and other public, charitable or educational enterprises or organizations; expanding the auditor's legislative rule-making authority to implement the computer donation program; and deleting obsolete language.

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

That sections one, two and three, article four-b, 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 4B. COMPUTER DONATION PROGRAM.**

§12-4B-1. Legislative findings.

§12-4B-2. Computer donation program created.

§12-4B-3. Legislative rules.

**§12-4B-1. Legislative findings.**

1           The Legislature finds that:

2           (a) Educational facilities, nonprofit organizations, juvenile  
3           detention centers, municipal and county public safety offices  
4           and other public, charitable or educational enterprises or  
5           organizations are always in need of computers, telecommunica-  
6           tions devices and other technological equipment, while the  
7           acquisition of such equipment is costly;

8           (b) The state auditor must frequently purchase computers,  
9           telecommunications devices and other technological equipment  
10          for his or her interaction with national and international  
11          financial services industries;

12          (c) The purchase by the state auditor of modern computers,  
13          telecommunications devices and other technological equipment  
14          frequently results in the surplus of existing equipment;

15          (d) Surplus equipment is generally obsolete and may no  
16          longer be used effectively by agency employees;

17          (e) Although the computers, telecommunications devices  
18          and other technological equipment is no longer useful in  
19          interacting with the financial services industry, they may still be  
20          useful items for a less complex and less high-speed dependent  
21          use;

22          (f) Heretofore, the state auditor has stripped the equipment  
23          for spare parts for other machines and that this continued  
24          practice does not necessarily result in the equipment's highest  
25          and best remaining use; and

26 (g) Rather than break down the equipment for spare parts  
27 or send obsolete machines to the surplus property unit of the  
28 state purchasing division where they may languish with lack of  
29 use, it would be in the best interest of the state that any obsolete  
30 computers, telecommunications devices or technological  
31 equipment be donated by the state auditor's office to educa-  
32 tional facilities, nonprofit organizations, juvenile detention  
33 centers, municipal and county public safety offices and other  
34 public, charitable or educational enterprises or organizations.

**§12-4B-2. Computer donation program created.**

1 (a) Notwithstanding any other provision of this code to the  
2 contrary, the state auditor is hereby authorized within his or her  
3 agency to create a computer donation program to donate  
4 equipment, which would otherwise be transferred to the surplus  
5 property unit of the purchasing division, to educational facili-  
6 ties, nonprofit organizations, juvenile detention centers,  
7 municipal and county public safety offices and other public,  
8 charitable or educational enterprises or organizations in this  
9 state. This program authorizes the state auditor's office to  
10 donate surplus equipment.

11 (b) The program shall be administered by a director as  
12 appointed or employed by the state auditor. The auditor may  
13 either appoint the director from existing staff from his or her  
14 office or may employ a director from existing funds.

15 (c) The director shall keep records and accounts that  
16 indicate the equipment donated, the age of the equipment, the  
17 reasons for declaring it obsolete and to which educational  
18 facility, nonprofit organization, juvenile detention center,  
19 municipal or county public safety office or other public,  
20 charitable or educational enterprise or organization the equip-  
21 ment was donated.

**§12-4B-3. Legislative rules.**

1       The state auditor shall propose legislative rules in accor-  
 2       dance with the provisions of article three-a, chapter twenty-  
 3       nine-a of this code which shall detail the regulations for  
 4       implementing the program. The rules shall provide for fair and  
 5       impartial selection of equipment recipients.

---

## CHAPTER 65

(S. B. 263 — By Senators Minard and Kessler)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section one hundred twelve, article four, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulated consumer lenders; and clarifying the construction of certain terms.

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

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

**ARTICLE 4. REGULATED CONSUMER LENDERS.**

**§46A-4-112. Code reference to supervised lenders and industrial loan companies; authority of the commissioner.**

1       All references in this code to supervised loans, supervised  
 2       lenders, industrial loans, industrial loan companies and licens-  
 3       ees thereof, as well as to article seven, chapter thirty-one of this



4 code, shall, after the operative date of this chapter and despite  
5 the repeal of said statute, be read, construed and understood to  
6 mean and to have reference, respectively, to regulated consumer  
7 loans, regulated consumer lenders, regulated consumer lender  
8 licensees and to this article.

9 All authority vested by this chapter in the commissioner  
10 shall be considered to be in addition to, and not in limitation of,  
11 the authority vested in the commissioner of banking by provi-  
12 sions contained in other chapters of this code.

---

## CHAPTER 66

**(H. B. 4116 — By Mr. Speaker, Mr. Kiss, and Delegates Stemple,  
Williams, Varner, Swartzmiller, Staton and Mezzatesta)**

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-j, all relating to protecting consumers from price gouging and unfair pricing practices during and shortly after a declaration of a state of emergency; defining terms; declaring legislative findings; restricting price increases during state of emergency; making violations of price restrictions and unfair method of competition or unfair or deceptive practice; misdemeanor offenses; providing remedies and penalties; and requiring the promulgation of rules to establish a system to notify persons affected by the price restrictions.

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

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

**ARTICLE 6J. PROTECTION OF CONSUMERS FROM PRICE GOUGING  
AND UNFAIR PRICING PRACTICES DURING AND  
SHORTLY AFTER A STATE OF EMERGENCY.**

§46A-6J-1. Emergencies and natural disasters - taking unfair advantage of consumers.

§46A-6J-2. Definitions.

§46A-6J-3. Prohibited unfair pricing practices.

§46A-6J-4. Notification by the secretary of state; registry.

§46A-6J-5. Penalties, remedies and enforcement.

§46A-6J-6. Preemption.

**§46A-6J-1. Emergencies and natural disasters - Taking unfair  
advantage of consumers.**

1       The Legislature hereby finds that during emergencies and  
2 major disasters, including, but not limited to, tornadoes,  
3 earthquakes, fires, floods, storms or civil disturbances, some  
4 merchants have taken unfair advantage of consumers by greatly  
5 increasing prices for essential consumer goods or services.  
6 While the pricing of consumer goods and services is generally  
7 best left to the marketplace under ordinary conditions, when a  
8 declared state of emergency results in abnormal disruptions of  
9 the market, the public interest requires that excessive and  
10 unjustified increases in the prices of essential consumer goods  
11 and services be prohibited. It is the intent of the Legislature in  
12 enacting this article to protect citizens from excessive and  
13 unjustified increases in the prices charged during or shortly  
14 after a declared state of emergency for goods and services that  
15 are vital and necessary for the health, safety and welfare of  
16 consumers. Further, it is the intent of the Legislature that this  
17 article be liberally construed so that its beneficial purposes may  
18 be served.

**§46A-6J-2. Definitions.**

1 (a) "Building materials" means lumber, construction tools,  
2 windows and any other item used in the building or rebuilding  
3 of property.

4 (b) "Consumer food item" means any article that is used or  
5 intended for use for food or drink by a person or animal.

6 (c) "Disaster" means the occurrence or imminent threat of  
7 widespread or severe damage, injury, or loss of life or property  
8 resulting from any natural or man-made cause, including fire,  
9 flood, earthquake, wind, snow, storm, chemical or oil spill or  
10 other water or soil contamination, epidemic, air contamination,  
11 blight, drought, infestation or other public calamity requiring  
12 emergency action.

13 (d) "Essential consumer item" means any article that is  
14 necessary to the health, safety and welfare of consumers,  
15 including, but not limited to, clothing, diapers, soap, cleaning  
16 supplies and toiletries.

17 (e) "Emergency supplies" includes, but is not limited to,  
18 water, flashlights, radios, batteries, candles, blankets, genera-  
19 tors, heaters and temporary shelters.

20 (f) "Medical supplies" includes, but is not limited to,  
21 prescription and nonprescription medications, bandages, gauze,  
22 isopropyl alcohol and antibacterial products.

23 (g) "Repair or reconstruction services" means any services  
24 performed by any person for repairs to residential, commercial  
25 or public property of any type that is damaged as a result of a  
26 disaster.

27 (h) "Gasoline" means any fuel used to power any motor  
28 vehicle or power tool.

29 (i) "Transportation, freight and storage services" means any  
30 service that is performed by any company that contracts to  
31 move, store or transport personal or business property or rents  
32 equipment or storage space for those purposes.

33 (j) "Housing" means any rental housing leased on a  
34 month-to-month term or the sale of manufactured homes, as  
35 that term is defined in section two, article nine, chapter twenty-  
36 one of this code.

37 (k) "State of emergency" means the situation existing after  
38 the occurrence of a disaster in which a state of emergency has  
39 been declared by the governor or by the Legislature pursuant to  
40 the provisions of section six, article five, chapter fifteen of this  
41 code, or in which a major disaster declaration or emergency  
42 declaration has been issued by the president of the United  
43 States.

**§46A-6J-3. Prohibited unfair pricing practices.**

1 (a) Upon the declaration of a state of emergency, and  
2 continuing for the existence of the state of emergency or for  
3 thirty days following the declaration, whichever period is  
4 longer, it is unlawful for any person, contractor, business, or  
5 other entity to sell or offer to sell to any person in the area  
6 subject to the declaration any consumer food items, essential  
7 consumer items, goods used for emergency cleanup, emergency  
8 supplies, medical supplies, home heating oil, building materials,  
9 housing, transportation, freight and storage services, or gasoline  
10 or other motor fuels for a price greater than ten percent above  
11 the price charged by that person for those goods or services on  
12 the tenth day immediately preceding the declaration of emer-  
13 gency, unless the increase in price was directly attributable to  
14 additional costs imposed on the seller by the supplier of the  
15 goods or directly attributable to additional costs for labor or  
16 materials used to provide the services: *Provided*, That in those

17 situations where the increase in price is attributable to addi-  
18 tional costs imposed by the seller's supplier or additional costs  
19 of providing the good or service during the state of emergency,  
20 the price is no greater than ten percent above the total of the  
21 cost to the seller plus the markup customarily applied by the  
22 seller for that good or service in the usual course of business on  
23 the tenth day immediately preceding the declaration.

24 (b) Upon the declaration of a state of emergency, and for a  
25 period of one hundred eighty days following that declaration, it  
26 is unlawful for any contractor to sell or offer to sell any repair  
27 or reconstruction services or any services used in emergency  
28 cleanup in the area subject to the declaration for a price greater  
29 than ten percent above the price charged by that person for  
30 those services on the tenth day immediately preceding the  
31 declaration, unless the increase in price was directly attributable  
32 to additional costs imposed on it by the supplier of the goods or  
33 directly attributable to additional costs for labor or materials  
34 used to provide the services: *Provided*, That in those situations  
35 where the increase in price is attributable to the additional costs  
36 imposed by the contractor's supplier or additional costs of  
37 providing the service, the price is no greater than ten percent  
38 above the total of the cost to the contractor plus the markup  
39 customarily applied by the contractor for that good or service  
40 in the usual course of business on the tenth day immediately  
41 preceding to the declaration of the state of emergency.

42 (c) Any business offering an item for sale at a reduced price  
43 ten days immediately prior to the declaration of the state of  
44 emergency may use the price at which it usually sells the item  
45 to calculate the price pursuant to subsection (a) or (b) of this  
46 section.

47 (d) The price restrictions imposed by this article may be  
48 limited or terminated by proclamation of the governor.

**§46A-6J-4. Notification by the secretary of state; registry.**

1       The secretary of state shall promulgate rules to establish a  
2 system by which any person, corporation, trade association or  
3 partnership may register to receive notification that a state of  
4 emergency has been declared and that the provisions of this  
5 article are in effect. The rules promulgated pursuant to the  
6 authority conferred by this section may include a requirement  
7 of the payment of fees for registration.

**§46A-6J-5. Penalties, remedies and enforcement.**

1       (a) A violation of this article is an unfair or deceptive act or  
2 practice within the meaning of section one hundred two, article  
3 six of this chapter and is subject to the enforcement provisions  
4 and remedies provided by this chapter.

5       (b) Any person violating the provisions of this article is  
6 guilty of a misdemeanor and, upon conviction thereof, shall be  
7 fined not more than one thousand dollars, or confined in the  
8 county or regional jail not more than one year, or both.

9       (c) The remedies and penalties provided by this article are  
10 cumulative, and do not prohibit any other remedy or punish-  
11 ment available under the laws of this state.

**§46A-6J-6. Preemption.**

1       Nothing in this section preempts any local ordinance  
2 prohibiting the same or similar conduct or imposing a more  
3 severe penalty for the same conduct prohibited in this section.

---

## CHAPTER 67

(Com. Sub. for S. B. 692 — By Senator Burnette)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections two hundred six and two hundred eight, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to rescheduling controlled substance dronabinol from Schedule II to Schedule III; and adding ketamine to Schedule III to be consistent with federal laws.

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

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

### ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-206. Schedule II.

§60A-2-208. Schedule III.

#### §60A-2-206. Schedule II.

- 1 (a) Schedule II consists of the drugs and other substances,
- 2 by whatever official name, common or usual name, chemical
- 3 name, or brand name designated, listed in this section.
  
- 4 (b) *Substances, vegetable origin or chemical synthesis.*—
- 5 Unless specifically excepted or unless listed in another sched-
- 6 ular, any of the following substances whether produced directly
- 7 or indirectly by extraction from substances of vegetable origin,

8 or independently by means of chemical synthesis, or by a  
9 combination of extraction and chemical synthesis:

10 (1) Opium and opiate, and any salt, compound, derivative  
11 or preparation of opium or opiate excluding apomorphine,  
12 thebaine-derived butorphanol, dextrorphan, nalbuphine,  
13 nalmefene, naloxone and naltrexone, and their respective salts,  
14 but including the following:

- 15 (A) Raw opium;
- 16 (B) Opium extracts;
- 17 (C) Opium fluid;
- 18 (D) Powdered opium;
- 19 (E) Granulated opium;
- 20 (F) Tincture of opium;
- 21 (G) Codeine;
- 22 (H) Ethylmorphine;
- 23 (I) Etorphine hydrochloride;
- 24 (J) Hydrocodone;
- 25 (K) Hydromorphone;
- 26 (L) Metopon;
- 27 (M) Morphine;
- 28 (N) Oxycodone;
- 29 (O) Oxymorphone;



30 (P) Thebaine;

31 (2) Any salt, compound, derivative or preparation thereof  
32 which is chemically equivalent or identical with any of the  
33 substances referred to in subdivision (1) of this subsection,  
34 except that these substances shall not include the isoquinoline  
35 alkaloids of opium;

36 (3) Opium poppy and poppy straw;

37 (4) Coca leaves and any salt, compound, derivative or  
38 preparation of coca leaves (including cocaine and ecgonine and  
39 their salts, isomers, derivatives and salts of isomers and  
40 derivatives), and any salt, compound, derivative or preparation  
41 thereof which is chemically equivalent or identical with any of  
42 these substances, except that the substances shall not include  
43 decocainized coca leaves or extractions of coca leaves, which  
44 extractions do not contain cocaine or ecgonine;

45 (5) Concentrate of poppy straw (the crude extract of poppy  
46 straw in either liquid, solid or powder form which contains the  
47 phenanthrene alkaloids of the opium poppy).

48 (c) *Opiates*. — Unless specifically excepted or unless in  
49 another schedule, any of the following opiates, including its  
50 isomers, esters, ethers, salts and salts of isomers, esters and  
51 ethers whenever the existence of such isomers, esters, ethers  
52 and salts is possible within the specific chemical designation,  
53 dextrophan and levopropoxyphene excepted:

54 (1) Alfentanil;

55 (2) Alphaprodine;

56 (3) Anileridine;

57 (4) Bezitramide;

- 58 (5) Bulk dextropropoxyphene (nondosage forms);
- 59 (6) Carfentanil;
- 60 (7) Dihydrocodeine;
- 61 (8) Diphenoxylate;
- 62 (9) Fentanyl;
- 63 (10) Isomethadone;
- 64 (11) Levo-alpha-acetylmethadol; some other names: levo-  
65 alpha-acetylmethadol, levomethadyl acetate, LAAM;
- 66 (12) Levomethorphan;
- 67 (13) Levorphanol;
- 68 (14) Metazocine;
- 69 (15) Methadone;
- 70 (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,  
71 4-diphenyl butane;
- 72 (17) Moramide-Intermediate, 2-methyl-3-morpholino-1,  
73 1-diphenylpropane-carboxylic acid;
- 74 (18) Pethidine; (meperidine);
- 75 (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-  
76 phenylpiperidine;
- 77 (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-  
78 carboxylate;

79 (21) Pethidine-Intermediate-C, 1-methyl-4-  
80 phenylpiperidine-4-carboxylic acid;

81 (22) Phenazocine;

82 (23) Piminodine;

83 (24) Racemethorphan;

84 (25) Racemorphan;

85 (26) Remifentanil;

86 (27) Sufentanil.

87 (d) *Stimulants*. — Unless specifically excepted or unless  
88 listed in another schedule, any material, compound, mixture or  
89 preparation which contains any quantity of the following  
90 substances having a stimulant effect on the central nervous  
91 system:

92 (1) Amphetamine, its salts, optical isomers and salts of its  
93 optical isomers;

94 (2) Methamphetamine, its salts, isomers and salts of its  
95 isomers;

96 (3) Methylphenidate;

97 (4) Phenmetrazine and its salts.

98 (e) *Depressants*. — Unless specifically excepted or unless  
99 listed in another schedule, any material, compound, mixture or  
100 preparation which contains any quantity of the following  
101 substances having a depressant effect on the central nervous  
102 system, including its salts, isomers and salts of isomers when-  
103 ever the existence of such salts, isomers and salts of isomers is  
104 possible within the specific chemical designation:

105 (1) Amobarbital;

106 (2) Glutethimide;

107 (3) Pentobarbital;

108 (4) Phencyclidine;

109 (5) Secobarbital.

110 (f) Hallucinogenic substances:

111 Nabilone: [Another name for nabilone: (+)-trans-3-(1,1-  
112 dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-  
113 dimethyl-9H-dibenzo [b,d] pyran-9-one].

114 (g) *Immediate precursors*.— Unless specifically excepted  
115 or unless listed in another schedule, any material, compound,  
116 mixture, or preparation which contains any quantity of the  
117 following substances:

118 (1) Immediate precursor to amphetamine and methamphet-  
119 amine:

120 (A) Phenylacetone;

121 Some trade or other names: phenyl-2-propanone; P2P;  
122 benzyl methyl ketone; methyl benzyl ketone;

123 (2) Immediate precursors to phencyclidine (PCP):

124 (A) 1-phenylcyclohexylamine;

125 (B) 1-piperidinocyclohexanecarbonitrile (PCC).

**§60A-2-208. Schedule III.**

1 (a) Schedule III consists of the drugs and other substances,  
2 by whatever official name, common or usual name, chemical  
3 name or brand name designated, listed in this section.

4 (b) *Stimulants*. — Unless specifically excepted or unless  
5 listed in another schedule, any material, compound, mixture or  
6 preparation which contains any quantity of the following  
7 substances having a stimulant effect on the central nervous  
8 system, including its salts, isomers (whether optical, position or  
9 geometric), and salts of such isomers whenever the existence of  
10 the salts, isomers and salts of isomers is possible within the  
11 specific chemical designation:

12 (1) Those compounds, mixtures or preparations in dosage  
13 unit form containing any stimulant substances listed in Sched-  
14 ule II which compounds, mixtures or preparations were listed  
15 on the twenty-fifth day of August, one thousand nine hundred  
16 seventy-one, as excepted compounds under 21 CFR §1308.32,  
17 and any other drug of the quantitative composition shown in  
18 that list for those drugs or which is the same except that it  
19 contains a lesser quantity of controlled substances;

20 (2) Benzphetamine;

21 (3) Chlorphentermine;

22 (4) Clortermine;

23 (5) Phendimetrazine;

24 (6) Hydrocodone.

25 (c) *Depressants*. — Unless specifically excepted or unless  
26 listed in another schedule, any material, compound, mixture or  
27 preparation which contains any quantity of the following  
28 substances having a depressant effect on the central nervous  
29 system:

- 30 (1) Any compound, mixture or preparation containing:
- 31 (A) Amobarbital;
- 32 (B) Secobarbital;
- 33 (C) Pentobarbital; or any salt of pentobarbital and one or  
34 more other active medicinal ingredients which are not listed in  
35 any schedule;
- 36 (2) Any suppository dosage form containing:
- 37 (A) Amobarbital;
- 38 (B) Secobarbital;
- 39 (C) Pentobarbital; or any salt of any of these drugs and  
40 approved by the food and drug administration for marketing  
41 only as a suppository;
- 42 (3) Any substance which contains any quantity of a  
43 derivative of barbituric acid or any salt of barbituric acid;
- 44 (4) Chlorhexadol;
- 45 (5) Lysergic acid;
- 46 (6) Lysergic acid amide;
- 47 (7) Methyprylon;
- 48 (8) Sulfondiethylmethane;
- 49 (9) Sulfonethylmethane;
- 50 (10) Sulfonmethane;
- 51 (11) Tiletamine and zolazepam or any salt of tiletamine and  
52 zolazepam; some trade or other names for a tiletamine-

53 zolazepam combination product: Telazol; some trade or other  
54 names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-  
55 cyclohexanone; some trade or other names for zolazepam:  
56 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e]  
57 [1,4]-diazepin-7(1H)-one, flupyrzapon;

58 (12) Human growth hormones or anabolic steroids.

59 Ketamine, its salts, isomers and salts of isomers, including  
60 ketamine hydrochloride.

61 (d) Nalorphine.

62 (e) *Narcotic drugs*. — Unless specifically excepted or  
63 unless listed in another schedule, any material, compound,  
64 mixture or preparation containing any of the following narcotic  
65 drugs, or their salts calculated as the free anhydrous base or  
66 alkaloid, in limited quantities as set forth below:

67 (1) Not more than 1.8 grams of codeine per 100 milliliters  
68 and not more than 90 milligrams per dosage unit, with an equal  
69 or greater quantity of an isoquinoline alkaloid of opium;

70 (2) Not more than 1.8 grams of codeine per 100 milliliters  
71 or not more than 90 milligrams per dosage unit, with one or  
72 more active, nonnarcotic ingredients in recognized therapeutic  
73 amounts;

74 (3) Not more than 300 milligrams of dihydrocodeinone  
75 (hydrocodone) per 100 milliliters or not more than 15 milli-  
76 grams per dosage unit, with a fourfold or greater quantity of an  
77 isoquinoline alkaloid of opium;

78 (4) Not more than 300 milligrams of dihydrocodeinone  
79 (hydrocodone) per 100 milliliters or not more than 15 milli-  
80 grams per dosage unit, with one or more active, nonnarcotic  
81 ingredients in recognized therapeutic amounts;

82 (5) Not more than 1.8 grams of dihydrocodeine per 100  
83 milliliters and not more than 90 milligrams per dosage unit,  
84 with one or more active, nonnarcotic ingredients in recognized  
85 therapeutic amounts;

86 (6) Not more than 300 milligrams of ethylmorphine per 100  
87 milliliters or not more than 15 milligrams per dosage unit, with  
88 one or more active, nonnarcotic ingredients in recognized  
89 therapeutic amounts;

90 (7) Not more than 500 milligrams of opium per 100  
91 milliliters or per 100 grams or not more than 25 milligrams per  
92 dosage unit, with one or more active, nonnarcotic ingredients in  
93 recognized therapeutic amounts;

94 (8) Not more than 50 milligrams of morphine per 100  
95 milliliters or per 100 grams, with one or more active,  
96 nonnarcotic ingredients in recognized therapeutic amounts.

97 (f) *Anabolic steroids*.— Unless specifically excepted or  
98 unless listed in another schedule, any material, compound,  
99 mixture, or preparation containing any quantity of anabolic  
100 steroids, including its salts, isomers and salts of isomers  
101 whenever the existence of the salts of isomers is possible within  
102 the specific chemical designation..

103 (g) Dronabinol (synthetic) in sesame oil and encapsulated  
104 in a soft gelatin capsule in a United States food and drug  
105 administration approved drug product. (Some other names for  
106 dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6, 9-  
107 trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1- ol or (-)-delta-9-  
108 (trans)-tetrahydrocannabinol).



---

## CHAPTER 68

(Com. Sub. for H. B. 4419 — By Delegates Border, Perdue,  
Michael, Douglas, Compton, H. White and Kominar)

---

[Passed March 7, 2002; in effect September 1, 2002. Approved by the Governor.]

---

AN ACT to amend article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four hundred ten; and to amend and reenact sections one, two, three, four, five, six and seven, article nine of said chapter, all relating to monitoring controlled substances generally; creating the criminal offense of withholding information from a practitioner that a patient has obtained a prescription for a controlled substance from another practitioner; establishing of a controlled substance monitoring program; and establishing criminal penalties for the misuse of information or the submission of false information.

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

That article four, chapter sixty-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 four hundred ten; and that sections one, two, three, four, five, six and seven, article nine of said chapter be amended and reenacted, all to read as follows:

**Article**

- 4. Offenses and Penalties.**
- 9. Controlled Substances Monitoring.**

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-410. Prohibited acts — Withholding information from practitioner; additional controlled substances; penalties.**

1 (a) It is unlawful for a patient, with the intent to deceive and  
2 obtain a prescription for a controlled substance, to withhold  
3 information from a practitioner that the patient has obtained a  
4 prescription for a controlled substance of a similar therapeutic  
5 use in a concurrent time period from another practitioner.

6 (b) Any person who violates this section is guilty of a  
7 misdemeanor and, upon conviction thereof, may be confined in  
8 the county or regional jail for not more than six months, or  
9 fined not more than one thousand dollars, or both fined and  
10 imprisoned.

11 (c) The offense established by this section is in addition to  
12 and a separate and distinct offense from any other offense set  
13 forth in this code.

**ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

§60A-9-1. Short title.

§60A-9-2. Establishment of program; purpose.

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

§60A-9-4. Required information.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

§60A-9-6. Promulgation of rules.

§60A-9-7. Criminal penalties.

**§60A-9-1. Short title.**

1 This article shall be referred to as the West Virginia  
2 controlled substances monitoring act.

**§60A-9-2. Establishment of program; purpose.**

1       There is hereby established a West Virginia controlled  
2 substances monitoring act the purpose of which is to require the  
3 recordation and retention in a single repository of information  
4 regarding the prescribing, dispensing and consumption of  
5 certain controlled substances.

**§60A-9-3. Reporting system requirements; implementation;  
central repository requirement.**

1       (a) On or before the first day of September, two thousand  
2 two, the board of pharmacy shall implement a program wherein  
3 a central repository is established and maintained which shall  
4 contain such information as is required by the provisions of this  
5 article regarding Schedule II, III and IV controlled substance  
6 prescriptions written or filled in this state. In implementing this  
7 program, the board of pharmacy shall consult with the West  
8 Virginia state police, the licensing boards of practitioners  
9 affected by this article and affected practitioners.

10       (b) The program authorized by subsection (a) of this section  
11 shall be designed to minimize inconvenience to patients,  
12 prescribing practitioners and pharmacists while effectuating the  
13 collection and storage of the required information. The state  
14 board of pharmacy shall allow reporting of the required  
15 information by electronic data transfer where feasible, and  
16 where not feasible, on reporting forms promulgated by the  
17 board of pharmacy. The information required to be submitted  
18 by the provisions of this article shall be required to be filed no  
19 more frequently than once a week.

20       (c)(1) The state board of pharmacy shall provide for the  
21 electronic transmission of the information required to be  
22 provided by this article by and through the use of a toll-free  
23 telephone line.

24       (2) A dispenser, who does not have an automated  
25 recordkeeping system capable of producing an electronic report

26 in the established format may request a waiver from electronic  
27 reporting. The request for a waiver shall be made to the state  
28 board of pharmacy in writing and shall be granted if the  
29 dispenser agrees in writing to report the data by submitting a  
30 completed "Pharmacy Universal Claim Form" as defined by  
31 legislative rule.

**§60A-9-4. Required information.**

1 (a) Whenever a medical services provider dispenses a  
2 controlled substance listed in the provisions of section two  
3 hundred six, article two of this chapter, or whenever a prescrip-  
4 tion for the controlled substance is filled by: (i) A pharmacist  
5 or pharmacy in this state; (ii) a hospital, or other health care  
6 facility, for out-patient use; or (iii) a pharmacy or pharmacist,  
7 licensed by the board of pharmacy, but situated outside this  
8 state for delivery to a person residing in this state, the medical  
9 services provider, health care facility, pharmacist or pharmacy  
10 shall, in a manner prescribed by rules promulgated by the board  
11 of pharmacy under this article, report the following informa-  
12 tion, as applicable:

13 (1) The name, address, pharmacy prescription number and  
14 DEA controlled substance registration number of the dispensing  
15 pharmacy;

16 (2) The name, address and birth date of the person for  
17 whom the prescription is written;

18 (3) The name, address and drug enforcement administration  
19 controlled substances registration number of the practitioner  
20 writing the prescription;

21 (4) The name and national drug code number of the  
22 Schedule II, III and IV controlled substance dispensed;

23 (5) The quantity and dosage of the Schedule II, III and IV  
24 controlled substance dispensed;

25 (6) The date the prescription was filled; and

26 (7) The number of refills, if any, authorized by the prescrip-  
27 tion.

28 (b) The board of pharmacy may prescribe by rule promul-  
29 gated under this article the form to be used in prescribing a  
30 Schedule II, III and IV substance if, in the determination of the  
31 board, the administration of the requirements of this section  
32 would be facilitated.

33 (c) Reporting required by this section is not required for a  
34 drug administered directly to a patient or a drug dispensed by  
35 a practitioner at a facility licensed by the state: *Provided*, That  
36 the quantity dispensed is limited to an amount adequate to treat  
37 the patient for a maximum of seventy-two hours with no greater  
38 than two seventy-two hour cycles in any fifteen day period of  
39 time.

**§60A-9-5. Confidentiality; limited access to records; period of  
retention; no civil liability for required reporting.**

1 The information required by this article to be kept by the  
2 state board of pharmacy is confidential and is open to inspec-  
3 tion only by inspectors and agents of the state board of phar-  
4 macy, members of the West Virginia state police expressly  
5 authorized by the superintendent of the West Virginia state  
6 police, to have access to the information, authorized agents of  
7 the federal drug enforcement agency, duly authorized agents of  
8 licensing boards of practitioners in this state and other states  
9 authorized to prescribe Schedule II, III and IV controlled  
10 substances, prescribing practitioners and pharmacists and  
11 persons with an enforceable court order or regulatory agency  
12 administrative subpoena: *Provided*, That all information  
13 released by the state board of pharmacy must be related to a

14 specific patient or a specific individual or entity under investi-  
15 gation by any of the above parties except that practitioners who  
16 prescribe controlled substances may request specific data  
17 related to their drug enforcement administration controlled  
18 substance registration number or for the purpose of providing  
19 treatment to a patient. The board shall maintain the information  
20 required by this article for a period of not less than five years.  
21 Notwithstanding any other provisions of this code to the  
22 contrary, data obtained under the provisions of this article may  
23 be used for compilation of educational, scholarly or statistical  
24 purposes as long as the identities of persons or entities remain  
25 confidential. No individual or entity required to report under  
26 section four of this article may be subject to a claim for civil  
27 damages or other civil relief for the reporting of information to  
28 the board of pharmacy as required under and in accordance with  
29 the provisions of this article.

#### **§60A-9-6. Promulgation of rules.**

1 The state board of pharmacy shall promulgate legislative  
2 rules to effectuate the purposes of this article in accordance  
3 with the provisions of chapter twenty-nine-a of this code.

#### **§60A-9-7. Criminal penalties.**

1 (a) Any person who is required to submit information to the  
2 state board of pharmacy pursuant to the provisions of this  
3 article who fails to do so as directed by the board shall be guilty  
4 of a misdemeanor and, upon conviction thereof, shall be fined  
5 not less than one hundred dollars nor more than five hundred  
6 dollars.

7 (b) Any person who is required to submit information to the  
8 state board of pharmacy pursuant to the provisions of this  
9 article who knowingly and willfully refuses to submit the  
10 information required by this article shall be guilty of a misde-  
11 meanor and, upon conviction thereof, shall be confined in a

12 county or regional jail not more than six months or fined not  
13 more than one thousand dollars, or both.

14 (c) Any person who is required by the provisions of this  
15 article to submit information to the state board of pharmacy  
16 who knowingly submits thereto information known to that  
17 person to be false or fraudulent shall be guilty of a misde-  
18 meanor and, upon conviction thereof, shall be confined in a  
19 county or regional jail not more than one year or fined not more  
20 than five thousand dollars, or both.

21 (d) Any person granted access to the information required  
22 by the provisions of this article to be maintained by the state  
23 board of pharmacy, who shall willfully disclose the information  
24 required to be maintained by this article in a manner inconsis-  
25 tent with a legitimate law-enforcement purpose, a legitimate  
26 professional regulatory purpose, the terms of a court order or as  
27 otherwise expressly authorized by the provisions of this article  
28 shall be guilty of a misdemeanor and, upon conviction thereof,  
29 shall be confined in a county or regional jail for not more than  
30 six months or fined not more than one thousand dollars, or both.

---

## CHAPTER 69

(Com. Sub. for H. B. 2899 — By Delegates Amores,  
Fleischauer and J. Smith)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter thirty-one-e, all relating to revising, arranging, consolidating and recodifying the laws of the state of West

Virginia relating to nonprofit corporations generally; short title; reservation of powers and construction of chapter; filing requirements; fees; powers and duties of secretary of state; appeals; certificate of existence; criminal penalty for signing false document; venue; definitions; notice; incorporation; bylaws; powers and duties of corporation; corporate name; registered office and registered agent; service of process; membership rights and liabilities; meetings; waiver of notice; record date; voting; board of directors; qualifications, election, powers and duties of board; meetings and action of board; standards for conduct and liability of directors; officers; indemnification and advance of expenses; insurance; directors' conflict of interest transactions; amendment of articles of incorporation; amendment of bylaws; mergers; disposition of assets; dissolutions; deposit of assets with state treasurer; foreign corporations - certificate of authority; service of process on foreign corporations; revocation of certificate of authority; records and reports; inspection of records; financial statements for members; transitional provisions; and operative date.

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

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

## **CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.**

### **Article**

- 1. General Provisions.**
- 2. Incorporation.**
- 3. Purpose and Powers.**
- 4. Name.**
- 5. Office and Agent.**
- 6. Members - Membership Rights and Liabilities.**



7. **Members - Meetings and Voting.**
8. **Directors and Officers.**
9. **Reserved.**
10. **Amendment of Articles of Incorporation and Bylaws.**
11. **Mergers.**
12. **Disposition of Assets.**
13. **Dissolution.**
14. **Foreign Corporations.**
15. **Records and Reports.**
16. **Transition Provisions.**

#### **ARTICLE 1. GENERAL PROVISIONS.**

- §31E-1-101. General provisions
- §31E-1-101a. Legislative acknowledgment.
- §31E-1-102. Reservation of powers.
- §31E-1-103. Construction of chapter.
- §31E-1-120. Filing requirements.
- §31E-1-121. Forms.
- §31E-1-122. Filing, service and copying fees.
- §31E-1-123. Effective time and date of document.
- §31E-1-124. Correcting filed document.
- §31E-1-125. Filing duty of secretary of state.
- §31E-1-126. Appeal from secretary of state's refusal to file document.
- §31E-1-127. Evidentiary effect of copy of filed document.
- §31E-1-128. Certificate of existence.
- §31E-1-129. Penalty for signing false document.
- §31E-1-130. Powers.
- §31E-1-140. Venue.
- §31E-1-150. Chapter definitions.
- §31E-1-151. Notice.
- §31E-1-152. Number of members.

#### **PART 1. SHORT TITLE, RESERVATION OF POWERS AND CONSTRUCTION OF CHAPTER.**

#### **§31E-1-101. Short title.**

- 1 This chapter is and may be cited as the “West Virginia
- 2 Nonprofit Corporation Act.”

**§31E-1-101a. Legislative acknowledgment.**

- 1 The Legislature acknowledges the work and contribution to
- 2 the drafting of this chapter of the late Ann Maxey, Professor of
- 3 Law at the West Virginia University College of Law.

**§31E-1-102. Reservation of powers.**

- 1 The West Virginia Legislature has power to amend or
- 2 repeal all or part of this act at any time and all domestic and
- 3 foreign corporations subject to this act are governed by the
- 4 amendment or repeal.

**§31E-1-103. Construction of chapter.**

- 1 In the event of any inconsistency between any of the
- 2 provisions of this chapter and the provisions made for particular
- 3 classes of corporations by chapters thirty-one, thirty-one-a or
- 4 thirty-three of this code, the provisions contained in chapter
- 5 thirty-one, thirty-one-a or thirty-three prevail to the extent of
- 6 the inconsistency.

PART 2. FILING DOCUMENTS.

**§31E-1-120. Filing requirements.**

- 1 (a) A document must satisfy the requirements of this
- 2 section and any other provision of this code that adds to or
- 3 varies these requirements to be entitled to filing by the secretary
- 4 of state.

5 (b) The document to be filed must be typewritten or printed  
6 or, if electronically transmitted, it must be in a format that can  
7 be retrieved or reproduced in typewritten or printed form.

8 (c) The document to be filed must be in the English  
9 language: *Provided*, That a corporate name is not required to be  
10 in the English language if it is written in English letters or  
11 Arabic or Roman numerals: *Provided, however*, That the  
12 certificate of existence required of foreign corporations is not  
13 required to be in the English language if it is accompanied by  
14 a reasonably authenticated English translation.

15 (d) The document to be filed must be executed:

16 (1) By the chairman of the board of directors of a domestic  
17 or foreign corporation, by its president, or by another of its  
18 officers;

19 (2) If directors have not been selected or the corporation  
20 has not been formed, by an incorporator; or

21 (3) If the corporation is in the hands of a receiver, trustee,  
22 or other court-appointed fiduciary, by that fiduciary.

23 (e) The person executing the document to be filed shall sign  
24 it and state beneath or opposite his or her signature his or her  
25 name and the capacity in which he or she signs. The document  
26 may contain a corporate seal, attestation, acknowledgment or  
27 verification.

28 (f) The document to be filed must be delivered to the office  
29 of the secretary of state for filing. Delivery may be made by  
30 electronic transmission as permitted by the secretary of state.  
31 The secretary of state may require one exact or conformed copy  
32 to be delivered with the document to be filed if the document is  
33 filed in typewritten or printed form and not transmitted elec-  
34 tronically: *Provided*, That a document filed pursuant to section

35 five hundred three, article five of this chapter and section one  
36 thousand four hundred nine, article fourteen of this chapter  
37 concerning the resignation of a registered agent must be  
38 accompanied by two exact or conformed copies as required by  
39 those sections.

40 (g) When a document is delivered to the office of the  
41 secretary of state for filing, the correct filing fee, and any  
42 franchise tax, license fee, or penalty required by this chapter or  
43 any other provision of this code must be paid or provision for  
44 payment made in a manner permitted by the secretary of state.

45 (h) In the case of service of notice and process as permitted  
46 by subsection (c), section five hundred four, article five and  
47 subsections (d) and (e), section one thousand four hundred ten,  
48 article fourteen of this chapter, the notice and process must be  
49 filed with the secretary of state as one original, plus two copies  
50 for each person to be served or noticed.

#### **§31E-1-121. Forms.**

1 (a) The secretary of state may prescribe and, upon request,  
2 furnish forms for documents required or permitted to be filed  
3 by this chapter. Use of these forms is not mandatory.

4 (b) The secretary of state may adopt procedural rules in  
5 accordance with the provisions of this article governing the  
6 form for filing with and delivery of documents to the office of  
7 the secretary of state under this chapter by electronic means,  
8 including facsimile and computer transmission.

#### **§31E-1-122. Filing, service and copying fees.**

1 The secretary of state shall collect all fees required to be  
2 charged and collected in accordance with the provisions of  
3 section two, article one, chapter fifty-nine, and section one,  
4 article twelve-c, chapter eleven of this code.

**§31E-1-123. Effective time and date of document.**

1 (a) Except as provided in subsection (b) of this section and  
2 subsection (c), section one hundred twenty-four of this article,  
3 a document accepted for filing is effective:

4 (1) At the date and time of filing, as evidenced by means  
5 the secretary of state may use for the purpose of recording the  
6 date and time of filing; or

7 (2) At the time specified in the document as its effective  
8 time on the date it is filed.

9 (b) A document may specify a delayed effective time and  
10 date, and if it does so the document becomes effective at the  
11 time and date specified. If a delayed effective date but no time  
12 is specified, the document is effective at the close of business  
13 on that date. A delayed effective date for a document may not  
14 be later than the ninetieth day after the date it is filed.

**§31E-1-124. Correcting filed document.**

1 (a) A domestic or foreign corporation may correct a  
2 document filed by the secretary of state if:

3 (1) The document contains an inaccuracy;

4 (2) The document was defectively executed, attested,  
5 sealed, verified or acknowledged; or

6 (3) The electronic transmission was defective.

7 (b) A document is corrected:

8 (1) By preparing articles of correction that:

9 (A) Describe the document, including its filing date, or  
10 attach a copy of the document to the articles;

11 (B) Specify the inaccuracy or defect to be corrected; and

12 (C) Correct the inaccuracy or defect; and

13 (2) By delivering the articles to the secretary of state for  
14 filing.

15 (c) Articles of correction are effective on the effective date  
16 of the document they correct: *Provided*, That articles of  
17 correction are effective when filed as to persons who have  
18 relied on the uncorrected document and have been adversely  
19 affected by the correction.

**§31E-1-125. Filing duty of secretary of state.**

1 (a) If a document delivered to the office of the secretary of  
2 state for filing satisfies the requirements of section one hundred  
3 twenty of this article, the secretary of state shall file it.

4 (b) The secretary of state files a document by recording it  
5 as filed on the date and time of receipt, unless a delayed  
6 effective time is specified in the document. After filing a  
7 document, except as provided in section five hundred three,  
8 article five of this chapter and section one thousand four  
9 hundred nine, article fourteen of this chapter, the secretary of  
10 state shall deliver to the domestic or foreign corporation or its  
11 representative a receipt for the record and the fees. Upon  
12 request and payment of a fee, the secretary of state shall send to  
13 the requester a certified copy of the requested record.

14 (c) If the secretary of state refuses to file a document, he or  
15 she shall return it to the domestic or foreign corporation or its  
16 representative within five days after the document was deliv-  
17 ered, together with a brief, written explanation of the reason for  
18 his or her refusal.

19 (d) The secretary of state's duty to file documents under  
20 this section is ministerial. His or her filing or refusing to file a  
21 document does not:

22 (1) Affect the validity or invalidity of the document in  
23 whole or part;

24 (2) Relate to the correctness or incorrectness of information  
25 contained in the document; or

26 (3) Create a presumption that the document is valid or  
27 invalid or that information contained in the document is correct  
28 or incorrect.

**§31E-1-126. Appeal from secretary of state's refusal to file document.**

1 (a) If the secretary of state refuses to file a document  
2 delivered to his or her office for filing, the domestic or foreign  
3 corporation may appeal the refusal to the circuit court within  
4 thirty days after the return of the document to the corporation.  
5 The appeal is commenced by petitioning the court to compel  
6 filing the document and by attaching to the petition the docu-  
7 ment and the secretary of state's explanation of his or her  
8 refusal to file.

9 (b) The circuit court may summarily order the secretary of  
10 state to file the document or take other action the court consid-  
11 ers appropriate.

12 (c) The circuit court's final decision may be appealed to the  
13 West Virginia supreme court of appeals as in other civil  
14 proceedings.

**§31E-1-127. Evidentiary effect of copy of filed document.**

1 All courts, public offices and official bodies shall take and  
2 receive copies of documents filed in the office of the secretary  
3 of state and certified by him or her, in accordance with the  
4 provisions of this article, as conclusive evidence that the  
5 original document is on file with the secretary of state.

**§31E-1-128. Certificate of existence.**

1 (a) Any person may request a certificate of existence for a  
2 domestic corporation or a certificate of authorization for a  
3 foreign corporation from the secretary of state.

4 (b) A certificate of existence or authorization provides the  
5 following information:

6 (1) The domestic corporation's corporate name or the  
7 foreign corporation's corporate name used in this state; and

8 (2) If the corporation is a domestic corporation, that the  
9 corporation is duly incorporated under the law of this state, the  
10 date of its incorporation, and the period of its duration if it is  
11 less than perpetual;

12 (3) If the corporation is a foreign corporation, that the  
13 corporation is authorized to transact business in this state; and

14 (4) If payment is reflected in the records of the secretary of  
15 state and if nonpayment affects the existence or authorization  
16 of the domestic or foreign corporation, whether all fees, taxes,  
17 and penalties owed to this state have been paid.

18 (c) Subject to any qualification stated in the certificate, a  
19 certificate of existence or authorization issued by the secretary  
20 of state may be relied upon as conclusive evidence that the  
21 domestic or foreign corporation is in existence or is authorized  
22 to transact business in this state.



**§31E-1-129. Penalty for signing false document.**

1 Any person who signs a document he or she knows is false  
2 in any material respect and knows that the document is to be  
3 delivered to the secretary of state for filing is guilty of a  
4 misdemeanor and, upon conviction thereof, shall be fined not  
5 more than one thousand dollars, or confined in the county or  
6 regional jail not more than one year, or both.

## PART 3. SECRETARY OF STATE.

**§31E-1-130. Powers.**

1 The secretary of state has the power reasonably necessary  
2 to perform the duties required of him or her by this chapter. The  
3 secretary of state has the power and authority to propose  
4 legislative rules for promulgation in accordance with the  
5 provisions of chapter twenty-nine-a of this code in order to  
6 carry out and implement the provisions of this chapter.

## PART 4. VENUE.

**§31E-1-140. Venue.**

1 Unless otherwise provided by any provision of this code,  
2 any civil action or other proceeding brought pursuant to this  
3 chapter may be initiated in the circuit court of any county of  
4 this state as provided in section one, article one, chapter fifty-  
5 six of this code.

## PART 5. DEFINITIONS.

**§31E-1-150. Chapter definitions.**

1 As used in this chapter, unless the context otherwise  
2 requires a different meaning, the term:

3 (1) "Articles of incorporation" includes, but is not limited  
4 to, amended and restated articles of incorporation and articles  
5 of merger.

6 (2) "Authorized shares" means the shares of all classes a  
7 domestic or foreign corporation is authorized to issue.

8 (3) "Board" or "board of directors" means the group of  
9 persons vested with management of the affairs of the corpora-  
10 tion irrespective of the name by which the group is designated.

11 (4) "Business corporation" means a corporation with capital  
12 stock or shares incorporated for profit.

13 (5) "Conspicuous" means written so that a reasonable  
14 person against whom the writing is to operate should have  
15 noticed including, but not limited to, printing in italics or  
16 boldface or contrasting color, or typing in capitals or under-  
17 lined.

18 (6) "Corporation" or "domestic corporation" means a  
19 corporation without capital stock or shares, which is not a  
20 foreign corporation, incorporated under the laws of this state:  
21 *Provided*, That "corporation" or "domestic corporation" does  
22 not include towns, cities, boroughs or any municipal corpora-  
23 tion or any department of any town, city, borough or municipal  
24 corporation.

25 (7) "Deliver" or "delivery" means any method of delivery  
26 used in conventional commercial practice, including, but not  
27 limited to, delivery by hand, mail, commercial delivery, and  
28 electronic transmission.

29 (8) "Distribution" means a direct or indirect transfer of  
30 money or other property, or incurrence of indebtedness by a  
31 corporation to or for the benefit of its members in respect of  
32 any of its membership interests, or to or for the benefit of its

33 officers or directors: *Provided*, That the payment of reasonable  
34 compensation for services rendered, the reimbursement of  
35 reasonable expenses, the granting of benefits to members in  
36 conformity with the corporation's nonprofit purposes and the  
37 making of distributions upon dissolution or final liquidation as  
38 provided by article thirteen of this chapter may not be deemed  
39 a distribution.

40 (9) "Effective date of notice" means the date as determined  
41 pursuant to section one hundred fifty-one of this article.

42 (10) "Electronic transmission" or "electronically transmit-  
43 ted" means any process of communication not directly involv-  
44 ing the physical transfer of paper that is suitable for the  
45 retention, retrieval, and reproduction of information by the  
46 recipient.

47 (11) "Employee" includes an officer and may include a  
48 director: *Provided*, That the director has accepted duties that  
49 make him or her also an employee.

50 (12) "Entity" includes corporation and foreign corporations;  
51 business corporations and foreign business corporations; profit  
52 and nonprofit unincorporated associations; limited liability  
53 companies and foreign limited liability companies; business  
54 trusts, estates, partnerships, trusts, and two or more persons  
55 having a joint or common economic interest; and state, United  
56 States, and foreign government.

57 (13) "Foreign corporation" means any nonprofit corpora-  
58 tion which is incorporated under a law other than the laws of  
59 this state.

60 (14) "Governmental subdivision" includes, but is not  
61 limited to, authorities, counties, districts, and municipalities.

62       (15) “Individual” includes, but is not limited to, the estate  
63 of an incompetent or deceased individual.

64       (16) “Member” means a person having membership rights  
65 in a corporation in accordance with the provisions of its  
66 certificate of incorporation or bylaws.

67       (17) “Nonprofit corporation” means a corporation which  
68 may not make distributions to its members, directors or officers.

69       (18) “Person” includes, but is not limited to, an individual  
70 and an entity.

71       (19) “Principal office” means the office so designated in the  
72 return required pursuant to section three, article twelve-c,  
73 chapter eleven of this code where the principal executive  
74 offices of a domestic or foreign corporation are located.

75       (20) “Proceeding” includes, but is not limited to, civil suits  
76 and criminal, administrative, and investigatory actions.

77       (21) “Record date” means the date established under article  
78 six or seven of this chapter on which a corporation determines  
79 the identity of its members and their interests. The determina-  
80 tions are to be made as of the close of business on the record  
81 date unless another time for doing so is specified when the  
82 record date is fixed.

83       (22) “Registered agent” means the agent identified by the  
84 corporation pursuant to section five hundred one, article five of  
85 this chapter.

86       (23) “Registered office” means the address of the registered  
87 agent for the corporation, as provided in section five hundred  
88 one, article five of this chapter.

89       (24) “Secretary” means the corporate officer to whom the  
90 board of directors has delegated responsibility under subsection  
91 (c), section eight hundred forty, article eight of this chapter for  
92 custody of the minutes of the meetings of the board of directors  
93 and the meetings of the members and for authenticating records  
94 of the corporation.

95       (25) “Sign” or “signature” includes, but is not limited to,  
96 any manual, facsimile, conformed or electronic signature.

97       (26) “State,” when referring to a part of the United States,  
98 includes a state, commonwealth and a territory and insular  
99 possession of the United States and their agencies and govern-  
100 mental subdivisions.

101       (27) “United States” includes, but is not limited to, districts,  
102 authorities, bureaus, commissions, departments, and any other  
103 agency of the United States.

### **§31E-1-151. Notice.**

1       (a) Notice under this chapter must be in writing unless oral  
2 notice is reasonable under the circumstances. Notice by  
3 electronic transmission is to be considered written notice.

4       (b) Notice may be communicated in person; by mail or  
5 other method of delivery; or by telephone, voice mail or other  
6 electronic means. If these forms of personal notice are impracti-  
7 cable, notice may be communicated by a newspaper of general  
8 circulation in the area where published, or by radio, television,  
9 or other form of public broadcast communication.

10       (c) Written notice by a domestic or foreign corporation to  
11 its member, if in a comprehensible form, is effective: (1) Upon  
12 deposit in the United States mail, if mailed postpaid and  
13 correctly addressed to the member’s address shown in the  
14 corporation’s current record of members; or (2) when electroni-

15 cally transmitted to the member in a manner authorized by the  
16 member.

17 (d) Written notice to a domestic or foreign corporation  
18 authorized to transact business in this state may be addressed to  
19 its registered agent at its registered office or to the corporation  
20 or its secretary at its principal office shown in its most recent  
21 return required pursuant to section three, article twelve-c,  
22 chapter eleven of this code or, in the case of a foreign corpora-  
23 tion that has not yet delivered a return, in its application for a  
24 certificate of authority.

25 (e) Except as provided in subsection (c) of this section,  
26 written notice, if in a comprehensible form, is effective at the  
27 earliest of the following:

28 (1) When received;

29 (2) Five days after its deposit in the United States mail, if  
30 mailed postpaid and correctly addressed; or

31 (3) On the date shown on the return receipt, if sent by  
32 registered or certified mail, return receipt requested, and the  
33 receipt is signed by or on behalf of the addressee.

34 (f) Oral notice is effective when communicated, if commu-  
35 nicated in a comprehensible manner.

36 (g) If other provisions of this chapter prescribe notice  
37 requirements for particular circumstances, those requirements  
38 govern. If articles of incorporation or bylaws prescribe notice  
39 requirements, not inconsistent with this section or other  
40 provisions of this chapter, those requirements govern.

**§31E-1-152. Number of members.**

1 (a) For purposes of this chapter, the following identified as  
2 a member in a corporation's current record of members  
3 constitutes one member:

4 (1) Three or fewer co-owners;

5 (2) A corporation, partnership, trust, estate, or other entity;  
6 or

7 (3) The trustees, guardians, custodians, or other fiduciaries  
8 of a single trust, estate, or account.

9 (b) For purposes of this chapter, interests registered in  
10 substantially similar names constitute one member if it is  
11 reasonable to believe that the names represent the same person.

## ARTICLE 2. INCORPORATION.

§31E-2-201. Incorporators.

§31E-2-202. Articles of incorporation.

§31E-2-203. Incorporation.

§31E-2-204. Organization of corporation.

§31E-2-205. Bylaws.

§31E-2-206. Emergency bylaws.

### §31E-2-201. Incorporators.

1 One or more persons may act as the incorporator or  
2 incorporators of a corporation by delivering articles of incorpo-  
3 ration to the secretary of state for filing.

### §31E-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the  
3 requirements of section four hundred one, article four of this  
4 chapter;

5 (2) A statement that the corporation is nonprofit and that  
6 the corporation may not have or issue shares of stock or make  
7 distributions;

8 (3) Whether the corporation is to have members and, if it is  
9 to have members, the provisions required by section six  
10 hundred one, article six of this chapter to be set forth in the  
11 certificate of incorporation;

12 (4) The mailing address of the corporation's initial regis-  
13 tered office, if any, and the name of its initial registered agent  
14 at that office, if any; and

15 (5) The name and address of each incorporator.

16 (b) The articles of incorporation may set forth:

17 (1) The names and addresses of the individuals who are to  
18 serve as the initial directors;

19 (2) Provisions not inconsistent with law regarding:

20 (A) Managing and regulating the affairs of the corporation;  
21 or

22 (B) Defining, limiting, and regulating the powers of the  
23 corporation, its board of directors, and members, or any class of  
24 members;

25 (3) Any provision that under this chapter is required or  
26 permitted to be set forth in the bylaws;

27 (4) A provision eliminating or limiting the personal liability  
28 of a director to the corporation or its members for monetary  
29 damages for any action taken, or any failure to take any action,  
30 as a director or member, except liability for: (A) The amount of  
31 a financial benefit received by a director or member to which he  
32 or she is not entitled; (B) an intentional infliction of harm on



33 the corporation or the members; (C) a violation of section eight  
34 hundred thirty-three, article eight of this chapter regarding  
35 unlawful distributions; or (D) an intentional violation of  
36 criminal law; and

37 (5) A provision permitting or making obligatory indemnifi-  
38 cation of a director for liability as that term is defined in section  
39 eight hundred fifty, article eight of this chapter, to any person  
40 for any action taken, or any failure to take any action, as a  
41 director, except liability for: (A) Receipt of a financial benefit  
42 to which he or she is not entitled; (B) an intentional infliction  
43 of harm on the corporation or its members; (C) a violation of  
44 section eight hundred thirty-three, article eight of this chapter  
45 for unlawful distributions; or (D) an intentional violation of  
46 criminal law.

47 (c) The articles of incorporation need not set forth any of  
48 the corporate powers enumerated in this chapter.

### **§31E-2-203. Incorporation.**

1 (a) Unless a delayed effective date is specified, the corpo-  
2 rate existence begins when the articles of incorporation are  
3 filed.

4 (b) The secretary of state's filing of the articles of incorpo-  
5 ration is conclusive proof that the incorporators satisfied all  
6 conditions precedent to incorporation except in a proceeding by  
7 the state to cancel or revoke the incorporation or involuntarily  
8 dissolve the corporation.

### **§31E-2-204. Organization of corporation.**

1 (a) After incorporation:

2 (1) If initial directors are named in the articles of incorpora-  
3 tion, the initial directors shall hold an organizational meeting,

4 at the call of a majority of the directors, to complete the  
5 organization of the corporation by appointing officers, adopting  
6 bylaws, and carrying on any other business brought before the  
7 meeting; or

8 (2) If initial directors are not named in the articles, the  
9 incorporator or incorporators shall hold an organizational  
10 meeting at the call of a majority of the incorporators:

11 (A) To elect directors and complete the organization of the  
12 corporation; or

13 (B) To elect a board of directors who shall complete the  
14 organization of the corporation.

15 (b) Action required or permitted by this chapter to be taken  
16 by incorporators at an organizational meeting may be taken  
17 without a meeting if the action taken is evidenced by one or  
18 more written consents describing the action taken and signed by  
19 each incorporator.

20 (c) An organizational meeting may be held in or out of this  
21 state.

#### **§31E-2-205. Bylaws.**

1 (a) The incorporators or board of directors of a corporation  
2 shall adopt initial bylaws for the corporation.

3 (b) The bylaws of a corporation may contain any provision  
4 for managing the business and regulating the affairs of the  
5 corporation that is not inconsistent with law or the articles of  
6 incorporation.

#### **§31E-2-206. Emergency bylaws.**

1 (a) Unless the articles of incorporation provide otherwise,  
2 the board of directors of a corporation may adopt bylaws to be

3 effective only in an emergency defined in subsection (d) of this  
4 section. The emergency bylaws, which are subject to amend-  
5 ment or repeal by the members, may make all provisions  
6 necessary for managing the corporation during the emergency,  
7 including:

8 (1) Procedures for calling a meeting of the board of  
9 directors;

10 (2) Quorum requirements for the meeting; and

11 (3) Designation of additional or substitute directors.

12 (b) All provisions of the regular bylaws consistent with the  
13 emergency bylaws remain effective during the emergency. The  
14 emergency bylaws are not effective after the emergency ends.

15 (c) Corporate action taken in good faith in accordance with  
16 the emergency bylaws:

17 (1) Binds the corporation; and

18 (2) May not be used to impose liability on a corporate  
19 director, officer, employee, or agent.

20 (d) An emergency exists for purposes of this section if a  
21 quorum of the corporation's directors cannot readily be  
22 assembled because of some catastrophic event.

### ARTICLE 3. PURPOSES AND POWERS.

- §31E-3-301. Purposes.
- §31E-3-302. General powers.
- §31E-3-303. Emergency powers
- §31E-3-304. Ultra vires.

#### §31E-3-301. Purposes.

1 (a) Corporations may be organized under this chapter for  
2 any lawful purpose, including any one or more of the following  
3 purposes: Charitable, benevolent, eleemosynary, educational,  
4 civic, patriotic, political, social, fraternal, literary, cultural,  
5 athletic, scientific, agricultural, horticultural, animal husbandry,  
6 and professional commercial, industrial or trade association.

7 (b) No charters or certificates of incorporation may be  
8 granted or issued to any church or religious denomination.

**§31E-3-302. General powers.**

1 Unless its articles of incorporation provide otherwise, every  
2 corporation has perpetual duration and succession in its  
3 corporate name and has the same powers as an individual to do  
4 all things necessary or convenient to carry out its business and  
5 affairs, including without limitation, power:

6 (1) To sue and be sued, complain and defend in its corpo-  
7 rate name;

8 (2) To have a corporate seal, which may be altered at will,  
9 and to use it, or a facsimile of it, by impressing or affixing it or  
10 in any other manner reproducing it;

11 (3) To make and amend bylaws, not inconsistent with its  
12 articles of incorporation or with the laws of this state, for  
13 managing and regulating the affairs of the corporation;

14 (4) To purchase, receive, lease, or otherwise acquire, and  
15 own, hold, improve, use, and otherwise deal with, real or  
16 personal property, or any legal or equitable interest in property,  
17 wherever located;

18 (5) To sell, convey, mortgage, pledge, lease, exchange, and  
19 otherwise dispose of all or any part of its property;

20 (6) To purchase, receive, subscribe for, or otherwise  
21 acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or  
22 otherwise dispose of; and deal in and with shares or other  
23 interests in, or obligations of, any other entity;

24 (7) To make contracts and guarantees; incur liabilities;  
25 borrow money; issue its notes, bonds, and other obligations,  
26 which may be convertible into or include the option to purchase  
27 other securities of the corporation; and secure any of its  
28 obligations by mortgage, deed of trust, or pledge of any of its  
29 property, franchises, or income;

30 (8) To lend money, invest and reinvest its funds, and  
31 receive and hold real and personal property as security for  
32 repayment;

33 (9) To be a promoter, partner, member, associate, or  
34 manager of any partnership, joint venture, trust, or other entity;

35 (10) To conduct its activities, locate offices, and exercise  
36 the powers granted by this chapter within or without this state;

37 (11) To elect directors and appoint officers, employees, and  
38 agents of the corporation, define their duties, and fix their  
39 compensation;

40 (12) To pay pensions and establish pension plans, pension  
41 trusts, profit sharing plans, share bonus plans, share option  
42 plans, and benefit or incentive plans for any or all of its current  
43 or former directors, officers, employees, and agents;

44 (13) To make donations for the public welfare or for  
45 charitable, scientific, or educational purposes, and for other  
46 purposes that further the corporate interest;

47 (14) To transact any lawful activity that will aid govern-  
48 mental policy;

49 (15) To impose or levy fines, penalties, dues, assessments,  
50 admission and transfer fees upon its members;

51 (16) To establish conditions for admission of members,  
52 admit members and issue memberships and certificates evi-  
53 dencing membership;

54 (17) To carry on one or more businesses; and

55 (18) To make payments or donations, or do any other act,  
56 not inconsistent with law, that furthers the affairs of the  
57 corporation.

**§31E-3-303. Emergency powers.**

1 (a) In anticipation of or during an emergency defined in  
2 subsection (d) of this section, the board of directors of a  
3 corporation may:

4 (1) Modify lines of succession to accommodate the  
5 incapacity of any director, officer, employee, or agent; and

6 (2) Relocate the principal office, designate alternative  
7 principal offices or regional offices, or authorize the officers to  
8 do so.

9 (b) During an emergency defined in subsection (d) of this  
10 section, unless emergency bylaws provide otherwise:

11 (1) Notice of a meeting of the board of directors need be  
12 given only to those directors whom it is practicable to reach and  
13 may be given in any practicable manner, including by publica-  
14 tion and radio; and

15 (2) One or more officers of the corporation present at a  
16 meeting of the board of directors may be deemed to be directors  
17 for the meeting, in order of rank and within the same rank in  
18 order of seniority, as necessary to achieve a quorum.

19 (c) Corporate action taken in good faith during an emer-  
20 gency under this section to further the ordinary affairs of the  
21 corporation:

22 (1) Binds the corporation; and

23 (2) May not be used to impose liability on a corporate  
24 director, officer, employee, or agent.

25 (d) An emergency exists for purposes of this section if a  
26 quorum of the corporation's directors cannot readily be  
27 assembled because of some catastrophic event.

#### §31E-3-304. Ultra vires.

1 (a) Except as provided in subsection (b) of this section, the  
2 validity of corporate action may not be challenged on the  
3 ground that the corporation lacks or lacked power to act.

4 (b) A corporation's power to act may be challenged:

5 (1) In a proceeding by a member or director against the  
6 corporation to enjoin the act;

7 (2) In a proceeding by the corporation, directly, deriva-  
8 tively, or through a receiver, trustee, or other legal representa-  
9 tive, against an incumbent or former director, officer, em-  
10 ployee, or agent of the corporation; or

11 (3) In a proceeding by the attorney general to dissolve the  
12 corporation or to enjoin the corporation from the conduct of  
13 unauthorized affairs.

14 (c) In a member's or director's proceeding under subdivi-  
15 sion (1), subsection (b) of this section to enjoin an unauthorized  
16 corporate act, the circuit court may enjoin or set aside the act,  
17 if equitable and if all affected persons are parties to the pro-  
18 ceeding, and may award damages for loss, except loss of

19 anticipated profits, suffered by the corporation or another party  
20 because of enjoining the unauthorized act.

21 (d) The attorney general may, upon his or her own informa-  
22 tion or upon complaint of an interested party, bring an action in  
23 the name of the state to restrain any person from purporting to  
24 have, or exercising, corporate powers not granted.

#### ARTICLE 4. NAME.

§31E-4-401. Corporate name.

§31E-4-402. Use of the words “corporation”, “incorporated” or “limited”; prohibi-  
tions; penalties.

§31E-4-403. Reserved name.

§31E-4-404. Registered name.

#### §31E-4-401. Corporate name.

1 (a) A corporate name:

2 (1) Must contain the word “corporation,” “incorporated,”  
3 “company,” or “limited,” or the abbreviation “corp.,” “inc.,”  
4 “co.,” or “ltd.,” or words or abbreviations of like import in  
5 another language; and

6 (2) May not contain language stating or implying that the  
7 corporation is organized for a purpose other than that permitted  
8 by section three hundred one, article three of this chapter and its  
9 articles of incorporation.

10 (b) Except as authorized by subsections (c) and (d) of this  
11 section, a corporate name must be distinguishable upon the  
12 records of the secretary of state from:

13 (1) The corporate name of a corporation or business  
14 corporation incorporated or authorized to transact business in  
15 this state;



16       (2) A corporate name reserved or registered under section  
17 four hundred three or four hundred four, article four of this  
18 chapter;

19       (3) The fictitious name adopted by a foreign corporation  
20 authorized to transact business in this state because its real  
21 name is unavailable;

22       (4) The corporate name of any foreign corporation autho-  
23 rized to transact business or conduct affairs in this state; and

24       (5) The name of any other entity whose name is carried  
25 upon the records of the secretary of state.

26       (c) A corporation may apply to the secretary of state for  
27 authorization to use a name that is not distinguishable upon his  
28 or her records from one or more of the names described in  
29 subsection (b) of this section. The secretary of state shall  
30 authorize use of the name applied for if:

31       (1) The other corporation consents to the use in writing and  
32 submits an undertaking in form satisfactory to the secretary of  
33 state to change the name so that it is distinguishable upon the  
34 records of the secretary of state from the name applied for; or

35       (2) The applicant delivers to the secretary of state a  
36 certified copy of the final judgment of a court of competent  
37 jurisdiction establishing the applicant's right to use the name  
38 applied for in this state.

39       (d) A corporation may use the name, including the fictitious  
40 name, of another domestic or foreign corporation that is used in  
41 this state if the other corporation is incorporated or authorized  
42 to transact business in this state and the proposed user corpora-  
43 tion:

44       (1) Has merged with the other corporation;

45 (2) Has been formed by reorganization of the other corpora-  
46 tion; or

47 (3) Has acquired all or substantially all of the assets,  
48 including the corporate name, of the other corporation.

49 (e) This chapter does not control the use of fictitious names.

50 (f) Notwithstanding the provisions of subsection (a) of this  
51 section, any domestic nonprofit corporation and any foreign  
52 nonprofit corporation, if permitted by the law of the state of its  
53 incorporation, may include in its name the word "foundation"  
54 in lieu of or in addition to the word "corporation", "company",  
55 "incorporated" or "limited" or an abbreviation of these words.

**§31E-4-402. Use of the words "corporation", "incorporated" or  
"limited"; prohibitions; penalties.**

1 (a) No person may use the word "corporation" or "incorpora-  
2 rated" or any abbreviation of these words, in any trade name,  
3 business or other organization name unless the name is used by  
4 a domestic or foreign corporation authorized by the secretary of  
5 state to transact business in West Virginia under the provisions  
6 of this chapter or chapter thirty-one-d of this code.

7 (b) No person may use the word "limited" or any abbrevia-  
8 tion of the word "limited" in any trade name, business or other  
9 organization name unless the name is used by a domestic or  
10 foreign corporation authorized by the secretary of state to  
11 transact business in West Virginia under the provisions of this  
12 chapter, chapters thirty-one-b, thirty-one-d or forty-seven of  
13 this code.

14 (c) The tax commissioner may not issue any business  
15 registration certificate under the provisions of article twelve,  
16 chapter eleven of this code to any business if the business name  
17 includes any of the words or their abbreviations as set forth in

18 subsection (a) or (b) of this section unless the business is a  
19 domestic or foreign corporation or domestic or foreign business  
20 corporation.

21 (d) Any person who unlawfully uses any one or more of the  
22 prescribed words or their abbreviations as set forth in subsec-  
23 tion (a) or (b) of this section is to be deemed to be acting as a  
24 corporation without authority of law and subject to an action in  
25 quo warranto as provided in article two, chapter fifty-three of  
26 this code.

27 (e) Any person who violates the provisions of this section  
28 is guilty of a misdemeanor and, upon conviction thereof, shall  
29 be fined not less than five hundred dollars nor more than one  
30 thousand dollars, or confined in the county or regional jail not  
31 more than thirty days, or both.

32 (f) The provisions of this section do not apply to businesses  
33 in existence prior to the first day of July, one thousand nine  
34 hundred eighty-eight.

**§31E-4-403. Reserved name.**

1 (a) A person may reserve the exclusive use of a corporate  
2 name, including a fictitious name for a foreign corporation  
3 whose corporate name is not available, by delivering an  
4 application to the secretary of state for filing. The application  
5 must set forth the name and address of the applicant and the  
6 name proposed to be reserved. If the secretary of state finds that  
7 the corporate name applied for is available, he or she shall  
8 reserve the name for the applicant's exclusive use for a  
9 nonrenewable one hundred twenty-day period.

10 (b) The owner of a reserved corporate name may transfer  
11 the reservation to another person by delivering to the secretary  
12 of state a signed notice of the transfer that states the name and  
13 address of the transferee.

**§31E-4-404. Registered name.**

1 (a) A foreign corporation may register its corporate name,  
2 or its corporate name with any addition required by section one  
3 thousand four hundred six, article fourteen of this chapter, if the  
4 name is distinguishable upon the records of the secretary of  
5 state from the corporate names that are not available under  
6 subsection (b), section four hundred one of this article.

7 (b) A foreign corporation registers its corporate name, or its  
8 corporate name with any addition required by section one  
9 thousand four hundred six, article fourteen of this chapter, by  
10 delivering to the secretary of state for filing an application:

11 (1) Setting forth its corporate name, or its corporate name  
12 with any addition required by section one thousand four  
13 hundred six, article fourteen of this chapter, the state or country  
14 and date of its incorporation, and a brief description of the  
15 nature of the business in which it is engaged; and

16 (2) Accompanied by a certificate of existence, or a docu-  
17 ment of similar import, from the state or country of incorpora-  
18 tion.

19 (c) The name is registered for the applicant's exclusive use  
20 upon the effective date of the application.

21 (d) A foreign corporation whose registration is effective  
22 may renew it for successive years by delivering to the secretary  
23 of state for filing a renewal application, which complies with  
24 the requirements of subsection (b) of this section, between the  
25 first day of October and the thirty-first day of December of the  
26 preceding year. The renewal application when filed renews the  
27 registration for the following calendar year.

28 (e) A foreign corporation whose registration is effective  
29 may qualify as a foreign corporation under the registered name

30 or consent in writing to the use of that name by a corporation  
31 incorporated under this chapter or by another foreign corpora-  
32 tion authorized to transact business in this state. The registra-  
33 tion terminates when the domestic corporation is incorporated  
34 or the foreign corporation qualifies or consents to the qualifica-  
35 tion of another foreign corporation under the registered name.

#### **ARTICLE 5. OFFICE AND AGENT.**

- §31E-5-501. Registered office and registered agent.  
§31E-5-502. Change of registered office or registered agent.  
§31E-5-503. Resignation of registered agent.  
§31E-5-504. Service on corporation.

#### **§31E-5-501. Registered office and registered agent.**

- 1 Each corporation may continuously maintain in this state:
- 2 (1) A registered office that may be the same as any of its  
3 places of business; and
- 4 (2) A registered agent, who may be:
- 5 (A) An individual who resides in this state and whose  
6 business office is identical with the registered office;
- 7 (B) A domestic corporation or domestic business corpora-  
8 tion whose business office is identical with the registered  
9 office;
- 10 (C) A foreign corporation or foreign business corporation  
11 authorized to transact business in this state whose business  
12 office is identical with the registered office; or
- 13 (D) A foreign limited liability company or domestic limited  
14 liability company authorized to transact business in this state  
15 whose business office is identical with the registered office.

**§31E-5-502. Change of registered office or registered agent.**

1       (a) A corporation may change its registered office or  
2 registered agent by delivering to the secretary of state for filing  
3 a statement of change that sets forth:

4       (1) The name of the corporation;

5       (2) The mailing address or description of physical location  
6 of its current registered office;

7       (3) If the current registered office is to be changed, the  
8 street address or description of physical location of the new  
9 registered office;

10      (4) The name of its current registered agent;

11      (5) If the current registered agent is to be changed, the  
12 name of the new registered agent and the new agent's written  
13 consent to the appointment either printed on the statement or  
14 attached to it; and

15      (6) That after the change or changes are made, the mailing  
16 addresses of its registered office and the business office of its  
17 registered agent will be identical.

18      (b) If a registered agent changes the mailing address of his  
19 or her business office, he or she may change the mailing  
20 address of the registered office of any corporation for which he  
21 or she is the registered agent by notifying the corporation in  
22 writing of the change and signing, either manually or in  
23 facsimile, and delivering to the secretary of state for filing a  
24 statement that complies with the requirements of subsection (a)  
25 of this section and recites that the corporation has been notified  
26 of the change.

**§31E-5-503. Resignation of registered agent.**

1 (a) A registered agent may resign his or her agency appoint-  
2 ment by signing and delivering to the secretary of state for  
3 filing the signed original and two exact or conformed copies of  
4 a statement of resignation. The statement may include a  
5 statement that the registered office is also discontinued.

6 (b) After filing the statement the secretary of state shall  
7 mail one copy to the registered office if the registered office is  
8 not discontinued and the other copy to the corporation at its  
9 principal office.

10 (c) The agency appointment is terminated, and the regis-  
11 tered office is discontinued if provision for its discontinuation  
12 is made, on the thirty-first day after the date on which the  
13 statement was filed.

**§31E-5-504. Service on corporation.**

1 (a) A corporation's registered agent is the corporation's  
2 agent for service of process, notice, or demand required or  
3 permitted by law to be served on the corporation.

4 (b) If a corporation has no registered agent, or the agent  
5 cannot with reasonable diligence be served, the corporation  
6 may be served by registered or certified mail, return receipt  
7 requested, addressed to the secretary of the corporation at its  
8 principal office. Service is perfected under this subsection at the  
9 earliest of:

10 (1) The date the corporation receives the mail;

11 (2) The date shown on the return receipt, if signed on behalf  
12 of the corporation; or

13 (3) Five days after its deposit in the United States mail, as  
14 evidenced by the postmark, if mailed postpaid and correctly  
15 addressed.

16 (c) In addition to the methods of service on a corporation  
17 provided in subsections (a) and (b) of this section, the secretary  
18 of state is hereby constituted the attorney-in-fact for and on  
19 behalf of each corporation created pursuant to the provisions of  
20 this chapter. The secretary of state has the authority to accept  
21 service of notice and process on behalf of each corporation and  
22 is an agent of the corporation upon whom service of notice and  
23 process may be made in this state for and upon each corpora-  
24 tion. No act of a corporation appointing the secretary of state as  
25 attorney-in-fact is necessary. Service of any process, notice or  
26 demand on the secretary of state may be made by delivering to  
27 and leaving with the secretary of state the original process,  
28 notice or demand and two copies of the process, notice or  
29 demand for each defendant, along with the fee required by  
30 section two, article one, chapter fifty-nine of this code. Immedi-  
31 ately after being served with or accepting any process or notice,  
32 the secretary of state shall: (1) File in his or her office a copy of  
33 the process or notice, endorsed as of the time of service, or  
34 acceptance; and (2) transmit one copy of the process or notice  
35 by registered or certified mail, return receipt requested, to: (A)  
36 The corporation's registered agent; or (B) if there is no regis-  
37 tered agent, to the individual whose name and address was last  
38 given to the secretary of state's office as the person to whom  
39 notice and process are to be sent, and if no person has been  
40 named, to the principal office of the corporation as that address  
41 was last given to the secretary of state's office. Service or  
42 acceptance of process or notice is sufficient if return receipt is  
43 signed by an agent or employee of the corporation, or the  
44 registered or certified mail sent by the secretary of state is  
45 refused by the addressee and the registered or certified mail is  
46 returned to the secretary of state, or to his or her office, showing  
47 the stamp of the United States postal service that delivery has



48 been refused, and the return receipt or registered or certified  
49 mail is appended to the original process or notice and filed in  
50 the clerk's office of the court from which the process or notice  
51 was issued. No process or notice may be served on the secretary  
52 of state or accepted by him or her less than ten days before the  
53 return day of the process or notice. The court may order  
54 continuances as may be reasonable to afford each defendant  
55 opportunity to defend the action or proceedings.

56 (d) This section does not prescribe the only means, or  
57 necessarily the required means of serving a corporation.

#### **ARTICLE 6. MEMBERS – MEMBERSHIP RIGHTS AND LIABILITIES.**

§31E-6-601. Classes of members.

§31E-6-602. Rules for membership.

§31E-6-603. Imposition of fines and penalties; levy of dues and assessments.

§31E-6-604. Liability of members.

#### **§31E-6-601. Classes of members.**

1 A corporation may have one or more classes of members or  
2 may have no members. If the corporation has one or more  
3 classes of members, the designation of a class or classes is to be  
4 set forth in the articles of incorporation and the manner of  
5 election or appointment and the qualifications and rights of the  
6 members of each class is to be set forth in the articles of  
7 incorporation or bylaws. If the corporation has no members, or  
8 only members not entitled to vote, that is to be set forth in the  
9 articles of incorporation and the corporation is to operate under  
10 the management of its board of directors. A corporation may  
11 issue articles evidencing membership.

#### **§31E-6-602. Rules for membership.**

1 (a) Membership is to be governed by rules of admission,  
2 retention, withdrawal and expulsion as the bylaws prescribe,  
3 provided all bylaws are to be reasonable, germane to the

4 purposes of the corporation, and equally enforced as to all  
5 members.

6 (b) Unless otherwise provided in the articles of incorpora-  
7 tion or the bylaws, another entity, foreign or domestic, may  
8 become a member of a corporation.

9 (c) Membership may be limited to persons who are mem-  
10 bers in good standing of another corporation, organization or  
11 association, if provided for in the articles of incorporation. If  
12 membership is limited, the articles of incorporation may  
13 provide that failure on the part of any member to keep in good  
14 standing with the other corporation, organization or association  
15 is sufficient cause for expulsion.

16 (d) Unless otherwise provided in the articles of incorpora-  
17 tion or bylaws, a member may not voluntarily or involuntarily  
18 transfer his or her membership or any rights arising from his or  
19 her membership.

20 (e) Unless otherwise provided in the articles of incorpora-  
21 tion or bylaws, membership is terminated by death, voluntary  
22 withdrawal or expulsion, and all rights and privileges of the  
23 member in the corporation and its property cease.

**§31E-6-603. Imposition of fines and penalties; levy of dues and  
assessments.**

1 (a) A corporation may impose fines or penalties on mem-  
2 bers if provided in bylaws duly adopted by a two-thirds vote of  
3 members entitled to vote and, if the fine or penalty applies to  
4 members not entitled to vote, by a two-thirds vote as a class of  
5 the members not otherwise entitled to vote. The fine or penalty  
6 may not exceed the higher of the: (1) Annual dues or assess-  
7 ment; or (2) initiation fee, if any.

8 (b) A corporation may levy dues or assessments against  
9 members if provided in a bylaw provision duly adopted: (1) By  
10 the affirmative vote of at least two thirds of the members of  
11 each class of members, voting as a class, to which the levy  
12 applies, even though a class of members is not otherwise  
13 entitled to vote; or (2) by the directors if the directors are  
14 authorized by a bylaw provision adopted by the affirmative vote  
15 of at least two thirds of the members of each class of members,  
16 voting as a class, to which a levy may apply, even though a  
17 class of members is not otherwise entitled to vote.

18 (c) For purposes of this section, the corporation's initial  
19 bylaws adopted by: (1) The incorporators; or (2) the board of  
20 directors is deemed to have been adopted by all the members  
21 entitled to vote thereon, if any.

22 (d) Notwithstanding any limitation on the amount of a fine  
23 or penalty set forth in subsection (a) of this section, a corpora-  
24 tion organized under this chapter, or any predecessor statutes,  
25 that is a trade association or other professional organization  
26 exempt from taxation under Section 501(c)(6) of the Internal  
27 Revenue Code may impose a fine on a member, not to exceed  
28 the amount set forth in the bylaws, for the violation of a code of  
29 ethics or other code of conduct upon majority vote of its board  
30 of directors in accordance with its bylaws, provided the articles  
31 of corporation or bylaws of the corporation contain a written  
32 provision whereby members agree to be bound by a code of  
33 ethics or code of conduct as a condition of membership.

#### **§31E-6-604. Liability of members.**

1 (a) A member of a corporation is not liable to the corpora-  
2 tion or its creditors with respect to his or her membership  
3 except for the obligation to pay in full any fines or penalties  
4 duly imposed against him or her and any dues and assessments  
5 levied against him or her to which he or she has assented, or

6 imposed or levied against him or her in accordance with the  
7 provisions of section six hundred three of this article.

8 (b) Any member who receives any distribution of income  
9 or assets from a corporation in violation of this chapter or of the  
10 articles of incorporation, whether by dividend, in liquidation or  
11 otherwise, and who accepted or received the distribution  
12 knowing it to be improper, is liable for the amount so received:  
13 (1) To any creditors existing at the time of the distribution who  
14 obtain a judgment against the corporation on which execution  
15 is returned unsatisfied; and (2) to the corporation.

#### **ARTICLE 7. MEMBERS – MEETINGS AND VOTING.**

§31E-7-701. Annual meeting; regular meeting.

§31E-7-702. Special meeting.

§31E-7-703. Court-ordered meeting.

§31E-7-704. Action without meeting; validity of actions at meetings not properly called.

§31E-7-705. Notice of meeting.

§31E-7-706 Waiver of notice.

§31E-7-707 Record date.

§31E-7-708 Conduct of the meeting.

§31E-7-720. Members' list for meeting.

§31E-7-721. Members' voting rights.

§31E-7-722. Proxies.

§31E-7-723. Corporation's acceptance or rejection of votes.

§31E-7-724. Quorum and voting requirements.

§31E-7-725. Action by single or multiple classes or members.

§31E-7-726. Other quorum or voting requirement.

§31E-7-727. Voting for directors; cumulative voting.

§31E-7-728. Inspectors of election.

#### **PART 1. MEETINGS.**

##### **§31E-7-701. Annual meeting; regular meeting.**

1 (a) A corporation that has members entitled to vote for the  
2 election of directors must hold a meeting of these members

3 annually at a time stated in or fixed in accordance with the  
4 bylaws.

5 (b) Annual meetings of members may be held in or out of  
6 this state at the place stated in or fixed in accordance with the  
7 bylaws. If no place is stated in or fixed in accordance with the  
8 bylaws, annual meetings are to be held at the corporation's  
9 principal office.

10 (c) A corporation that has members entitled to vote may  
11 hold regular meetings of these members in or out of this state  
12 at the places and times stated in or fixed in accordance with the  
13 bylaws.

14 (d) The failure to hold an annual or regular meeting at the  
15 time stated in or fixed in accordance with a corporation's  
16 bylaws does not affect the validity of any corporate action.

**§31E-7-702. Special meeting.**

1 (a) A corporation that has members entitled to vote must  
2 hold a special meeting of members entitled to vote at the  
3 meeting: (1) On call of its board of directors or the person or  
4 persons authorized to do so by the articles of incorporation or  
5 the bylaws; or (2) if the members holding at least five percent,  
6 or other number or proportion as is provided in the bylaws, of  
7 all the votes entitled to be cast on any issue proposed to be  
8 considered at the proposed special meeting sign, date and  
9 deliver to the corporation one or more written demands for the  
10 meeting describing the purpose or purposes for which it is to be  
11 held. If a call for a special meeting is not issued within fifteen  
12 days after receipt of a members' request, members may call the  
13 meeting.

14 (b) If not otherwise fixed under section seven hundred three  
15 or seven hundred seven of this article, the record date for

16 determining members entitled to demand a special meeting is  
17 the date the first member signs the demand.

18 (c) Special meetings of members may be held in or out of  
19 this state at the place stated in or fixed in accordance with the  
20 bylaws. If no place is stated or fixed in accordance with the  
21 bylaws, special meetings are to be held at the corporation's  
22 principal office.

23 (d) Only business within the purpose or purposes described  
24 in the meeting notice required by subsection (c), section seven  
25 hundred five of this article may be conducted at a special  
26 meeting of members.

**§31E-7-703. Court-ordered meeting.**

1 (a) The circuit court may summarily order a meeting to be  
2 held:

3 (1) On application of any member entitled to vote at an  
4 annual meeting if an annual meeting was not held within the  
5 earlier of six months after the end of the corporation's fiscal  
6 year or fifteen months after its last annual meeting; or

7 (2) On application of a member who signed a demand for  
8 a special meeting valid under section seven hundred two of this  
9 article, if:

10 (A) Notice of the special meeting was not given within  
11 thirty days after the date the demand was delivered to the  
12 corporation's secretary; or

13 (B) The special meeting was not held in accordance with  
14 the notice.

15 (b) The court may fix the time and place of the meeting;  
16 determine the members entitled to vote at the meeting; specify

17 a record date for determining members entitled to notice of and  
18 to vote at the meeting; prescribe the form and content of the  
19 meeting notice; fix the quorum required for specific matters to  
20 be considered at the meeting, or direct that the votes repre-  
21 sented at the meeting constitute a quorum for action on those  
22 matters; and enter other orders necessary to accomplish the  
23 purpose or purposes of the meeting.

**§31E-7-704. Action without meeting; validity of actions at meet-  
ings not properly called.**

1 (a) Any action which, under any provision of this chapter,  
2 may be taken at a meeting of members may be taken without a  
3 meeting if one or more members consents in writing, setting  
4 forth the action taken or to be taken, signed by all of the persons  
5 who would be entitled to vote upon the action at a meeting, or  
6 by their duly authorized attorneys which action for purposes of  
7 this subsection is to be referred to as “unanimous written  
8 consent”. The secretary shall file the consent or consents, or  
9 certify the tabulation of the consents and file the articles, with  
10 the minutes of the meetings of the members. A unanimous  
11 written consent must have the same force and effect as a vote  
12 of the members at a meeting duly held, and may be stated as  
13 having the same force and effect as a vote of the members in  
14 any articles or document filed under this chapter.

15 (b) Where directors or officers are to be elected by mem-  
16 bers or any other action is to be voted upon by members, the  
17 articles of incorporation or bylaws may provide that the  
18 elections may be conducted and the actions voted upon by mail  
19 or electronic means in a manner provided in the articles of  
20 incorporation or bylaws. The vote of members, or of the  
21 members of any particular class, is to be determined from the  
22 total number of members who actually vote by mail, rather than  
23 from the total number of members entitled to vote, unless the  
24 articles of incorporation otherwise provide. A ballot signed

25 under this section has the same force and effect as a vote of the  
26 member who signed it at a meeting duly held, and may be  
27 stated as having the same force and effect in any certificate or  
28 document filed under this chapter.

29 (c) If not otherwise fixed under section seven hundred three  
30 or seven hundred seven of this article, the record date for  
31 determining members entitled to take action without a meeting  
32 is the date the first member signs the consent or ballot under  
33 subsection (a) or (b) of this section.

34 (d) The absence from the minutes of any indication that a  
35 member objected to holding the meeting prima facie establishes  
36 that no objection was made.

**§31E-7-705. Notice of meeting.**

1 (a) A corporation is to notify members entitled to vote of  
2 the date, time and place of each annual, regular and special  
3 meeting no fewer than ten nor more than sixty days before the  
4 meeting date. Unless this chapter, or the articles of incorpora-  
5 tion require otherwise, the corporation is required to give notice  
6 only to members entitled to vote at the meeting.

7 (b) Unless this chapter, the articles of incorporation or  
8 bylaws require otherwise, notice of an annual or regular  
9 meeting need not include a description of the purpose or  
10 purposes for which the meeting is called, except that, unless  
11 stated in a written notice of the meeting: (1) No bylaw may be  
12 brought up for adoption, amendment or repeal; and (2) no  
13 matter, other than the election of directors at an annual meeting,  
14 may be brought up which expressly requires the vote of  
15 members.

16 (c) Notice of a special meeting of members must include a  
17 description of the purpose or purposes for which the meeting is  
18 called.



19 (d) If not otherwise fixed under section seven hundred three  
20 or seven hundred seven of this article, the record date for  
21 determining members entitled to notice of and to vote at an  
22 annual, regular or special meeting is the day before the first  
23 notice is delivered to members.

24 (e) Unless the bylaws require otherwise, if an annual,  
25 regular or special meeting of members is adjourned to a  
26 different date, time or place, notice need not be given of the  
27 new date, time or place if the new date, time or place is  
28 announced at the meeting before adjournment. If a new record  
29 date for the adjourned meeting is or must be fixed under section  
30 seven hundred seven of this article, notice of the adjourned  
31 meeting must be given under this section to persons who are  
32 members entitled to vote as of the new record date.

33 (f) Unless the articles of incorporation or bylaws provide  
34 otherwise, any member may participate in a regular or special  
35 meeting by any means of communication by which all members  
36 participating may simultaneously hear each other during the  
37 meeting. A member participating in a meeting by this means is  
38 deemed to be present in person at the meeting.

**§31E-7-706. Waiver of notice.**

1 (a) A member may waive any notice required by this  
2 chapter, the articles of incorporation or bylaws before or after  
3 the date and time stated in the notice. The waiver must be in  
4 writing, be signed by the member entitled to the notice and be  
5 delivered to the corporation for inclusion in the minutes or  
6 filing with the corporate records.

7 (b) A member's attendance at a meeting:

8 (1) Waives objection to lack of notice or defective notice of  
9 the meeting, unless the member at the beginning of the meeting

10 objects to holding the meeting or transacting business at the  
11 meeting; and

12 (2) Waives objection to consideration of a particular matter  
13 at the meeting that is not within the purpose or purposes  
14 described in the meeting notice, unless the member objects to  
15 considering the matter when it is presented.

**§31E-7-707. Record date.**

1 (a) The bylaws may fix or provide the manner of fixing the  
2 record date for one or more classes of members in order to  
3 determine the members entitled to notice of a meeting of  
4 members, to demand a special meeting, to vote or to take any  
5 other action. If the bylaws do not fix or provide for fixing a  
6 record date, the board of directors of the corporation may fix a  
7 future date as the record date.

8 (b) A record date fixed under this section may not be more  
9 than seventy days before the meeting or action requiring a  
10 determination of members.

11 (c) A determination of members entitled to notice of or to  
12 vote at a meeting of members is effective for any adjournment  
13 of the meeting unless the board of directors fixes a new record  
14 date, which it must do if the meeting is adjourned to a date  
15 more than one hundred twenty days after the date fixed for the  
16 original meeting.

17 (d) If a court orders a meeting adjourned to a date more  
18 than one hundred twenty days after the date fixed for the  
19 original meeting, it may provide that the original record date  
20 continues in effect or it may fix a new record date.

**§31E-7-708. Conduct of the meeting.**

1 (a) At each meeting of members, a chair must preside. The  
2 chair is to be appointed as provided in the bylaws or, in the  
3 absence of a provision in the bylaws, by the board of directors.

4 (b) The chairperson, unless the articles of incorporation or  
5 bylaws provide otherwise, shall determine the order of business  
6 and has the authority to establish rules for the conduct of the  
7 meeting.

8 (c) Any rules adopted for, and the conduct of, the meeting  
9 are to be fair to members.

10 (d) The chair of the meeting shall announce at the meeting  
11 when the polls close for each matter voted upon. If no an-  
12 nouncement is made, the polls are to be deemed to have closed  
13 upon the final adjournment of the meeting. After the polls close,  
14 no ballots, proxies or votes, nor any revocations or changes to  
15 a ballot, proxy or vote, may be accepted.

16 (e) If the articles of incorporation or bylaws authorize the  
17 use of electronic communication for members' meetings, any  
18 or all of the members may participate in a regular or special  
19 meeting by, or conduct the meeting through the use of, any  
20 means of communication by which all members may simulta-  
21 neously hear each other during the meeting.

#### PART 2. VOTING.

#### **§31E-7-720. Members' list for meeting.**

1 (a) After fixing a record date for a meeting, a corporation  
2 must prepare an alphabetical list of the names of all its mem-  
3 bers who are entitled to notice of the meeting. The list must be  
4 arranged by classes of members, if any, and show the address  
5 of and number of votes to which each member is entitled.

6 (b) The members' list must be available for inspection by  
7 any member entitled to vote at the meeting, beginning two  
8 business days after notice of the meeting is given for which the  
9 list was prepared and continuing through the meeting, at the  
10 corporation's principal office or at a place identified in the  
11 meeting notice in the city where the meeting will be held. A  
12 member entitled to vote at the meeting or his or her agent or  
13 attorney is entitled on written demand to inspect and, subject to  
14 the requirements of section one thousand five hundred two,  
15 article fifteen of this chapter, to copy the list, during regular  
16 business hours and at his or her expense, during the period it is  
17 available for inspection.

18 (c) The corporation must make the members' list available  
19 at the meeting, and any member entitled to vote at the meeting  
20 or his or her agent or attorney is entitled to inspect the list at  
21 any time during the meeting or any adjournment.

22 (d) If the corporation refuses to allow a member entitled to  
23 vote at the meeting or his or her agent or attorney to inspect the  
24 members' list before or at the meeting, or copy the list as  
25 permitted by subsection (b) of this section, the circuit court, on  
26 application of the member, may summarily order the inspection  
27 or copying at the corporation's expense and may postpone the  
28 meeting for which the list was prepared until the inspection or  
29 copying is complete.

30 (e) Refusal or failure to prepare or make available the  
31 members' list does not affect the validity of action taken at the  
32 meeting.

**§31E-7-721. Members' voting rights.**

1 (a) Unless the articles of incorporation provide otherwise,  
2 each member, regardless of class, is entitled to one vote on each  
3 matter voted on at a meeting of members. Voting rights of

4 members of any class may be increased, limited or denied by  
5 the articles of incorporation.

6 (b) Members otherwise entitled to vote, but disqualified  
7 from voting for any reason, may not be considered for the  
8 purpose of a quorum or of computing the voting power of the  
9 corporation or of members of any class.

10 (c) A corporate member's vote may be cast by the president  
11 of the member corporation or by any other officer of the  
12 corporation in the absence of express notice of the designation  
13 of some other person by the board of directors or bylaws of the  
14 member corporation.

**§31E-7-722. Proxies.**

1 (a) Unless the articles of incorporation or bylaws provide  
2 otherwise, a member entitled to vote may vote in person or by  
3 proxy.

4 (b) A member entitled to vote by proxy or his or her agent  
5 or attorney-in-fact may appoint a proxy to vote or otherwise act  
6 for the member by signing an appointment form or by an  
7 electronic transmission of the appointment. An electronic  
8 transmission must contain or be accompanied by information  
9 from which one can determine that the member, the member's  
10 agent or the member's attorney-in-fact authorized the electronic  
11 transmission.

12 (c) An appointment of a proxy is effective when a signed  
13 appointment form or an electronic transmission of the appoint-  
14 ment is received by the inspector of election or the officer or  
15 agent of the corporation authorized to tabulate votes. A photo-  
16 graphic or similar reproduction of an appointment, or a tele-  
17 gram, cablegram, facsimile transmission, wireless or similar  
18 transmission of an appointment received by the inspector of  
19 election or the officer or agent of the corporation authorized to

20 tabulate votes is sufficient to effect an appointment. An  
21 appointment is valid for eleven months unless a longer period  
22 is expressly provided in the appointment form.

23 (d) An appointment of a proxy is revocable by the member.

24 (e) The death or incapacity of the member appointing a  
25 proxy does not affect the right of the corporation to accept the  
26 proxy's authority unless notice of the death or incapacity is  
27 received by the secretary or other officer or agent authorized to  
28 tabulate votes before the proxy exercises his or her authority  
29 under the appointment.

30 (f) Subject to section seven hundred twenty-three of this  
31 article and to any express limitation on the proxy's authority  
32 stated in the appointment form or electronic transmission of the  
33 appointment, a corporation is entitled to accept the proxy's vote  
34 or other action as that of the member making the appointment.

**§31E-7-723. Corporation's acceptance or rejection of votes.**

1 (a) If the name signed on a vote, consent, waiver or proxy  
2 appointment corresponds to the name of a member, the corpora-  
3 tion if acting in good faith is entitled to accept the vote,  
4 consent, waiver or proxy appointment and give it effect as the  
5 act of the member.

6 (b) If the name signed on a vote, consent, waiver or proxy  
7 appointment does not correspond to the name of a member, the  
8 corporation if acting in good faith is entitled to accept the vote,  
9 consent, waiver or proxy appointment and give it effect as the  
10 act of the member if:

11 (1) The member is an entity and the name signed purports  
12 to be that of an officer or agent of the entity;

13       (2) The name signed purports to be that of an attorney-in-  
14 fact, administrator, executor, guardian or conservator represent-  
15 ing the member and, if the corporation requests, evidence of  
16 this status acceptable to the corporation has been presented with  
17 respect to the vote, consent, waiver or proxy appointment;

18       (3) The name signed purports to be that of a receiver or  
19 trustee in bankruptcy of the member and, if the corporation  
20 requests, evidence of this status acceptable to the corporation  
21 has been presented with respect to the vote, consent, waiver or  
22 proxy appointment; or

23       (4) Two or more persons are co-members or fiduciaries and  
24 the name signed purports to be the name of at least one of the  
25 co-members or fiduciaries and the person signing appears to be  
26 acting on behalf of all of the co-members or fiduciaries.

27       (c) The corporation is entitled to reject a vote, consent,  
28 waiver or proxy appointment if the secretary or other officer or  
29 agent authorized to tabulate votes, acting in good faith, has  
30 reasonable basis for doubt about the validity of the signature on  
31 it or about the signatory's authority to sign for the member.

32       (d) The corporation and its officer or agent who accepts or  
33 rejects a vote, consent, waiver or proxy appointment in good  
34 faith and in accordance with the standards of this section or  
35 subsection (b), section seven hundred twenty-two of this article  
36 are not liable in damages to the member for the consequences  
37 of the acceptance or rejection.

38       (e) Corporate action based on the acceptance or rejection of  
39 a vote, consent, waiver or proxy appointment under this section  
40 or subsection (b), section seven hundred twenty-two of this  
41 article is valid unless a court of competent jurisdiction deter-  
42 mines otherwise.

**§31E-7-724. Quorum and voting requirements.**

1 (a) Members entitled to vote on a matter may take action on  
2 the matter at a meeting only if a quorum of those members  
3 exists with respect to that matter. If there are no members  
4 entitled to vote as a separate class, unless this chapter, the  
5 articles of incorporation or bylaws provide otherwise, the  
6 members entitled to vote on the matter who are present at the  
7 meeting, either in person or by proxy, if voting by proxy is  
8 permitted pursuant to section seven hundred twenty-two of this  
9 article, constitute a quorum for action on the matter. If there are  
10 members entitled to vote on a matter as a separate class, the  
11 members entitled to vote as a separate class may take action on  
12 the matter at a meeting only if a quorum of that class exists with  
13 respect to that matter. Unless this chapter, the articles of  
14 incorporation or bylaws provide otherwise, the members of a  
15 class entitled to vote on the matter who are present at the  
16 meeting, either in person or by proxy, if voting by proxy is  
17 permitted pursuant to section seven hundred twenty-two of this  
18 article constitute a quorum of that class for action on that  
19 matter.

20 (b) Once a member is represented for any purpose at a  
21 meeting, the member is deemed present for quorum purposes  
22 for the remainder of the meeting and for any adjournment of  
23 that meeting unless a new record date is or must be set for that  
24 adjourned meeting.

25 (c) Where any of this chapter, requires for any purpose the  
26 vote of a designated proportion of the voting power of members  
27 entitled to vote on a matter, or of the members of any particular  
28 class entitled to vote on a matter as a class, if a quorum exists,  
29 action on the matter, other than the election of directors, by  
30 these members or by the members of a class, is approved if the  
31 votes cast favoring the action by the members voting or by the  
32 members of a class voting, are in a designated proportion of the  
33 total votes cast by the members or by the members of a class,  
34 unless the articles of incorporation require a greater vote.



35 (d) Where subsection (c) of this section is not applicable, if  
36 a quorum exists, action on a matter, other than the election of  
37 directors, by the members entitled to vote on the matter, or by  
38 the members of any particular class entitled to vote on the  
39 matter as a class, is approved if the votes cast by the members  
40 voting, or by the members of a class voting, favoring the action  
41 exceed the votes cast by the members, or by the members of a  
42 class, opposing the action, unless the articles of incorporation  
43 require a greater vote.

44 (e) An amendment of the articles of incorporation adding,  
45 changing or deleting a voting requirement is governed by  
46 section seven hundred twenty-six of this article. An amendment  
47 of the articles of incorporation or bylaws adding, changing or  
48 deleting a quorum requirement is governed by section seven  
49 hundred twenty-six of this article.

50 (f) The election of directors is governed by section seven  
51 hundred twenty-seven of this article.

**§31E-7-725. Action by single and multiple classes of members.**

1 (a) If the articles of incorporation or this chapter, provide  
2 for voting by a single class on a matter, action on that matter is  
3 taken when voted upon by that class as provided in section  
4 seven hundred twenty-four of this article.

5 (b) If the articles of incorporation or this chapter, provide  
6 for voting by two or more classes on a matter, action on that  
7 matter is taken only when voted upon by each of those classes  
8 counted separately as provided in section seven hundred  
9 twenty-four of this article. Action may be taken by one class on  
10 a matter even though no action is taken by another class entitled  
11 to vote on the matter.

**§31E-7-726. Other quorum or voting requirement.**

1 (a) The articles of incorporation may provide for a greater  
2 voting requirement for members, or classes of members, than  
3 is provided by this chapter. The articles of incorporation or the  
4 bylaws may provide for a greater quorum requirement for  
5 members, or classes of members, than is provided by this  
6 chapter.

7 (b) The articles of incorporation may, except where  
8 expressly prohibited by this chapter, or where action is required  
9 by this chapter to be unanimous, provide for a lesser voting  
10 requirement, but unless expressly permitted by a particular  
11 section of this chapter, not less than a majority of the votes cast  
12 by the members, or by the members of a particular class,  
13 entitled to vote on the matter.

14 (c) An amendment to the articles of incorporation that adds,  
15 changes or deletes a greater quorum or voting requirement must  
16 meet the same quorum requirement and be adopted by the same  
17 vote and classes required to take action under the quorum and  
18 voting requirements then in effect or proposed to be adopted,  
19 whichever is greater.

**§31E-7-727. Voting for directors; cumulative voting.**

1 (a) Unless otherwise provided in the articles of incorpora-  
2 tion, directors are elected by a plurality of the votes cast by the  
3 members entitled to vote in the election at a meeting at which  
4 a quorum is present, or if voting by mail is permitted pursuant  
5 to section seven hundred four of this article in an election in  
6 which the total number of members who vote is not less than  
7 the number required for a quorum.

8 (b) Members do not have a right to cumulate their votes for  
9 directors unless this is provided for in the articles of incorpora-  
10 tion.

11 (c) A statement included in the articles of incorporation that  
12 “all or a designated class of members are entitled to cumulate  
13 their votes for directors”, or words of similar import, means that  
14 the members designated are entitled to multiply the number of  
15 votes they are entitled to cast by the number of directors for  
16 whom they are entitled to vote and cast the product for a single  
17 candidate or distribute the product among two or more candi-  
18 dates.

19 (d) Members otherwise entitled to vote cumulatively may  
20 not vote cumulatively at a particular meeting unless: (1) The  
21 meeting notice states conspicuously that cumulative voting is  
22 authorized; (2) a member who has the right to cumulate his or  
23 her votes gives notice to the corporation not less than forty-  
24 eight hours before the time set for the meeting of his or her  
25 intent to cumulate his or her votes during the meeting, and if  
26 one member gives this notice all other members in the same  
27 class participating in the election are entitled to cumulate their  
28 votes without giving further notice; or (3) if voting is to be by  
29 mail or electronic means pursuant to section seven hundred four  
30 of this article: (A) The bylaws specify how election of directors  
31 are to be conducted if members vote cumulatively by mail; (B)  
32 the notice of the meeting states conspicuously that cumulative  
33 voting is authorized and how the election is to be conducted;  
34 and (C) the mail ballot provides for cumulative voting.

**§31E-7-728. Inspectors of election.**

1 (a) A corporation may appoint one or more inspectors to act  
2 at a meeting of members and make a written report of the  
3 inspectors’ determinations. Each inspector shall take and sign  
4 an oath faithfully to execute the duties of inspector with strict  
5 impartiality and according to the best of the inspector’s ability.

6 (b) The inspectors shall: (1) Ascertain the number of  
7 members entitled to vote and the voting power of each; (2)

8 determine the members represented at a meeting; (3) determine  
9 the validity of proxies and ballots; (4) count all votes; and (5)  
10 determine the result.

11 (c) An inspector may be an officer or employee of the  
12 corporation.

#### **ARTICLE 8. DIRECTORS AND OFFICERS.**

- §31E-8-801. Requirement for and duties of board of directors.
- §31E-8-802. Qualifications of directors.
- §31E-8-803. Number and election of directors.
- §31E-8-804. Special provisions regarding directors.
- §31E-8-805. Election of directors by certain classes of members.
- §31E-8-806. Terms of directors generally.
- §31E-8-807. Staggered terms for directors.
- §31E-8-808. Resignation of directors.
- §31E-8-809. Removal of directors by members or directors.
- §31E-8-810. Removal of directors by judicial proceeding.
- §31E-8-811. Vacancy on board.
- §31E-8-812. Compensation of directors.
- §31E-8-820. Meetings.
- §31E-8-821. Actions without meeting.
- §31E-8-822. Notice of meeting.
- §31E-8-823. Waiver of notice.
- §31E-8-824. Quorum and voting.
- §31E-8-825. Committees.
- §31E-8-826. Court-ordered meeting of directors.
- §31E-8-830. Standards of conduct for directors.
- §31E-8-831. Standards of liability for directors.
- §31E-8-832. [Reserved]
- §31E-8-833. Directors' liability for unlawful distributions.
- §31E-8-840. Required officers.
- §31E-8-841. Duties of officers.
- §31E-8-842. Standards of conduct for officers.
- §31E-8-843. Resignation and removal of officers.
- §31E-8-844. Contract rights of officers.
- §31E-8-850. Part definitions.
- §31E-8-851. Permissible indemnification.
- §31E-8-852. Mandatory indemnification.
- §31E-8-853. Advance for expenses.
- §31E-8-854. Circuit court-ordered indemnification and advance for expenses.

- §31E-8-855. Determination and authorization of indemnification.
- §31E-8-856. Indemnification of officers.
- §31E-8-857. Insurance.
- §31E-8-858. Variation by corporate action; application of part.
- §31E-8-859. Exclusivity of part.
- §31E-8-860. Directors' conflicting interest transactions.

#### PART 1. BOARD OF DIRECTORS.

##### **§31E-8-801. Requirement for and duties of board of directors.**

- 1 (a) Each corporation must have a board of directors.
- 2 (b) All corporate powers are to be exercised by or under the  
3 authority of, and the activities, property and affairs of the  
4 corporation managed under the direction of, its board of  
5 directors, subject to any limitation set forth in the articles of  
6 incorporation.

##### **§31E-8-802. Qualifications of directors.**

- 1 (a) The articles of incorporation or bylaws may prescribe  
2 qualifications for directors. A director need not be a resident of  
3 this state or a member of the corporation unless the articles of  
4 incorporation or bylaws require he or she to be a member.
- 5 (b) The directors and board of directors may be designated  
6 by other names as may be provided in the articles of incorpora-  
7 tion or bylaws.

##### **§31E-8-803. Number and election of directors.**

- 1 (a) A board of directors must consist of three or more  
2 individuals, with the number specified in or fixed in accordance  
3 with the articles of incorporation or bylaws.
- 4 (b) The number of directors may be increased or decreased  
5 from time to time by amendment to, or in the manner provided  
6 in, the articles of incorporation or bylaws.

7 (c) The initial board of directors is to be designated in the  
8 articles of incorporation or elected at the organizational meeting  
9 of the corporation. Thereafter, if the corporation has members  
10 entitled to vote for directors, directors are to be elected at the  
11 first meeting of the members held for that purpose and at each  
12 subsequent annual meeting, except as provided in section eight  
13 hundred four of this article.

**§31E-8-804. Special provisions regarding directors.**

1 (a) The articles of incorporation may provide that the entire  
2 membership, or a certain class of members, shall constitute the  
3 board of directors.

4 (b) The articles of incorporation may provide that persons  
5 occupying certain positions within or without the corporation  
6 are ex officio directors, but, unless otherwise provided in the  
7 articles of incorporation or bylaws, ex officio directors may not  
8 be counted in determining a quorum nor may they be entitled to  
9 a vote. An ex officio director shall continue to be a director so  
10 long as he or she continues to hold the office from which his or  
11 her ex officio status derives, and shall cease to be an ex officio  
12 director immediately and automatically upon ceasing to hold  
13 the office, without the need for any action by the corporation,  
14 its directors or its members. The provisions of sections eight  
15 hundred six and eight hundred eight of this article do not apply  
16 to ex officio directors.

17 (c) In the cases of corporations without members and  
18 corporations without members entitled to vote for directors, the  
19 articles of incorporation may provide for a self-perpetuating  
20 board of directors.

**§31E-8-805. Election of directors by certain classes of members.**

1 If the articles of incorporation authorize classes of mem-  
2 bers, the articles may also authorize the election of all or a

- 3 specified number of directors by members in one or more  
4 authorized classes of members.

**§31E-8-806. Terms of directors generally.**

1 (a) The terms of the initial directors of a corporation expire  
2 at the first members' meeting at which directors are elected or,  
3 in the case of a corporation without members entitled to vote  
4 for directors, at the first annual meeting of the board of direc-  
5 tors, unless their terms are staggered pursuant to section eight  
6 hundred seven of this article.

7 (b) The terms of all other directors expire at the next annual  
8 meeting of members or the annual meeting of the directors if  
9 the corporation does not have members entitled to vote for  
10 directors, as the case may be, following their election unless  
11 their terms are staggered under section eight hundred seven of  
12 this article.

13 (c) A decrease in the number of directors does not shorten  
14 an incumbent director's term.

15 (d) The term of a director elected to fill a vacancy expires  
16 at the next meeting at which directors are elected.

17 (e) Despite the expiration of a director's term, he or she  
18 continues to serve until his or her successor is elected and  
19 qualifies or until there is a decrease in the number of directors.

**§31E-8-807. Staggered terms for directors.**

1 (a) The articles of incorporation may provide for staggering  
2 the terms of directors, other than ex officio directors, by  
3 dividing the total number of directors, other than ex officio  
4 directors, into up to five groups, with each group containing  
5 approximately the same percentage of the total number of  
6 directors, as possible. In that event, the terms of directors in the

7 first group expire at the first annual meeting of members or, in  
8 the case of a corporation without members entitled to vote for  
9 directors, at the first annual meeting of the board of directors,  
10 after their election, the terms of the second group expire at the  
11 second annual meeting of members or directors after their  
12 election, the terms of the third group, if any, expire at the third  
13 annual meeting of members or directors after their election, the  
14 terms of the fourth group, if any, expire at the fourth annual  
15 meeting of members or directors after their election, and the  
16 terms of the fifth group, if any, expire at the fifth annual  
17 meeting of members or directors after their election. At each  
18 annual meeting thereafter, directors are to be chosen for a term  
19 of two years, three years, four years or five years, as the case  
20 may be, to succeed those whose terms expire.

21 (b) If a corporation has cumulative voting pursuant to  
22 section seven hundred twenty-seven, article seven of this  
23 chapter, this section applies only if there are at least three  
24 directors in each group.

**§31E-8-808. Resignation of directors.**

1 (a) A director may resign at any time by delivering written  
2 notice to the board of directors, the chair of the board of  
3 directors or the corporation.

4 (b) A resignation is effective when the notice is delivered  
5 unless the board of directors agree to a later effective date.

**§31E-8-809. Removal of directors by members or directors.**

1 (a) The members entitled to vote for the election of  
2 directors or, if there are no members entitled to vote for the  
3 election of directors, the directors, may remove one or more  
4 directors with or without cause unless the articles of incorpora-  
5 tion provide that directors may be removed only for cause.



6 (b) If a director is elected by a class of members only the  
7 members of that class may participate in the vote to remove him  
8 or her.

9 (c) If cumulative voting is authorized, a director may not be  
10 removed if the number of votes sufficient to elect him or her  
11 under cumulative voting is voted against his or her removal. If  
12 cumulative voting is not authorized, a director may be removed  
13 only if the number of votes cast to remove him or her exceeds  
14 the number of votes cast not to remove him or her.

15 (d) A director may be removed by the members entitled to  
16 vote for directors or, if there are no members entitled to vote for  
17 directors, the directors, only at a meeting called for the purpose  
18 of removing him or her and the meeting notice must state that  
19 the purpose, or one of the purposes, of the meeting is removal  
20 of the director.

**§31E-8-810. Removal of directors by judicial proceeding.**

1 (a) The circuit court may remove a director of the corpora-  
2 tion from office in a proceeding commenced either by the  
3 corporation or by its members holding at least ten percent of the  
4 voting power of any class if the court finds that: (1) The  
5 director engaged in fraudulent or dishonest conduct or gross  
6 abuse of authority or discretion, with respect to the corporation;  
7 and (2) removal is in the best interest of the corporation.

8 (b) The court that removes a director may bar the director  
9 from serving on the board for a period prescribed by the court.

10 (c) If members commence a proceeding under subsection  
11 (a) of this section, they must make the corporation a party  
12 defendant.

**§31E-8-811. Vacancy on board.**

1 (a) Unless the articles of incorporation provide otherwise,  
2 if a vacancy occurs on a board of directors, including a vacancy  
3 resulting from an increase in the number of directors:

4 (1) The members entitled to vote for directors may fill the  
5 vacancy;

6 (2) The board of directors may fill the vacancy; or

7 (3) If the directors remaining in office constitute fewer than  
8 a quorum of the board, they may fill the vacancy by the  
9 affirmative vote of a majority of all the directors remaining in  
10 office.

11 (b) If the vacant office was held by a director elected by a  
12 class of members and if the vacancy is to be filled by the  
13 members entitled to vote for directors as provided in subdivi-  
14 sion (1), subsection (a) of this section, only the members of that  
15 class are entitled to vote to fill the vacancy.

16 (c) A vacancy that will occur at a specific later date, by  
17 reason of a resignation effective at a later date under subsection  
18 (b), section eight hundred eight of this article or otherwise, may  
19 be filled before the vacancy occurs but the new director may  
20 not take office until the vacancy occurs.

21 (d) If the board of directors ceases to exist and there are no  
22 members having the right to vote for the election of directors,  
23 members not entitled to vote are entitled to elect a new board of  
24 directors.

**§31E-8-812. Compensation of directors.**

1 Unless the articles of incorporation or bylaws provide  
2 otherwise, the board of directors may fix the compensation of  
3 directors, including reasonable allowance for expenses actually  
4 incurred in connection with their duties.

## PART 2. MEETINGS AND ACTION OF THE BOARD.

**§31E-8-820. Meetings.**

1 (a) The board of directors may hold regular or special  
2 meetings in or out of this state.

3 (b) Unless the articles of incorporation or bylaws provide  
4 otherwise, the board of directors may permit any or all directors  
5 to participate in a regular or special meeting by, or conduct the  
6 meeting through the use of, any means of communication by  
7 which all directors participating may simultaneously hear each  
8 other during the meeting. A director participating in a meeting  
9 by this means is deemed to be present in person at the meeting.

**§31E-8-821. Action without meeting.**

1 (a) Unless the articles of incorporation or bylaws provide  
2 otherwise, action required or permitted by this chapter to be  
3 taken at a board of directors' meeting may be taken without a  
4 meeting if the action is taken by all members of the board. The  
5 action must be evidenced by one or more written consents  
6 describing the action taken, signed by each director, and  
7 included in the minutes or filed with the corporate records  
8 reflecting the action taken.

9 (b) Action taken under this section is effective when the last  
10 director signs the consent, unless the consent specifies a  
11 different effective date.

12 (c) A consent signed under this section has the effect of a  
13 meeting vote and may be described as having the effect of a  
14 meeting vote in any document.

**§31E-8-822. Notice of meeting.**

1 (a) Unless the articles of incorporation or bylaws provide  
2 otherwise, regular meetings of the board of directors may be  
3 held without notice of the date, time, place, or purpose of the  
4 meeting.

5 (b) Unless the articles of incorporation or bylaws provide  
6 for a longer or shorter period, special meetings of the board of  
7 directors must be preceded by at least two days' notice of the  
8 date, time, and place of the meeting. The notice need not  
9 describe the purpose of the special meeting unless required by  
10 the articles of incorporation or bylaws.

**§31E-8-823. Waiver of notice.**

1 (a) A director may waive any notice required by this  
2 chapter, the articles of incorporation, or bylaws before or after  
3 the date and time stated in the notice. Except as provided by  
4 subsection (b) of this section, the waiver must be in writing,  
5 signed by the director entitled to the notice, and filed with the  
6 minutes or corporate records.

7 (b) A director's attendance at or participation in a meeting  
8 waives any required notice to him or her of the meeting unless  
9 the director at the beginning of the meeting or promptly upon  
10 his or her arrival objects to holding the meeting or transacting  
11 business at the meeting and does not thereafter vote for or  
12 assent to action taken at the meeting.

**§31E-8-824. Quorum and voting.**

1 (a) Unless the articles of incorporation or bylaws require a  
2 greater number or unless otherwise specifically provided in this  
3 chapter, a quorum of a board of directors consists of:

4 (1) A majority of the fixed number of directors if the  
5 corporation has a fixed board size; or

6       (2) A majority of the number of directors prescribed, or if  
7 no number is prescribed the number in office immediately  
8 before the meeting begins, if the corporation has a vari-  
9 able-range size board.

10       (b) The articles of incorporation or bylaws may authorize  
11 a quorum of a board of directors to consist of no fewer than one  
12 third of the fixed or prescribed number of directors determined  
13 under subsection (a) of this section.

14       (c) If a quorum is present when a vote is taken, the affirma-  
15 tive vote of a majority of directors present is the act of the  
16 board of directors unless the articles of incorporation or bylaws  
17 require the vote of a greater number of directors.

18       (d) A director who is present at a meeting of the board of  
19 directors or a committee of the board of directors when corpo-  
20 rate action is taken is deemed to have assented to the action  
21 taken unless: (1) He or she objects at the beginning of the  
22 meeting or promptly upon his or her arrival to holding it or  
23 transacting business at the meeting; (2) his or her dissent or  
24 abstention from the action taken is entered in the minutes of the  
25 meeting; or (3) he or she delivers written notice of his or her  
26 dissent or abstention to the presiding officer of the meeting  
27 before its adjournment or to the corporation immediately after  
28 adjournment of the meeting. The right of dissent or abstention  
29 is not available to a director who votes in favor of the action  
30 taken.

### **§31E-8-825. Committees.**

1       (a) Unless the articles of incorporation or bylaws provide  
2 otherwise, a board of directors may create one or more commit-  
3 tees and appoint members of the board of directors to serve on  
4 them. Each committee must have two or more members, who  
5 serve at the pleasure of the board of directors.

6 (b) The creation of a committee and appointment of  
7 members to it must be approved by the greater of: (1) A  
8 majority of all the directors in office when the action is taken;  
9 or (2) the number of directors required by the articles of  
10 incorporation or bylaws to take action under section eight  
11 hundred twenty-four of this article.

12 (c) Sections eight hundred twenty, eight hundred twenty-  
13 one, eight hundred twenty-two, eight hundred twenty-three and  
14 eight hundred twenty-four of this article, which govern meet-  
15 ings, action without meetings, notice and waiver of notice, and  
16 quorum and voting requirements of the board of directors, apply  
17 to committees and their members as well.

18 (d) To the extent specified by the board of directors or in  
19 the articles of incorporation or bylaws, each committee may  
20 exercise the authority of the board of directors under section  
21 eight hundred one of this article.

22 (e) A committee may not, however:

23 (1) Approve or propose to members action that this chapter  
24 requires be approved by members;

25 (2) Fill vacancies on the board of directors or on any of its  
26 committees;

27 (3) Amend articles of incorporation pursuant to section one  
28 thousand two, article ten of this chapter;

29 (4) Adopt, amend, or repeal bylaws;

30 (5) Approve a plan of merger;

31 (6) Approve a sale, lease, exchange or other disposition of  
32 all, or substantially all, of the property of a corporation; or

33 (7) Approve a proposal to dissolve.

34 (f) The creation of, delegation of authority to, or action by  
35 a committee does not alone constitute compliance by a director  
36 with the standards of conduct described in section eight  
37 hundred thirty of this article.

**§31E-8-826. Court-ordered meeting of directors.**

1 (a) The circuit court of the county where a corporation's  
2 principal office is located or, if none, where its registered office  
3 is located, or if the corporation has no principal or registered  
4 office in this state, the circuit court satisfying the venue  
5 requirements found in section one, article one, chapter fifty-six  
6 of this code, may summarily order a meeting of the board of  
7 directors to be held: (1) On application of any director of the  
8 corporation if no meeting of the board of directors has been  
9 held for a period of twelve months or more; or (2) on applica-  
10 tion of a director who signed a demand for a special meeting  
11 valid under the bylaws if: (A) Notice of the special meeting was  
12 not given within thirty days after the date the demand was  
13 delivered to the corporation's secretary; or (B) the special  
14 meeting was not held in accordance with the notice.

15 (b) The circuit court may fix the time and place of the  
16 meeting, determine the directors entitled to participate in the  
17 meeting, prescribe the form and content of the meeting notice,  
18 fix the quorum required for specific matters to be considered at  
19 the meeting, or direct that the votes represented at the meeting  
20 constitute a quorum for action on those matters, and enter other  
21 orders necessary to accomplish the purpose or purposes of the  
22 meeting.

PART 3. DIRECTORS.

**§31E-8-830. Standards of conduct for directors.**

1 (a) Each member of the board of directors, when discharg-  
2 ing the duties of a director, shall act: (1) In good faith; and (2)

3 in a manner the director reasonably believes to be in the best  
4 interests of the corporation.

5 (b) The members of the board of directors or a committee  
6 of the board, when becoming informed in connection with their  
7 decision-making function or devoting attention to their over-  
8 sight function, shall discharge their duties with the care that a  
9 person in a like position would reasonably believe appropriate  
10 under similar circumstances.

11 (c) In discharging board or committee duties a director,  
12 who does not have knowledge that makes reliance unwarranted,  
13 is entitled to rely on the performance by any of the persons  
14 specified in subdivisions (1) or (3), subsection (e) of this  
15 section to whom the board may have delegated, formally or  
16 informally by course of conduct, the authority or duty to  
17 perform one or more of the board's functions that are delegable  
18 under applicable law.

19 (d) In discharging board or committee duties a director,  
20 who does not have knowledge that makes reliance unwarranted,  
21 is entitled to rely on information, opinions, reports or state-  
22 ments, including financial statements and other financial data,  
23 prepared or presented by any of the persons specified in  
24 subsection (e) of this section.

25 (e) A director is entitled to rely, in accordance with  
26 subsection (c) or (d) of this section, on:

27 (1) One or more officers or employees of the corporation  
28 whom the director reasonably believes to be reliable and  
29 competent in the functions performed or the information,  
30 opinions, reports or statements provided;

31 (2) Legal counsel, public accountants, or other persons  
32 retained by the corporation as to matters involving skills or  
33 expertise the director reasonably believes are matters: (A)



34 Within the particular person's professional or expert compe-  
35 tence; or (B) as to which the particular person merits confi-  
36 dence; or

37 (3) A committee of the board of directors of which the  
38 director is not a member if the director reasonably believes the  
39 committee merits confidence.

**§31E-8-831. Standards of liability for directors.**

1 (a) A director is not liable to the corporation or its members  
2 for any decision to take or not to take action, or any failure to  
3 take any action, as a director, unless the party asserting liability  
4 in a proceeding establishes that:

5 (1) Any provision in the articles of incorporation authorized  
6 by subdivision (4), subsection (b), section two hundred two,  
7 article two of this chapter or the protections afforded by section  
8 eight hundred sixty of this article or article seven-c, chapter  
9 fifty-five of this code, if interposed as a bar to the proceeding  
10 by the director, does not preclude liability; and

11 (2) The challenged conduct consisted or was the result of:

12 (A) Action not in good faith; or

13 (B) A decision: (i) Which the director did not reasonably  
14 believe to be in the best interests of the corporation; or (ii) as to  
15 which the director was not informed to an extent the director  
16 reasonably believed appropriate in the circumstances; or

17 (C) A lack of objectivity due to the director's familial,  
18 financial or business relationship with, or a lack of independ-  
19 ence due to the director's domination or control by, another  
20 person having a material interest in the challenged conduct: (i)  
21 Which relationship or which domination or control could  
22 reasonably be expected to have affected the director's judgment

23 respecting the challenged conduct in a manner adverse to the  
24 corporation; and (ii) after a reasonable expectation has been  
25 established, the director does not establish that the challenged  
26 conduct was reasonably believed by the director to be in the  
27 best interests of the corporation; or

28 (D) A sustained failure of the director to devote attention to  
29 ongoing oversight of the affairs of the corporation, or a failure  
30 to devote timely attention, by making or causing to be made  
31 appropriate inquiry, when particular facts and circumstances of  
32 significant concern materialize that would alert a reasonably  
33 attentive director to the need to make inquiry; or

34 (E) Receipt of a financial benefit to which the director was  
35 not entitled or any other breach of the director's duties to deal  
36 fairly with the corporation and its members that is actionable  
37 under applicable law.

38 (b) The party seeking to hold the director liable:

39 (1) For money damages, has the burden of establishing that:

40 (A) Harm to the corporation or its members has been  
41 suffered; and

42 (B) The harm suffered was proximately caused by the  
43 director's challenged conduct; or

44 (2) For other money payment under a legal remedy,  
45 including compensation for the unauthorized use of corporate  
46 assets, has whatever persuasion burden may be called for to  
47 establish that the payment sought is appropriate in the circum-  
48 stances; or

49 (3) For other money payment under an equitable remedy,  
50 including profit recovery by or disgorgement to the corporation,  
51 has whatever persuasion burden may be called for to establish

52 that the equitable remedy sought is appropriate in the circum-  
53 stances.

54 (c) Nothing contained in this section may: (1) In any  
55 instance where fairness is at issue, including consideration of  
56 the fairness of a transaction to the corporation under section  
57 eight hundred sixty of this article, alter the burden of proving  
58 the fact or lack of fairness otherwise applicable; (2) alter the  
59 fact or lack of liability of a director under another section of  
60 this chapter, including the provisions governing the conse-  
61 quences of an unlawful distribution under section eight hundred  
62 thirty-three of this article or a transactional interest under  
63 section eight hundred sixty of this article; or (3) affect any  
64 rights to which the corporation or a member may be entitled  
65 under another provision of this code or the United States code.

#### **§31E-8-832. [RESERVED]**

#### **§31E-8-833. Directors' liability for unlawful distributions.**

1 (a) A director who votes for or assents to a distribution in  
2 violation of this chapter or the articles of incorporation is  
3 personally liable to the corporation for the amount of the  
4 distribution that exceeds what could have been distributed  
5 without violating this chapter if the party asserting liability  
6 establishes that when taking the action the director did not  
7 comply with section eight hundred thirty of this article.

8 (b) A director held liable under subsection (a) of this  
9 section for an unlawful distribution is entitled to:

10 (1) Contribution from every other director who could be  
11 held liable under subsection (a) of this section for the unlawful  
12 distribution; and

13 (2) Recoupment from each recipient for the amount the  
14 recipient accepted, knowing the distribution was made in  
15 violation of this chapter or the articles of incorporation.

16 (c) A proceeding to enforce the liability of a director under  
17 subsection (a) of this section is barred unless it is commenced  
18 within two years after the date on which the distribution was  
19 made.

20 (d) For purposes of this section, a director is deemed to  
21 have voted for a distribution if the director was present at the  
22 meeting of the board of directors at the time the distribution  
23 was authorized and did not vote in dissent, or if the director  
24 consented to the vote pursuant to section eight hundred twenty-  
25 one of this article.

#### PART 4. OFFICERS.

##### **§31E-8-840. Required officers.**

1 (a) A corporation has the officers described in its bylaws or  
2 appointed by the board of directors in accordance with the  
3 bylaws.

4 (b) A duly appointed officer may appoint one or more  
5 officers or assistant officers if authorized by the bylaws or the  
6 board of directors.

7 (c) The bylaws or the board of directors must delegate to  
8 one of the officers responsibility for preparing minutes of the  
9 directors' and members' meetings and for authenticating  
10 records of the corporation.

11 (d) The same individual may simultaneously hold more  
12 than one office in a corporation.

##### **§31E-8-841. Duties of officers.**

1 Each officer has the authority and shall perform the duties  
2 set forth in the bylaws or, to the extent consistent with the  
3 bylaws, the duties prescribed by the board of directors or by

- 4 direction of an officer authorized by the board of directors to
- 5 prescribe the duties of other officers.

**§31E-8-842. Standards of conduct for officers.**

- 1 (a) An officer, when performing in his or her official
- 2 capacity, shall act:

- 3 (1) In good faith;

- 4 (2) With the care that a person in a like position would
- 5 reasonably exercise under similar circumstances; and

- 6 (3) In a manner the officer reasonably believes to be in the
- 7 best interests of the corporation.

**§31E-8-843. Resignation and removal of officers.**

- 1 (a) An officer may resign at any time by delivering notice
- 2 to the corporation. A resignation is effective when the notice is
- 3 delivered unless the board of directors agree to a later effective
- 4 date. If a resignation is made effective at a later date and the
- 5 corporation accepts the future effective date, its board of
- 6 directors may fill the pending vacancy before the effective date
- 7 if the board of directors provides that the successor does not
- 8 take office until the effective date.

- 9 (b) A board of directors may remove any officer at any time
- 10 with or without cause.

**§31E-8-844. Contract rights of officers.**

- 1 (a) The appointment of an officer does not itself create
- 2 contract rights.

3 (b) An officer's removal does not affect the officer's  
4 contract rights, if any, with the corporation. An officer's  
5 resignation does not affect the corporation's contract rights, if  
6 any, with the officer.

PART 5. INDEMNIFICATION AND ADVANCE FOR EXPENSES.

**§31E-8-850. Part definitions.**

1 In this part:

2 (1) "Corporation" includes any domestic or foreign  
3 predecessor entity of a corporation in a merger.

4 (2) "Director" or "officer" means an individual who is or  
5 was a director or officer, respectively, of a corporation or who,  
6 while a director or officer of the corporation, is or was serving  
7 at the corporation's request as a director, officer, partner,  
8 trustee, employee, or agent of another domestic or foreign  
9 corporation, partnership, joint venture, trust, employee benefit  
10 plan, or other entity. A director or officer is considered to be  
11 serving an employee benefit plan at the corporation's request if  
12 his or her duties to the corporation also impose duties on, or  
13 otherwise involve services by, him or her to the plan or to  
14 participants in or beneficiaries of the plan. "Director" or  
15 "officer" includes, unless the context requires otherwise, the  
16 estate or personal representative of a director or officer.

17 (3) "Disinterested director" means a director who, at the  
18 time of a vote referred to in subsection (c), section eight  
19 hundred fifty-three of this article or a vote or selection referred  
20 to in subsection (b) or (c), section eight hundred fifty-five of  
21 this article, is not: (A) A party to the proceeding; or (B) an  
22 individual having a familial, financial, professional or employ-  
23 ment relationship with the director whose indemnification or

24 advance for expenses is the subject of the decision being made,  
25 which relationship would, in the circumstances, reasonably be  
26 expected to exert an influence on the director's judgment when  
27 voting on the decision being made.

28 (4) "Expenses" includes counsel fees.

29 (5) "Liability" means the obligation to pay a judgment;  
30 settlement; penalty; fine, including an excise tax assessed with  
31 respect to an employee benefit plan; or reasonable expenses  
32 incurred with respect to a proceeding.

33 (6) "Official capacity" means:

34 (A) When used with respect to a director, the office of  
35 director in a corporation; and

36 (B) When used with respect to an officer, as contemplated  
37 in section eight hundred fifty-six of this article, the office in a  
38 corporation held by the officer. "Official capacity" does not  
39 include service for any other domestic or foreign corporation or  
40 any partnership, joint venture, trust, employee benefit plan, or  
41 other entity.

42 (7) "Party" means an individual who was, is, or is threat-  
43 ened to be made, a defendant or respondent in a proceeding.

44 (8) "Proceeding" means any threatened, pending, or  
45 completed action, suit, or proceeding, whether civil, criminal,  
46 administrative, arbitratative, or investigative and whether formal  
47 or informal.

**§31E-8-851. Permissible indemnification.**

1       (a) Except as otherwise provided in this section, a corpora-  
2 tion may indemnify an individual who is a party to a proceeding  
3 because he or she is a director against liability incurred in the  
4 proceeding if:

5       (1) (A) He or she conducted himself or herself in good  
6 faith; and

7       (B) He or she reasonably believed: (i) In the case of  
8 conduct in his or her official capacity, that his or her conduct  
9 was in the best interests of the corporation; and (ii) in all other  
10 cases, that his or her conduct was at least not opposed to the  
11 best interests of the corporation; and

12       (C) In the case of any criminal proceeding, he or she had no  
13 reasonable cause to believe his or her conduct was unlawful; or

14       (2) He or she engaged in conduct for which broader  
15 indemnification has been made permissible or obligatory under  
16 a provision of the articles of incorporation, as authorized by  
17 subdivision (5), subsection (b), section two hundred two, article  
18 two of this chapter.

19       (b) A director's conduct with respect to an employee  
20 benefit plan for a purpose he or she reasonably believed to be  
21 in the interests of the participants in, and the beneficiaries of,  
22 the plan is conduct that satisfies the requirement of subpara-  
23 graph (ii), paragraph (B), subdivision (1), subsection (a) of this  
24 section.

25       (c) The termination of a proceeding by judgment, order,  
26 settlement, or conviction, or upon a plea of nolo contendere or  
27 its equivalent, is not, determinative that the director did not  
28 meet the relevant standard of conduct described in this section.



29 (d) Unless ordered by a circuit court under subdivision (3),  
30 subsection (a), section eight hundred fifty-four of this article, a  
31 corporation may not indemnify a director:

32 (1) In connection with a proceeding by or in the right of the  
33 corporation, except for reasonable expenses incurred in  
34 connection with the proceeding if it is determined that the  
35 director has met the relevant standard of conduct under subsec-  
36 tion (a) of this section; or

37 (2) In connection with any proceeding with respect to  
38 conduct for which he or she was adjudged liable on the basis  
39 that he or she received a financial benefit to which he or she  
40 was not entitled, whether or not involving action in his or her  
41 official capacity.

**§31E-8-852. Mandatory indemnification.**

1 A corporation must indemnify a director who was wholly  
2 successful, on the merits or otherwise, in the defense of any  
3 proceeding to which he or she was a party because he or she  
4 was a director of the corporation against reasonable expenses  
5 incurred by him or her in connection with the proceeding.

**§31E-8-853. Advance for expenses.**

1 (a) A corporation may, before final disposition of a  
2 proceeding, advance funds to pay for or reimburse the reason-  
3 able expenses incurred by a director who is a party to a pro-  
4 ceeding because he or she is a director if he or she delivers to  
5 the corporation:

6 (1) A written affirmation of his or her good faith belief that  
7 he or she has met the relevant standard of conduct described in  
8 section eight hundred fifty-one of this article or that the

9 proceeding involves conduct for which liability has been  
10 eliminated under a provision of the articles of incorporation as  
11 authorized by subdivision (4), subsection (b), section two  
12 hundred two, article two of this chapter; and

13 (2) His or her written undertaking to repay any funds  
14 advanced if he or she is not entitled to mandatory indemnifica-  
15 tion under section eight hundred fifty-two of this article and it  
16 is ultimately determined under sections eight hundred fifty-four  
17 or eight hundred fifty-five of this article that he or she has not  
18 met the relevant standard of conduct described in section eight  
19 hundred fifty-one of this article.

20 (b) The undertaking required by subdivision (2), subsection  
21 (a) of this section must be an unlimited general obligation of the  
22 director but need not be secured and may be accepted without  
23 reference to the financial ability of the director to make  
24 repayment.

25 (c) Authorizations under this section are to be made:

26 (1) By the board of directors:

27 (A) If there are two or more disinterested directors, by a  
28 majority vote of all the disinterested directors, a majority of  
29 whom constitute a quorum for this purpose, or by a majority of  
30 the members of a committee of two or more disinterested  
31 directors appointed by a vote; or

32 (B) If there are fewer than two disinterested directors, by  
33 the vote necessary for action by the board in accordance with  
34 subsection (c), section eight hundred twenty-four of this article,  
35 in which authorization directors who do not qualify as disinter-  
36 ested directors may participate; or

37 (2) By special legal counsel:

38 (A) Selected in the manner prescribed in subdivision (1) of  
39 this subsection;

40 (B) If there are fewer than two disinterested directors,  
41 selected by the board of directors in which selection directors  
42 who do not qualify as disinterested directors may participate; or

43 (3) By the members, if the members have a right to vote.

**§31E-8-854. Circuit court-ordered indemnification and advance  
for expenses.**

1 (a) A director who is a party to a proceeding because he or  
2 she is a director may apply for indemnification or an advance  
3 for expenses to the circuit court conducting the proceeding or  
4 to another circuit court of competent jurisdiction. After receipt  
5 of an application and after giving any notice it considers  
6 necessary, the circuit court shall:

7 (1) Order indemnification if the circuit court determines  
8 that the director is entitled to mandatory indemnification under  
9 section eight hundred fifty-two of this article;

10 (2) Order indemnification or advance for expenses if the  
11 circuit court determines that the director is entitled to indemni-  
12 fication or advance for expenses pursuant to a provision  
13 authorized by subsection (a), section eight hundred fifty-eight  
14 of this article; or

15 (3) Order indemnification or advance for expenses if the  
16 circuit court determines, in view of all the relevant circum-  
17 stances, that it is fair and reasonable:

18 (A) To indemnify the director; or

19 (B) To advance expenses to the director, even if he or she  
20 has not met the relevant standard of conduct set forth in  
21 subsection (a), section eight hundred fifty-one of this article,  
22 failed to comply with section eight hundred fifty-three of this  
23 article or was adjudged liable in a proceeding referred to in  
24 subdivisions (1) or (2), subsection (d), section eight hundred  
25 fifty-one of this article, but if he or she was adjudged so liable  
26 his or her indemnification is to be limited to reasonable  
27 expenses incurred in connection with the proceeding.

28 (b) If the circuit court determines that the director is  
29 entitled to indemnification under subdivision (1), subsection (a)  
30 of this section or to indemnification or advance for expenses  
31 under subdivision (2), subsection (a) of this section, it shall also  
32 order the corporation to pay the director's reasonable expenses  
33 incurred in connection with obtaining circuit court-ordered  
34 indemnification or advance for expenses. If the circuit court  
35 determines that the director is entitled to indemnification or  
36 advance for expenses under subdivision (3), subsection (a) of  
37 this section, it may also order the corporation to pay the direc-  
38 tor's reasonable expenses to obtain circuit court-ordered  
39 indemnification or advance for expenses.

**§31E-8-855. Determination and authorization of indemnification.**

1 (a) A corporation may not indemnify a director under  
2 section eight hundred fifty-one of this article unless authorized  
3 for a specific proceeding after a determination has been made  
4 that indemnification of the director is permissible because he or  
5 she has met the relevant standard of conduct set forth in section  
6 eight hundred fifty-one of this article.

7 (b) The determination is to be made:

8       (1) If there are two or more disinterested directors, by the  
9 board of directors by a majority vote of all the disinterested  
10 directors, a majority of whom constitute a quorum for this  
11 purpose, or by a majority of the members of a committee of two  
12 or more disinterested directors appointed by a vote;

13       (2) By special legal counsel:

14       (A) Selected in the manner prescribed in subdivision (1) of  
15 this subsection; or

16       (B) If there are fewer than two disinterested directors,  
17 selected by the board of directors in which selection directors  
18 who do not qualify as disinterested directors may participate; or

19       (3) By the members, if the members have a right to vote.

20       (c) Authorization of indemnification is to be made in the  
21 same manner as the determination that indemnification is  
22 permissible, except that if there are fewer than two disinterested  
23 directors or if the determination is made by special legal  
24 counsel, authorization of indemnification is to be made by those  
25 entitled under paragraph (B), subdivision (2), subsection (b) of  
26 this section to select special legal counsel.

**§31E-8-856. Indemnification of officers.**

1       (a) A corporation may indemnify and advance expenses  
2 under this part to an officer of the corporation who is a party to  
3 a proceeding because he or she is an officer of the corporation:

4       (1) To the same extent as a director; and

5       (2) If he or she is an officer but not a director, to a further  
6 extent as may be provided by the articles of incorporation, the

7 bylaws, a resolution of the board of directors, or contract except  
8 for:

9 (A) Liability in connection with a proceeding by or in the  
10 right of the corporation other than for reasonable expenses  
11 incurred in connection with the proceeding; or

12 (B) Liability arising out of conduct that constitutes:

13 (i) Receipt by him or her of a financial benefit to which he  
14 or she is not entitled;

15 (ii) An intentional infliction of harm on the corporation or  
16 the members; or

17 (iii) An intentional violation of criminal law.

18 (b) The provisions of subdivision (2), subsection (a) of this  
19 section apply to an officer who is also a director if the basis on  
20 which he or she is made a party to the proceeding is an act or  
21 omission solely as an officer.

22 (c) An officer of a corporation who is not a director is  
23 entitled to mandatory indemnification under section eight  
24 hundred fifty-two of this article, and may apply to a circuit  
25 court under section eight hundred fifty-four of this article for  
26 indemnification or an advance for expenses, in each case to the  
27 same extent to which a director may be entitled to indemnifica-  
28 tion or advance for expenses under those provisions.

### **§31E-8-857. Insurance.**

1 A corporation may purchase and maintain insurance on  
2 behalf of an individual who is a director or officer of the  
3 corporation, or who, while a director or officer of the corpora-

4 tion, serves at the corporation's request as a director, officer,  
5 partner, trustee, employee, or agent of another domestic or  
6 foreign corporation, partnership, joint venture, trust, employee  
7 benefit plan, or other entity, against liability asserted against or  
8 incurred by him or her in that capacity or arising from his or her  
9 status as a director or officer, whether or not the corporation  
10 would have power to indemnify or advance expenses to him or  
11 her against the same liability under this part.

**§31E-8-858. Variation by corporate action; application of part.**

1 (a) A corporation may, by a provision in its articles of  
2 incorporation or bylaws or in a resolution adopted or a contract  
3 approved by its board of directors or members, obligate itself in  
4 advance of the act or omission giving rise to a proceeding to  
5 provide indemnification in accordance with section eight  
6 hundred fifty-one of this article or advance funds to pay for or  
7 reimburse expenses in accordance with section eight hundred  
8 fifty-three of this article. Any obligatory provision is deemed to  
9 satisfy the requirements for authorization referred to in subsec-  
10 tion (c), section eight hundred fifty-three and in subsection (c),  
11 section eight hundred fifty-five of this article. Any provision  
12 that obligates the corporation to provide indemnification to the  
13 fullest extent permitted by law is deemed to obligate the  
14 corporation to advance funds to pay for or reimburse expenses  
15 in accordance with section eight hundred fifty-three of this  
16 article to the fullest extent permitted by law, unless the provi-  
17 sion specifically provides otherwise.

18 (b) Any provision pursuant to subsection (a) of this section  
19 may not obligate the corporation to indemnify or advance  
20 expenses to a director of a predecessor of the corporation,  
21 pertaining to conduct with respect to the predecessor, unless  
22 otherwise specifically provided. Any provision for indemnifica-

23 tion or advance for expenses in the articles of incorporation,  
24 bylaws, or a resolution of the board of directors or members of  
25 a predecessor of the corporation in a merger or in a contract to  
26 which the predecessor is a party, existing at the time the merger  
27 takes effect, is to be governed by section one thousand one  
28 hundred and three, article eleven of this chapter.

29 (c) A corporation may, by a provision in its articles of  
30 incorporation, limit any of the rights to indemnification or  
31 advance for expenses created by or pursuant to this part.

32 (d) This part does not limit a corporation's power to pay or  
33 reimburse expenses incurred by a director or an officer in  
34 connection with his or her appearance as a witness in a proceed-  
35 ing at a time when he or she is not a party.

36 (e) This part does not limit a corporation's power to  
37 indemnify, advance expenses to or provide or maintain insur-  
38 ance on behalf of an employee or agent.

**§31E-8-859. Exclusivity of part.**

1 A corporation may provide indemnification or advance  
2 expenses to a director or an officer only as permitted by this  
3 part.

**PART 6. DIRECTORS' CONFLICTING INTEREST TRANSACTIONS.**

**§31E-8-860. Directors' conflicting interest transactions.**

1 (a) No contract or transaction between a corporation and  
2 one or more of its directors or officers, or between a corporation  
3 and any other corporation, partnership, association, or other  
4 organization in which one or more of its directors or officers are  
5 directors or officers, or have a financial interest, is void or



6 voidable solely for this reason, or solely because the director or  
7 officer is present at or participates in the meeting of the board  
8 or committee thereof which authorizes the contract or transac-  
9 tion, or solely because any director's or officer's votes are  
10 counted for the purpose, if:

11 (1) The material facts as to the director's or officer's  
12 relationship or interest and as to the contract or transaction are  
13 disclosed or are known to the board of directors or the commit-  
14 tee, and the board or committee in good faith authorizes the  
15 contract or transaction by the affirmative votes of a majority of  
16 the disinterested directors, even though the disinterested  
17 directors be less than a quorum; or

18 (2) The material facts as to the director's or officer's  
19 relationship or interest and as to the contract or transaction are  
20 disclosed or are known to the members entitled to vote on the  
21 contract or transaction, and the contract or transaction is  
22 specifically approved in good faith by vote of the members  
23 entitled to vote; or

24 (3) The contract or transaction is fair as to the corporation  
25 as of the time it is authorized, approved or ratified, by the board  
26 of directors, a committee of the board of directors, or the  
27 members.

28 (b) Common or interested directors may be counted in  
29 determining the presence of a quorum at a meeting of the board  
30 of directors or of a committee which authorizes the contract or  
31 transaction.

**ARTICLE 9. RESERVED.**

**ARTICLE 10. AMENDMENT OF ARTICLES OF INCORPORATION AND  
BYLAWS.**

- §31E-10-1001. Authority to amend.
- §31E-10-1002. Certain amendments by board of directors.
- §31E-10-1003. Amendment by board of directors and members.
- §31E-10-1004. Amendment by incorporators.
- §31E-10-1005. Articles of amendment.
- §31E-10-1006. Restated articles of incorporation.
- §31E-10-1007. Amendment pursuant to reorganization.
- §31E-10-1008. Effect of amendment.
- §31E-10-1020. Amendment by board of directors or members.
- §31E-10-1021. Bylaw increasing quorum or voting requirement for directors.
- §31E-10-1022. Bylaw increasing quorum or voting requirement for members.

#### PART 1. AMENDMENT OF ARTICLES OF INCORPORATION.

##### **§31E-10-1001. Authority to amend.**

1       (a) A corporation may amend its articles of incorporation  
2 at any time to add or change a provision that is required or  
3 permitted in the articles of incorporation or to delete a provision  
4 not required in the articles of incorporation. Whether a provi-  
5 sion is required or permitted in the articles of incorporation is  
6 determined as of the effective date of the amendment.

7       (b) A member of the corporation does not have a vested  
8 property right resulting from any provision in the articles of  
9 incorporation, including provisions relating to management,  
10 control, purpose or duration of the corporation.

##### **§31E-10-1002. Certain amendments by board of directors.**

1       Unless the articles of incorporation provide otherwise, a  
2 corporation's board of directors may adopt one or more  
3 amendments to the corporation's articles of incorporation  
4 without member action:

5       (1) To extend the duration of the corporation if it was  
6 incorporated at a time when limited duration was required by  
7 law;

8       (2) To delete the names and addresses of the initial direc-  
9   tors;

10       (3) To delete the name and address of the initial registered  
11   agent or registered office, if any, if a statement of change is on  
12   file with the secretary of state;

13       (4) To change the corporate name by substituting the word  
14   “corporation,” “incorporated” or “company”, or the abbrevia-  
15   tion “corp.,” “inc.” or “co.,” for a similar word or abbreviation  
16   in the name, or by adding, deleting or changing a geographical  
17   attribution to the name; or

18       (5) To make any other change expressly permitted by this  
19   chapter to be made without member action.

**§31E-10-1003. Amendment by board of directors and members.**

1       (a) A corporation’s board of directors may propose one or  
2   more amendments to the articles of incorporation for submis-  
3   sion to those members who are entitled to vote on amendments,  
4   if any.

5       (b) For the amendment to be adopted: (1) The board of  
6   directors must approve the amendment; (2) the board of  
7   directors must recommend the amendment to the members  
8   entitled to vote on the amendment, if any, unless the board of  
9   directors determines that because of conflict of interest or other  
10   special circumstances it should make no recommendation and  
11   communicates the basis for its determination to the members  
12   entitled to vote on the amendment with the submission of the  
13   amendment; and (3) the members entitled to vote on the  
14   amendment must approve the amendment, either before or after  
15   the actions required in subdivisions (1) and (2) of this subsec-  
16   tion, as provided in subsection (e) of this section.

17 (c) The board of directors may condition its submission of  
18 the proposed amendment on any basis.

19 (d) The corporation shall notify each member entitled to  
20 vote on the amendment, if any, of the proposed meeting of  
21 members in accordance with section seven hundred five, article  
22 seven of this chapter. The notice of meeting must also state that  
23 the purpose, or one of the purposes, of the meeting is to  
24 consider the proposed amendment and contain or be accompa-  
25 nied by a copy or summary of the amendment.

26 (e) Unless this chapter, the articles of incorporation or the  
27 board of directors acting pursuant to subsection (c) of this  
28 section requires a greater vote or a vote by class of members,  
29 the amendment to be adopted must be approved by: (1) If no  
30 class of members is entitled to vote separately on the amend-  
31 ment as a class, at least two thirds of the votes cast by the  
32 members entitled to vote on the amendment; and (2) if any class  
33 of members is entitled to vote on the amendment separately as  
34 a class, at least two thirds of the votes cast by the members of  
35 each class.

36 (f) If the corporation has no members, or no members  
37 entitled to vote, the proposed amendment must be adopted by  
38 vote of at least two thirds of the directors present at a meeting  
39 of the board of directors at which a quorum is present.

**§31E-10-1004. Amendment by incorporators.**

1 If a corporation has no members entitled to vote on the  
2 proposed amendment to the articles of incorporation, the  
3 incorporators may, at any time and from time to time, before  
4 the corporation has directors amend the articles of incorporation  
5 by resolution adopted by a vote of at least two thirds of the  
6 incorporators.

**§31E-10-1005. Articles of amendment.**

1 A corporation amending its articles of incorporation shall  
2 deliver to the secretary of state for filing articles of amendment  
3 setting forth:

4 (1) The name of the corporation;

5 (2) The text of each amendment adopted;

6 (3) The date of each amendment's adoption;

7 (4) A statement that the amendment was approved by the  
8 board of directors as required under section one thousand three  
9 of this article or, if approval of members was not required, a  
10 statement to that effect and a statement that the amendment was  
11 approved by a sufficient vote of either: (A) The incorporators,  
12 if the vote was before the corporation had directors; or (B) the  
13 board of directors, in either case in accordance with section one  
14 thousand two or one thousand four of this article; and

15 (5) If approval by members was required: (A) The designa-  
16 tion of each class of members entitled to vote separately on the  
17 amendment; and (B) the total number of votes cast for and  
18 against the amendment by each class of members entitled to  
19 vote separately on the amendment and a statement that the  
20 number cast for the amendment by each class was sufficient for  
21 approval by that class.

**§31E-10-1006. Restated articles of incorporation.**

1 (a) A corporation's board of directors may restate its  
2 articles of incorporation at any time with or without member  
3 action.

4 (b) The restatement may include one or more amendments  
5 to the articles. If the restatement includes an amendment  
6 requiring member approval, it must be adopted as provided in  
7 section one thousand three of this article. If the restatement

8 includes an amendment which does not require member  
9 approval, it must be adopted as provided in section one thou-  
10 sand two or one thousand four of this article.

11 (c) If the board of directors submits a restatement for  
12 member action, the corporation shall notify each member  
13 entitled to vote on the proposed amendment of the proposed  
14 members' meeting in accordance with section seven hundred  
15 five, article seven of this chapter. The notice of meeting must  
16 also state that the purpose, or one of the purposes, of the  
17 meeting is to consider the proposed restatement and contain or  
18 be accompanied by a copy of the restatement that identifies any  
19 amendment or other change it would make in the articles.

20 (d) A corporation restating its articles of incorporation shall  
21 deliver to the secretary of state for filing articles of restatement  
22 setting forth the name of the corporation and the text of the  
23 restated articles of incorporation together with a statement  
24 setting forth: (1) Whether the restatement contains an amend-  
25 ment to the articles of incorporation requiring member approval  
26 and, if it does not, that the board of directors, or the incorpora-  
27 tors before the corporation had directors, adopted the restate-  
28 ment; or (2) if the restatement contains an amendment to the  
29 articles of incorporation requiring member approval, the  
30 information required by section one thousand five of this  
31 article.

32 (e) Duly adopted restated articles of incorporation super-  
33 sede the original articles of incorporation and all amendments  
34 to it.

35 (f) The secretary of state may certify a restated articles of  
36 incorporation, as the articles of incorporation currently in  
37 effect, without including the statement information required by  
38 subsection (d) of this section.

**§31E-10-1007. Amendment pursuant to reorganization.**

1 (a) A corporation's articles of incorporation may be  
2 amended without action by the board of directors or the  
3 members to carry out a plan of reorganization ordered or  
4 decreed by a court of competent jurisdiction under federal  
5 statute if the articles of incorporation after amendment contains  
6 only provisions required or permitted by section two hundred  
7 two, article two of this chapter.

8 (b) The individual or individuals designated by the court  
9 shall deliver to the secretary of state for filing articles of  
10 amendment setting forth:

11 (1) The name of the corporation;

12 (2) The text of each amendment approved by the court;

13 (3) The date of the court's order or decree approving the  
14 articles of amendment;

15 (4) The title of the reorganization proceeding in which the  
16 order or decree was entered; and

17 (5) A statement that the court had jurisdiction of the  
18 proceeding under federal law.

19 (c) This section does not apply after entry of a final decree  
20 in the reorganization proceeding even though the court retains  
21 jurisdiction of the proceeding for limited purposes unrelated to  
22 consummation of the reorganization plan.

**§31E-10-1008. Effect of amendment.**

1 An amendment to the articles of incorporation does not  
2 affect a cause of action existing against or in favor of the  
3 corporation, a proceeding to which the corporation is a party or  
4 the existing rights of persons other than members of the  
5 corporation. An amendment changing a corporation's name

6 does not abate a proceeding brought by or against the corpora-  
7 tion in its former name.

#### PART 2. AMENDMENT OF BYLAWS.

#### **§31E-10-1020. Amendment by board of directors or members.**

1 (a) A corporation's members entitled to vote may amend or  
2 repeal the corporation's bylaws.

3 (b) A corporation's board of directors may amend or repeal  
4 the corporation's bylaws, unless:

5 (1) The articles of incorporation or section one thousand  
6 twenty-one of this article reserve that power exclusively to the  
7 members in whole or part; or

8 (2) The members in amending, repealing, or adopting a  
9 bylaw expressly provide that the board of directors may not  
10 amend, repeal, or reinstate that bylaw.

#### **§31E-10-1021. Bylaw increasing quorum or voting requirement for directors.**

1 (a) A bylaw that increases a quorum or voting requirement  
2 for the board of directors may be amended or repealed:

3 (1) If adopted by the members, only by the members, unless  
4 the bylaw otherwise provides; or

5 (2) If adopted by the board of directors, either by the  
6 members or by the board of directors.

7 (b) A bylaw adopted or amended by the members that  
8 increases a quorum or voting requirement for the board of  
9 directors may provide that it can be amended or repealed only  
10 by a specified vote of either the members or the board of  
11 directors.



12 (c) Action by the board of directors under subsection (a) of  
13 this section to amend or repeal a bylaw that changes the quorum  
14 or voting requirement for the board of directors must meet the  
15 same quorum requirement and be adopted by the same vote  
16 required to take action under the quorum and voting require-  
17 ment then in effect or proposed to be adopted, whichever is  
18 greater.

**§31E-10-1022. Bylaw increasing quorum or voting requirement  
for members.**

1 (a) If authorized by the articles of incorporation, the  
2 members may adopt or amend a bylaw that fixes a greater  
3 quorum or voting requirement for members or classes of  
4 members than is required by this chapter. The adoption or  
5 amendment of a bylaw that adds, changes or deletes a greater  
6 quorum requirement for members must meet the same quorum  
7 requirement and be adopted by the same vote and classes of  
8 members required to take action under the quorum and voting  
9 requirement then in effect or proposed to be adopted, whichever  
10 is greater.

11 (b) A bylaw that fixes a greater quorum or voting require-  
12 ment for members under subsection (a) of this section may not  
13 be adopted, amended or repealed by the board of directors.

**ARTICLE 11. MERGERS.**

§31E-11-1101. Merger.

§31E-11-1102. Action on plan of merger.

§31E-11-1103. Articles of merger.

§31E-11-1104. Effect of merger.

**§31E-11-1101. Merger.**

1 (a) One or more domestic corporations may merge with a  
2 domestic or foreign corporation or other entity pursuant to a  
3 plan of merger.

4 (b) A foreign corporation, or a domestic or foreign other  
5 entity, may be a party to the merger, or may be created by the  
6 terms of the plan of merger, only if:

7 (1) The merger is permitted by the laws under which the  
8 corporation or other entity is organized or by which it is  
9 governed; and

10 (2) In effecting the merger, the corporation or other entity  
11 complies with the laws under which the corporation or other  
12 entity is organized or by which it is governed and with its  
13 articles of incorporation or organizational documents.

14 (c) The plan of merger must include:

15 (1) The name of each corporation or other entity that will  
16 merge and the name of the corporation or other entity that will  
17 be the survivor of the merger;

18 (2) The terms and conditions of the merger;

19 (3) The manner and basis of converting the memberships,  
20 if any, of each merging corporation and interests of each  
21 merging entity, interests, obligations, cash, other property, or  
22 any combination of the foregoing;

23 (4) The articles of incorporation of any corporation, or the  
24 organizational documents of any other entity, to be created by  
25 the merger, or if a new corporation or other entity is not to be  
26 created by the merger, any amendments to the survivor's  
27 articles of incorporation or organizational documents; and

28 (5) Any other provisions required by the laws under which  
29 any party to the merger is organized or by which it is governed,  
30 or by the articles of incorporation or organizational documents  
31 of any party to the merger.

32 (d) The terms described in subdivisions (2) and (3),  
33 subsection (c) of this section may be made dependent on facts  
34 ascertainable outside the plan of merger, provided that those  
35 facts are objectively ascertainable. The term "facts" includes,  
36 but is not limited to, the occurrence of any event, including a  
37 determination or action by any person or body, including the  
38 corporation.

39 (e) The plan of merger may also include a provision that the  
40 plan may be amended prior to filing the articles of merger with  
41 the secretary of state: *Provided*, That if the members of a  
42 domestic corporation that is a party to the merger are required  
43 or permitted to vote on the plan, the plan must provide that  
44 subsequent to approval of the plan by the members the plan  
45 may not be amended to:

46 (1) Change the manner and basis of converting the member-  
47 ships, if any;

48 (2) Change the articles of incorporation of any corporation,  
49 or the organizational documents of any other entity, that will  
50 survive or be created as a result of the merger, except for  
51 changes permitted by section one thousand five, article ten of  
52 this chapter or by comparable provisions of the laws under  
53 which the foreign corporation or other entity is organized or  
54 governed; or

55 (3) Change any of the other terms or conditions of the plan  
56 if the change would adversely affect the members in any  
57 material respect.

### **§31E-11-1102. Action on plan of merger.**

1 (a) After adopting a plan of merger, the board of directors  
2 of each corporation party to the merger shall submit the plan of  
3 merger, except as provided in subsection (h) of this section, for

4 approval by those members who are entitled to vote on a plan  
5 of merger, if any.

6 (b) For a plan of merger to be approved: (1) The board of  
7 directors must approve the plan of merger; (2) the board of  
8 directors must recommend the plan of merger to the members  
9 entitled to vote on the plan of merger, if any, unless the board  
10 of directors determines that because of conflicts of interest or  
11 other special circumstances it should make no recommendation  
12 and communicates the basis for its determination to the  
13 members entitled to vote on the plan of merger with the  
14 submission of the plan; and (3) the members entitled to vote on  
15 the plan must approve the plan, either before or after the actions  
16 required in subdivisions (1) and (2) of this subsection, as  
17 provided in subsection (e) of this section.

18 (c) The board of directors may condition its submission of  
19 the proposed merger on any basis.

20 (d) The corporation shall notify each member, entitled to  
21 vote on the plan, if any, of the proposed members' meeting in  
22 accordance with section seven hundred five, article seven of  
23 this chapter. The notice is also to state that the purpose, or one  
24 of the purposes, of the meeting is to consider the plan of merger  
25 and contain or be accompanied by a copy or summary of the  
26 plan.

27 (e) Unless this chapter, the articles of incorporation or the  
28 board of directors acting pursuant to subsection (c) of this  
29 section requires a greater vote or a vote by class of members,  
30 the plan of merger to be adopted must be approved by: (1) If no  
31 class of members is entitled to vote separately on the plan as a  
32 class, at least two thirds of the votes cast by the members  
33 entitled to vote; and (2) if any class of members is entitled to  
34 vote on the plan separately as a class, at least two thirds of the

35 votes cast by the members of each class whose members are  
36 entitled to vote.

37 (f) Separate voting by class of members is required on a  
38 plan of merger if the plan contains a provision that, if contained  
39 in a proposed amendment to articles of incorporation, would  
40 require action by one or more separate classes of members on  
41 the proposed amendment under the articles of incorporation of  
42 the corporation.

43 (g) Approval of the plan of merger by the corporation  
44 requires a greater or additional vote if:

45 (1) In the case of the surviving corporation, a plan of  
46 merger contains any provision which, if contained in a proposed  
47 amendment to its articles of incorporation would require a  
48 greater vote than, or additional vote to, that otherwise required  
49 to approve the plan of merger; or

50 (2) In the case of any terminating corporation, a sale of all  
51 or substantially all assets, or dissolution, would under the  
52 circumstances require a greater vote than, or additional vote to,  
53 that otherwise required to approve the plan of merger.

54 (h) Action by the members of the surviving corporation on  
55 a plan of merger is not required if:

56 (1) The articles of incorporation of the surviving corpora-  
57 tion will not differ, except for amendments enumerated in  
58 section one thousand two, article ten of this chapter from its  
59 articles of incorporation before the merger; and

60 (2) Each member of the surviving corporation immediately  
61 before the effective date of the merger will be a member with  
62 identical designations, qualifications, privileges and rights  
63 immediately after the merger.

64 (i) After a merger is authorized, and at any time before the  
65 articles of merger is filed, the planned merger may be aban-  
66 doned, subject to any contractual rights, without further  
67 member action, in accordance with the procedure set forth in  
68 the plan of merger or, if none is set forth, in the manner  
69 determined by the board of directors.

70 (j) If any merging corporation has no members, or no  
71 members entitled to vote on the merger, a plan of merger is to  
72 be adopted by the board of directors.

**§31E-11-1103. Articles of merger.**

1 (a) After a plan of merger is approved as required by  
2 section one thousand one hundred two of this article, the  
3 surviving corporation shall deliver to the secretary of state for  
4 filing articles of merger setting forth: (1) The plan of merger;  
5 (2) a statement to the effect that the plan of merger was adopted  
6 by the board of directors of each corporation party to the  
7 merger; (3) if member approval was not required, a statement  
8 to that effect; and (4) if approval of members of one or more  
9 corporations party to the merger was required: (A) The designa-  
10 tion of each class of members entitled to vote separately on the  
11 plan as to each corporation; and (B) the total number of votes  
12 cast for and against the plan by each class of members entitled  
13 to vote separately on the plan as to each corporation and a  
14 statement that the number cast for the plan by each class of  
15 members was sufficient for approval by that class.

16 (b) A merger takes effect upon issuance by the secretary of  
17 state of a certificate of merger to the survivor corporation.

18 (c) The secretary of state shall withhold the issuance of any  
19 certificate of merger in the case where the new or surviving  
20 corporation will be a foreign corporation which has not  
21 qualified to conduct affairs or do or transact business or hold  
22 property in this state until the receipt by the secretary of state of

23 a notice from the tax commissioner and bureau of employment  
24 programs to the effect that all taxes due from said corporation  
25 under the provisions of chapter eleven of this code, including,  
26 but not limited to, taxes withheld under the provisions of  
27 section seventy-one, article twenty-one, chapter eleven of this  
28 code, all business and occupation taxes, motor carrier and  
29 transportation privilege taxes, gasoline taxes, consumer sales  
30 taxes and any and all license franchise or other excise taxes and  
31 corporate net income taxes, and employment security payments  
32 levied or assessed against the corporation seeking to dissolve  
33 have been paid or that the payment has been provided for, or  
34 until the secretary of state received a notice from the tax  
35 commissioner or bureau of employment programs stating that  
36 the corporation in question is not subject to payment of any  
37 taxes or to the making of any employment security payments or  
38 assessments.

**§31E-11-1104. Effect of merger.**

1 When a merger takes effect:

2 (1) Every other corporation party to the merger merges into  
3 the surviving corporation and the separate existence of every  
4 corporation except the surviving corporation ceases;

5 (2) All property owned by, and every contract right  
6 possessed by, each corporation or other entity that merges into  
7 the survivor is vested in the survivor without reversion or  
8 impairment;

9 (3) All real property located in the state owned by each  
10 corporation or other entity that merges into the survivor passes  
11 by operation of law and the transfer is evidenced by recording  
12 a confirmation deed in each county in which the real property  
13 is located. No transfer or excise taxes may be assessed for the  
14 recording of the confirmation deeds.

15 (4) The surviving corporation has all liabilities of each  
16 corporation party to the merger;

17 (5) A proceeding pending against any corporation party to  
18 the merger may be continued as if the merger did not occur or  
19 the surviving corporation may be substituted in the proceeding  
20 for the corporation whose existence ceased;

21 (6) The articles of incorporation of the surviving corpora-  
22 tion is amended to the extent provided in the plan of merger;

23 (7) The memberships, if any, of each corporation party to  
24 the merger that are to be converted into memberships of the  
25 surviving corporation are converted, and the former members  
26 in the membership classes are entitled only to the designation,  
27 qualifications, privileges and rights of the class of members to  
28 which they are converted, as provided in the articles of incorpo-  
29 ration of the surviving corporation as the articles may be  
30 amended by the plan of merger; and

31 (8) Any devise, bequest, gift or grant, contained in any will  
32 or in any other instrument, made before or after the merger, to  
33 or for the benefit of any of the merging corporations inures to  
34 the benefit of the surviving corporation, and so far as is  
35 necessary for that purpose, the existence of each merging  
36 corporation is deemed to continue in and through the surviving  
37 or new corporation.

#### **ARTICLE 12. DISPOSITION OF ASSETS.**

§31E-12-1201. Disposition of assets not requiring member approval.

§31E-12-1202. Member approval of certain dispositions.

#### **§31E-12-1201. Disposition of assets not requiring member approval.**

1 No approval of the members of a corporation is required,  
2 unless the articles of incorporation otherwise provide:



3       (1) To sell, lease, exchange, or otherwise dispose of any or  
4 all of the corporation's assets in the usual and regular course of  
5 business;

6       (2) To mortgage, pledge, dedicate to the repayment of  
7 indebtedness with or without recourse, or otherwise encumber  
8 any or all of the corporation's assets, whether or not in the usual  
9 and regular course of business; or

10       (3) To transfer any or all of the corporation's assets to one  
11 or more corporations or other entities all of the shares or  
12 interests of which are owned by the corporation.

**§31E-12-1202. Member approval of certain dispositions.**

1       (a) If the corporation has members entitled to vote on the  
2 transaction, a sale, lease, exchange, or other disposition of  
3 assets, other than a disposition described in section one thou-  
4 sand two hundred one of this article, requires approval of the  
5 corporation's members if the disposition would leave the  
6 corporation without a significant continuing business activity.  
7 If a corporation retains an activity that represented at least  
8 twenty-five percent of total assets at the end of the most  
9 recently completed fiscal year, and twenty-five percent of either  
10 income from continuing operations before taxes or revenues  
11 from continuing operations for that fiscal year, in each case of  
12 the corporation and its subsidiaries on a consolidated basis, the  
13 corporation will conclusively be deemed to have retained a  
14 significant continuing activity.

15       (b) A disposition that requires approval of the members  
16 under subsection (a) of this section must be initiated by a  
17 resolution by the board of directors authorizing the disposition.  
18 After adoption of a resolution, the board of directors shall  
19 submit the proposed disposition to the members for their  
20 approval. The board of directors shall also transmit to the  
21 members a recommendation that the members approve the

22 proposed disposition, unless the board of directors makes a  
23 determination that because of conflicts of interest or other  
24 special circumstances it should not make a recommendation  
25 that the members approve the disposition, in which case the  
26 board of directors shall transmit to the members the basis for  
27 that determination.

28 (c) The board of directors may condition its submission of  
29 a disposition to the members under subsection (b) of this  
30 section on any basis.

31 (d) If a disposition is required to be approved by the  
32 members under subsection (a) of this section, and if the  
33 approval is to be given at a meeting, the corporation shall notify  
34 each member entitled to vote of the meeting of members at  
35 which the disposition is to be submitted for approval. The  
36 notice must state that the purpose, or one of the purposes, of the  
37 meeting is to consider the disposition and is to contain a  
38 description of the disposition, including the terms and condi-  
39 tions of the disposition and the consideration to be received by  
40 the corporation.

41 (e) Unless this chapter or the articles of incorporation or the  
42 board of directors acting pursuant to subsection (c) of this  
43 section requires a greater vote, or a greater number of votes to  
44 be present, the approval of a disposition by the members  
45 requires the approval of the members at a meeting at which a  
46 quorum consisting of at least a majority of the votes entitled to  
47 be cast on the disposition exists.

48 (f) After a disposition has been approved by the members  
49 under subsection (b) of this section, and at any time before the  
50 disposition has been consummated, it may be abandoned by the  
51 corporation without action by the members, subject to any  
52 contractual rights of other parties to the disposition.

53 (g) A disposition of assets in the course of dissolution under  
54 article thirteen of this chapter is not governed by this section.

55 (h) The assets of a direct or indirect consolidated subsidiary  
56 are to be deemed the assets of the parent corporation for the  
57 purposes of this section.

#### **ARTICLE 13. DISSOLUTION.**

- §31E-13-1301. Dissolution by incorporators or initial directors.
- §31E-13-1302. Dissolution by board of directors and members.
- §31E-13-1303. Articles of dissolution.
- §31E-13-1304. Revocation of dissolution.
- §31E-13-1305. Effect of dissolution.
- §31E-13-1306. Known claims against dissolved corporation.
- §31E-13-1307. Unknown claims against dissolved corporation.
- §31E-13-1308. Adoption of plan for distribution of assets.
- §31E-13-1309. Liquidation distribution of assets.
- §31E-13-1320. Grounds for administrative dissolution.
- §31E-13-1321. Procedure for and effect of administrative dissolution.
- §31E-13-1322. Reinstatement following administrative dissolution.
- §31E-13-1323. Appeal from denial of reinstatement.
- §31E-13-1330. Grounds for judicial dissolution.
- §31E-13-1331. Procedure for judicial dissolution.
- §31E-13-1332. Receivership or custodianship.
- §31E-13-1333. Decree of dissolution.
- §31E-13-1340. Deposit with state treasurer.

#### **PART 1. VOLUNTARY DISSOLUTION.**

##### **§31E-13-1301. Dissolution by incorporators or initial directors.**

1 A majority of the incorporators or initial directors of a  
2 corporation that has not commenced activities may dissolve the  
3 corporation by delivering to the secretary of state for filing  
4 articles of dissolution that set forth:

5 (1) The name of the corporation;

6 (2) The date of its incorporation;

7 (3) That the corporation has no member entitled to vote;

8 (4) That the corporation has not commenced the activities  
9 for which it was incorporated;

10 (5) That no debt of the corporation remains unpaid;

11 (6) That the net assets of the corporation remaining after  
12 winding up have been distributed as required by this chapter;  
13 and

14 (7) That a majority of the incorporators or initial directors  
15 authorized the dissolution.

**§31E-13-1302. Dissolution by board of directors and members.**

1 (a) A corporation's board of directors may propose dissolu-  
2 tion for submission to those members entitled to vote on the  
3 dissolution.

4 (b) For a proposal to dissolve to be adopted:

5 (1) The board of directors must recommend dissolution to  
6 the members unless the board of directors determines that  
7 because of conflict of interest or other special circumstances it  
8 should make no recommendation and communicates the basis  
9 for its determination to the members; and

10 (2) The members entitled to vote must approve the proposal  
11 to dissolve as provided in subsection (e) of this section.

12 (c) The board of directors may condition its submission of  
13 the proposal for dissolution on any basis.

14 (d) The corporation shall notify each member entitled to  
15 vote of the proposed members' meeting. The notice must also  
16 state that the purpose, or one of the purposes, of the meeting is  
17 to consider dissolving the corporation.

18 (e) Unless the articles of incorporation or the board of  
19 directors acting pursuant to subsection (c) of this section require  
20 a greater vote, adoption of the proposal to dissolve requires the  
21 approval of the members at a meeting at which a quorum  
22 consisting of at least a majority of the votes entitled to be cast  
23 exists.

24 (f) If the corporation has no members, or no members  
25 entitled to vote upon dissolution, dissolution must be authorized  
26 by resolution of the board of directors.

**§31E-13-1303. Articles of dissolution.**

1 (a) At any time after dissolution is authorized, the corpora-  
2 tion may dissolve by delivering to the secretary of state for  
3 filing articles of dissolution setting forth:

4 (1) The name of the corporation;

5 (2) The date dissolution was authorized; and

6 (3) If dissolution was approved by the members, a state-  
7 ment that the proposal to dissolve was duly approved by the  
8 members in the manner required by this chapter and by the  
9 articles of incorporation.

10 (b) A corporation is dissolved upon the receipt by the  
11 corporation of a certificate of dissolution from the secretary of  
12 state.

13 (c) The secretary of state shall issue a certificate of dissolu-  
14 tion to the corporation delivering articles of dissolution upon  
15 receipt by the secretary of state of a notice from the tax  
16 commissioner and bureau of employment programs to the effect  
17 that all taxes due from the corporation under the provisions of  
18 chapter eleven of this code, including, but not limited to, taxes  
19 withheld under the provisions of section seventy-one, article

20 twenty-one of said chapter eleven of this code, all business and  
21 occupation taxes, motor carrier and transportation privilege  
22 taxes, gasoline taxes, consumer sales taxes and any and all  
23 license franchise or other excise taxes and corporate net income  
24 taxes, and employment security payments levied or assessed  
25 against the corporation seeking to dissolve have been paid or  
26 that the payment has been provided for, or until the secretary of  
27 state received a notice from the tax commissioner or bureau of  
28 employment programs, as the case may be, stating that the  
29 corporation in question is not subject to payment of any taxes  
30 or to the making of any employment security payments or  
31 assessments.

**§31E-13-1304. Revocation of dissolution.**

1 (a) A corporation may revoke its dissolution within one  
2 hundred twenty days of its effective date.

3 (b) Revocation of dissolution must be authorized in the  
4 same manner as the dissolution was authorized unless that  
5 authorization permitted revocation by action of the board of  
6 directors alone, in which event the board of directors may  
7 revoke the dissolution without member action.

8 (c) After the revocation of dissolution is authorized, the  
9 corporation may revoke the dissolution by delivering to the  
10 secretary of state for filing articles of revocation of dissolution,  
11 together with a copy of its articles of dissolution, that set forth:

12 (1) The name of the corporation;

13 (2) The effective date of the dissolution that was revoked;

14 (3) The date that the revocation of dissolution was autho-  
15 rized;

16 (4) If the corporation's board of directors or incorporators  
17 revoked the dissolution, a statement to that effect;

18 (5) If the corporation's board of directors revoked a  
19 dissolution authorized by the members, a statement that  
20 revocation was permitted by action by the board of directors  
21 alone pursuant to that authorization; and

22 (6) If member action was required to revoke the dissolution,  
23 the information required by subdivision (3), subsection (a),  
24 section one thousand three hundred three of this article.

25 (d) Revocation of dissolution is effective upon the effective  
26 date of the articles of revocation of dissolution.

27 (e) When the revocation of dissolution is effective, it relates  
28 back to and takes effect as of the effective date of the dissolu-  
29 tion and the corporation resumes carrying on its activities as if  
30 dissolution had never occurred.

**§31E-13-1305. Effect of dissolution.**

1 (a) A dissolved corporation continues its corporate exist-  
2 tence but may not carry on any activities except those appropri-  
3 ate to wind up and liquidate its activities and affairs, including:

4 (1) Adopting a plan providing for the distribution of assets  
5 under section one thousand three hundred eight of this article.

6 (2) Collecting its assets;

7 (3) Disposing of its properties that will not be distributed in  
8 kind pursuant to the plan of distribution consistent with the  
9 requirements of section one thousand three hundred eight of  
10 this article;

11 (4) Discharging or making provision for discharging its  
12 liabilities;

13 (5) Distributing its remaining assets in accordance with  
14 sections one thousand three hundred eight and one thousand  
15 three hundred nine of this article; and

16 (6) Doing every other act necessary to wind up and liqui-  
17 date its activities and affairs.

18 (b) Dissolution of a corporation does not:

19 (1) Transfer title to the corporation's property;

20 (2) Prevent transfer of its transferable membership interests,  
21 if any, although the authorization to dissolve may provide for  
22 closing the corporation's membership records;

23 (3) Subject its directors or officers to standards of conduct  
24 different from those prescribed in article eight of this chapter;

25 (4) Change quorum or voting requirements for its board of  
26 directors or members; change provisions for selection, resigna-  
27 tion, or removal of its directors or officers or both; or change  
28 provisions for amending its bylaws;

29 (5) Prevent commencement of a proceeding by or against  
30 the corporation in its corporate name;

31 (6) Abate or suspend a proceeding pending by or against the  
32 corporation on the effective date of dissolution;

33 (7) Terminate the authority of the registered agent of the  
34 corporation; or

35 (8) Of itself, render the members liable for any liability or  
36 other obligations of the corporation or vest title to the property  
37 of the corporation in the members.

**§31E-13-1306. Known claims against dissolved corporation.**



1 (a) A dissolved corporation may dispose of the known  
2 claims against it by following the procedure described in this  
3 section.

4 (b) The dissolved corporation shall notify its known  
5 claimants in writing of the dissolution at any time after its  
6 effective date. The written notice must:

7 (1) Describe information that must be included in a claim;

8 (2) Provide a mailing address where a claim may be sent;

9 (3) State the deadline, which may not be fewer than one  
10 hundred twenty days from the effective date of the written  
11 notice, by which the dissolved corporation must receive the  
12 claim; and

13 (4) State that the claim will be barred if not received by the  
14 deadline.

15 (c) A claim against the dissolved corporation is barred:

16 (1) If a claimant who was given written notice under  
17 subsection (b) of this section does not deliver the claim to the  
18 dissolved corporation by the deadline; or

19 (2) If a claimant whose claim was rejected by the dissolved  
20 corporation does not commence a proceeding to enforce the  
21 claim within ninety days from the effective date of the rejection  
22 notice.

23 (d) For purposes of this section, "claim" does not include  
24 a contingent liability or a claim based on an event occurring  
25 after the effective date of dissolution.

**§31E-13-1307. Unknown claims against dissolved corporation.**

1 (a) A dissolved corporation may also publish notice of its  
2 dissolution and request that persons with claims against the  
3 corporation present them in accordance with the notice.

4 (b) The notice must:

5 (1) Be published one time in a newspaper of general  
6 circulation in the county where the dissolved corporation's  
7 principal office, or if the corporation had no principal office in  
8 this state, in any county where it conducts its affairs;

9 (2) Describe the information that must be included in a  
10 claim and provide a mailing address where the claim may be  
11 sent; and

12 (3) State that a claim against the corporation will be barred  
13 unless a proceeding to enforce the claim is commenced within  
14 five years after the publication of the notice.

15 (c) If the dissolved corporation publishes a newspaper  
16 notice in accordance with subsection (b) of this section, the  
17 claim of each of the following claimants is barred unless the  
18 claimant commences a proceeding to enforce the claim against  
19 the dissolved corporation within five years after the publication  
20 date of the newspaper notice:

21 (1) A claimant who did not receive written notice under  
22 section one thousand three hundred six of this article;

23 (2) A claimant whose claim was timely sent to the dis-  
24 solved corporation but not acted on; and

25 (3) A claimant whose claim is contingent or based on an  
26 event occurring after the effective date of dissolution.

27 (d) A claim may be enforced under this section:

28 (1) Against the dissolved corporation, to the extent of its  
29 undistributed assets; or

30 (2) If the assets have been distributed in liquidation, against  
31 a member of the dissolved corporation to the extent of his or her  
32 pro rata share of the claim or the corporate assets distributed to  
33 him or her in liquidation, whichever is less, but a member's  
34 total liability for all claims under this section may not exceed  
35 the total amount of assets distributed to him or her.

**§31E-13-1308. Adoption of plan for distribution of assets.**

1 A plan providing for the distribution of assets, not inconsis-  
2 tent with the provisions of this chapter is to be adopted by a  
3 corporation for the purpose of authorizing any transfer or  
4 conveyance of assets for which section one thousand three  
5 hundred nine of this article requires a plan of distribution, in the  
6 following manner:

7 (1) Where there are members of any class entitled to vote  
8 on dissolution, the board of directors shall adopt a resolution  
9 recommending a plan of distribution and directing the submis-  
10 sion of the plan to a vote of each class of members entitled to  
11 vote. Written notice setting forth the proposed plan of distribu-  
12 tion or a summary of the plan is to be given to each member  
13 entitled to vote in accordance with section seven hundred five,  
14 article seven of this chapter. The plan of distribution is to be  
15 adopted upon receiving the approval of a majority of the votes  
16 cast by each class of members voting as a class.

17 (2) Where there are no members entitled to vote on  
18 dissolution, a plan of distribution is to be adopted by resolution  
19 of the board of directors, or, if directors have not yet been  
20 appointed, by resolution approved by a majority of the incorpo-  
21 rators.

**§31E-13-1309. Liquidating distribution of assets.**

1           (a) The assets of a corporation in the process of dissolution  
2 are to be applied and distributed as follows: (1) All liabilities  
3 and other obligations of the corporation are to be paid, satisfied  
4 and discharged, or adequate provision made for their payment,  
5 satisfaction and discharge; (2) assets held by the corporation  
6 upon condition requiring return, transfer or conveyance, which  
7 condition occurs by reason of the dissolution, are to be returned,  
8 transferred or conveyed in accordance with the conditions; (3)  
9 assets received and held by the corporation subject to limita-  
10 tions permitting their use only for charitable, religious, eleemo-  
11 synary, benevolent, educational or similar purposes, but not  
12 held upon a condition requiring return, transfer or conveyance  
13 by reason of the dissolution, are to be transferred or conveyed  
14 to one or more domestic or foreign corporations, societies or  
15 organizations engaged in activities substantially similar to those  
16 of the dissolving corporation, pursuant to a plan of distribution  
17 adopted as provided in section one thousand three hundred eight  
18 of this article; (4) other assets, if any, are to be distributed pro  
19 rata among the members of the corporation except to the extent  
20 that the articles of incorporation determines the distributive  
21 rights of members, or any class or classes of members, or  
22 provides for distribution to others; and (5) any remaining assets  
23 may be distributed to persons, societies, organizations or  
24 domestic or foreign corporations, whether for profit or non-  
25 profit, as may be specified in a plan of distribution adopted as  
26 provided in section one thousand three hundred eight of this  
27 article.

28           (b) No final liquidating distribution of assets may be made  
29 by a dissolved corporation until the corporation has obtained a  
30 current statement or statements from the tax commissioner and  
31 bureau of employment programs to the effect that all taxes due  
32 from the corporation under the provisions of chapter eleven of  
33 this code, including, but not limited to, taxes withheld under the  
34 provisions of section seventy-one, article twenty-one of said  
35 chapter eleven of this code, all business and occupation taxes,

36 motor carrier and transportation privilege taxes, gasoline taxes,  
37 consumer sales taxes and any and all license franchise or other  
38 excise taxes and corporate net income taxes, and employment  
39 security payments levied or assessed against the corporation  
40 seeking to dissolve have been paid or that the payment has been  
41 provided for, or until the secretary of state received a notice  
42 from the tax commissioner or bureau of employment programs,  
43 as the case may be, stating that the corporation in question is  
44 not subject to payment of any taxes or to the making of any  
45 employment security payments or assessments.

#### PART 2. ADMINISTRATIVE DISSOLUTION.

#### **§31E-13-1320. Grounds for administrative dissolution.**

1 The secretary of state may commence a proceeding under  
2 section one thousand three hundred twenty-one of this article to  
3 administratively dissolve a corporation if:

4 (1) The corporation does not pay within sixty days after  
5 they are due any franchise taxes or penalties imposed by this  
6 chapter or other law;

7 (2) The corporation does not notify the secretary of state  
8 within sixty days that its registered agent or registered office  
9 has been changed, that its registered agent has resigned, or that  
10 its registered office has been discontinued; or

11 (3) The corporation's period of duration stated in its articles  
12 of incorporation expires.

#### **§31E-13-1321. Procedure for and effect of administrative dissolution.**

1 (a) If the secretary of state determines that one or more  
2 grounds exist under section one thousand three hundred twenty  
3 of this article for dissolving a corporation, he or she shall serve

4 the corporation with written notice of his or her determination  
5 pursuant to section five hundred four, article five of this  
6 chapter.

7 (b) If the corporation does not correct each ground for  
8 dissolution or demonstrate to the reasonable satisfaction of the  
9 secretary of state that each ground determined by the secretary  
10 of state does not exist within sixty days after service of the  
11 notice is perfected under section five hundred four, article five  
12 of this chapter, the secretary of state shall administratively  
13 dissolve the corporation by signing a certificate of dissolution  
14 that recites the ground or grounds for dissolution and its  
15 effective date. The secretary of state shall file the original of the  
16 certificate and serve a copy on the corporation pursuant to  
17 section five hundred four, article five of this chapter.

18 (c) A corporation administratively dissolved continues its  
19 corporate existence but may not carry on any activities except  
20 that necessary to wind up and liquidate its business and affairs  
21 under section one thousand three hundred five of this article and  
22 notify claimants pursuant to sections one thousand three  
23 hundred six and one thousand three hundred seven of this  
24 article.

25 (d) The administrative dissolution of a corporation does not  
26 terminate the authority of its registered agent.

**§31E-13-1322. Reinstatement following administrative dissolution.**

1 (a) A corporation administratively dissolved under section  
2 one thousand three hundred twenty-one of this article may  
3 apply to the secretary of state for reinstatement within two  
4 years after the effective date of dissolution. The application  
5 must:

6 (1) Recite the name of the corporation and the effective  
7 date of its administrative dissolution;

8 (2) State that the ground or grounds for dissolution either  
9 did not exist or have been eliminated;

10 (3) State that the corporation's name satisfies the require-  
11 ments of section four hundred one, article four of this chapter;  
12 and

13 (4) Contain a certificate from the tax commissioner reciting  
14 that all taxes owed by the corporation have been paid.

15 (b) If the secretary of state determines that the application  
16 contains the information required by subsection (a) of this  
17 section and that the information is correct, he or she shall  
18 cancel the certificate of dissolution and prepare a certificate of  
19 reinstatement that recites his or her determination and the  
20 effective date of reinstatement, file the original of the certifi-  
21 cate, and serve a copy on the corporation pursuant to section  
22 five hundred four, article five of this chapter.

23 (c) When the reinstatement is effective, it relates back to  
24 and takes effect as of the effective date of the administrative  
25 dissolution and the corporation resumes carrying on its activi-  
26 ties as if the administrative dissolution had never occurred.

**§31E-13-1323. Appeal from denial of reinstatement.**

1 (a) If the secretary of state denies a corporation's applica-  
2 tion for reinstatement following administrative dissolution, he  
3 or she shall serve the corporation pursuant to section five  
4 hundred four, article five of this chapter with a written notice  
5 that explains the reason or reasons for denial.

6 (b) The corporation may appeal the denial of reinstatement  
7 to the circuit court within thirty days after service of the notice

8 of denial is perfected. The corporation appeals by petitioning  
9 the circuit court to set aside the dissolution and attaching to the  
10 petition copies of the secretary of state's certificate of dissolu-  
11 tion, the corporation's application for reinstatement, and the  
12 secretary of state's notice of denial.

13 (c) The circuit court may summarily order the secretary of  
14 state to reinstate the dissolved corporation or may take other  
15 action the circuit court considers appropriate.

16 (d) The circuit court's final decision may be appealed as in  
17 other civil proceedings.

### PART 3. JUDICIAL DISSOLUTION.

#### **§31E-13-1330. Grounds for judicial dissolution.**

1 The circuit court may dissolve a corporation:

2 (1) In a proceeding by the attorney general if it is estab-  
3 lished that:

4 (A) The corporation obtained its articles of incorporation  
5 through fraud; or

6 (B) The corporation has continued to exceed or abuse the  
7 authority conferred upon it by law;

8 (2) In a proceeding by a member or director if it is estab-  
9 lished that:

10 (A) The directors are deadlocked in the management of the  
11 corporate affairs, the members are unable to break the deadlock,  
12 and irreparable injury to the corporation is threatened or being  
13 suffered, or the activities and affairs of the corporation can no  
14 longer be conducted in accordance with the corporation's  
15 purpose, because of the deadlock;



16 (B) The directors or those in control of the corporation have  
17 acted, are acting, or will act in a manner that is illegal, oppres-  
18 sive, or fraudulent; or

19 (C) The corporate assets are being misapplied or wasted;

20 (3) In a proceeding by a creditor if it is established that:

21 (A) The creditor's claim has been reduced to judgment, the  
22 execution on the judgment returned unsatisfied, and the  
23 corporation is insolvent; or

24 (B) The corporation has admitted in writing that the  
25 creditor's claim is due and owing and the corporation is  
26 insolvent; or

27 (4) In a proceeding by the corporation to have its voluntary  
28 dissolution continued under circuit court supervision.

### **§31E-13-1331. Procedure for judicial dissolution.**

1 (a) It is not necessary to make members or directors parties  
2 to a proceeding to dissolve a corporation unless relief is sought  
3 against them individually.

4 (b) A circuit court in a proceeding brought to dissolve a  
5 corporation may issue injunctions, appoint a receiver or  
6 custodian pendente lite with all powers and duties the circuit  
7 court directs, take other action required to preserve the corpo-  
8 rate assets wherever located, and carry on the activities of the  
9 corporation until a full hearing can be held.

### **§31E-13-1332. Receivership or custodianship.**

1 (a) A circuit court in a judicial proceeding brought to  
2 dissolve a corporation may appoint one or more receivers to  
3 wind up and liquidate, or one or more custodians to manage, the

4 activities and affairs of the corporation. The circuit court shall  
5 hold a hearing, after notifying all parties to the proceeding and  
6 any interested persons designated by the circuit court, before  
7 appointing a receiver or custodian. The circuit court appointing  
8 a receiver or custodian has exclusive jurisdiction over the  
9 corporation and all of its property wherever located.

10 (b) The circuit court may appoint an individual or a  
11 domestic or foreign corporation authorized to transact business  
12 in this state as a receiver or custodian. The circuit court may  
13 require the receiver or custodian to post bond, with or without  
14 sureties, in an amount the circuit court directs.

15 (c) The circuit court shall describe the powers and duties of  
16 the receiver or custodian in its appointing order, which may be  
17 amended from time to time. Among other powers:

18 (1) The receiver: (A) May dispose of all or any part of the  
19 assets of the corporation wherever located, at a public or private  
20 sale, if authorized by the circuit court; and (B) may sue and  
21 defend in his or her own name as receiver of the corporation in  
22 all circuit courts of this state; and

23 (2) The custodian may exercise all of the powers of the  
24 corporation, through or in place of its board of directors, to the  
25 extent necessary to manage the affairs of the corporation in the  
26 best interests of its members and creditors.

27 (d) The circuit court during a receivership may redesignate  
28 the receiver a custodian, and during a custodianship may  
29 redesignate the custodian a receiver, if doing it is in the best  
30 interests of the corporation, its members, if any, and creditors.

31 (e) The circuit court from time to time during the receiver-  
32 ship or custodianship may order compensation paid and  
33 expense disbursements or reimbursements made to the receiver

34 or custodian and his or her counsel from the assets of the  
35 corporation or proceeds from the sale of the assets.

**§31E-13-1333. Decree of dissolution.**

1 (a) If after a hearing the circuit court determines that one or  
2 more grounds for judicial dissolution described in section one  
3 thousand three hundred thirty of this article exist, it may enter  
4 a decree dissolving the corporation and specifying the effective  
5 date of the dissolution, and the clerk of the circuit court shall  
6 deliver a certified copy of the decree to the secretary of state,  
7 who shall file it.

8 (b) After entering the decree of dissolution, the circuit court  
9 shall direct the winding up and liquidation of the corporation's  
10 activities and affairs in accordance with section one thousand  
11 three hundred five of this article and the notification of claim-  
12 ants in accordance with sections one thousand three hundred six  
13 and one thousand three hundred seven of this article.

PART 4. MISCELLANEOUS.

**§31E-13-1340. Deposit with state treasurer.**

1 Assets of a dissolved corporation that should be transferred  
2 to a creditor, claimant, or member of the corporation who  
3 cannot be found or who is not competent to receive them are to  
4 be reduced to cash and deposited with the state treasurer or  
5 other appropriate state official for safekeeping. When the  
6 creditor, claimant, or member furnishes satisfactory proof of  
7 entitlement to the amount deposited, the state treasurer or other  
8 appropriate state official shall pay him or her or his or her  
9 representative that amount.

**ARTICLE 14. FOREIGN CORPORATIONS.**

- §31E-14-1401. Authority to conduct affairs required.
- §31E-14-1402. Consequences of conducting affairs without authority.
- §31E-14-1403. Application for certificate of authority.
- §31E-14-1404. Amended certificate of authority.
- §31E-14-1405. Effect of certificate of authority.
- §31E-14-1406. Corporate name of foreign corporation.
- §31E-14-1407. Registered office and registered agent of foreign corporation.
- §31E-14-1408. Change of registered office or registered agent of foreign corporation.
- §31E-14-1409. Resignation of registered agent of foreign corporation.
- §31E-14-1410. Service on foreign corporation.
- §31E-14-1420. Withdrawal of foreign corporation.
- §31E-14-1430. Grounds for revocation.
- §31E-14-1431. Procedure for and effect of revocation.
- §31E-14-1432. Appeal from revocation.

#### PART 1. CERTIFICATE OF AUTHORITY.

#### **§31E-14-1401. Authority to conduct affairs required.**

1           (a) A foreign corporation may not conduct affairs in this  
2 state until it obtains a certificate of authority from the secretary  
3 of state.

4           (b) The following activities, among others, do not constitute  
5 conducting affairs within the meaning of subsection (a) of this  
6 section:

7           (1) Maintaining, defending, or settling any proceeding;

8           (2) Holding meetings of the board of directors or members  
9 or carrying on other activities concerning internal corporate  
10 affairs;

11           (3) Maintaining bank accounts;

12           (4) Selling through independent contractors;

13 (5) Soliciting or obtaining orders, whether by mail or  
14 through employees or agents or otherwise, if the orders require  
15 acceptance outside this state before they become contracts;

16 (6) Creating or acquiring indebtedness, mortgages, and  
17 security interests in real or personal property;

18 (7) Securing or collecting debts or enforcing mortgages and  
19 security interests in property securing the debts;

20 (8) Owning, without more, real or personal property;

21 (9) Conducting an isolated transaction that is completed  
22 within thirty days and that is not one in the course of repeated  
23 transactions of a like nature;

24 (10) Conducting affairs in interstate commerce;

25 (11) Granting funds or other gifts;

26 (12) Distributing information to its shareholders or mem-  
27 bers;

28 (13) Effecting sales through independent contractors;

29 (14) The acquisition by purchase of lands secured by  
30 mortgage or deeds;

31 (15) Physical inspection and appraisal of property in West  
32 Virginia as security for deeds of trust, or mortgages and  
33 negotiations for the purchase of loans secured by property in  
34 West Virginia; and

35 (16) The management, rental, maintenance and sale; or the  
36 operating, maintaining, renting or otherwise, dealing with

37 selling or disposing of property acquired under foreclosure sale  
38 or by agreement in lieu of foreclosure sale.

39 (c) The list of activities in subsection (b) of this section is  
40 not exhaustive.

41 (d) A foreign corporation is to be deemed to be conducting  
42 affairs in this state if:

43 (1) The corporation makes a contract to be performed, in  
44 whole or in part, by any party thereto, in this state;

45 (2) The corporation commits a tort in whole or in part in  
46 this state; or

47 (3) The corporation manufactures, sells, offers for sale or  
48 supplies any product in a defective condition and that product  
49 causes injury to any person or property within this state  
50 notwithstanding the fact that the corporation had no agents,  
51 servants or employees or contacts within this state at the time  
52 of the injury.

53 (e) A foreign corporation's making of a contract, the  
54 committing of a manufacture or sale, offer of sale or supply of  
55 defective product as described in subsection (d) of this section  
56 is deemed to be the agreement of that foreign corporation that  
57 any notice or process served upon, or accepted by, the secretary  
58 of state in a proceeding against that foreign corporation arising  
59 from, or growing out of, contract, tort, or manufacture or sale,  
60 offer of sale or supply of the defective product has the same  
61 legal force and validity as process duly served on that corpora-  
62 tion in this state.

**§31E-14-1402. Consequences of conducting affairs without au-  
thority.**

1 (a) A foreign corporation conducting affairs in this state  
2 without a certificate of authority may not maintain a proceeding  
3 in any circuit court in this state until it obtains a certificate of  
4 authority.

5 (b) The successor to a foreign corporation that conducted  
6 affairs in this state without a certificate of authority and the  
7 assignee of a cause of action arising out of that business may  
8 not maintain a proceeding based on that cause of action in any  
9 circuit court in this state until the foreign corporation or its  
10 successor obtains a certificate of authority.

11 (c) A circuit court may stay a proceeding commenced by a  
12 foreign corporation, its successor, or assignee until it deter-  
13 mines whether the foreign corporation or its successor requires  
14 a certificate of authority. If it so determines, the circuit court  
15 may further stay the proceeding until the foreign corporation or  
16 its successor obtains the certificate.

17 (d) A foreign corporation which conducts affairs or does or  
18 transacts business in this state without a certificate of authority  
19 is liable to this state, for the years or parts of years during  
20 which it conducted affairs or did or transacted business in this  
21 state without a certificate of authority in an amount equal to all  
22 fees and taxes which would have been imposed by this chapter,  
23 or by any other provision of this code, upon the corporation had  
24 it duly applied for and received a certificate of authority to  
25 conduct affairs or do or transact business in this state as  
26 required by this article and had filed all reports, statements or  
27 returns required by this chapter or by any other chapter of this  
28 code, plus all penalties imposed for failure to pay any fees and  
29 taxes.

30 (e) Notwithstanding subsections (a) and (b) of this section,  
31 the failure of a foreign corporation to obtain a certificate of

32 authority does not impair the validity of its corporate acts or  
33 prevent it from defending any proceeding in this state.

34 (f) A foreign corporation conducting affairs in this state  
35 without a certificate of authority is conclusively presumed to  
36 have appointed the secretary of state as its attorney-in-fact to  
37 accept service of process and notice on behalf of the foreign  
38 corporation as provided in subsection (d), section one thousand  
39 four hundred ten of this article.

**§31E-14-1403. Application for certificate of authority.**

1 (a) A foreign corporation may apply for a certificate of  
2 authority to conduct affairs in this state by delivering an  
3 application to the secretary of state for filing. The application  
4 must set forth:

5 (1) The name of the foreign corporation or, if its name is  
6 unavailable for use in this state, a corporate name that satisfies  
7 the requirements of section one thousand four hundred six of  
8 this article;

9 (2) The name of the state or country under whose law it is  
10 incorporated;

11 (3) Its date of incorporation and period of duration;

12 (4) The mailing address of its principal office;

13 (5) The address of its registered office in this state, if any,  
14 and the name of its registered agent at that office, if any;

15 (6) The names and usual addresses of its current directors  
16 and officers; and

17 (7) The purpose or purposes of the corporation which it  
18 proposes to pursue in conducting its affairs or doing or transact-  
19 ing its business in this state.



20 (b) The foreign corporation shall deliver with the completed  
21 application a certificate of existence, or a document of similar  
22 import, duly authenticated by the secretary of state or other  
23 official having custody of corporate records in the state or  
24 country under whose law it is incorporated.

**§31E-14-1404. Amended certificate of authority.**

1 (a) A foreign corporation authorized to conduct affairs in  
2 this state must obtain an amended certificate of authority from  
3 the secretary of state if it changes:

4 (1) Its corporate name;

5 (2) The period of its duration; or

6 (3) The state or country of its incorporation.

7 (b) The requirements of section one thousand four hundred  
8 three of this article for obtaining an original certificate of  
9 authority apply to obtaining an amended certificate under this  
10 section.

**§31E-14-1405. Effect of certificate of authority.**

1 (a) A certificate of authority authorizes the foreign corpora-  
2 tion to which it is issued to conduct affairs in this state subject  
3 to the right of the state to revoke the certificate as provided in  
4 this chapter.

5 (b) A foreign corporation with a valid certificate of author-  
6 ity has the same rights and has the same privileges as, and  
7 except as otherwise provided by this chapter is subject to the  
8 same duties, restrictions, penalties, and liabilities as, a domestic  
9 corporation of like character.

10 (c) This chapter does not authorize this state to regulate the  
11 organization or internal affairs of a foreign corporation autho-  
12 rized to conduct affairs in this state.

**§31E-14-1406. Corporate name of foreign corporation.**

1 (a) If the corporate name of a foreign corporation does not  
2 satisfy the requirements of section four hundred one, article  
3 four of this chapter, the foreign corporation to obtain or  
4 maintain a certificate of authority to conduct affairs in this  
5 state:

6 (1) May add the word "corporation," "incorporated,"  
7 "company," or "limited," or the abbreviation "corp.," "inc.,"  
8 "co.," or "ltd.," to its corporate name for use in this state; or

9 (2) May use a fictitious name to transact business in this  
10 state if its real name is unavailable and it delivers to the  
11 secretary of state for filing a copy of the resolution of its board  
12 of directors, certified by its secretary, adopting the fictitious  
13 name.

14 (b) Except as authorized by subsections (c) and (d) of this  
15 section, the corporate name, including a fictitious name, of a  
16 foreign corporation must be distinguishable upon the records of  
17 the secretary of state from:

18 (1) The corporate name of a corporation incorporated or  
19 authorized to conduct affairs in this state;

20 (2) A corporate name reserved or registered under sections  
21 four hundred three or four hundred four, article four of this  
22 chapter;

23 (3) The fictitious name of another foreign corporation  
24 authorized to transact business in this state;

25       (4) The corporate name of a business corporation incorpo-  
26 rated or authorized to transact business in this state; and

27       (5) The name of any other entity whose name is carried in  
28 the records of the secretary of state.

29       (c) A foreign corporation may apply to the secretary of state  
30 for authorization to use in this state the name of another  
31 corporation incorporated or authorized to transact business in  
32 this state that is not distinguishable upon his or her records from  
33 the name applied for. The secretary of state shall authorize use  
34 of the name applied for if:

35       (1) The other corporation consents to the use in writing and  
36 submits an undertaking in form satisfactory to the secretary of  
37 state to change the name so that it is distinguishable upon the  
38 records of the secretary of state from the name applied for; or

39       (2) The applicant delivers to the secretary of state a  
40 certified copy of a final judgment of a circuit court of compe-  
41 tent jurisdiction establishing the applicant's right to use the  
42 name applied for in this state.

43       (d) A foreign corporation may use in this state the name,  
44 including the fictitious name, of another domestic or foreign  
45 corporation that is used in this state if the other corporation is  
46 incorporated or authorized to conduct affairs in this state and  
47 the foreign corporation:

48       (1) Has merged with the other corporation;

49       (2) Has been formed by reorganization of the other corpora-  
50 tion; or

51       (3) Has acquired all or substantially all of the assets,  
52 including the corporate name, of the other corporation.

53 (e) If a foreign corporation authorized to conduct affairs in  
54 this state changes its corporate name to one that does not satisfy  
55 the requirements of section four hundred one, article four of this  
56 chapter, it may not conduct affairs in this state under the  
57 changed name until it adopts a name satisfying the requirements  
58 of section four hundred one, article four of this chapter and  
59 obtains an amended certificate of authority under section one  
60 thousand four hundred four of this article.

**§31E-14-1407. Registered office and registered agent of foreign corporation.**

1 Each foreign corporation authorized to conduct affairs in  
2 this state may continuously maintain in this state:

3 (1) A registered office that may be the same as any of its  
4 places of business; and

5 (2) A registered agent, who may be:

6 (A) An individual who resides in this state and whose  
7 business office is identical with the registered office;

8 (B) A domestic corporation or domestic business corpora-  
9 tion whose business office is identical with the registered  
10 office; or

11 (C) A foreign corporation or foreign business corporation  
12 authorized to transact business in this state whose business  
13 office is identical with the registered office.

**§31E-14-1408. Change of registered office or registered agent of foreign corporation.**

1 (a) A foreign corporation authorized to conduct affairs in  
2 this state may change its registered office or registered agent by

3 delivering to the secretary of state for filing a statement of  
4 change that sets forth:

5 (1) Its name;

6 (2) The mailing address of its current registered office;

7 (3) If the current registered office is to be changed, the  
8 mailing address of its new registered office;

9 (4) The name of its current registered agent;

10 (5) If the current registered agent is to be changed, the  
11 name of its new registered agent and the new agent's written  
12 consent, either on the statement or attached to it, to the appoint-  
13 ment; and

14 (6) That after the change or changes are made, the mailing  
15 addresses of its registered office and the business office of its  
16 registered agent will be identical.

17 (b) If a registered agent changes the mailing address of his  
18 or her business office, he or she may change the mailing  
19 address of the registered office of any foreign corporation for  
20 which he or she is the registered agent by notifying the corpora-  
21 tion in writing of the change and signing, either manually or in  
22 facsimile, and delivering to the secretary of state for filing a  
23 statement of change that complies with the requirements of  
24 subsection (a) of this section and recites that the corporation has  
25 been notified of the change.

**§31E-14-1409. Resignation of registered agent of foreign corpora-  
tion.**

1 (a) The registered agent of a foreign corporation may resign  
2 his or her agency appointment by signing and delivering to the  
3 secretary of state for filing the original and two exact or

4 conformed copies of a statement of resignation. The statement  
5 of resignation may include a statement that the registered office  
6 is also discontinued.

7 (b) After filing the statement, the secretary of state shall  
8 attach the filing receipt to one copy and mail the copy and  
9 receipt to the registered office if not discontinued. The secretary  
10 of state shall mail the other copy to the foreign corporation at  
11 its principal office address shown in its most recent return  
12 required pursuant to section three, article twelve-c, chapter  
13 eleven of this code.

14 (c) The agency appointment is terminated, and the regis-  
15 tered office discontinued if provided in the statement of  
16 registration, on the thirty-first day after the date on which the  
17 statement was filed.

**§31E-14-1410. Service on foreign corporation.**

1 (a) The registered agent of a foreign corporation authorized  
2 to conduct activities in this state is the corporation's agent for  
3 service of process, notice, or demand required or permitted by  
4 law to be served on the foreign corporation.

5 (b) A foreign corporation may be served by registered or  
6 certified mail, return receipt requested, addressed to the  
7 secretary of the foreign corporation at its principal office shown  
8 in its application for a certificate of authority or in its most  
9 recent return required pursuant to section three, article twelve-c,  
10 chapter eleven of this code if the foreign corporation:

11 (1) Has no registered agent or its registered agent cannot  
12 with reasonable diligence be served;

13 (2) Has withdrawn from conducting activities in this state  
14 under section one thousand four hundred twenty of this article;  
15 or

16       (3) Has had its certificate of authority revoked under  
17 section one thousand four hundred thirty-one of this article.

18       (c) Service is perfected under subsection (b) of this section  
19 at the earliest of:

20       (1) The date the foreign corporation receives the mail;

21       (2) The date shown on the return receipt, if signed on behalf  
22 of the foreign corporation; or

23       (3) Five days after its deposit in the United States mail, as  
24 evidenced by the postmark, if mailed postpaid and correctly  
25 addressed.

26       (d) In addition to the methods of service on a foreign  
27 corporation provided in subsections (a) and (b) of this section,  
28 the secretary of state is hereby constituted the attorney-in-fact  
29 for and on behalf of each foreign corporation authorized to  
30 conduct affairs in this state pursuant to the provisions of this  
31 chapter. The secretary of state has the authority to accept  
32 service of notice and process on behalf of each corporation and  
33 is an agent of the corporation upon whom service of notice and  
34 process may be made in this state for and upon each corpora-  
35 tion. No act of a corporation appointing the secretary of state as  
36 attorney-in-fact is necessary. Service of any process, notice or  
37 demand on the secretary of state may be made by delivering to  
38 and leaving with the secretary of state the original process,  
39 notice or demand and two copies of the process, notice or  
40 demand for each defendant, along with the fee required by  
41 section two, article one, chapter fifty-nine of this code. Immedi-  
42 ately after being served with or accepting any process or notice,  
43 the secretary of state shall: (1) file in his or her office a copy of  
44 the process or notice, endorsed as of the time of service, or  
45 acceptance, and (2) transmit one copy of the process or notice  
46 by registered or certified mail, return receipt requested, to (A)  
47 the foreign corporation's registered agent; or (B) if there is no

48 registered agent, to the individual whose name and address was  
49 last given to the secretary of state's office as the person to  
50 whom notice and process are to be sent, and if no person has  
51 been named, to the principal office of the foreign corporation as  
52 that address was last given to the secretary of state's office.  
53 Service or acceptance of process or notice is sufficient if return  
54 receipt is signed by an agent or employee of the corporation, or  
55 the registered or certified mail sent by the secretary of state is  
56 refused by the addressee and the registered or certified mail is  
57 returned to the secretary of state, or to his or her office, showing  
58 the stamp of the United States postal service that delivery has  
59 been refused, and the return receipt or registered or certified  
60 mail is appended to the original process or notice and filed in  
61 the clerk's office of the court from which the process or notice  
62 was issued. No process or notice may be served on the secretary  
63 of state or accepted by him or her less than ten days before the  
64 return day of the process or notice. The court may order  
65 continuances as may be reasonable to afford each defendant  
66 opportunity to defend the action or proceedings.

67 (e) Any foreign corporation conducting affairs in this state  
68 without having been authorized to do so pursuant to the  
69 provisions of this chapter is conclusively presumed to have  
70 appointed the secretary of state as its attorney-in-fact with  
71 authority to accept service of notice and process on behalf of  
72 the corporation and upon whom service of notice and process  
73 may be made in this state for and upon the corporation in any  
74 action or proceeding arising from activities described in section  
75 one thousand four hundred one of this article. No act of a  
76 corporation appointing the secretary of state as its attorney-in-  
77 fact is necessary. Immediately after being served with or  
78 accepting any process or notice, of which process or notice two  
79 copies for each defendant are to be furnished to the secretary of  
80 state with the original notice or process, together with the fee  
81 required by section two, article one, chapter fifty-nine of this  
82 code, the secretary of state shall file in his or her office a copy



83 of the process or notice, with a note endorsed of the time of  
84 service or acceptance, and transmit one copy of the process or  
85 notice by registered or certified mail, return receipt requested,  
86 to the corporation at the address of its principal office, which  
87 address shall be stated in the process or notice. The service or  
88 acceptance of process or notice is sufficient if the return receipt  
89 is signed by an agent or employee of the corporation, or the  
90 registered or certified mail sent by the secretary of state is  
91 refused by the addressee and the registered or certified mail is  
92 returned to the secretary of state, or to his or her office, showing  
93 thereon the stamp of the United States postal service that  
94 delivery thereof has been refused, and the return receipt or  
95 registered or certified mail is appended to the original process  
96 or notice and filed therewith in the clerk's office of the court  
97 from which the process or notice was issued. No process or  
98 notice may be served on the secretary of state or accepted by  
99 him or her less than ten days before the return date thereof. The  
100 court may order continuances as may be reasonable to afford  
101 each defendant opportunity to defend the action or proceedings.

102 (f) This section does not prescribe the only means, or  
103 necessarily the required means, of serving a foreign corpora-  
104 tion.

## PART 2. WITHDRAWAL.

### **§31E-14-1420. Withdrawal of foreign corporation.**

1 (a) A foreign corporation authorized to conduct activities in  
2 this state may not withdraw from this state until it obtains a  
3 certificate of withdrawal from the secretary of state.

4 (b) A foreign corporation authorized to conduct activities  
5 in this state may apply for a certificate of withdrawal by  
6 delivering an application to the secretary of state for filing. The  
7 application must set forth:

8       (1) The name of the foreign corporation and the name of the  
9 state or country under whose law it is incorporated;

10       (2) That it is not conducting activities in this state and that  
11 it surrenders its authority to conduct activities in this state;

12       (3) That it revokes the authority of its registered agent to  
13 accept service on its behalf and appoints the secretary of state  
14 as its agent for service of process in any proceeding based on a  
15 cause of action arising during the time it was authorized to  
16 conduct activities in this state;

17       (4) A mailing address to which the secretary of state may  
18 mail a copy of any process served on him or her under subdivi-  
19 sion (3) of this subsection; and

20       (5) A commitment to notify the secretary of state in the  
21 future of any change in its mailing address.

22       (c) After the withdrawal of the corporation is effective,  
23 service of process on the secretary of state under this section is  
24 service on the foreign corporation. Upon receipt of process, the  
25 secretary of state shall mail a copy of the process to the foreign  
26 corporation at the mailing address set forth under subsection (b)  
27 of this section.

28       (d) The secretary of state shall withhold the issuance of any  
29 certificate of withdrawal until the receipt by the secretary of  
30 state of a notice from the tax commissioner and bureau of  
31 employment programs to the effect that all taxes due from the  
32 corporation under the provisions of chapter eleven of this code,  
33 including, but not limited to, taxes withheld under the provi-  
34 sions of section seventy-one, article twenty-one, chapter eleven  
35 of this code, all business and occupation taxes, motor carrier  
36 and transportation privilege taxes, gasoline taxes, consumer  
37 sales taxes and any and all license franchise or other excise  
38 taxes and corporate net income taxes, and employment security

39 payments levied or assessed against the corporation seeking to  
40 dissolve have been paid or that payment has been provided for,  
41 or until the secretary of state received a notice from the tax  
42 commissioner or bureau of employment programs, as the case  
43 may be, stating that the corporation in question is not subject to  
44 payment of any taxes or to the making of any employment  
45 security payments or assessments.

### PART 3. REVOCATION OF CERTIFICATE OF AUTHORITY.

#### §31E-14-1430. Grounds for revocation.

1 The secretary of state may commence a proceeding under  
2 section one thousand four hundred thirty-one of this article to  
3 revoke the certificate of authority of a foreign corporation  
4 authorized to conduct activities in this state if:

5 (1) The foreign corporation does not pay within sixty days  
6 after they are due any franchise taxes or penalties imposed by  
7 this chapter or other law;

8 (2) The foreign corporation does not inform the secretary  
9 of state under sections one thousand four hundred eight or one  
10 thousand four hundred nine of this article that its registered  
11 agent or registered office has changed, that its registered agent  
12 has resigned, or that its registered office has been discontinued  
13 within sixty days of the change, resignation, or discontinuance;

14 (3) An incorporator, director, officer, or agent of the foreign  
15 corporation signed a document he or she knew was false in any  
16 material respect with intent that the document be delivered to  
17 the secretary of state for filing; or

18 (4) The secretary of state receives a duly authenticated  
19 certificate from the secretary of state or other official having  
20 custody of corporate records in the state or country under whose

21 law the foreign corporation is incorporated stating that it has  
22 been dissolved or disappeared as the result of a merger.

**§31E-14-1431. Procedure for and effect of revocation.**

1 (a) If the secretary of state determines that one or more  
2 grounds exist under section one thousand four hundred thirty of  
3 this article for revocation of a certificate of authority, he or she  
4 shall serve the foreign corporation with written notice of his or  
5 her determination pursuant to section one thousand four  
6 hundred ten of this article.

7 (b) If the foreign corporation does not correct each ground  
8 for revocation or demonstrate to the reasonable satisfaction of  
9 the secretary of state that each ground determined by the  
10 secretary of state does not exist within sixty days after service  
11 of the notice is perfected pursuant to section one thousand four  
12 hundred ten of this article, the secretary of state may revoke the  
13 foreign corporation's certificate of authority by signing a  
14 certificate of revocation that recites the ground or grounds for  
15 revocation and its effective date. The secretary of state shall file  
16 the original of the certificate and serve a copy on the foreign  
17 corporation pursuant to section one thousand four hundred ten  
18 of this article.

19 (c) The authority of a foreign corporation to transact  
20 business in this state ceases on the date shown on the certificate  
21 revoking its certificate of authority.

22 (d) The secretary of state's revocation of a foreign corpora-  
23 tion's certificate of authority appoints the secretary of state the  
24 foreign corporation's agent for service of process in any  
25 proceeding based on a cause of action which arose during the  
26 time the foreign corporation was authorized to transact business  
27 in this state. Service of process on the secretary of state under  
28 this subsection is service on the foreign corporation. Upon  
29 receipt of process, the secretary of state shall mail a copy of the

30 process to the secretary of the foreign corporation at its  
31 principal office shown in its most recent return required  
32 pursuant to section three, article twelve-c, chapter eleven of this  
33 code or in any subsequent communication received from the  
34 corporation stating the current mailing address of its principal  
35 office, or, if none are on file, in its application for a certificate  
36 of authority.

37 (e) Revocation of a foreign corporation's certificate of  
38 authority does not terminate the authority of the registered  
39 agent of the corporation.

**§31E-14-1432. Appeal from revocation.**

1 (a) A foreign corporation may appeal the secretary of  
2 state's revocation of its certificate of authority to the circuit  
3 court within thirty days after service of the certificate of  
4 revocation is perfected pursuant to section one thousand four  
5 hundred ten of this article. The foreign corporation appeals by  
6 petitioning the circuit court to set aside the revocation and  
7 attaching to the petition copies of its certificate of authority and  
8 the secretary of state's certificate of revocation.

9 (b) The circuit court may summarily order the secretary of  
10 state to reinstate the certificate of authority or may take any  
11 other action the circuit court considers appropriate.

12 (c) The circuit court's final decision may be appealed as in  
13 other civil proceedings.

**ARTICLE 15. RECORDS AND REPORTS.**

- §31E-15-1501. Corporate records.
- §31E-15-1502. Inspection of records by members.
- §31E-15-1503. Scope of inspection right.
- §31E-15-1504. Circuit court-ordered inspection.
- §31E-15-1505. Inspection of records by directors.

§31E-15-1506. Exception to notice requirement.

§31E-15-1520. Financial statements for members.

#### PART 1. RECORDS.

##### **§31E-15-1501. Corporate records.**

1 (a) A corporation shall keep as permanent records minutes  
2 of all meetings of its members and board of directors, a record  
3 of all actions taken by the members or board of directors  
4 without a meeting, and a record of all actions taken by a  
5 committee of the board of directors in place of the board of  
6 directors on behalf of the corporation.

7 (b) A corporation shall maintain appropriate accounting  
8 records.

9 (c) A corporation or its agent shall maintain a record of its  
10 members, if any, in a form that permits preparation of a list of  
11 the names and addresses of all members, in alphabetical order.

12 (d) A corporation shall maintain its records in written form  
13 or in another form capable of conversion into written form  
14 within a reasonable time.

15 (e) A corporation shall keep a copy of the following records  
16 at its principal office:

17 (1) Its articles or restated articles of incorporation and all  
18 amendments to them currently in effect;

19 (2) Its bylaws or restated bylaws and all amendments to  
20 them currently in effect;

21 (3) Resolutions adopted by its board of directors;

22       (4) The minutes of all members' meetings, and records of  
23 all action taken by members without a meeting, for the past  
24 three years;

25       (5) All written communications to members generally  
26 within the past three years, including the financial statements  
27 furnished for the past three years under section one thousand  
28 five hundred twenty of this article; and

29       (6) A list of the names and business addresses of its current  
30 directors and officers.

**§31E-15-1502. Inspection of records by members.**

1       (a) A member of a corporation is entitled to inspect, during  
2 regular business hours at the corporation's principal office, any  
3 of the records of the corporation described in subsection (e),  
4 section one thousand five hundred one of this article if he or she  
5 gives the corporation written notice of his or her demand at  
6 least five business days before the date on which he or she  
7 wishes to inspect.

8       (b) A member of a corporation is entitled to inspect, during  
9 regular business hours at a reasonable location specified by the  
10 corporation, any of the following records of the corporation if  
11 the member meets the requirements of subsection (c) of this  
12 section and gives the corporation written notice of his or her  
13 demand at least five business days before the date on which he  
14 or she wishes to inspect and copy:

15       (1) Excerpts from minutes of any meeting of the board of  
16 directors, records of any action of a committee of the board of  
17 directors while acting in place of the board of directors on  
18 behalf of the corporation, minutes of any meeting of the  
19 members, and records of action taken by the members or board

20 of directors without a meeting, to the extent not subject to  
21 inspection under subsection (a), of this section;

22 (2) Accounting records of the corporation; and

23 (3) The record of members.

24 (c) A member may inspect and copy the records described  
25 in subdivisions (1) and (2), subsection (b) of this section and  
26 may inspect the records described in subdivision (3), subsection  
27 (b) of this section only if:

28 (1) His or her demand is made in good faith and for a  
29 proper purpose;

30 (2) He or she describes with reasonable particularity his or  
31 her purpose and the records he or she desires to inspect; and

32 (3) The records are directly connected with his or her  
33 purpose.

34 (d) A member may not copy the records described in  
35 subdivision (3), subsection (b) of this section unless provided  
36 for in the corporation's articles of incorporation or bylaws.

37 (e) The right of inspection granted by this section may not  
38 be abolished or limited by a corporation's articles of incorpora-  
39 tion or bylaws.

40 (f) This section does not affect:

41 (1) The right of a member to inspect records under section  
42 seven hundred twenty, article seven of this chapter or, if the  
43 member is in litigation with the corporation, to the same extent  
44 as any other litigant; or



45 (2) The power of a circuit court, independently of this  
46 chapter, to compel the production of corporate records for  
47 examination.

**§31E-15-1503. Scope of inspection right.**

1 (a) A member's agent or attorney has the same inspection  
2 and copying rights as the member represented.

3 (b) The right to copy records under section one thousand  
4 five hundred two of this article includes, if reasonable, the right  
5 to receive copies by xerographic or other means, including  
6 copies through an electronic transmission if available and  
7 requested by the member.

8 The term "inspect" for purposes of section one thousand  
9 five hundred two of this article includes the making of extracts  
10 from the records reviewed.

11 (c) The corporation may comply at its expense with a  
12 member's demand to inspect the record of members under  
13 subdivision (3), subsection (b), section one thousand five  
14 hundred two of this article by providing the member with a list  
15 of members that was compiled no earlier than the date of the  
16 member's demand.

17 (d) The corporation may impose a reasonable charge,  
18 covering the costs of labor and material, for copies of any  
19 documents provided to the member. The charge may not exceed  
20 the estimated cost of production, reproduction or transmission  
21 of the records.

**§31E-15-1504. Circuit court-ordered inspection.**

1 (a) If a corporation does not allow a member who complies  
2 with subsection (a), section one thousand five hundred two of  
3 this article to inspect and copy any records required by that

4 subsection to be available for inspection, the circuit court may  
5 summarily order inspection and copying of the records de-  
6 manded at the corporation's expense upon application of the  
7 member.

8 (b) If a corporation does not within a reasonable time allow  
9 a member to inspect and copy any other record, the member  
10 who complies with subsections (b) and (c), section one thou-  
11 sand five hundred two of this article may apply to the circuit  
12 court for an order to permit inspection and copying of the  
13 records demanded. The circuit court shall dispose of an  
14 application under this subsection on an expedited basis.

15 (c) If the circuit court orders inspection and copying of the  
16 records demanded, it shall also order the corporation to pay the  
17 member's costs, including reasonable counsel fees, incurred to  
18 obtain the order unless the corporation proves that it refused  
19 inspection in good faith because it had a reasonable basis for  
20 doubt about the right of the member to inspect the records  
21 demanded.

22 (d) If the circuit court orders inspection and copying of the  
23 records demanded, it may impose reasonable restrictions on the  
24 use or distribution of the records by the demanding member.

**§31E-15-1505. Inspection of records by directors.**

1 (a) A director of a corporation is entitled to inspect and  
2 copy the books, records and documents of the corporation at  
3 any reasonable time to the extent reasonably related to the  
4 performance of the director's duties as a director, including  
5 duties as a member of a committee, but not for any other  
6 purpose or in any manner that would violate any duty to the  
7 corporation.

8 (b) The circuit court may order inspection and copying of  
9 the books, records and documents at the corporation's expense,

10 upon application of a director who has been refused inspection  
11 rights, unless the corporation establishes that the director is not  
12 entitled to inspection rights. The circuit court shall dispose of  
13 an application under this subsection on an expedited basis.

14 (c) If an order is issued, the circuit court may include  
15 provisions protecting the corporation from undue burden or  
16 expense, and prohibiting the director from using information  
17 obtained upon exercise of the inspection rights in a manner that  
18 would violate a duty to the corporation, and may also order the  
19 corporation to reimburse the director for the director's costs,  
20 including reasonable counsel fees, incurred in connection with  
21 the application.

**§31E-15-1506. Exception to notice requirement.**

1 (a) Whenever notice is required to be given under any  
2 provision of this chapter to any member, notice may not be  
3 required to be given if notice of two consecutive annual  
4 meetings, and all notices of meetings during the period between  
5 two consecutive annual meetings, have been sent to the member  
6 at the member's address as shown on the records of the  
7 corporation and have been returned undeliverable.

8 (b) If a member delivers to the corporation a written notice  
9 setting forth the member's then-current address, the require-  
10 ment that notice be given to the member is to be reinstated.

PART 2. CORPORATE RECORDS.

**§31E-15-1520. Financial statements for members.**

1 (a) A corporation shall furnish its members annual financial  
2 statements, which may be consolidated or combined statements  
3 of the corporation and one or more of its subsidiaries, as  
4 appropriate, that include a balance sheet as of the end of the  
5 fiscal year, and an income statement for that year. If financial

6 statements are prepared for the corporation on the basis of  
7 generally accepted accounting principles, the annual financial  
8 statements must also be prepared on that basis.

9 (b) If the annual financial statements are reported upon by  
10 a public accountant, his or her report must accompany them. If  
11 not, the statements must be accompanied by a statement of the  
12 president or the person responsible for the corporation's  
13 accounting records:

14 (1) Stating his or her reasonable belief whether the state-  
15 ments were prepared on the basis of generally accepted  
16 accounting principles and, if not, describing the basis of  
17 preparation; and

18 (2) Describing any respects in which the statements were  
19 not prepared on a basis of accounting consistent with the  
20 statements prepared for the preceding year.

21 (c) A corporation shall mail the annual financial statements  
22 to each member within one hundred twenty days after the close  
23 of each fiscal year. On written request from a member who was  
24 not mailed the statements, the corporation shall mail him or her  
25 the latest financial statements.

#### ARTICLE 16. TRANSITION PROVISIONS.

§31E-16-1601. Application to existing domestic corporations.

§31E-16-1602. Application to qualified foreign corporations.

§31E-16-1603. Effective date.

#### **§31E-16-1601. Application to existing domestic corporations.**

1 This chapter applies to all domestic corporations in  
2 existence on its effective date that were incorporated under any  
3 general statute of this state providing for incorporation of  
4 nonprofit corporations.

#### **§31E-16-1602. Application to qualified foreign corporations.**

1 A foreign corporation authorized to transact business in this  
2 state on the effective date of this chapter is subject to this  
3 chapter but is not required to obtain a new certificate of  
4 authority to transact business under this chapter.

**§31E-16-1603. Effective date.**

1 This chapter takes effect on the first day of October, two  
2 thousand two.

---

## CHAPTER 70

**(Com. Sub. for H. B. 4115 — By Mr. Speaker, Mr. Kiss, and  
Delegates Varner, Stemple, Michael, Kominar, Cann and Amores)**

---

[Passed March 5, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section nine, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article ten, chapter sixty-two of said code, all relating to providing that correctional officers at state facilities and regional jails have authority to execute warrants on persons in their custody; and authorizing correctional officers to apply for fugitive from justice warrants when they have reasonable grounds to believe persons in their custody are charged with crimes in other states.

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

That section nine, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nine, article ten, chapter sixty-two 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.**
62. **Criminal Procedure.**

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**

## ARTICLE 1. THE GOVERNOR.

**§5-1-9. Hearing after arrest; application for writ of habeas corpus; arrest and confinement of fugitives from another state; bail; persons involved in criminal or civil actions in this state.**

1 (a) No person arrested upon a warrant shall be delivered  
 2 over to the agent whom the executive authority demanding him  
 3 or her shall have appointed to receive him or her unless he or  
 4 she shall first be taken forthwith before a judge of a court of  
 5 record in this state, who shall inform him or her of the demand  
 6 made for his or her surrender and of the crime with which he or  
 7 she is charged, and that he or she has the right to demand and  
 8 procure legal counsel and if the prisoner or his or her counsel  
 9 shall state that he or they desire to test the legality of his or her  
 10 arrest, the judge of the court of record shall fix a reasonable  
 11 time to be allowed him or her within which to apply for a writ  
 12 of habeas corpus. When a writ is applied for, notice thereof, and  
 13 of the time and place of hearing thereon, shall be given to the  
 14 prosecuting attorney of the county in which the arrest is made  
 15 and in which the accused is in custody, and to the agent of the  
 16 demanding state.

17 (b) Any officer who delivers to the agent for extradition of  
 18 the demanding state a person in his or her custody under the  
 19 governor's warrant, in willful disobedience to subdivision (a)

20 of this section, shall be guilty of a misdemeanor and, on  
21 conviction thereof shall be fined not more than one thousand  
22 dollars or be imprisoned not more than six months, or both.

23 (c) The officer or persons executing the governor's warrant  
24 of arrest, or the agent of the demanding state to whom the  
25 prisoner may have been delivered, may, when necessary,  
26 confine the prisoner in any city, county or regional jail; and the  
27 keeper of the jail shall receive and safely keep the prisoner until  
28 the officer or person having charge of him or her is ready to  
29 proceed on his or her route, the officer or person being charge-  
30 able with the expense of keeping.

31 The officer or agent of a demanding state to whom a  
32 prisoner may have been delivered following extradition  
33 proceedings in another state, or to whom a prisoner may have  
34 been delivered after waiving extradition in the other state, and  
35 who is passing through this state with such a prisoner for the  
36 purpose of immediately returning the prisoner to the demanding  
37 state may, when necessary, confine the prisoner in any city,  
38 county or regional jail; and the keeper of the jail shall receive  
39 and safely keep the prisoner until the officer or agent having  
40 charge of him or her is ready to proceed on his or her route, the  
41 officer or agent, however, being chargeable with the expense of  
42 keeping: *Provided*, That the officer or agent shall produce and  
43 show to the keeper of the jail satisfactory written evidence of  
44 the fact that he or she is actually transporting a prisoner to the  
45 demanding state after a requisition by the executive authority of  
46 the demanding state. The prisoner may not be entitled to  
47 demand a new requisition while in this state.

48 (d) Whenever any person within this state shall be charged  
49 on the oath of any credible person before any judge or magis-  
50 trate of this state with the commission of any crime in any other  
51 state and, except in cases arising under subdivision (g), section  
52 seven of this article, with having fled from justice, or with  
53 having been convicted of a crime in that state and having

54 escaped from confinement, or having broken the terms of his or  
55 her bail, probation or parole, or whenever complaint has been  
56 made before any judge or magistrate in this state setting forth  
57 on the affidavit of any credible person in another state that a  
58 crime has been committed in the state and that the accused has  
59 been charged in the state with the commission of the crime,  
60 and, except in cases arising under subdivision (g), section seven  
61 of this article, has fled from justice, or with having been  
62 convicted of a crime in that state and having escaped from  
63 confinement, or having broken the terms of his or her bail,  
64 probation or parole, and is believed to be in this state, the judge  
65 or magistrate shall issue a warrant directed to any peace officer  
66 commanding him or her to apprehend the person named therein,  
67 wherever he or she may be found in this state, and to bring him  
68 or her before the same or any other judge, magistrate, or court  
69 who or which may be available in or convenient of access to the  
70 place where the arrest may be made, to answer the charge or  
71 complaint and affidavit, and a certified copy of the sworn  
72 charge or complaint and affidavit upon which the warrant is  
73 issued shall be attached to the warrant.

74 (e) The arrest of a person may be lawfully made also by any  
75 peace officer, or a private person, without a warrant, upon  
76 reasonable information that the accused stands charged in the  
77 courts of a state with a crime punishable by death or by  
78 imprisonment for a term exceeding one year, but when so  
79 arrested the accused must be taken before a judge or magistrate  
80 with all practicable speed and complaint must be made against  
81 him or her under oath setting forth the ground for the arrest as  
82 in the preceding section and thereafter his or her answer shall  
83 be heard as if he or she had been arrested on a warrant. Correc-  
84 tional officers may, additionally, make complaint against  
85 persons in their custody for whom they have a reasonable belief  
86 stand accused of crimes, punishable by death or confinement  
87 for a term exceeding one year, in the courts of another state.



88 (f) If from the examination before the judge or magistrate  
89 it appears that the person held is the person charged with having  
90 committed the crime alleged and, except in cases arising under  
91 subdivision (g), section seven of this article, that he or she has  
92 fled from justice, the judge or magistrate must, by a warrant  
93 reciting the accusation, commit him or her to the county or  
94 regional jail for a time not exceeding thirty days, and specified  
95 in the warrant, as will enable the arrest of the accused to be  
96 made under a warrant of the governor on a requisition of the  
97 executive authority of the state having jurisdiction of the  
98 offense, unless the accused give bail as provided in subdivision  
99 (g) of this section, or until he or she shall be legally discharged.

100 (g) Unless the offense with which the prisoner is charged is  
101 shown to be an offense punishable by death or life imprison-  
102 ment under the laws of the state in which it was committed, a  
103 judge or magistrate in this state may admit the person arrested  
104 to bail by bond, with sufficient sureties, and in a sum as he or  
105 she considers proper, conditioned for his or her appearance  
106 before him or her at a time specified in the bond, and for his or  
107 her surrender, to be arrested upon the warrant of the governor  
108 of this state.

109 (h) If the accused is not arrested under warrant of the  
110 governor by the expiration of the time specified in the warrant  
111 or bond, a judge or magistrate may discharge him or her or may  
112 recommit him or her for a further period not to exceed sixty  
113 days, or a judge or magistrate may again take bail for his or her  
114 appearance and surrender as provided in subdivision (g) of this  
115 section, but within a period not to exceed sixty days after the  
116 date of the new bond.

117 (i) If the prisoner is admitted to bail, and fails to appear and  
118 surrender himself or herself according to the conditions of his  
119 or her bond, the judge, or magistrate, by proper order, shall  
120 declare the bond forfeited and order his or her immediate arrest  
121 without warrant if he or she is within this state. Recovery may

122 be had on a bond in the name of the state as in the case of other  
123 bonds given by the accused in criminal proceedings within this  
124 state.

125 (j) If a criminal prosecution has been instituted against the  
126 person under the laws of this state and is still pending, the  
127 governor, in his or her discretion, either may surrender him or  
128 her on demand of the executive authority of another state or  
129 hold him or her until he or she has been tried and discharged or  
130 convicted and punished in this state: *Provided*, That any person  
131 under recognizance to appear as a witness in any criminal  
132 proceeding pending in this state may in the discretion of the  
133 governor be surrendered on demand of the executive authority  
134 of another state or be held until criminal proceeding pending in  
135 this state has been determined: *Provided however*, That any  
136 person who was in custody upon any execution, or upon process  
137 in any suit, at the time of being apprehended for a crime  
138 charged to have been committed without the jurisdiction of this  
139 state, may not be delivered up without the consent of the  
140 plaintiff in an execution or suit, until the amount of the execu-  
141 tion has been paid, or until the person shall be otherwise  
142 discharged from the execution or process.

143 (k) The guilt or innocence of the accused as to the crime for  
144 which he or she is charged may not be inquired into by the  
145 governor or in any proceeding after the demand for extradition  
146 accompanied by a charge of crime in legal form as provided in  
147 this article has been presented to the governor, except as it may  
148 be involved in identifying the person held as the person charged  
149 with the crime.

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE 10. PREVENTION OF CRIME.

#### §62-10-9. Power and authority of sheriffs, deputy sheriffs and correctional officers to make arrests.

1        Sheriffs and each of their deputies are hereby authorized  
2        and empowered within their respective counties to make arrests  
3        for any crime for which a warrant has been issued in violation  
4        of any laws of the United States or of this state, and to make  
5        arrests without warrant for all violations of any of the criminal  
6        laws of the United States, or of this state, when committed in  
7        their presence. A correctional officer may execute a warrant,  
8        issued for the arrest of a person, only when the person named  
9        in the warrant is already in the custody of the officer or when  
10       the person voluntarily surrenders to the correctional officer at  
11       the county or regional jail or a state correctional facility at  
12       which the correctional officer is employed.

---

## CHAPTER 71

**(Com. Sub. for H. B. 2966 — By Delegates Craig, Leach, Morgan,  
Stephens, Hubbard and Smirl)**

---

[Passed February 12, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section twelve, article eight, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the use of correctional officers and home incarceration supervisors to supervise county inmates at county work farms.

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

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

**ARTICLE 8. JAIL AND JAILER.**

**§7-8-12. Establishment, operation and maintenance of county work farms.**

1       The county commission of every county is authorized to  
2 establish, operate and maintain a county work farm to be  
3 operated in connection with the county jail and to be used for  
4 the confinement of prisoners assigned thereto as hereinafter  
5 provided. The county commission is authorized to purchase  
6 land and other property in connection with the establishment of  
7 a work farm and to construct buildings, fences and other  
8 facilities and to acquire any personal property necessary to  
9 maintain and operate the work farm. The cost of the farm shall  
10 be paid out of the general county fund or out of any other funds  
11 available to the county commission for that purpose.

12       The county commission is authorized to make needed  
13 improvements and repairs for the proper upkeep of the work  
14 farm and provide for the necessary food, medical treatment and  
15 safekeeping of the prisoners. The work farm shall be operated  
16 in conjunction with the county jail. The sheriff of the county  
17 shall be responsible for and have the same control of the  
18 prisoners assigned to the work farm as he or she has over the  
19 prisoners confined in the county jail and shall make any rules  
20 necessary for the care and treatment of prisoners assigned  
21 thereto, and shall take proper care for their discipline, diet,  
22 clothing and safety. He or she shall also determine the type and  
23 amount of labor each prisoner performs, and shall perform all  
24 other duties with regard to the prisoners confined at the work  
25 farm as he or she is required to perform with regard to prisoners  
26 in the county jail. He or she may assign deputies, correctional  
27 officers or home incarceration supervisors as guards as may be  
28 necessary to supervise and insure the safekeeping of the  
29 prisoners. Prisoners committed to the work farm shall be  
30 required to perform those duties and labor as are reasonably  
31 permitted by their physical and mental condition. Provision  
32 shall be made for truck and vegetable gardens to be tended by  
33 the prisoners, and for the raising of fruit, hogs, poultry and

34 other farm products as can be economically and profitably  
35 produced. All food products produced on the work farm shall  
36 be used first for feeding prisoners at the work farm or county  
37 jail, and any surplus may be used at any other county institu-  
38 tion.

39 The county commission shall employ a superintendent for  
40 the county work farm, whose duty will be to supervise the work  
41 done and to care for and maintain the property and equipment  
42 used in connection therewith and who shall serve until his or  
43 her successor is employed as hereinafter provided. The superin-  
44 tendent shall also keep an accurate record of the number of  
45 prisoners confined at the county work farm and an accurate  
46 record of the cost of operating the work farm and shall make a  
47 report thereof to the county commission as the court may  
48 require, but at least twice each year. He or she shall also keep  
49 a record of the farm products produced on the farm and of the  
50 disposition of the products. The superintendent and his or her  
51 assistants shall be employed by the county commission on the  
52 written recommendation of the sheriff: *Provided*, That the  
53 county commission may not employ any superintendent or  
54 assistant superintendent unless it is satisfied that he or she  
55 possesses the high character, appropriate ability and energy  
56 suitable for that employment.

57 The judge of the circuit court or other court having jurisdic-  
58 tion for the trial of felony cases in the county may, upon his or  
59 her own motion or upon application of any prisoner confined in  
60 the county jail either in term time or in vacation, transfer any  
61 prisoner confined in the county jail except those under convic-  
62 tion for a felony to the work farm or transfer any prisoner  
63 confined at the work farm to the county jail. Proper order shall  
64 be entered in the order book of the court of the action. In  
65 sentencing any person to the county jail the judge may stipulate  
66 in the order of sentence whether the person shall be confined in  
67 the county jail or confined at the work farm. This provision,  
68 however, may not be construed to give authority to magistrates,  
69 judges of police courts or mayors of municipalities to sentence

70 persons to the work farm or to transfer persons from the county  
71 jail to the work farm.

72 Any inmate of the work farm who escapes therefrom shall  
73 be punished under the same provisions of law as if he or she  
74 had escaped from the county jail.

---

## CHAPTER 72

(Com. Sub. for S. B. 465 — By Senators Love and Hunter)

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section three-a, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the ten percent holding of inmate funds requirement for inmates the warden determines are likely to serve the remainder of their natural lives in prison due to their age and the length of their sentences.

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

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

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS  
MANAGEMENT.**

**§25-1-3a. Trustee accounts and funds, earnings and personal  
property of inmates.**

1 (a) The commissioner of corrections is authorized to  
2 establish at each institution under his or her jurisdiction a  
3 “trustee fund”. The warden or administrator of each institution

4 shall receive and take charge of the money and personal  
5 property, as defined by policy, of all inmates in his or her  
6 institution and all money or personal property, as defined by  
7 policy, sent to the inmates or earned by the inmates as compen-  
8 sation for work performed while they are domiciled there. The  
9 warden or administrator shall credit the money and earnings to  
10 the inmate entitled to it and shall keep an accurate account of  
11 all the money and personal property so received, which account  
12 is subject to examination by the state commissioner of correc-  
13 tions. The warden or administrator shall deposit the moneys in  
14 one or more responsible banks in accounts to be designated a  
15 "trustee fund".

16 (b) For all inmates, except those serving life without mercy  
17 and those the warden determines are likely to serve the remain-  
18 der of their natural lives in the custody of the division of  
19 corrections due to their age and the length of their sentences,  
20 the warden or administrator shall keep in an account at least ten  
21 percent of all money earned during the inmate's incarceration  
22 and pay the money to the inmate at the time of the inmate's  
23 release.

24 (c) The commissioner of corrections may direct that  
25 offenders who work in community work programs, including  
26 work release inmates who have obtained employment, make  
27 reimbursement to the state toward the cost of his or her incar-  
28 ceration.

29 (d)(1) Prior to ordering an incarcerated offender to make  
30 reimbursement toward the costs of his or her incarceration, the  
31 commissioner, or his or her designee, shall consider the  
32 following:

33 (A) The offender's ability to pay;

34 (B) The nature and extent of the offender's responsibilities  
35 to his or her dependents, if any;

36 (C) The length of probable incarceration under the court's  
37 sentence; and

38 (D) The effect, if any, that reimbursement might have on  
39 the offender's rehabilitation.

40 (2) No order of reimbursement entered pursuant to this  
41 section may exceed five hundred dollars per month unless the  
42 offender gives his or her express consent.

43 (3) The commissioner of corrections shall, prior to the  
44 beginning of each fiscal year, prepare a report that details the  
45 average cost per inmate incurred by the division for the care  
46 and supervision of those individuals in his or her custody.

47 (e) The chief executive officer of any correctional institu-  
48 tion, on request of an inmate, may expend up to one half of the  
49 money earned by the inmate on behalf of the family of the  
50 inmate if the ten percent mandatory savings has first been set  
51 aside and other fees owed by the inmate have been paid. The  
52 remainder of the money earned, after deducting amounts  
53 expended as authorized, shall be accumulated to the credit of  
54 the inmate and be paid to the inmate at times as may be  
55 prescribed by rules. The funds so accumulated on behalf of  
56 inmates shall be held by the chief executive officer of each  
57 institution, under a bond approved by the attorney general.

58 (f) The warden or administrator shall deliver to the inmate  
59 at the time he or she leaves the institution, or as soon as  
60 practicable after departure, all personal property, moneys and  
61 earnings then credited to the inmate, or in case of the death of  
62 the inmate before authorized release from the institution, the  
63 warden or administrator shall deliver the property to the  
64 inmate's personal representative. In case a conservator is  
65 appointed for the inmate while he or she is domiciled at the  
66 institution, the warden or administrator shall deliver to the  
67 conservator, upon proper demand, all moneys and personal  
68 property belonging to the inmate that are in the custody of the  
69 warden or administrator.



---

## CHAPTER 73

(S. B. 553 — By Senators Love and Hunter)

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section three-b, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to funds held by the division of corrections for the benefit of inmates; and allowing inmate benefit funds to be used for expenses related to the inmate telephone system.

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

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

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS  
MANAGEMENT.**

**§25-1-3b. Inmate benefit funds.**

1       (a) The commissioner of corrections shall establish an  
2 inmate benefit fund for each of the institutions under his or her  
3 jurisdiction. The inmate benefit fund is a fund held by the  
4 institutions for the benefit and welfare of inmates incarcerated  
5 in state correctional facilities and for the benefit of victims.

6       (b) There is hereby created a special revenue account in the  
7 state treasury for each inmate benefit fund established by the  
8 commissioner. Moneys received by an institution for deposit in  
9 an inmate benefit fund shall be deposited with the state trea-

10 surer to be credited to the special revenue account created for  
11 the institution's inmate benefit fund. Moneys in a special  
12 revenue account established for an inmate benefit fund may be  
13 expended by the institution for the purposes set forth in this  
14 section. Moneys to be deposited into an inmate benefit fund  
15 consist of:

16 (1) All profit from the exchange or commissary operation;

17 (2) All net proceeds from vending machines used for  
18 inmate visitation;

19 (3) All proceeds from contracted inmate telephone commis-  
20 sions;

21 (4) Any funds that may be assigned by inmates or donated  
22 to the institution by the general public or an inmate service  
23 organization on behalf of all inmates;

24 (5) Any funds confiscated considered contraband; and

25 (6) Any unexpended balances in individual inmate trustee  
26 funds if designated by the inmate upon his or her discharge  
27 from the institution.

28 (c) The inmate benefit fund may only be used for the  
29 following purposes at correctional facilities:

30 (1) Open-house visitation functions or other nonroutine  
31 inmate functions;

32 (2) Holiday functions which may include decorations and  
33 gifts for children of inmates;

34 (3) Cable television service;

35 (4) Rental of video cassettes;

- 36 (5) Payment of video license;
- 37 (6) Recreational supplies, equipment or area surfacing;
- 38 (7) Reimbursement of employee wages for overtime  
39 incurred during open-house visitations and holiday functions;
- 40 (8) Postsecondary education classes;
- 41 (9) Reimbursement of a pro rata share of inmate work  
42 compensation;
- 43 (10) Household equipment and supplies in day rooms or  
44 units as approved by chief executive officers of institutions,  
45 excluding supplies used in the daily maintenance and sanitation  
46 of the unit;
- 47 (11) Christmas or other holidays gift certificates for each  
48 inmate to be used at the exchange or commissary;
- 49 (12) Any expense associated with the operation of the fund;
- 50 (13) Expenditures necessary to properly operate an auto-  
51 mated inmate family and victim information notification  
52 system;
- 53 (14) Any expense for improvement of the facility which  
54 will benefit the inmate population that is not otherwise funded;  
55 and
- 56 (15) Any expense related to the installation, operation and  
57 maintenance of the inmate telephone system.
- 58 (d) The institution shall compile a monthly report that  
59 specifically documents inmate benefit fund receipts and  
60 expenditures and a yearly report for the previous fiscal year by  
61 the first day of September of each year and submit the reports  
62 to the commissioner.

---

## CHAPTER 74

(S. B. 565 — By Senators Tomblin, Mr. President, and Craigo)

---

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section fourteen, article five-b, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the prison industries account; allowing money from the account to be used to pay wages due inmates for services provided under a contract between a state spending unit, political subdivision or other governmental entity and the division of corrections pending receipt of the amounts owed for the services under the contract; providing for reimbursement of the account; and increasing the amount that may be maintained in the account.

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

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

**ARTICLE 5B. PRISON-MADE GOODS.**

**§28-5B-14. Prison industries account.**

- 1 (a) All moneys collected by the commissioner of the
- 2 division of corrections from the sale or disposition of articles
- 3 and products manufactured or produced by convict labor in
- 4 accordance with the provisions of this article shall be immedi-
- 5 ately deposited with the state treasurer to be kept and main-

6 tained in a special revolving account designated the “prison  
7 industries account”.

8 (b) Except as provided in subsection (c) of this section,  
9 moneys collected and deposited may only be used for the  
10 purchase of manufacturing supplies, equipment, machinery and  
11 materials used to carry out the purposes of this article, as well  
12 as for the payment of the necessary personnel in charge thereof  
13 and to otherwise defray the necessary expenses incident thereto,  
14 all of which are under the direction and subject to the approval  
15 of the commissioner.

16 (c) Moneys in the account may also be used to pay wages  
17 due inmates for services provided under a contract between a  
18 state spending unit, political subdivision or other governmental  
19 entity and the division of corrections, pending receipt of the  
20 amounts owed for the services under the contract. The account  
21 shall be reimbursed within twenty-four hours of receipt of the  
22 amounts due under the contract from the state spending unit,  
23 political subdivision or other governmental entity.

24 (d) The “prison industries account” may never be main-  
25 tained in excess of the amount necessary to efficiently and  
26 properly carry out the intentions of this article and in no event  
27 may the “prison industries account” be maintained in excess of  
28 the sum of one million five hundred thousand dollars. When, in  
29 the opinion of the governor, the “prison industries account” has  
30 reached a sum in excess of the requirements of this article, the  
31 excess shall be transferred by the commissioner of the division  
32 of corrections to the state general revenue fund and if the  
33 governor does not make that determination, any amount above  
34 one million five hundred thousand dollars shall be transferred  
35 to the state fund, general revenue, by the commissioner of the  
36 division of corrections at the end of each fiscal year.

---

## CHAPTER 75

(Com. Sub. for H. B. 4494 — By Delegates Manuel, Staton and Webb)

---

[Passed March 5, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article twenty, chapter thirty-one 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 monitoring inmate telephone calls in regional jails.

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

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

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.**

**§31-20-5e. Monitoring of inmate telephone calls; procedures and restrictions; attorney-client privilege protected and exempted.**

1       The executive director or his or her designee is authorized  
2       to monitor, intercept, record and disclose telephone calls to or  
3       from inmates housed in regional jails in accordance with the  
4       following provisions:

5       (1) All inmates housed in regional jails shall be notified in  
6       writing that their telephone conversations may be monitored,  
7       intercepted, recorded and disclosed;

8       (2) Only the executive director and his or her designee shall  
9 have access to recordings of inmates' telephone calls unless  
10 disclosed pursuant to subdivision (4) of this subsection;

11       (3) Notice shall be prominently placed on or immediately  
12 near every telephone that may be monitored;

13       (4) The contents of inmates' telephone calls may be  
14 disclosed to the appropriate law-enforcement agency only if the  
15 disclosure is:

16       (A) Necessary to safeguard the orderly operation of the  
17 regional jails;

18       (B) Necessary for the investigation of a crime;

19       (C) Necessary for the prevention of a crime;

20       (D) Necessary for the prosecution of a crime;

21       (E) Required by an order of a court of competent jurisdic-  
22 tion; or

23       (F) Necessary to protect persons from physical harm or the  
24 threat of physical harm;

25       (5) Recordings of telephone calls may be destroyed after  
26 twelve months unless further retention is required for disclosure  
27 pursuant to subdivision (4) of this subsection or, in the discre-  
28 tion of the executive secretary, for other good cause; and

29       (6) To safeguard the sanctity of the attorney-client privi-  
30 lege, an adequate number of telephone lines that are not  
31 monitored shall be made available for telephone calls between  
32 inmates and their attorneys. Such calls shall not be monitored,  
33 intercepted, recorded or disclosed in any matter.

---

## CHAPTER 76

(S. B. 711 — By Senators Wooton, Burnette, Caldwell,  
Hunter, Minard, Ross, Rowe, Snyder, Deem and Facemyer)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section ten, article five, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, four, six and seven, article eleven-c of said chapter, all relating to community corrections generally; adding community corrections boards to list of persons or entities which set participation fees in community corrections programs; imposing a twenty-five dollar mandatory special assessment against convicted felons for deposit in the community corrections fund; adding three dollars to court costs in criminal proceedings in municipal, magistrate or circuit court; excluding parking ordinances; and directing clerks of respective courts to collect the fee for deposit in the community corrections fund.

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

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

**Article**

**5. Costs in Criminal Cases.**

**11C. The West Virginia Community Corrections Act.**

**ARTICLE 5. COSTS IN CRIMINAL CASES.**

**§62-5-10. Mandatory cost assessed upon conviction of a felony.**



1 (a) Every circuit court shall assess, in every felony criminal  
2 matter as a cost to the defendant, an assessment in the sum of  
3 seventy-five dollars for each felony count of conviction. The  
4 assessment referred to herein shall be paid upon adjudication of  
5 guilt unless the court determines that the defendant is unable to  
6 pay in such a manner in which case payment of the assessment  
7 shall be paid prior to final disposition. If the circuit court  
8 determines that a defendant is financially unable to pay the  
9 assessment prior to final disposition, payment of the assessment  
10 shall be a mandatory condition of probation or parole.

11 (b) The clerk of the circuit court wherein the assessment is  
12 imposed under the provisions of subsection (a) of this section  
13 shall, on or before the last day of each month, transmit all costs  
14 received pursuant to this section to the state treasurer for  
15 deposit as follows: Fifty dollars to the credit of the crime  
16 victims compensation fund created by the provisions of section  
17 four, article two-a, chapter fourteen of this code and twenty-five  
18 dollars to the credit of the West Virginia community corrections  
19 fund created by the provisions of section four, article eleven-c  
20 of this chapter.

#### **ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.**

§62-11C-2. Community corrections subcommittee.

§62-11C-3. Duties of the governor's committee and the community corrections subcommittee.

§62-11C-4. Special revenue account.

§62-11C-6. Community criminal justice boards.

§62-11C-7. Supervision or participation fee.

#### **§62-11C-2. Community corrections subcommittee.**

1 (a) A community corrections subcommittee of the gover-  
2 nor's committee on crime, delinquency and correction is hereby  
3 created and assigned responsibility for screening community  
4 corrections programs submitted by community criminal justice  
5 boards or from other entities authorized by the provisions of  
6 this article to do so for approval for funding by the governor's

7 committee and for making recommendations as to the disburse-  
8 ment of funds for approved community corrections programs.  
9 The subcommittee is to be comprised of fifteen members of the  
10 governor's committee including: A representative of the  
11 division of corrections, a representative of the regional jail and  
12 correctional facility authority, a person representing the  
13 interests of victims of crime, an attorney employed by a public  
14 defender corporation, an attorney who practices criminal law,  
15 a prosecutor and a representative of the West Virginia coalition  
16 against domestic violence. At the discretion of the West  
17 Virginia supreme court of appeals, the administrator of the  
18 supreme court of appeals, a probation officer and a circuit judge  
19 may serve on the subcommittee as ex officio, nonvoting  
20 members.

21 (b) The subcommittee shall elect a chairperson and a vice  
22 chairperson. Special meetings may be held upon the call of the  
23 chairperson, vice chairperson or a majority of the members of  
24 the subcommittee. A majority of the members of the subcom-  
25 mittee constitute a quorum.

26 (c) A working group of the community corrections subcom-  
27 mittee is hereby created to study safe and effective pretrial  
28 diversion programs for persons charged with domestic violence  
29 offenses and to recommend, based upon its findings, programs  
30 considered to be safe and effective in reducing incidences of  
31 domestic violence and educating persons charged with a  
32 domestic violence offense. The working group is to be com-  
33 prised of the following members of the subcommittee: (1) If  
34 approved by the West Virginia supreme court of appeals, the  
35 circuit judge; (2) the prosecuting attorney; (3) the public  
36 defender or the criminal defense attorney; (4) the probation  
37 officer; and (5) the representative of the West Virginia coalition  
38 against domestic violence. The working group is to report its  
39 findings and recommendations to the subcommittee on or  
40 before the first day of July, two thousand two.

**§62-11C-3. Duties of the governor's committee and the commu-  
nity corrections subcommittee.**

1 (a) Upon recommendation of the community corrections  
2 subcommittee, the governor's committee shall propose for  
3 legislative promulgation in accordance with the provisions of  
4 article three, chapter twenty-nine-a of this code, emergency and  
5 legislative rules to:

6 (1) Establish standards for approval of community correc-  
7 tions programs submitted by community criminal justice boards  
8 or other entities authorized by the provisions of this article to do  
9 so;

10 (2) Establish minimum standards for community correc-  
11 tions programs to be funded, including requiring annual  
12 program evaluations;

13 (3) Make any necessary adjustments to the fees established  
14 in section four of this article;

15 (4) Establish reporting requirements for community  
16 corrections programs; and

17 (5) Carry out the purpose and intent of this article.

18 (b) Upon recommendation of the community corrections  
19 subcommittee, the governor's committee shall:

20 (1) Maintain records of community corrections programs  
21 including the corresponding community criminal justice board  
22 or other entity contact information and annual program evalua-  
23 tions, when available;

24 (2) Seek funding for approved community corrections  
25 programs from sources other than the fees collected pursuant to  
26 section four of this article; and

27 (3) Provide funding for approved community corrections  
28 programs, as available.

29 (c) The governor's committee shall submit, on or before the  
30 thirtieth day of September of each year, to the governor, the  
31 speaker of the House of Delegates, the president of the Senate  
32 and, upon request, to any individual member of the Legislature  
33 a report on its activities during the previous year and an  
34 accounting of funds paid into and disbursed from the special  
35 revenue account established pursuant to section four of this  
36 article.

**§62-11C-4. Special revenue account.**

1 (a) There is hereby created in the state treasury a special  
2 revenue account to be known as the "West Virginia community  
3 corrections fund". Expenditures from the fund are for the  
4 purposes set forth in subsection (d) of this section and are not  
5 authorized from collections but are to be made only in accor-  
6 dance with appropriation by the Legislature and in accordance  
7 with the provisions of article three, chapter twelve of this code  
8 and upon the fulfillment of the provisions set forth in article  
9 two, chapter five-a of this code: *Provided*, That for the fiscal  
10 year ending the thirtieth day of June, two thousand two,  
11 expenditures are authorized from collections rather than  
12 pursuant to an appropriation by the Legislature. The West  
13 Virginia community corrections fund may receive any gifts,  
14 grants, contributions or other money from any source which is  
15 specifically designated for deposit in the fund.

16 (b) Beginning on the effective date of this article, in  
17 addition to the fee required in section nine, article twelve of this  
18 chapter, a fee not to exceed thirty dollars per month, unless  
19 modified by legislative rule as provided in section three of this  
20 article, is also to be collected from those persons on probation.  
21 This fee is to be based upon the person's ability to pay. The  
22 magistrate or circuit judge shall conduct a hearing prior to  
23 imposition of probation and make a determination on the record  
24 that the offender is able to pay the fee without undue hardship.

25 The magistrate clerk or circuit clerk shall collect all fees  
26 imposed pursuant to this subsection and deposit them in a  
27 separate account. Within ten calendar days following the  
28 beginning of the calendar month, the magistrate clerk or circuit  
29 clerk shall forward the amount deposited to the state treasurer  
30 to be credited to the West Virginia community corrections fund.

31 (c) Beginning on the effective date of this article, in  
32 addition to the fee required in section five, article eleven-b of  
33 this chapter, a fee not to exceed five dollars per day, unless  
34 modified by legislative rule as provided in section three of this  
35 article, is also to be collected from those persons on home  
36 incarceration. The circuit judge, magistrate or municipal court  
37 judge shall consider the person's ability to pay in determining  
38 the imposition and amount of the fee. The circuit clerk, magis-  
39 trate clerk or municipal court clerk shall collect all fees  
40 imposed pursuant to this subsection and deposit them in a  
41 separate account. Within ten calendar days following the  
42 beginning of the calendar month, the circuit clerk or municipal  
43 court clerk shall forward the amount deposited to the state  
44 treasurer to be credited to the West Virginia community  
45 corrections fund.

46 (d) Beginning on the first day of July, two thousand two, in  
47 addition to the usual court costs in any criminal case taxed  
48 against any defendant convicted in a municipal, magistrate or  
49 circuit court, excluding municipal parking ordinances, a  
50 three-dollar fee shall be added. The circuit clerk, magistrate  
51 clerk or municipal court clerk shall collect all fees imposed  
52 pursuant to this subsection and deposit them in a separate  
53 account. Within ten calendar days following the beginning of  
54 the calendar month, the circuit clerk, magistrate court clerk and  
55 the municipal court clerk shall forward the amount deposited to  
56 the state treasurer to be credited to the West Virginia commu-  
57 nity corrections fund.

58 (e) The moneys of the West Virginia community correc-  
59 tions fund are to be disbursed by the governor's committee on  
60 crime, delinquency and correction, upon recommendation by  
61 the community corrections subcommittee, for the funding of  
62 community corrections programs and to pay expenses of the  
63 governor's committee in administering the provisions of this  
64 article, which expenses may not in any fiscal year exceed ten  
65 percent of the funds deposited to the special revenue account  
66 during that fiscal year.

67 (f) Any disbursements from the West Virginia community  
68 corrections fund allocated for community corrections programs  
69 by the governor's committee may be made contingent upon  
70 local appropriations or gifts in money or in kind for the support  
71 of the programs. Any county commission of any county or the  
72 governing body of a municipality may appropriate and expend  
73 money for establishing and maintaining community corrections  
74 programs.

75 (g) Nothing in this article may be construed to mandate  
76 funding for the West Virginia community corrections fund or  
77 to require any appropriation by the Legislature.

#### **§62-11C-6. Community criminal justice boards.**

1 (a) Each county or combination of counties or a county or  
2 counties and a Class I or II municipality that seek to establish  
3 community-based corrections services shall establish a commu-  
4 nity criminal justice board: *Provided*, That if a county has not  
5 established a community criminal justice board by the first day  
6 of July, two thousand two, the chief probation officer of such  
7 county, with the approval of the chief judge of the circuit, may  
8 apply for and receive approval and funding from the governor's  
9 committee for such programs as are authorized by the provi-  
10 sions of section five of this article. Any county which chooses  
11 to operate without a community criminal justice board shall be

12 subject to the regulations and requirements established by the  
13 community corrections subcommittee and the governor's  
14 committee.

15 (b) The community criminal justice board is to consist of no  
16 more than fifteen voting members.

17 (c) All members of the community criminal justice board  
18 are to be residents of the county or counties represented.

19 (d) The community criminal justice board is to consist of  
20 the following members:

21 (1) The sheriff or chief of police or, if the board represents  
22 more than one county or municipality, at least one sheriff or  
23 chief of police from the counties represented;

24 (2) The prosecutor or, if the board represents more than one  
25 county, at least one prosecutor from the counties represented;

26 (3) If a public defender corporation exists in the county or  
27 counties represented, at least one attorney employed by any  
28 public defender corporation existing in the counties represented  
29 or, if no public defender office exists, one criminal defense  
30 attorney from the counties represented;

31 (4) One member to be appointed by the local board of  
32 education or, if the board represents more than one county, at  
33 least one member appointed by a board of education of the  
34 counties represented;

35 (5) One member with a background in mental health care  
36 and services to be appointed by the commission or commissions  
37 of the county or counties represented by the board;

38 (6) Two members who can represent organizations or  
39 programs advocating for the rights of victims of crimes with

40 preference given to organizations or programs advocating for  
41 the rights of victims of the crimes of domestic violence or  
42 driving under the influence; and

43 (7) Three at-large members to be appointed by the commis-  
44 sion or commissions of the county or counties represented by  
45 the board.

46 (e) At the discretion of the West Virginia supreme court of  
47 appeals, any or all of the following people may serve on a  
48 community criminal justice board as ex officio, nonvoting  
49 members:

50 (1) A circuit judge from the county or counties represented;

51 (2) A magistrate from the county or counties represented;  
52 or

53 (3) A probation officer from the county or counties repre-  
54 sented.

55 (f) Community criminal justice boards may:

56 (1) Provide for the purchase, development and operation of  
57 community corrections services;

58 (2) Coordinate with local probation departments in estab-  
59 lishing and modifying programs and services for offenders;

60 (3) Evaluate and monitor community corrections programs,  
61 services and facilities to determine their impact on offenders;  
62 and

63 (4) Develop and apply for approval of community correc-  
64 tions programs by the governor's committee on crime, delin-  
65 quency and correction.



66 (g) If a community criminal justice board represents more  
67 than one county, the appointed membership of the board,  
68 excluding any ex officio members, shall include an equal  
69 number of members from each county, unless the county  
70 commission of each county agrees in writing otherwise.

71 (h) If a community criminal justice board represents more  
72 than one county, the board shall, in consultation with the county  
73 commission of each county represented, designate one county  
74 commission as the fiscal agent of the board.

75 (i) Any political subdivision of this state operating a  
76 community corrections program shall, regardless of whether or  
77 not the program has been approved by the governor's commit-  
78 tee on crime, delinquency and correction, provide to the  
79 governor's committee required information regarding the  
80 program's operations as required by legislative rule.

**§62-11C-7. Supervision or participation fee.**

1 (a) A circuit judge, magistrate, municipal court judge or  
2 community criminal justice board may require the payment of  
3 a supervision or participation fee from any person required to  
4 be supervised by or participate in a community corrections  
5 program. The circuit judge, magistrate, municipal court judge  
6 or community criminal justice board shall consider the person's  
7 ability to pay in determining the imposition and amount of the  
8 fee.

9 (b) All fees ordered by the circuit court or community  
10 criminal justice board pursuant to this section are to be paid to  
11 the circuit clerk, who shall monthly remit the fees to the  
12 treasurer of the county designated as the fiscal agent for the  
13 board pursuant to section six of this article. All fees ordered by  
14 the magistrate court pursuant to this section are to be paid to the  
15 magistrate clerk, who shall monthly remit the fees to the  
16 treasurer of the county designated as the fiscal agent for the

17 board pursuant to said section. All fees ordered by the municipi-  
18 pal court judge pursuant to this section are to be paid to the  
19 municipal court clerk who shall monthly remit the fees to the  
20 treasurer of the county designated as the fiscal agent for the  
21 board pursuant to section six of this article.

---

## CHAPTER 77

(Com. Sub. for H. B. 4296 — By Delegates Trump,  
Smirl, Manuel and Doyle)

---

[Passed March 4, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section one, article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to inmate release for work generally; providing that an inmate, released for work, may designate a person to receive certain earnings for dependent support after required deductions are withheld; removing the requirement that the clerk pay certain inmate expenses; removing the provision that the clerk may pay certain unpaid inmate debts; and clarifying the role of the clerk with respect to payment of inmate debts, expenses and bills.

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

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

**ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.**

**§62-11A-1. Release for work and other purposes by courts of record with criminal jurisdiction.**

1       (1) When a defendant is sentenced or committed for a term  
2 of one year or less by a court of record having criminal jurisdic-  
3 tion, such court may in its order grant to such defendant the  
4 privilege of leaving the jail during necessary and reasonable  
5 hours for any of the following purposes:

6       (a) To work at his or her employment;

7       (b) To seek employment;

8       (c) To conduct his or her own business or to engage in other  
9 self-employment, including housekeeping and attending to the  
10 needs of his or her family;

11       (d) To attend an educational institution;

12       (e) To obtain medical treatment;

13       (f) To devote time to any other purpose approved of or  
14 ordered by the court, including participation in the litter control  
15 program of the county unless the court specifically finds that  
16 this alternative service would be inappropriate.

17       (2) Whenever an inmate who has been granted the privilege  
18 of leaving the jail under this section is not engaged in the  
19 activity for which such leave is granted, he or she shall be  
20 confined in jail.

21       (3) An inmate sentenced to ordinary confinement may  
22 petition the court at any time after sentence for the privilege of  
23 leaving jail under this section and may renew his or her petition  
24 in the discretion of the court. The court may withdraw the  
25 privilege at any time by order entered with or without notice.

26       (4) If the inmate has been granted permission to leave the  
27 jail to seek or take employment, the court's probation officers,  
28 or if none, the jail shall assist him or her in obtaining suitable

29 employment and in making certain that employment already  
30 obtained is suitable. Employment shall not be deemed suitable  
31 if the wages or working conditions or other circumstances  
32 present a danger of exploitation or of interference in a labor  
33 dispute in the establishment in which the inmate would be  
34 employed.

35 (5) If an inmate is employed for wages or salary, the clerk  
36 of the court shall collect the same or shall require the inmate to  
37 turn over his or her wages or salary in full when received, and  
38 shall deposit the same in a trust account and shall keep a ledger  
39 showing the status of the account of each inmate. Earnings  
40 levied upon pursuant to writ of attachment or execution or in  
41 other lawful manner shall be collected from the employer and  
42 shall not be collected hereunder, but when the clerk has  
43 requested transmittal of earnings prior to levy, such request  
44 shall have priority. When an employer transmits such earnings  
45 to the clerk pursuant to this subsection he or she shall have no  
46 liability to the inmate for such earnings. From such earnings the  
47 clerk shall pay the inmate's board and personal expenses inside  
48 the jail and shall deduct installments on fines, if any, and, to the  
49 extent directed by the court, shall pay the balance to the person  
50 designated by the inmate to receive the balance for the support  
51 of the inmate's dependents: *Provided*, That at least twenty-five  
52 percent of the earnings collected by the clerk on behalf of an  
53 inmate shall be paid to the person designated by the inmate as  
54 the person to receive funds being paid for the support of such  
55 inmate's dependents, if any. Any undistributed balance shall be  
56 paid to the inmate at the time of his or her discharge.

57 Except as specifically provided herein, nothing in this  
58 section may be construed to require the clerk to undertake  
59 disbursement and payment of an inmate's expenses, debts or  
60 bills.

61 (6) An inmate who is serving his or her sentence pursuant  
62 to this section shall be eligible for a reduction of his or her term  
63 for good behavior and faithful performance of duties in the  
64 same manner as if he or she had served his or her term in  
65 ordinary confinement.

66 (7) The court shall not make an order granting the privilege  
67 of leaving the institution under this section unless it is satisfied  
68 that there are adequate facilities for the administration of such  
69 privilege in the jail or other institution in which the defendant  
70 will be confined.

71 (8) In every case wherein the defendant has been convicted  
72 of an offense, defined in section twelve, article eight, chapter  
73 sixty-one, or in article eight-b or eight-d of said chapter against  
74 a child, the defendant shall not live in the same residence as any  
75 minor child, nor exercise visitation with any minor child and  
76 shall have no contact with the victim of the offense: *Provided,*  
77 That the defendant may petition the court of the circuit wherein  
78 he or she was so convicted for a modification of this term and  
79 condition of this probation and the burden shall rest upon the  
80 defendant to demonstrate that a modification is in the best  
81 interest of the child.

---

## CHAPTER 78

(H. B. 4530 — By Delegates Armstead, Manuel, Craig, Mahan,  
J. Smith, Wills and Smirl)

---

[Passed March 4, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section nineteen, article twelve,  
chapter sixty-two of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to violation of parole; allowing for intermediate sanctions for technical and nonfelonious parole violations; and precluding need for parole revocation hearing where parolee is convicted of a new felony.

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

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

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-19. Violation of parole.**

1           (a) If at any time during the period of parole there shall be  
2 reasonable cause to believe that the parolee has violated any of  
3 the conditions of his or her release on parole, the parole officer  
4 may arrest him or her with or without an order or warrant, or  
5 the commissioner of corrections may issue its written order or  
6 warrant for his or her arrest, which written order or warrant  
7 shall be sufficient for his or her arrest by any officer charged  
8 with the duty of executing an ordinary criminal process. The  
9 commissioner's written order or warrant delivered to the sheriff  
10 against the paroled prisoner shall be a command to keep  
11 custody of the parolee for the jurisdiction of the division of  
12 corrections and during the period of custody, the parolee may  
13 be admitted to bail by the court before which the parolee was  
14 sentenced. If the parolee is not released on a bond, the costs of  
15 confining the paroled prisoner shall be paid out of the funds  
16 appropriated for the division of corrections.

17           (b) When a parolee is under arrest for violation of the  
18 conditions of his or her parole, he or she shall be given a  
19 prompt and summary hearing, at which the parolee and his or  
20 her counsel shall be given an opportunity to attend. If at the  
21 hearing it shall appear to the satisfaction of the board that the  
22 parolee has violated any condition of his or her release on

23 parole, or any rules or conditions of his or her supervision, the  
24 board may revoke his or her parole and may require him or her  
25 to serve in prison the remainder or any portion of his or her  
26 maximum sentence for which, at the time of his or her release,  
27 he or she was subject to imprisonment: *Provided*, That if the  
28 violation of the conditions of parole or rules for his or her  
29 supervision is not a felony as set out in section eighteen of this  
30 article, the board may, if in its judgment the best interests of  
31 justice do not require revocation, reinstate him or her on parole.  
32 The division of corrections will effect release from custody  
33 upon approval of a home plan. Notwithstanding any provision  
34 of this code to the contrary, when reasonable cause has been  
35 found to believe that a parolee has violated the conditions of his  
36 or her parole but said violation does not constitute felonious  
37 conduct, the commissioner may, in his or her discretion and  
38 with the written consent of the parolee, allow the parolee to  
39 remain on parole with additional conditions or restrictions.  
40 Such additional conditions or restrictions may include, but shall  
41 not be limited to, participation in any program described in  
42 subsection (d), section five, article eleven-c of this chapter.  
43 Compliance by the parolee with such conditions of parole shall  
44 preclude revocation of parole for the conduct which constituted  
45 the violation. Failure of the parolee to comply with such  
46 conditions or restrictions and all other conditions of release  
47 shall constitute an additional violation of parole and the parolee  
48 may be proceeded against under the provisions of this section  
49 for the original violation as well as any subsequent violations.

50 (c) When a parolee has violated the conditions of his or her  
51 release on parole by confession to, or being convicted of, any  
52 of the crimes set forth in section eighteen of this article, he or  
53 she shall be returned to the custody of the division of correc-  
54 tions to serve the remainder of his or her maximum sentence,  
55 during which remaining part of his or her sentence he or she  
56 shall be ineligible for further parole.

57 (d) Whenever the parole of a paroled prisoner has been  
58 revoked, the commissioner shall upon receipt of the board's

59 written order of revocation, convey and transport the paroled  
60 prisoner to a state correctional institution. A paroled prisoner  
61 whose parole has been revoked shall remain in custody of the  
62 sheriff until delivery to a corrections officer sent and duly  
63 authorized by the commissioner for the removal of the paroled  
64 prisoner to a state penal institution; the cost of confining such  
65 paroled prisoner shall be paid out of the funds appropriated for  
66 the division of corrections.

67 (e) When a paroled prisoner is convicted of, or confesses to,  
68 any one of the crimes enumerated in section eighteen of this  
69 article, it shall be the duty of the board to cause him or her to be  
70 returned to this state for a summary hearing as provided by this  
71 article. Whenever a parolee has absconded supervision, the  
72 commissioner shall issue a warrant for his or her apprehension  
73 and return to this state for the hearing provided for in this  
74 article: *Provided*, That the board may, if it be of opinion the  
75 best interests of justice do not require revocation, cause the  
76 paroled absconder to be reinstated to parole.

77 (f) A warrant filed by the commissioner shall stay the  
78 running of his or her sentence until the parolee is returned to the  
79 custody of the division of corrections and physically in the state  
80 of West Virginia.

81 (g) Whenever a parolee who has absconded supervision or  
82 has been transferred out of this state for supervision pursuant to  
83 section one, article six, chapter twenty-eight of this code is  
84 returned to West Virginia due to a violation of parole and costs  
85 are incurred by the division of corrections, the commissioner  
86 may assess reasonable costs from the parolee's inmate funds or  
87 the parolee as reimbursement to the division of corrections for  
88 the costs of returning him or her to the state of West Virginia.

89 (h) Conviction of a felony for conduct occurring during the  
90 period of parole constitutes proof of violation of the conditions  
91 of parole and the hearing procedures required by the provisions  
92 of this section are inapplicable.



---

## CHAPTER 79

(Com. Sub. for S. B. 3 — By Senators Jackson, Deem,  
Hunter, Anderson, Unger, Snyder and Edgell)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-kk, relating to county commissions generally; authorizing county commissions to provide for the elimination of hazards to public safety; and authorizing penalty.

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

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

### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

#### **§7-1-3kk. Authority to provide for the elimination of hazards to public health and safety; penalty.**

1       In addition to all other powers and duties now conferred by  
2 law upon county commissions, commissions are hereby  
3 authorized to enact ordinances, issue orders and take other  
4 appropriate and necessary actions for the elimination of hazards  
5 to public health and safety and to abate or cause to be abated  
6 anything which the commission determines to be a public  
7 nuisance. The ordinances may provide for a misdemeanor  
8 penalty for its violation. The ordinances may further be  
9 applicable to the county in its entirety or to any portion of the  
10 county as considered appropriate by the county commission.

---

## CHAPTER 80

**(S. B. 267 — By Senators Mitchell and Kessler)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section two, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing county prosecuting attorneys' investigators to hold other employment with the permission of the county prosecuting attorney and county commission.

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

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

**ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

**§7-4-2. Rewards for apprehension of persons charged with crime and expenditure of money for detection of crime; appointment of investigators of crime.**

1       The prosecuting attorney of any county, with the approval  
 2 of the county commission, or of the governor, or of the court of  
 3 the county vested with authority to try criminal offenses, or of  
 4 the judge thereof in vacation, may, within his discretion, offer  
 5 rewards for the apprehension of persons charged with crime, or  
 6 may expend money for the detection of crime. Any money  
 7 expended under this section shall, when approved by the  
 8 prosecuting attorney, be paid out of the county fund, in the  
 9 same manner as other county expenses are paid: *Provided*, That  
 10 the prosecuting attorneys of the several counties of the state  
 11 may, with the approval of the county commissions of their

12 respective counties, entered of record, appoint to assist them in  
13 the discharge of their official duties, trained and qualified full-  
14 time or part-time investigators of crime. Such full-time investi-  
15 gators shall accept no other public employment or employment  
16 in a private police or investigative capacity during the term of  
17 their appointment without prior approval of the county commis-  
18 sion and county prosecuting attorney and shall be paid such  
19 salary and expenses as may be fixed by the county commission.  
20 Such expenses shall be itemized and sworn to by the investiga-  
21 tor upon presentation to the county commission.

22 Notwithstanding any other provision of this code to the  
23 contrary, the prosecuting attorney of any county, with the  
24 consent of the judge of the court of competent jurisdiction and  
25 the county commission, may appoint an investigator of crime  
26 who need not be a resident of this state.

---

## CHAPTER 81

**(H. B. 4366 — By Delegates Manuel, C. White,  
Armstead, Spencer, Pethtel, Webb and Pino)**

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section sixteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article three, chapter eleven-a of said code, all relating to counties generally; increasing time period for preparation, publication and disposition of financial statements by county commissions; and eliminating filing requirement of redemptions with the auditor.

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

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

**Chapter**

**7. County Commissions and Officers.**

**11A. Collection and Enforcement of Property Taxes.**

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 5. FISCAL AFFAIRS**

**§7-5-16. Preparation, publication and disposition of financial statements.**

1 (a) The county commission of every county, within ninety  
 2 days after the first session held after the beginning of each  
 3 fiscal year, shall prepare on a form to be prescribed by the state  
 4 tax commissioner, and cause to be published a statement  
 5 revealing: (1) The receipts and expenditures of the county  
 6 during the previous fiscal year arranged under descriptive  
 7 headings; (2) the name of each firm, corporation, and person  
 8 who received more than fifty dollars from any fund during the  
 9 previous fiscal year, together with the amount received and the  
 10 purpose for which paid; and (3) all debts of the county, the  
 11 purpose for which each debt was contracted, its due date, and  
 12 to what date the interest thereon has been paid. The statement  
 13 shall be published as a Class I-0 legal advertisement in compli-  
 14 ance with the provisions of article three, chapter fifty-nine of  
 15 this code, and the publication area for such publication shall be  
 16 the county: *Provided*, That all salaries, receipts and expendi-  
 17 tures to all county employees by office or department may be  
 18 published in the aggregate.

19 (b) The county commission shall transmit to any resident of  
 20 the county requesting the same a copy of the published state-

21 ment for the fiscal year designated, supplemented by a list of  
22 the names of each firm, corporation and person who received  
23 less than fifty dollars from any fund during such fiscal year  
24 showing the amount paid to each, the purpose for which paid  
25 and an itemization of the salaries, receipts and expenditures to  
26 all county employees by office or department otherwise  
27 published in the aggregate.

28 (c) If a county commission willfully fails or refuses to  
29 perform the duties hereinbefore named, every member of the  
30 commission, concurring in such failure or refusal, shall be  
31 guilty of a misdemeanor and, upon conviction thereof, shall be  
32 fined not less than fifty nor more than one hundred dollars; and  
33 the prosecuting attorney of any county shall, when the failure  
34 or refusal shall come to his knowledge, immediately present the  
35 evidence thereof to the grand jury if in session, and if not in  
36 session, he shall institute proper criminal proceedings before a  
37 magistrate against any offender, and cause the failure or refusal  
38 to be investigated by the next succeeding grand jury.

39 (d) Where in subsections (a) and (b), salaries, receipts and  
40 expenditures are published in the aggregate, the county com-  
41 mission shall, upon written request, provide to any resident of  
42 the county an itemized accounting of such salaries, receipts and  
43 expenditures.

## **CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.**

### **ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.**

#### **§11A-3-26. Certificate of redemption issued by clerk; recordation; disposition of redemption money.**

1 (a) Upon payment of the sum necessary to redeem, the clerk  
2 shall execute a certificate of redemption in duplicate, which

3 certificate shall specify the real estate redeemed, or the part  
4 thereof or the interest therein, as the case may be, together with  
5 any changes in respect thereto which were made in the  
6 landbook and in the record of delinquent lands; shall specify the  
7 year or years for which payment was made; and shall state that  
8 it is a receipt for the money paid and a release of the tax lien on  
9 the real estate redeemed. The original certificate shall be  
10 retained in the files in the clerk's office and one copy shall be  
11 delivered to the person redeeming. The clerk shall make any  
12 necessary changes in his record of delinquent lands and shall  
13 note the fact of redemption on such record, and shall record the  
14 certificate in a separate volume provided for the purpose.

15       The fee for issuing the certificate of redemption shall be  
16 twenty-five dollars.

17       (b) All certificates of redemption issued by the clerk in each  
18 year shall be numbered consecutively and shall be filed by the  
19 clerk in numerical order. Reference to the year and number of  
20 the certificate shall be included in the notation of redemption  
21 required herein. No fee shall be charged by the clerk for any  
22 recordation, filing or notation required by this section.

---

## CHAPTER 82

**(Com. Sub. for S. B. 211 — By Senators Wooton, Minard, Mitchell,  
Unger, Edgell, Kessler, Jackson and Tomblin, Mr. President)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one and four, article seven,  
chapter seven of the code of West Virginia, one thousand nine  
hundred thirty-one, as amended, all relating generally to salaries

and duties of elected county officials; recognizing additional duties imposed on elected county officials; increasing salaries of certain elected county officials; and providing circumstances under which certain elected county officials must perform their duties on a full-time basis.

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

That sections one and four, article seven, 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 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.**

§7-7-1. Legislative findings and purpose.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

**§7-7-1. Legislative findings and purpose.**

1       (a) The Legislature finds that it has, since the first day of  
2       January, one thousand nine hundred ninety-seven, consistently  
3       and annually imposed upon the county commissioners, sheriffs,  
4       county and circuit clerks, assessors and prosecuting attorneys  
5       in each county board, new and additional duties by the enact-  
6       ment of new provisions and amendments to this code. The new  
7       and additional duties imposed upon the aforesaid county  
8       officials by these enactments are such that they would justify  
9       the increases in compensation as provided in section four of this  
10      article, without violating the provisions of section thirty-eight,  
11      article VI of the constitution of West Virginia.

12      (b) The Legislature further finds that there are, from time  
13      to time, additional duties imposed upon all county officials  
14      through the acts of the congress of the United States and that  
15      such acts constitute new and additional duties for county  
16      officials and, as such, justify the increases in compensation as  
17      provided by section four of this article, without violating the  
18      provisions of section thirty-eight, article VI of the constitution  
19      of West Virginia.

20 (c) The Legislature further finds that there is a direct  
21 correlation between the total assessed property valuations of a  
22 county on which the salary levels of the county commissioners,  
23 sheriffs, county and circuit clerks, assessors and prosecuting  
24 attorneys are based, and the new and additional duties that each  
25 of these officials is required to perform as they serve the best  
26 interests of their respective counties. Inasmuch as the reap-  
27 praisal of the property valuations in each county has now been  
28 accomplished, the Legislature finds that a change in classifica-  
29 tion of counties by virtue of increased property valuations will  
30 occur on an infrequent basis. However, it is the further finding  
31 of the Legislature that when such change in classification of  
32 counties does occur, that new and additional programs, eco-  
33 nomic developments, requirements of public safety and the  
34 need for new services provided by county officials all increase,  
35 that the same constitute new and additional duties for county  
36 officials as their respective counties reach greater heights of  
37 economic development, as exemplified by the substantial  
38 increases in property valuations and, as such, justify the  
39 increases in compensation provided in section four of this  
40 article, without violating the provisions of section thirty-eight,  
41 article VI of the constitution of West Virginia.

42 (d) The Legislature further finds and declares that the  
43 amendments enacted to this article are intended to modify the  
44 provisions of this article so as to cause the same to be in full  
45 compliance with the provisions of the constitution of West  
46 Virginia and to be in full compliance with the decisions of the  
47 supreme court of appeals of West Virginia.

**§7-7-4. Compensation of elected county officials and county  
commissioners for each class of county; effective  
date.**

1 (a)(1) All county commissioners shall be paid compensa-  
2 tion out of the county treasury in amounts and according to the



3 schedule set forth in subdivision (2) of this subsection for each  
4 class of county as determined by the provisions of section three  
5 of this article: *Provided*, That as to any county having a tribunal  
6 in lieu of a county commission, the county commissioners of  
7 the county may be paid less than the minimum compensation  
8 limits of the county commission for the particular class of such  
9 county.

10	(2) COUNTY COMMISSIONERS	
11	Class I	\$ 20,000
12	Class II	\$ 15,500
13	Class III	\$ 14,000
14	Class IV	\$ 10,000
15	Class V	\$ 7,000
16	Class VI	\$ 4,000

17 (3) The compensation, set out in subdivision (2) of this  
18 subsection, shall be paid on and after the first day of January,  
19 one thousand nine hundred eighty-five, to each county commis-  
20 sioner. Within each county, every county commissioner whose  
21 term of office commenced prior to the first day of January, one  
22 thousand nine hundred eighty-five, shall receive the same  
23 annual compensation as commissioners commencing a term of  
24 office on or after that date by virtue of the new duties imposed  
25 upon county commissioners pursuant to the provisions of  
26 chapter fifteen, acts of the Legislature, first extraordinary  
27 session, one thousand nine hundred eighty-three.

28 (4) For the purpose of determining the compensation to be  
29 paid to the elected county officials of each county, the compen-  
30 sations for each office by class, set out in subdivision (5) of this  
31 subsection, are established and shall be used by each county  
32 commission in determining the compensation of each of their  
33 county officials other than compensation of members of the  
34 county commission.

35

## (5) OTHER ELECTED OFFICIALS

		County	Circuit		Prosecuting	
	Sheriff	Clerk	Clerk	Assessor	Attorney	
38	Class I	\$24,200	\$31,300	\$31,300	\$24,200	\$41,500
39	Class II	\$24,200	\$28,000	\$28,000	\$24,200	\$39,500
40	Class III	\$24,200	\$28,000	\$28,000	\$24,200	\$30,000
41	Class IV	\$22,300	\$24,000	\$24,000	\$22,300	\$26,500
42	Class V	\$20,400	\$22,000	\$22,000	\$20,400	\$23,500
43	Class VI	\$17,200	\$17,200	\$17,200	\$17,200	\$17,000

44 (6) Any county clerk, circuit clerk, joint clerk of the county  
 45 commission and circuit court, if any, county assessor, sheriff  
 46 and prosecuting attorney of a Class I county, any assessor of a  
 47 Class II and Class III county, any sheriff of a Class II and Class  
 48 III county and any prosecuting attorney of a Class II county  
 49 shall devote full-time to his or her public duties to the exclusion  
 50 of any other employment: *Provided*, That any public official,  
 51 whose term of office begins when his or her county's classifica-  
 52 tion imposes no restriction on his or her outside activities, shall  
 53 not be restricted on his or her outside activities during the  
 54 remainder of the term for which he or she is elected. The  
 55 compensation, set out in subdivision (5) of this subsection, shall  
 56 be paid on and after the first day of January, one thousand nine  
 57 hundred eighty-five, to each elected county official.

58 (7) In the case of a county that has a joint clerk of the  
 59 county commission and circuit court, the compensation of the  
 60 joint clerk shall be fixed in an amount twenty-five percent  
 61 higher than the compensation would be fixed for the county  
 62 clerk if it had separate offices of county clerk and circuit clerk.

63 (8) The Legislature finds that the duties imposed upon  
 64 county clerks by the provisions of chapter sixty-four, acts of the  
 65 Legislature, regular session, one thousand nine hundred  
 66 eighty-two, and by chapter fifteen, acts of the Legislature, first

67 extraordinary session, one thousand nine hundred eighty-three,  
68 constitute new and additional duties for county clerks and as  
69 such justify the additional compensation provided in this  
70 section without violating the provisions of section thirty-eight,  
71 article VI of the constitution of West Virginia.

72 (9) The Legislature further finds that the duties imposed  
73 upon circuit clerks by the provisions of chapters sixty-one and  
74 one hundred eighty-two, acts of the Legislature, regular session,  
75 one thousand nine hundred eighty-one, and by chapter sixty,  
76 acts of the Legislature, regular session, one thousand nine  
77 hundred eighty-three, constitute new and additional duties for  
78 circuit clerks and as such justify the additional compensation  
79 provided by this section without violating the provisions of  
80 section thirty-eight, article VI of the constitution of West  
81 Virginia.

82 (b)(1) Prior to the primary election in the year one thousand  
83 nine hundred ninety-two, and for the fiscal year beginning on  
84 the first day of July, one thousand nine hundred ninety-two, or  
85 for any subsequent fiscal year if the approval, set out in  
86 subdivision (2) of this subsection, is not granted for any fiscal  
87 year, and at least thirty days prior to the meeting to approve the  
88 county budget, the commission shall provide notice to the  
89 public of the date and time of the meeting and that the purpose  
90 of the meeting of the county commission is to decide upon their  
91 budget certification to the auditor.

92 (2) Upon submission by the county commission to the  
93 auditor of a proposed annual budget which contains anticipated  
94 receipts into the county's general revenue fund, less anticipated  
95 moneys from the unencumbered fund balance, equal to antici-  
96 pated receipts into the county's general revenue fund, less  
97 anticipated moneys from the unencumbered fund balance and  
98 any federal or state special grants, for the immediately preced-  
99 ing fiscal year, plus such additional amount as is necessary for

100 payment of the increases in the salaries set out in subdivisions  
 101 (3) and (5) of this subsection, and related employment taxes  
 102 over that paid for the immediately preceding fiscal year, and  
 103 upon approval thereof by the auditor, which approval shall not  
 104 be granted for any proposed annual budget containing antici-  
 105 pated receipts which are unreasonably greater or lesser than that  
 106 of the immediately preceding fiscal year, for the purpose of  
 107 determining the compensation to be paid to the elected county  
 108 officials of each county office by class are established and shall  
 109 be used by each county commission in determining the com-  
 110 pensation of each of their county officials: *Provided*, That as to  
 111 any county having a tribunal in lieu of a county commission,  
 112 the county commissioners of the county may be paid less than  
 113 the minimum compensation limits of the county commission  
 114 for the particular class of the county.

115	(3) COUNTY COMMISSIONERS	
116	Class I	\$24,000
117	Class II	\$18,600
118	Class III	\$16,800
119	Class IV	\$12,000
120	Class V	\$8,400

121 (4) If the approval, set out in subdivision (2) of this  
 122 subsection, is granted, the compensation, set out in subdivision  
 123 (3) of this subsection, shall be paid on and after the first day of  
 124 January, one thousand nine hundred ninety-three, to each  
 125 county commissioner. Within each county, every county  
 126 commissioner shall receive the same annual compensation by  
 127 virtue of the new duties imposed upon county commissioners  
 128 pursuant to the provisions of chapter one hundred seventy-two,  
 129 acts of the Legislature, second regular session, one thousand  
 130 nine hundred ninety and chapter five, acts of the Legislature,  
 131 third extraordinary session, one thousand nine hundred ninety.

## 132 (5) OTHER ELECTED OFFICIALS

133		County	Circuit	Prosecuting		
134		Sheriff	Clerk	Assessor		
				Attorney		
135	Class I	\$29,040	\$37,560	\$37,560	\$29,040	\$59,500
136	Class II	\$29,040	\$33,600	\$33,600	\$29,040	\$59,500
137	Class III	\$29,040	\$33,600	\$33,600	\$29,040	\$36,000
138	Class IV	\$26,760	\$28,800	\$28,800	\$26,760	\$31,800
139	Class V	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200
140	Class VI	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200

141 (6) Any county clerk, circuit clerk, joint clerk of the county  
 142 commission and circuit court, if any, county assessor, sheriff  
 143 and prosecuting attorney of a Class I county, any assessor of a  
 144 Class II and Class III county, any sheriff of a Class II and Class  
 145 III county and any prosecuting attorney of a Class II county  
 146 shall devote full-time to his or her public duties to the exclusion  
 147 of any other employment: *Provided*, That any public official,  
 148 whose term of office begins when his or her county's classifica-  
 149 tion imposes no restriction on his or her outside activities, shall  
 150 not be restricted on his or her outside activities during the  
 151 remainder of the term for which he or she is elected. If the  
 152 approval, set out in subdivision (2) of this subsection, is  
 153 granted, the compensation, set out in subdivision (5) of this  
 154 subsection, shall be paid on and after the first day of January,  
 155 one thousand nine hundred ninety-three, to each elected county  
 156 official.

157 (7) In the case of a county that has a joint clerk of the  
 158 county commission and circuit court, the compensation of the  
 159 joint clerk shall be fixed in an amount twenty-five percent  
 160 higher than the compensation would be fixed for the county  
 161 clerk if it had separate offices of county clerk and circuit clerk.

162 (8) Prior to the primary election in the year one thousand  
 163 nine hundred ninety-two, in the case of a Class III, Class IV or

164 Class V county which has a part-time prosecuting attorney, the  
165 county commission may find that such facts and circumstances  
166 exist that require the prosecuting attorney to devote full-time to  
167 his or her public duties for the four-year term, beginning the  
168 first day of January, one thousand nine hundred ninety-three. If  
169 the county commission makes such a finding, it may by proper  
170 order adopted and entered, require the prosecuting attorney who  
171 takes office on the first day of January, one thousand nine  
172 hundred ninety-three, to devote full-time to his or her public  
173 duties and the county commission shall then compensate said  
174 prosecuting attorney at the same rate of compensation as that of  
175 a prosecuting attorney in a Class II county.

176 (9) For any county: ( A) Which on and after the first day of  
177 July, one thousand nine hundred ninety-four, is classified as a  
178 Class II county; and ( B) which prior to such date was classified  
179 as a Class III, Class IV or Class V county and maintained a  
180 part-time prosecuting attorney, the county commission may  
181 elect to maintain the prosecuting attorney as a part-time  
182 prosecuting attorney: *Provided*, That prior to the first day of  
183 January, one thousand nine hundred ninety-six, the county  
184 commission shall make a finding, by proper order and entered,  
185 whether to maintain a full-time or part-time prosecuting  
186 attorney. The part-time prosecuting attorney shall be compen-  
187 sated at the same rate of compensation as that of a prosecuting  
188 attorney in the class for the county prior to being classified as  
189 a Class II county.

190 (c)(1) Prior to the primary election in the year one thousand  
191 nine hundred ninety-six, and for the fiscal year beginning on the  
192 first day of July, one thousand nine hundred ninety-six, or for  
193 any subsequent fiscal year if the approval, set out in subdivision  
194 (2) of this subsection, is not granted for any fiscal year, and at  
195 least thirty days prior to the meeting to approve the county  
196 budget, the commission shall provide notice to the public of the  
197 date and time of the meeting and that the purpose of the

198 meeting of the county commission is to decide upon their  
199 budget certification to the auditor.

200 (2) Upon submission by the county commission to the  
201 auditor of a proposed annual budget which contains anticipated  
202 receipts into the county’s general revenue fund, less anticipated  
203 moneys from the unencumbered fund balance, equal to antici-  
204 pated receipts into the county’s general revenue fund, less  
205 anticipated moneys from the unencumbered fund balance and  
206 any federal or state special grants, for the fiscal year beginning  
207 the first day of July, one thousand nine hundred ninety-six, plus  
208 such additional amount as is necessary for payment of the  
209 increases in the salaries set out in subdivisions (3) and (6) of  
210 this subsection, and related employment taxes over that paid for  
211 the immediately preceding fiscal year, and upon approval  
212 thereof by the auditor, which approval shall not be granted for  
213 any proposed annual budget containing anticipated receipts  
214 which are unreasonably greater or lesser than that of the  
215 immediately preceding fiscal year for the purpose of determin-  
216 ing the compensation to be paid to the elected county officials  
217 of each county office by class are established and shall be used  
218 by each county commission in determining whether county  
219 revenues are sufficient to pay the compensation mandated  
220 herein for their county officials: *Provided*, That as to any  
221 county having a tribunal in lieu of a county commission, the  
222 county commissioners of the county may be paid less than the  
223 minimum compensation limits of the county commission for  
224 the particular class of the county: *Provided, however*, That  
225 should there be an insufficient projected increase in revenues to  
226 pay the increased compensation and related employment taxes,  
227 then the compensation of that county’s elected officials shall  
228 remain at the level in effect at the time certification was sought.

229 (3) COUNTY COMMISSIONERS

230	Class I	\$28,000
231	Class II	\$27,500

232	Class III	\$27,000
233	Class IV	\$26,500
234	Class V	\$26,000
235	Class VI	\$21,500
236	Class VII	\$21,000
237	Class VIII	\$19,000
238	Class IX	\$18,500
239	Class X	\$15,000

240 (4) The compensation, set out in subdivision (3) of this  
 241 subsection, shall be paid on and after the first day of January,  
 242 one thousand nine hundred ninety-seven, to each county  
 243 commissioner. Every county commissioner in each county,  
 244 whose term of office commenced prior to or on or after the first  
 245 day of January, one thousand nine hundred ninety-seven, shall  
 246 receive the same annual compensation by virtue of legislative  
 247 findings of extra duties as set forth in section one of this article.

248 (5) For the purpose of determining the compensation to be  
 249 paid to the elected county officials of each county, the compen-  
 250 sations for each county office by class, set out in subdivision (6)  
 251 of this subsection, are established and shall be used by each  
 252 county commission in determining the compensation of each of  
 253 their county officials other than compensation of members of  
 254 the county commission:

255 (6) OTHER ELECTED OFFICIALS

256		County	Circuit	Prosecuting		
257		Sheriff	Clerk	Assessor	Attorney	
258	Class I	\$34,000	\$42,000	\$42,000	\$34,000	\$76,000
259	Class II	\$33,500	\$41,500	\$41,500	\$33,500	\$74,000
260	Class III	\$33,250	\$40,500	\$40,500	\$33,250	\$72,000
261	Class IV	\$33,000	\$40,250	\$40,250	\$33,000	\$70,000
262	Class V	\$32,750	\$40,000	\$40,000	\$32,750	\$68,000
263	Class VI	\$32,500	\$37,500	\$37,500	\$32,500	\$45,000



264	Class VII	\$32,250	\$37,000	\$37,000	\$32,250	\$43,000
265	Class VIII	\$32,000	\$36,500	\$36,500	\$32,000	\$41,000
266	Class IX	\$31,750	\$36,000	\$36,000	\$31,750	\$38,000
267	Class X	\$29,000	\$32,000	\$32,000	\$29,000	\$35,000

268 (7) The compensation, set out in subdivision (6) of this  
 269 subsection, shall be paid on and after the first day of January,  
 270 one thousand nine hundred ninety-seven, to each elected county  
 271 official. Any county clerk, circuit clerk, joint clerk of the  
 272 county commission and circuit court, if any, county assessor or  
 273 sheriff of a Class I through Class V county, inclusive, any  
 274 assessor or any sheriff of a Class VI through Class IX county,  
 275 inclusive, shall devote full-time to his or her public duties to the  
 276 exclusion of any other employment: *Provided*, That any public  
 277 official, whose term of office begins when his or her county's  
 278 classification imposes no restriction on his or her outside  
 279 activities, shall not be restricted on his or her outside activities  
 280 during the remainder of the term for which he or she is elected.

281 (8) In the case of a county that has a joint clerk of the  
 282 county commission and circuit court, the compensation of the  
 283 joint clerk shall be fixed in an amount twenty-five percent  
 284 higher than the compensation would be fixed for the county  
 285 clerk if it had separate offices of county clerk and circuit clerk.

286 (9) Any prosecuting attorney of a Class I through Class V  
 287 county, inclusive, shall devote full-time to his or her public  
 288 duties to the exclusion of any other employment: *Provided*,  
 289 That any county which under the prior provisions of this section  
 290 was classified as a Class II county and elected to maintain a  
 291 part-time prosecutor may continue to maintain a part-time  
 292 prosecutor, until such time as the county commission, on  
 293 request of the part-time prosecutor, approves and makes a  
 294 finding, by proper order entered, that the prosecuting attorney  
 295 shall devote full-time to his or her public duties. The county  
 296 commission shall then compensate said prosecuting attorney at

297 the same rate of compensation as that of a prosecuting attorney  
298 in a Class V county: *Provided*, however, That any county which  
299 under the prior provisions of this section was classified as a  
300 Class II county and which did not elect to maintain a part-time  
301 prosecutor shall maintain a full-time prosecuting attorney and  
302 shall compensate said prosecuting attorney at the same rate of  
303 compensation as that of a prosecuting attorney in a Class V  
304 county: *Provided further*, That, until the first day of January,  
305 two thousand one, when a vacancy occurs in the office of  
306 prosecuting attorney prior to the end of a term, the county  
307 commission of a Class IV or Class V county may elect to allow  
308 the position to become part-time for the end of that term, and  
309 thereafter the position of prosecuting attorney shall become  
310 full-time.

311 (d)(1) The increased salaries to be paid to the county  
312 commissioners and the other elected county officials described  
313 in this subsection on and after the first day of July, two thou-  
314 sand two, are set out in subdivisions (5) and (7) of this subsec-  
315 tion. Every county commissioner and elected county official in  
316 each county, whose term of office commenced prior to or on or  
317 after the first day of July, two thousand two, shall receive the  
318 same annual salary by virtue of legislative findings of extra  
319 duties as set forth in section one of this article.

320 (2) Before the increased salaries, as set out in subdivisions  
321 (5) and (7) of this subsection, are paid to the county commis-  
322 sioners and the elected county officials, the following require-  
323 ments must be met:

324 (A) The auditor has certified that the proposed annual  
325 county budget for the fiscal year beginning the first days of  
326 July, two thousand two, has increased over the previous fiscal  
327 year in an amount sufficient for the payment of the increase in  
328 the salaries, set out in subdivisions (5) and (7) of this subsec-  
329 tion, and the related employment taxes: *Provided*, That the

330 auditor may not approve the budget certification for any  
331 proposed annual county budget containing anticipated receipts  
332 which are unreasonably greater or lesser than that of the  
333 previous year. For purposes of this subdivision, the term  
334 "receipts" does not include unencumbered fund balance or  
335 federal or state grants; and

336 (B) Each county commissioner or other elected official  
337 described in this subsection in office on the effective date of the  
338 increased salaries provided by this subsection who desires to  
339 receive the increased salary has prior to that date filed in the  
340 office of the clerk of the county commission his or her written  
341 agreement to accept the salary increase. The salary for the  
342 person who holds the office of county commissioner or other  
343 elected official described in this subsection who fails to file the  
344 written agreement as required by this paragraph shall be the  
345 salary for that office in effect immediately prior to the effective  
346 date of the increased salaries provided by this subsection until  
347 the person vacates the office or his or her term of office expires,  
348 whichever first occurs.

349 (3) If there is an insufficient projected increase in revenues  
350 to pay the increased salaries and the related employment taxes,  
351 then the salaries of that county's elected officials and commis-  
352 sioners shall remain at the level in effect at the time certifica-  
353 tion was sought.

354 (4) In any county having a tribunal in lieu of a county  
355 commission, the county commissioners of that county may be  
356 paid less than the minimum salary limits of the county commis-  
357 sion for that particular class of the county.

358	(5) COUNTY COMMISSIONERS	
359	Class I	\$30,800
360	Class II	\$30,250
361	Class III	\$29,700

668

COUNTIES

[Ch. 82

362	Class IV	\$29,150
363	Class V	\$28,600
364	Class VI	\$23,650
365	Class VII	\$23,100
366	Class VIII	\$20,900
367	Class IX	\$20,350
368	Class X	\$16,500

369 (6) For the purpose of determining the salaries to be paid to  
 370 the elected county officials of each county, the salaries for each  
 371 county office by class, set out in subdivision (7) of this subsection,  
 372 are established and shall be used by each county commission  
 373 in determining the salaries of each of their county officials  
 374 other than salaries of members of the county commission.

375 (7) OTHER ELECTED OFFICIALS

376		County	Circuit	Prosecuting		
377		Sheriff	Clerk	Clerk	Assessor	Attorney
378	Class I	\$37,400	\$46,200	\$46,200	\$37,400	\$83,600
379	Class II	\$36,850	\$45,650	\$45,650	\$36,850	\$81,400
380	Class III	\$36,575	\$44,550	\$44,550	\$36,575	\$79,200
381	Class IV	\$36,300	\$44,295	\$44,295	\$36,300	\$77,000
382	Class V	\$36,025	\$44,000	\$44,000	\$36,025	\$74,800
383	Class VI	\$35,750	\$41,250	\$41,250	\$35,750	\$49,500
384	Class VII	\$35,475	\$40,700	\$40,700	\$35,475	\$47,300
385	Class VIII	\$35,200	\$40,150	\$40,150	\$35,200	\$45,100
386	Class IX	\$34,925	\$39,600	\$39,600	\$34,925	\$41,800
387	Class X	\$31,900	\$35,200	\$35,200	\$31,900	\$38,500

388 (8) Any county clerk, circuit clerk, joint clerk of the county  
 389 commission and circuit court, if any, county assessor or sheriff  
 390 of a Class I through Class V county, inclusive, any assessor or  
 391 any sheriff of a Class VI through Class IX county, inclusive,  
 392 shall devote full-time to his or her public duties to the exclusion  
 393 of any other employment: *Provided*, That any public official,

394 whose term of office begins when his or her county's classifica-  
395 tion imposes no restriction on his or her outside activities, may  
396 not be restricted on his or her outside activities during the  
397 remainder of the term for which he or she is elected.

398 (9) In the case of a county that has a joint clerk of the  
399 county commission and circuit court, the salary of the joint  
400 clerk shall be fixed in an amount twenty-five percent higher  
401 than the salary would be fixed for the county clerk if it had  
402 separate offices of county clerk and circuit clerk.

403 (10) Any prosecuting attorney of a Class I through Class V  
404 county, inclusive, shall devote full-time to his or her public  
405 duties to the exclusion of any other employment: *Provided*,  
406 That any county which under the prior provisions of this section  
407 was classified as a Class II county and elected to maintain a  
408 part-time prosecutor may continue to maintain a part-time  
409 prosecutor, until such time as the county commission, on  
410 request of the part-time prosecutor, approves and makes a  
411 finding, by proper order entered, that the prosecuting attorney  
412 shall devote full-time to his or her public duties. The county  
413 commission shall then compensate said prosecutor at the same  
414 salary as that of a prosecuting attorney in a Class V county:  
415 *Provided, however*, That any county which under the prior  
416 provisions of this section was classified as a Class II county and  
417 which did not elect to maintain a part-time prosecutor shall  
418 maintain a full-time prosecuting attorney and shall compensate  
419 said prosecuting attorney at the same salary as that of a prose-  
420 cuting attorney in a Class V county: *Provided further*, That,  
421 until the first day of January, two thousand three, when a  
422 vacancy occurs in the office of prosecuting attorney prior to the  
423 end of a term, the county commission of a Class IV or Class V  
424 county may elect to allow the position to become part-time for  
425 the end of that term and thereafter the position of prosecuting  
426 attorney shall become full-time.

---

## CHAPTER 83

(H. B. 2012 — By Delegate Butcher)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to prohibiting certain outgoing county officeholders from spending or obligating more than fifty percent of their budgets before the end of the calender year.

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

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

**ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.;  
 COMPENSATION OF ELECTED COUNTY OFFICIALS;  
 COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES,  
 THEIR NUMBER AND COMPENSATION.**

**§7-7-7a. Limit of budget expenditures.**

1           (a) No county clerk, circuit clerk, joint clerk of the county  
 2           commission and circuit court, if any, sheriff, county assessor or  
 3           prosecuting attorney may, without the approval of the county  
 4           commission, spend or obligate, before the end of the calendar  
 5           year, more than fifty percent of the funds allocated for his or  
 6           her office in the fiscal year budget, in any fiscal year where the

7 person holding the office is leaving office due to either resigna-  
8 tion or the results of an election.

9 (b) As used in subsection (a) of this section, “spend or  
10 obligate” includes, but is not limited to, increasing employee  
11 salaries to a level that would create a deficit in the budget if  
12 paid during the remainder of the fiscal year in addition to other  
13 anticipated expenditures.

---

## CHAPTER 84

(H. B. 4580 — By Delegates Webster, Wills, Hrutkay,  
Caputo, C. White, Schadler and Coleman)

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor. ]

---

AN ACT to amend and reenact sections two-a and two-b, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-a, article three, chapter seventeen-b of said code; and to amend and reenact section two-a, article three, chapter fifty of said code, all relating to extending the time period to make payment of costs, fines, fees, forfeitures, restitution or penalties, as may be applicable, in municipal and magistrate courts.

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

That sections two-a and two-b, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three-a, article three, chapter seventeen-b of said code be amended and reenacted; and that section two-a, article three, chapter fifty of said code be amended and reenacted, all to read as follows:

**Chapter****8. Municipal Corporations.****17B. Motor Vehicle Driver's Licenses.****50. Magistrate Courts.****CHAPTER 8. MUNICIPAL CORPORATIONS.****ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.**

§8-10-2a. Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

§8-10-2b. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

**§8-10-2a. Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.**

1 (a) A municipal court may accept credit cards in payment  
2 of all costs, fines, forfeitures or penalties. A municipal court  
3 may collect a substantial portion of all costs, fines, forfeitures  
4 or penalties at the time such amount is imposed by the court so  
5 long as the court requires the balance to be paid within one  
6 hundred eighty days and in accordance with a payment plan  
7 which specifies: (1) The number of additional payments to be  
8 made; (2) the dates on which such payments and amounts shall  
9 be made; and (3) amounts due on such dates.

10 (b) If costs, fines, forfeitures or penalties imposed by the  
11 municipal court for motor vehicle violations as described in  
12 section three-a, article three, chapter seventeen-b of this code  
13 are not paid within one hundred eighty days, or if a person who  
14 committed any such violation defaults on a payment plan as  
15 described in subsection (a) of this section, or if a person fails to  
16 appear or otherwise respond in court when charged with a  
17 motor vehicle violation as defined in section three-a, article  
18 three, chapter seventeen-b of this code, the municipal court



19 must notify the commissioner of the division of motor vehicles  
20 of such failure to pay or failure to appear.

**§8-10-2b. Suspension of licenses for failure to pay fines and costs  
or failure to appear in court.**

1 (a) If costs, fines, forfeitures or penalties imposed by the  
2 municipal court upon conviction of a person for a criminal  
3 offense as defined in section three-c, article three, chapter  
4 seventeen-b of this code are not paid in full within one hundred  
5 eighty days of the judgment, the municipal court clerk or, upon  
6 a judgment rendered on appeal, the circuit clerk shall notify the  
7 division of motor vehicles of such failure to pay: *Provided,*  
8 That at the time the judgment is imposed, the judge shall  
9 provide the person with written notice that failure to pay the  
10 same as ordered shall result in the suspension of such person's  
11 license or privilege to operate a motor vehicle in this state and  
12 that such suspension could result in the cancellation of, the  
13 failure to renew or the failure to issue an automobile insurance  
14 policy providing coverage for such person or such person's  
15 family: *Provided, however,* That the failure of the judge to  
16 provide such notice shall not affect the validity of any suspen-  
17 sion of such person's license or privilege to operate a motor  
18 vehicle in this state. For purposes of this section, payment shall  
19 be stayed during any period an appeal from the conviction  
20 which resulted in the imposition of such costs, fines, forfeitures  
21 or penalties is pending.

22 Upon such notice, the division of motor vehicles shall  
23 suspend the person's driver's license or privilege to operate a  
24 motor vehicle in this state until such time that the costs, fines,  
25 forfeitures or penalties are paid.

26 (b) Notwithstanding the provisions of this section to the  
27 contrary, the notice of the failure to pay such costs, fines,  
28 forfeitures or penalties shall not be given where the municipal

29 court, upon application of the person upon whom the same were  
30 imposed filed prior to the expiration of the period within which  
31 the same are required to be paid, enters an order finding that  
32 such person is financially unable to pay all or a portion of the  
33 same: *Provided*, That where the municipal court, upon finding  
34 that the person is financially unable to pay a portion thereof,  
35 requires the person to pay the remaining portion thereof, the  
36 municipal court shall notify the division of motor vehicles of  
37 such person's failure to pay the same if the same is not paid  
38 within the period of time ordered by such court.

39 (c) If a person charged with a criminal offense fails to  
40 appear or otherwise respond in court, the municipal court shall  
41 notify the division of motor vehicles thereof within fifteen days  
42 of the scheduled date to appear unless such person sooner  
43 appears or otherwise responds in court to the satisfaction of the  
44 judge. Upon such notice, the division of motor vehicles shall  
45 suspend the person's driver's license or privilege to operate a  
46 motor vehicle in this state until such time that the person  
47 appears as required.

## **CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

### **ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.**

#### **§17B-3-3a. Suspending license for failure to pay fines or penalties imposed by magistrate court or municipal court.**

1 The division shall suspend the license of any resident of  
2 this state or the privilege of a nonresident to drive a motor  
3 vehicle in this state upon receiving notice from a magistrate  
4 court or municipal court of this state, pursuant to subsection (b),  
5 section two-a, article three, chapter fifty or subsection (b),  
6 section two-a, article ten, chapter eight of this code, that such  
7 person has defaulted on the payment of costs, fines, forfeitures

8 or penalties, which were imposed on the person by the magis-  
9 trate court or municipal court upon conviction of any motor  
10 vehicle violation, after one hundred eighty days following such  
11 conviction, or that such person has failed to appear in court  
12 when charged with a motor vehicle violation. For the purposes  
13 of this section, section two-a, article three, chapter fifty and  
14 section two-a, article ten, chapter eight, “motor vehicle  
15 violation” shall be defined as any violation designated in  
16 chapter seventeen-a, seventeen-b, seventeen-c, seventeen-d or  
17 seventeen-e of this code, or the violation of any municipal  
18 ordinance relating to the operation of a motor vehicle for which  
19 the violation thereof would result in a fine or penalty: *Provided,*  
20 That any parking violation or other violation for which a  
21 citation may be issued to an unattended vehicle shall not be  
22 considered a motor vehicle violation for the purposes of this  
23 section, section two-a, article three, chapter fifty or section  
24 two-a, article ten, chapter eight of this code.

## CHAPTER 50. MAGISTRATE COURTS.

### ARTICLE 3. COSTS, FINES AND RECORDS.

#### **§50-3-2a. Payment by credit card or payment plan; suspension of licenses for failure to make payments or appear or respond; restitution; liens.**

1 (a) A magistrate court may accept credit cards in payment  
2 of all costs, fines, fees, forfeitures, restitution or penalties in  
3 accordance with rules promulgated by the supreme court of  
4 appeals. Any charges made by the credit company shall be paid  
5 by the person responsible for paying the cost, fine, forfeiture or  
6 penalty.

7 (b) Unless otherwise required by law, a magistrate court  
8 may collect a portion of any costs, fines, fees, forfeitures,  
9 restitution or penalties at the time the amount is imposed by the  
10 court so long as the court requires the balance to be paid in

11 accordance with a payment plan which specifies: (1) The  
12 number of payments to be made; (2) the dates on which such  
13 payments are due; and (3) the amounts due for each payment.

14 (c)(1) If any costs, fines, fees, forfeitures, restitution or  
15 penalties imposed by the magistrate court in a criminal case are  
16 not paid within one hundred eighty days from the date of  
17 judgment and the expiration of any stay of execution, the  
18 magistrate court clerk or, upon judgment rendered on appeal,  
19 the circuit clerk shall notify the commissioner of the division of  
20 motor vehicles of the failure to pay. Upon such notice, the  
21 division of motor vehicles shall suspend any privilege the  
22 person defaulting on payment may have to operate a motor  
23 vehicle in this state, including any driver's license issued to the  
24 person by the division of motor vehicles, until such time that all  
25 the costs, fines, fees, forfeitures, restitution or penalties are paid  
26 in full. The suspension shall be imposed in accordance with the  
27 provisions of section six, article three, chapter seventeen-b of  
28 this code: *Provided*, That any person who has had his or her  
29 license to operate a motor vehicle in this state suspended  
30 pursuant to this subsection and his or her failure to pay is based  
31 upon inability to pay may, if he or she is employed on a full or  
32 part-time basis, petition to the circuit court for an order autho-  
33 rizing him or her to operate a motor vehicle solely for employ-  
34 ment purposes. Upon a showing satisfactory to the court of  
35 inability to pay, employment and compliance with other  
36 applicable motor vehicle laws, the court shall issue such an  
37 order.

38 (2) In addition to the provisions of subdivision (1) of this  
39 subsection, if any costs, fines, fees, forfeitures, restitution or  
40 penalties imposed or ordered by the magistrate court for a  
41 hunting violation described in chapter twenty of this code are  
42 not paid within one hundred eighty days from the date of  
43 judgment and the expiration of any stay of execution, the  
44 magistrate court clerk or, upon a judgment rendered on appeal,

45 the circuit clerk shall notify the director of the division of  
46 natural resources of such failure to pay. Upon such notice, the  
47 director of the division of natural resources shall suspend any  
48 privilege the person failing to appear or otherwise respond may  
49 have to hunt in this state, including any hunting license issued  
50 to the person by the division of natural resources, until all the  
51 costs, fines, fees, forfeitures, restitution or penalties are paid in  
52 full.

53 (3) In addition to the provisions of subdivision (1) of this  
54 subsection, if any costs, fines, fees, forfeitures, restitution or  
55 penalties imposed or ordered by the magistrate court for a  
56 fishing violation described in chapter twenty of this code are  
57 not paid within one hundred eighty days from the date of  
58 judgment and the expiration of any stay of execution, the  
59 magistrate court clerk or, upon a judgment rendered on appeal,  
60 the circuit clerk shall notify the director of the division of  
61 natural resources of such failure to pay. Upon such notice, the  
62 director of the division of natural resources shall suspend any  
63 privilege the person failing to appear or otherwise respond may  
64 have to fish in this state, including any fishing license issued to  
65 the person by the division of natural resources, until all the  
66 costs, fines, fees, forfeitures, restitution or penalties are paid in  
67 full.

68 (d)(1) If a person charged with any criminal violation of  
69 this code fails to appear or otherwise respond in court, the  
70 magistrate court shall notify the commissioner of the division  
71 of motor vehicles thereof within fifteen days of the scheduled  
72 date to appear, unless the person sooner appears or otherwise  
73 responds in court to the satisfaction of the magistrate. Upon  
74 such notice, the division of motor vehicles shall suspend any  
75 privilege the person failing to appear or otherwise respond may  
76 have to operate a motor vehicle in this state, including any  
77 driver's license issued to the person by the division of motor  
78 vehicles, until final judgment in the case and, if a judgment of

79 guilty, until such time that all the costs, fines, fees, forfeitures,  
80 restitution or penalties imposed are paid in full. The suspension  
81 shall be imposed in accordance with the provisions of section  
82 six, article three, chapter seventeen-b of this code.

83 (2) In addition to the provisions of subdivision (1) of this  
84 subsection, if a person charged with any hunting violation  
85 described in chapter twenty of this code fails to appear or  
86 otherwise respond in court, the magistrate court shall notify the  
87 director of the division of natural resources of such failure  
88 thereof within fifteen days of the scheduled date to appear,  
89 unless the person sooner appears or otherwise responds in court  
90 to the satisfaction of the magistrate. Upon such notice, the  
91 director of the division of natural resources shall suspend any  
92 privilege the person failing to appear or otherwise respond may  
93 have to hunt in this state, including any hunting license issued  
94 to the person by the division of natural resources, until final  
95 judgment in the case and, if a judgment of guilty, until such  
96 time that all the costs, fines, fees, forfeitures, restitution or  
97 penalties imposed are paid in full.

98 (3) In addition to the provisions of subdivision (1) of this  
99 subsection, if a person charged with any fishing violation  
100 described in chapter twenty of this code fails to appear or  
101 otherwise respond in court, the magistrate court shall notify the  
102 director of the division of natural resources of such failure  
103 thereof within fifteen days of the scheduled date to appear,  
104 unless the person sooner appears or otherwise responds in court  
105 to the satisfaction of the magistrate. Upon such notice, the  
106 director of the division of natural resources shall suspend any  
107 privilege the person failing to appear or otherwise respond may  
108 have to fish in this state, including any fishing license issued to  
109 the person by the division of natural resources, until final  
110 judgment in the case and, if a judgment of guilty, until such  
111 time that all the costs, fines, fees, forfeitures, restitution or  
112 penalties imposed are paid in full.

113 (e) In every criminal case which involves a misdemeanor  
114 violation, a magistrate may order restitution where appropriate  
115 when rendering judgment.

116 (f)(1) If all costs, fines, fees, forfeitures, restitution or  
117 penalties imposed by a magistrate court and ordered to be paid  
118 are not paid within one hundred eighty days from the date of  
119 judgment and the expiration of any stay of execution, the clerk  
120 of the magistrate court shall notify the prosecuting attorney of  
121 the county of such nonpayment and provide the prosecuting  
122 attorney with an abstract of judgment. The prosecuting attorney  
123 shall file the abstract of judgment in the office of the clerk of  
124 the county commission in the county where the defendant was  
125 convicted and in any county wherein the defendant resides or  
126 owns property. The clerks of the county commissions shall  
127 record and index the abstracts of judgment without charge or  
128 fee to the prosecuting attorney, and when so recorded, the  
129 amount stated to be owing in the abstract shall constitute a lien  
130 against all property of the defendant.

131 (2) When all the costs, fines, fees, forfeitures, restitution or  
132 penalties described in subdivision (1) of this subsection for  
133 which an abstract of judgment has been recorded are paid in  
134 full, the clerk of the magistrate court shall notify the prosecut-  
135 ing attorney of the county of such payment and provide the  
136 prosecuting attorney with a release of judgment, prepared in  
137 accordance with the provisions of section one, article twelve,  
138 chapter thirty-eight of this code, for filing and recordation  
139 pursuant to the provisions of this subdivision. Upon receipt  
140 from the clerk, the prosecuting attorney shall file the release of  
141 judgment in the office of the clerk of the county commission in  
142 each county where an abstract of the judgment was recorded.  
143 The clerks of the county commissions shall record and index  
144 the release of judgment without charge or fee to the prosecuting  
145 attorney.

---

## CHAPTER 85

(Com. Sub. for S. B. 519 — By Senators Prezioso, Unger, Snyder, McCabe, Kessler, Anderson, Fanning, Helmick, Mitchell, Plymale, Hunter, Chafin, Sharpe, Ross, Love, Rowe, Caldwell, Redd, Facemyer, Sprouse, Minear, Minard, Bailey, Bowman, Wooton, Jackson, Craigo, Oliverio, Edgell and Tomblin, Mr. President)

---

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section three, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing salaries of magistrates; and establishing effective date.

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

That section three, 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.

#### §50-1-3. Salaries of magistrates.

1 (a) The Legislature finds and declares that:

2 (1) The West Virginia supreme court of appeals has held  
3 that a salary system for magistrates which is based upon the  
4 population that each magistrate serves does not violate the  
5 equal protection clause of the constitution of the United States;

6 (2) The West Virginia supreme court of appeals has held  
7 that a salary system for magistrates which is based upon the



8 population that each magistrate serves does not violate section  
9 thirty-nine, article VI of the constitution of West Virginia;

10 (3) The utilization of a two-tiered salary schedule for  
11 magistrates is an equitable and rational manner by which  
12 magistrates should be compensated for work performed;

13 (4) Organizing the two tiers of the salary schedule into one  
14 tier for magistrates serving less than eight thousand five  
15 hundred in population and the second tier for magistrates  
16 serving eight thousand five hundred or more in population is  
17 rational and equitable given current statistical information  
18 relating to population and caseload; and

19 (5) That all magistrates who fall under the same tier should  
20 be compensated equally.

21 (b) The salary of each magistrate shall be paid by the state.  
22 Magistrates who serve fewer than eight thousand five hundred  
23 in population shall be paid annual salaries of thirty thousand six  
24 hundred twenty-five dollars and magistrates who serve eight  
25 thousand five hundred or more in population shall be paid  
26 annual salaries of thirty-seven thousand dollars: *Provided*, That  
27 on and after the first day of July, two thousand three, magis-  
28 trates who serve fewer than eight thousand five hundred in  
29 population shall be paid annual salaries of thirty-three thousand  
30 six hundred twenty-five dollars and magistrates who serve eight  
31 thousand five hundred or more in population shall be paid  
32 annual salaries of forty thousand dollars.

33 (c) For the purpose of determining the population served by  
34 each magistrate, the number of magistrates authorized for each  
35 county shall be divided into the population of each county. For  
36 the purpose of this article, the population of each county is the  
37 population as determined by the last preceding decennial census  
38 taken under the authority of the United States government.

---

## CHAPTER 86

(S. B. 740 — By Senators Wooton, Burnette, Caldwell,  
Fanning, Hunter, Oliverio, Ross, Rowe, Snyder and Deem)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article four, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to providing that video arraignments of already incarcerated persons be performed if practicable by a magistrate from the charging jurisdiction; and allowing alternative proceedings before magistrates located in the jurisdiction in which the facility is located or by any magistrate designated to preside by the supreme court of appeals.

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

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

**ARTICLE 4. PROCEDURE BEFORE TRIAL.**

**§50-4-2a. Initial appearance and arraignment by video to be conducted by magistrate court wherein offense is charged; exceptions.**

- 1 (a) Except as provided by the provisions of subsection (b)
- 2 of this section, whenever a person already detained in a regional
- 3 jail facility is served with a criminal complaint, the initial
- 4 appearance or arraignment, if accomplished by the use of a
- 5 video imaging system, shall to the extent practicable be before

6 a magistrate of the charging jurisdiction. If such is not practica-  
7 ble, a magistrate of the jurisdiction in which the regional jail  
8 facility is located may preside over the proceeding.

9 (b) An order of the supreme court of appeals authorizing a  
10 magistrate or magistrates to conduct pretrial proceedings by use  
11 of video imaging shall supercede the requirements set forth in  
12 subsection (a) of this section.

---

## CHAPTER 87

(S. B. 425 — By Senators Wooton, Burnette, Caldwell,  
Fanning, Hunter, Kessler, Minard, Mitchell, Oliverio,  
Redd, Ross, Rowe, Snyder, Deem and Facemyer)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirty-three, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the filing of a bond by a plaintiff against a nonresident prior to the filing of a complaint and summons in circuit court.

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

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

### ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

**\*§56-3-33. Actions by or against nonresident persons having certain contracts with this state; authorizing secretary of state to receive process; bond and**

**\*Clerk's Note:** This section was also amended by HB 4558 (Chapter 206), which passed subsequent to this act.

**fees; service of process; definitions; retroactive application.**

1 (a) The engaging by a nonresident, or by his or her duly  
2 authorized agent, in any one or more of the acts specified in  
3 subdivisions (1) through (7), inclusive, of this subsection shall  
4 be deemed equivalent to an appointment by such nonresident of  
5 the secretary of state, or his or her successor in office, to be his  
6 or her true and lawful attorney upon whom may be served all  
7 lawful process in any action or proceeding against him or her,  
8 in any circuit court in this state, including an action or proceed-  
9 ing brought by a nonresident plaintiff or plaintiffs, for a cause  
10 of action arising from or growing out of such act or acts, and  
11 the engaging in such act or acts shall be a signification of such  
12 nonresident's agreement that any such process against him or  
13 her, which is served in the manner hereinafter provided, shall  
14 be of the same legal force and validity as though such nonresi-  
15 dent were personally served with a summons and complaint  
16 within this state:

17 (1) Transacting any business in this state;

18 (2) Contracting to supply services or things in this state;

19 (3) Causing tortious injury by an act or omission in this  
20 state;

21 (4) Causing tortious injury in this state by an act or omis-  
22 sion outside this state if he or she regularly does or solicits  
23 business, or engages in any other persistent course of conduct,  
24 or derives substantial revenue from goods used or consumed or  
25 services rendered in this state;

26 (5) Causing injury in this state to any person by breach of  
27 warranty expressly or impliedly made in the sale of goods  
28 outside this state when he or she might reasonably have  
29 expected such person to use, consume or be affected by the  
30 goods in this state: *Provided*, That he or she also regularly does  
31 or solicits business, or engages in any other persistent course of

32 conduct, or derives substantial revenue from goods used or  
33 consumed or services rendered in this state;

34 (6) Having an interest in, using or possessing real property  
35 in this state; or

36 (7) Contracting to insure any person, property or risk  
37 located within this state at the time of contracting.

38 (b) When jurisdiction over a nonresident is based solely  
39 upon the provisions of this section, only a cause of action  
40 arising from or growing out of one or more of the acts specified  
41 in subdivisions (1) through (7), inclusive, subsection (a) of this  
42 section may be asserted against him or her.

43 (c) Service shall be made by leaving the original and two  
44 copies of both the summons and the complaint, and the fee  
45 required by section two, article one, chapter fifty-nine of this  
46 code with the secretary of state, or in his or her office, and such  
47 service shall be sufficient upon such nonresident: *Provided,*  
48 That notice of such service and a copy of the summons and  
49 complaint shall forthwith be sent by registered or certified mail,  
50 return receipt requested, by the secretary of state to the defen-  
51 dant at his or her nonresident address and the defendant's return  
52 receipt signed by himself or herself or his or her duly autho-  
53 rized agent or the registered or certified mail so sent by the  
54 secretary of state which is refused by the addressee and which  
55 registered or certified mail is returned to the secretary of state,  
56 or to his or her office, showing thereon the stamp of the post  
57 office department that delivery has been refused, shall be  
58 appended to the original summons and complaint and filed  
59 therewith in the clerk's office of the court from which process  
60 issued. If any defendant served with summons and complaint  
61 fails to appear and defend within thirty days of service, judg-  
62 ment by default may be rendered against him or her at any time  
63 thereafter. The court may order such continuances as may be  
64 reasonable to afford the defendant opportunity to defend the  
65 action or proceeding.

66 (d) The fee remitted to the secretary of state at the time of  
67 service shall be taxed in the costs of the action or proceeding.  
68 The secretary of state shall keep a record in his or her office of  
69 all such process and the day and hour of service thereof.

70 (e) The following words and phrases, when used in this  
71 section, shall for the purpose of this section and unless a  
72 different intent be apparent from the context, have the following  
73 meanings:

74 (1) "Duly authorized agent" means and includes among  
75 others a person who, at the direction of or with the knowledge  
76 or acquiescence of a nonresident, engages in such act or acts  
77 and includes among others a member of the family of such  
78 nonresident or a person who, at the residence, place of business  
79 or post office of such nonresident, usually receives and receipts  
80 for mail addressed to such nonresident.

81 (2) "Nonresident" means any person, other than voluntary  
82 unincorporated associations, who is not a resident of this state  
83 or a resident who has moved from this state subsequent to  
84 engaging in such act or acts and among others includes a  
85 nonresident firm, partnership or corporation or a firm, partner-  
86 ship or corporation which has moved from this state subsequent  
87 to any of said such act or acts.

88 (3) "Nonresident plaintiff or plaintiffs" means a nonresident  
89 of this state who institutes an action or proceeding in a circuit  
90 court in this state having jurisdiction against a nonresident of  
91 this state pursuant to the provisions of this section.

92 (f) The provision for service of process herein is cumulative  
93 and nothing herein contained shall be construed as a bar to the  
94 plaintiff in any action or proceeding from having process in  
95 such action served in any other mode or manner provided by the  
96 law of this state or by the law of the place in which the service  
97 is made for service in that place in an action in any of its courts  
98 of general jurisdiction.

99 (g) This section shall not be retroactive and the provisions  
100 hereof shall not be available to a plaintiff in a cause of action  
101 arising from or growing out of any of said acts occurring prior  
102 to the effective date of this section.

---

## CHAPTER 88

(Com. Sub. for S. B. 524 — By Senators Kessler, Oliverio, Plymale,  
Edgell, Anderson, Redd, Sharpe, Unger and Snyder)

---

[Passed March 9, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend and reenact section six, article two-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring DNA samples for DNA analysis from persons convicted of certain felonies in this state.

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

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

### **ARTICLE 2B. DNA DATA.**

#### **§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required for certain prisoners.**

1 (a) Any person convicted of an offense described in section  
2 one, two, three, four, seven, nine, nine-a (when that offense  
3 constitutes a felony), ten, ten-a, ten-b, twelve, fourteen or  
4 fourteen-a, article two, chapter sixty-one of this code or section  
5 twelve, article eight of said chapter, when that offense consti-

6 tutes a felony, shall provide a DNA sample to be used for DNA  
7 analysis as described in this article. Further, any person  
8 convicted of any offense described in article eight-b or eight-d  
9 of said chapter shall provide a DNA sample to be used for DNA  
10 analysis as described in this article.

11 (b) All persons incarcerated in a state correctional facility  
12 or any county or regional jail in this state who are incarcerated  
13 due to the conviction of any offense listed in subsection (a) of  
14 this section who are incarcerated on the first day of July, one  
15 thousand nine hundred ninety-five, or who are convicted of any  
16 such offense on or after the first day of July, one thousand nine  
17 hundred ninety-five, shall have a DNA sample drawn for  
18 purposes of analysis and storage of the DNA.

19 (c) Any person convicted after the first day of July, two  
20 thousand, of a violation of section five or thirteen, article two,  
21 chapter sixty-one of this code, section one, two, three, four,  
22 five, seven, eleven, twelve (when that offense constitutes a  
23 felony) or subsection (a), section thirteen, article three of said  
24 chapter, section three, four, five or ten, article three-e of said  
25 chapter or section three, article four of said chapter, shall  
26 provide a DNA sample to be used for DNA analysis as de-  
27 scribed in this article.

28 (d) Any person convicted after the first day of July, two  
29 thousand two, of an offense which constitutes a felony violation  
30 of the provisions of article four, chapter sixty-a of this code; or  
31 of an attempt to commit a violation of section one or section  
32 fourteen-a, article two, chapter sixty-one of this code; or an  
33 attempt to commit a violation of article eight-b of said chapter  
34 shall provide a DNA sample to be used for DNA analysis as  
35 described in this article.



36 (e) For the purposes of this section, the term “DNA sample”  
37 means a tissue, fluid or other bodily sample of an individual on  
38 which a DNA analysis can be done. The method of taking the  
39 “DNA sample” is subject to the testing methods utilized by the  
40 West Virginia state police crime lab.

41 (f) When a person who is required to provide a DNA  
42 sample as required by this section refuses to comply with any  
43 DNA testing, the state shall apply to a circuit court for an order  
44 requiring the person to provide a DNA sample to be withdrawn  
45 for the purpose of DNA typing and testing. The circuit court  
46 shall order the person to submit to DNA testing in conformity  
47 with the provisions of this article.

---

## CHAPTER 89

**(Com. Sub. for H. B. 4070 — By Delegates Perry, Pino,  
Beach, Williams, Stemple and Hrutkay)**

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section nineteen, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article three-a, chapter twenty-nine of said code, all relating to creating a misdemeanor criminal offense for the failure to obey directions of firefighters or any emergency medical service agency personnel directing or controlling traffic while engaged in official business; and providing criminal penalties for violations.

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

That section nineteen, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted; and that section four, article three-a, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

**Chapter**

**16. Public Health.**

**29. Miscellaneous Boards and Officers.**

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**

**§16-4C-19. Obstructing or causing bodily injury to emergency medical service personnel; criminal penalties.**

1 (a) It is unlawful for any person to intentionally obstruct or  
2 interfere with any emergency medical service agency personnel  
3 engaged in the act of delivering or administering emergency  
4 medical services. Any person violating the provisions of this  
5 subsection is guilty of a misdemeanor and, upon conviction  
6 thereof, shall be fined not more than one thousand dollars or  
7 confined in the county or regional jail for a period not more  
8 than one year, or both fined and confined.

9 (b) It is unlawful for any person to willfully cause bodily  
10 injury to any person designated to be an emergency medical  
11 personnel engaged in the act of delivering or administering  
12 emergency medical services. Any person violating the provi-  
13 sions of this subsection is guilty of a felony and, upon convic-  
14 tion thereof, shall be confined in a state correctional facility not  
15 less than one nor more than ten years or fined not more than  
16 five thousand dollars, or both fined and confined.

17 (c) Nothing in this section may be construed to prevent law-  
18 enforcement officials from controlling traffic and otherwise  
19 maintaining order at the scene of an accident, injury or illness  
20 where an emergency medical service agency is rendering  
21 services.

22 (d) No person may willfully fail or refuse to comply with a  
23 lawful order or direction of any emergency medical service  
24 agency personnel engaged in the act of delivering or adminis-  
25 tering emergency medical services, relating to directing,  
26 controlling or regulating traffic, so long as such order or  
27 direction is conveyed by a retro-reflective hand signing device.  
28 Any person violating the provisions of this subsection is guilty  
29 of a misdemeanor and, upon conviction thereof: (1) For a first  
30 offense shall be fined not more than one hundred dollars; (2) for  
31 a second offense occurring within one year of a previous  
32 conviction shall be fined not more than two hundred dollars;  
33 and (3) for a third and subsequent offense shall be fined not  
34 more than five hundred dollars.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 3A. AUTHORITY OF LOCAL FIRE DEPARTMENTS.

#### **§29-3A-4. Person attacking or hindering or obstructing firefighter or emergency equipment; penalties.**

1 (a) It is unlawful, while any fire department or company or  
2 firefighter is lawfully exercising or discharging the depart-  
3 ment's, company's or firefighter's official duty during an  
4 emergency, for any person to:

5 (1) Attack any firefighter or any of his or her equipment  
6 with any deadly weapon as defined in section two, article seven,  
7 chapter sixty-one of this code; or

8 (2) Intentionally hinder, obstruct, oppose, or attempt to  
9 hinder, obstruct or oppose, or counsel, advise or invite others to  
10 hinder, obstruct or oppose, any fire department, fire company  
11 or firefighter.

12 (b) Any person violating the provisions of this section is  
13 guilty of a felony and, upon conviction thereof, shall be  
14 confined in a state correctional facility not less than one nor

15 more than ten years, or, in the discretion of the court, be  
16 confined in the regional or county jail not more than one year  
17 or fined not more than five hundred dollars, or both.

18 (c) Any person willfully violating any of the provisions of  
19 section one or three of this article is guilty of a misdemeanor  
20 and, upon conviction thereof, shall be fined not less than one  
21 hundred dollars nor more than five hundred dollars.

22 (d) Nothing in this article shall be construed to prevent  
23 law-enforcement officials from controlling traffic and otherwise  
24 maintaining order at the scene of a fire.

25 (e) No person may willfully fail or refuse to comply with a  
26 lawful order or direction of any fire department or company or  
27 firefighter who is lawfully exercising or discharging the  
28 department's, company's or firefighter's official duty during an  
29 emergency, relating to directing, controlling or regulating  
30 traffic, so long as such order or direction is conveyed by a retro-  
31 reflective hand signing device. Any person violating the  
32 provisions of this subsection is guilty of a misdemeanor and,  
33 upon conviction thereof: (1) For a first offense shall be fined  
34 not more than one hundred dollars; (2) for a second offense  
35 occurring within one year of a previous conviction shall be  
36 fined not more than two hundred dollars; and (3) for a third and  
37 subsequent offense shall be fined not more than five hundred  
38 dollars.

---

## CHAPTER 90

**(H. B. 4318 — By Mr. Speaker, Mr. Kiss, and  
Delegates Trump, Amores and Michael)**

---

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section four hundred seven, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to court costs for conditional discharge for certain first offense drug offenses; making a person whose case is disposed pursuant to this section liable for certain court costs; and permitting the assessment of court costs as a condition of probation in certain circumstances.

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

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

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-407. Conditional discharge for first offense of possession.**

1       (a) Whenever any person who has not previously been  
2 convicted of any offense under this chapter or under any statute  
3 of the United States or of any state relating to narcotic drugs,  
4 marijuana, or stimulant, depressant, or hallucinogenic drugs,  
5 pleads guilty to or is found guilty of possession of a controlled  
6 substance under section 401(c), the court, without entering a  
7 judgment of guilt and with the consent of the accused, may  
8 defer further proceedings and place him or her on probation  
9 upon terms and conditions. Upon violation of a term or condi-  
10 tion, the court may enter an adjudication of guilt and proceed as  
11 otherwise provided. Upon fulfillment of the terms and condi-  
12 tions, the court shall discharge the person and dismiss the  
13 proceedings against him or her. Discharge and dismissal under  
14 this section shall be without adjudication of guilt and is not a  
15 conviction for purposes of this section or for purposes of  
16 disqualifications or disabilities imposed by law upon conviction  
17 of a crime, including the additional penalties imposed for  
18 second or subsequent convictions under section 408. The effect  
19 of the dismissal and discharge shall be to restore the person in  
20 contemplation of law to the status he or she occupied prior to

21 arrest and trial. No person as to whom a dismissal and discharge  
22 have been effected shall be thereafter held to be guilty of  
23 perjury, false swearing, or otherwise giving a false statement by  
24 reason of his or her failure to disclose or acknowledge his or her  
25 arrest or trial in response to any inquiry made of him or her for  
26 any purpose. There may be only one discharge and dismissal  
27 under this section with respect to any person.

28 (b) After a period of not less than six months which shall  
29 begin to run immediately upon the expiration of a term of  
30 probation imposed upon any person under this chapter, the  
31 person may apply to the court for an order to expunge from all  
32 official records all recordations of his or her arrest, trial, and  
33 conviction, pursuant to this section. If the court determines after  
34 a hearing that the person during the period of his or her proba-  
35 tion and during the period of time prior to his or her applica-  
36 tion to the court under this section has not been guilty of any serious  
37 or repeated violation of the conditions of his or her probation,  
38 it shall order the expungement.

39 (c) Notwithstanding any provision of this code to the  
40 contrary, any person prosecuted pursuant to the provisions of  
41 this article whose case is disposed of pursuant to the provisions  
42 of this section shall be liable for any court costs assessable  
43 against a person convicted of a violation of section 401(c) of  
44 this article. Payment of such costs may be made a condition of  
45 probation.

46 The costs assessed pursuant to this section, whether as a  
47 term of probation or not, shall be distributed as other court costs  
48 in accordance with section two, article three, chapter fifty,  
49 section four, article two-a, chapter fourteen, section four, article  
50 twenty-nine, chapter thirty and sections two, seven and ten,  
51 article five, chapter sixty-two of this code.

---

## CHAPTER 91

**(S. B. 513 — By Senators Wooton, Burnette, Fanning, Hunter, Kessler, Minard, Mitchell, Oliverio, Redd, Ross, Rowe, Snyder, Deem, Facemyer and McKenzie)**

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article three-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to creating offense of violating court rules, legislative rules or administrative rules regarding ingress and egress of state government facilities; creating felony offense of violating court rules, legislative rules or administrative rules regarding ingress and egress with intent to commit a crime; and penalties.

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

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

**ARTICLE 3B. TRESPASS.**

**§61-3B-5. Trespass on state government property; aiding and abetting; penalties.**

- 1 (a) Notwithstanding any provision of this code to the
- 2 contrary, any person who knowingly and willfully violates an
- 3 administrative order of a court, a rule or emergency rule
- 4 promulgated by the secretary of administration, a joint rule of

5 the Senate and House of Delegates or a rule of the Senate or  
6 House of Delegates relating to access to government buildings  
7 or facilities or portions thereof under their control or who  
8 knowingly and willfully aids or abets another to violate such an  
9 order, rule or joint rule is guilty of a misdemeanor and, upon  
10 conviction, shall be confined for not more than thirty days or  
11 fined more than five hundred dollars, or both.

12 (b) Any person who violates the provisions of subsection  
13 (a) of this section with the intent to commit a crime which  
14 constitutes a misdemeanor is guilty of a misdemeanor and, upon  
15 conviction, shall be confined in a county or regional jail for not  
16 more than one year or fined not more than one thousand dollars,  
17 or both.

18 (c) Any person who violates the provisions of subsection  
19 (a) of this section with the intent to commit a crime which  
20 constitutes a felony is guilty of a felony and, upon conviction,  
21 shall be incarcerated in a state correctional facility for not less  
22 than one nor more than five years or fined not more than five  
23 thousand dollars, or both.

---

## CHAPTER 92

**(Com. Sub. for S. B. 97 — By Senators Kessler, Hunter, McKenzie,  
Edgell, Anderson, Minard, Caldwell, Minear and Sharpe)**

---

[Passed February 19, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a,



relating to creating the crime of harassing another by means of a computer and establishing penalties therefor.

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

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

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

**§61-3C-14a. Obscene, anonymous, harassing and threatening communications by computer; penalty.**

1 (a) It is unlawful for any person, with the intent to harass or  
2 abuse another person, to use a computer to:

3 (1) Make contact with another without disclosing his or her  
4 identity with the intent to harass or abuse;

5 (2) Make contact with a person after being requested by the  
6 person to desist from contacting them;

7 (3) Threaten to commit a crime against any person or  
8 property; or

9 (4) Cause obscene material to be delivered or transmitted  
10 to a specific person after being requested to desist from sending  
11 such material.

12 For purposes of this section, "obscene material" means  
13 material that:

14 (A) An average person, applying contemporary adult  
15 community standards, would find, taken as a whole, appeals to  
16 the prurient interest, is intended to appeal to the prurient  
17 interest, or is pandered to a prurient interest;

18 (B) An average person, applying contemporary adult  
19 community standards, would find, depicts or describes, in a

20 patently offensive way, sexually explicit conduct consisting of  
21 an ultimate sexual act, normal or perverted, actual or simulated,  
22 an excretory function, masturbation, lewd exhibition of the  
23 genitals, or sadomasochistic sexual abuse; and

24 (C) A reasonable person would find, taken as a whole, lacks  
25 literary, artistic, political or scientific value.

26 (b) It is unlawful for any person to knowingly permit a  
27 computer under his or her control to be used for any purpose  
28 prohibited by this section.

29 (c) Any offense committed under this section may be  
30 determined to have occurred at the place at which the contact  
31 originated or the place at which the contact was received or  
32 intended to be received.

33 (d) Any person who violates a provision of this section is  
34 guilty of a misdemeanor and, upon conviction thereof, shall be  
35 fined not more than five hundred dollars or confined in a county  
36 or regional jail not more than six months, or both. For a second  
37 or subsequent offense, the person is guilty of a misdemeanor  
38 and, upon conviction thereof, shall be fined not more than one  
39 thousand dollars or confined in a county or regional jail for not  
40 more than one year, or both.

---

## CHAPTER 93

(Com. Sub. for S. B. 57 — By Senator Bailey)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one-b and nineteen, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to crimes against

the peace; prohibiting the disturbance of the peace in or on any property controlled by the state of West Virginia; specifying certain activities that are prohibited in the state capitol complex; providing exemptions; and setting forth criminal penalties.

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

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

**ARTICLE 6. CRIMES AGAINST THE PEACE.**

§61-6-1b. Disorderly conduct; penalty.

§61-6-19. Willful disruption of governmental processes; offenses occurring at state capitol complex; penalties.

**§61-6-1b. Disorderly conduct; penalty.**

1 (a) Any person who, in a public place, any office or office  
2 building of the state of West Virginia, or in the state capitol  
3 complex, or on any other property owned, leased, occupied or  
4 controlled by the state of West Virginia, a mobile home park,  
5 a public parking area, a common area of an apartment building  
6 or dormitory, or a common area of a privately owned commer-  
7 cial shopping center, mall or other group of commercial retail  
8 establishments, disturbs the peace of others by violent, profane,  
9 indecent or boisterous conduct or language or by the making of  
10 unreasonably loud noise that is intended to cause annoyance or  
11 alarm to another person, and who persists in such conduct after  
12 being requested to desist by a law-enforcement officer acting in  
13 his lawful capacity, is guilty of disorderly conduct, a misde-  
14 meanor and, upon conviction thereof, may be committed to the  
15 custody of the division of corrections for twenty-four hours or  
16 fined not more than one hundred dollars: *Provided*, That  
17 nothing in this subsection should be construed as a deterrence  
18 to the lawful and orderly public right to demonstrate in support  
19 or protest of public policy issues.

20 (b) For purposes of this section:

21 (1) "Mobile home park" means a privately owned residen-  
22 tial housing area or subdivision wherein the dwelling units are  
23 comprised mainly of mobile homes and wherein the occupants  
24 of such dwelling units share common elements for purposes of  
25 ingress and egress, parking, recreation and other like residential  
26 purposes.

27 (2) "Mobile home" means a moveable or portable unit,  
28 designed and constructed to be towed on its own chassis  
29 (comprised of frame and wheels) and designed to be connected  
30 to utilities for year-round occupancy. The term includes: (A)  
31 Units containing parts that may be folded, collapsed or tele-  
32 scoped when being towed and that may be expanded to provide  
33 additional cubic capacity; and (B) units composed of two or  
34 more separately towable components designed to be joined into  
35 one integral unit capable of being separated again into the  
36 components for repeated towing.

37 (3) "Public parking area" means an area, whether publicly  
38 or privately owned or maintained, open to the use of the public  
39 for parking motor vehicles.

**§61-6-19. Willful disruption of governmental processes; offenses  
occurring at state capitol complex; penalties.**

1 (a) If any person willfully interrupts or molests the orderly  
2 and peaceful process of any department, division, agency or  
3 branch of state government or of its political subdivisions, he or  
4 she is guilty of a misdemeanor and, upon conviction thereof,  
5 shall be fined not more than one hundred dollars, or imprisoned  
6 in the county or regional jail not more than six months, or both  
7 fined and imprisoned: *Provided*, That any assembly in a  
8 peaceable, lawful and orderly manner for a redress of griev-  
9 ances shall not be a violation of this section.

10 (b) It is unlawful for any person to bring upon the state  
11 capitol complex any weapon as defined by the provisions of  
12 section two, article seven of this chapter. It is unlawful for any  
13 person to willfully deface any trees, wall, floor, stairs, ceiling,  
14 column, statue, monument, structure, surface, artwork or  
15 adornment in the state capitol complex. It is unlawful for any  
16 person or persons to willfully block or otherwise willfully  
17 obstruct any public access, stair or elevator in the state capitol  
18 complex after being asked by a law-enforcement officer acting  
19 in his or her official capacity to desist: *Provided*, That in order  
20 to preserve the constitutional right of the people to assemble, it  
21 is not willful blocking or willful obstruction for persons  
22 gathered in a group or crowd, if the persons move to the side or  
23 part to allow other persons to pass by the group or crowd to  
24 gain ingress or egress: *Provided, however*, That this subsection  
25 shall not apply to a law-enforcement officer acting in his or her  
26 official capacity.

27 Any person who violates any provision of this subsection  
28 is guilty of a misdemeanor and, upon conviction thereof, shall  
29 be fined not less than one hundred dollars or confined in the  
30 county or regional jail not more than six months, or both.

---

## CHAPTER 94

(S. B. 61 — By Senators Ross and Mitchell)

---

[Passed February 28, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section fifteen, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting county and district officers, teachers and school officials from having a

pecuniary interest in certain contracts; establishing criminal penalties; providing for removal from office upon conviction; prohibiting certain activities designed to influence decisions of these public officials and establishing criminal penalties; setting forth exceptions; and providing for the application of constitutional provisions.

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

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

**ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

**§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.**

1           (a) It is unlawful for any member of a county commission,  
 2 overseer of the poor, district school officer, secretary of a board  
 3 of education, supervisor or superintendent, principal or teacher  
 4 of public schools or any member of any other county or district  
 5 board or any county or district officer to be or become pecuni-  
 6 arily interested, directly or indirectly, in the proceeds of any  
 7 contract or service or in the furnishing of any supplies in the  
 8 contract for or the awarding or letting of a contract if, as a  
 9 member, officer, secretary, supervisor, superintendent, principal  
 10 or teacher, he or she may have any voice, influence or control:  
 11 *Provided*, That nothing in this section prevents or makes  
 12 unlawful the employment of the spouse of a member, officer,  
 13 secretary, supervisor, superintendent, principal or teacher as a  
 14 principal or teacher or auxiliary or service employee in the  
 15 public schools of any county or prevents or makes unlawful the  
 16 employment by any joint county and circuit clerk of his or her  
 17 spouse.

18 (b) Any person who violates the provisions of subsection  
19 (a) of this section is guilty of a misdemeanor and, upon conviction  
20 thereof, shall be fined not less than fifty dollars nor more  
21 than five hundred dollars and may, in the discretion of the  
22 court, be confined in the county or regional jail for a period not  
23 to exceed one year.

24 (c) Any person convicted of violating the provisions of  
25 subsection (a) of this section shall also be removed from his or  
26 her office and the certificate or certificates of any teacher,  
27 principal, supervisor or superintendent so convicted shall, upon  
28 conviction thereof, be immediately revoked: *Provided*, That no  
29 person may be removed from office and no certificate may be  
30 revoked for a violation of the provisions of this section unless  
31 the person has first been convicted of the violation.

32 (d) Any person, firm or corporation that offers or gives any  
33 compensation or thing of value or who forebears to perform an  
34 act to any of the persons named in subsection (a) of this section  
35 or to or for any other person with the intent to secure the  
36 influence, support or vote of the person for any contract,  
37 service, award or other matter as to which any county or school  
38 district becomes or may become the paymaster is guilty of a  
39 misdemeanor and, upon conviction thereof, shall be fined not  
40 less than five hundred dollars nor more than twenty-five  
41 hundred dollars and, in the court's discretion, the person or any  
42 member of the firm or, if it is a corporation, any agent or officer  
43 of the corporation offering or giving any compensation or other  
44 thing of value may, in addition to a fine, be confined in the  
45 county or regional jail for a period not to exceed one year.

46 (e) The provisions of subsection (a) of this section do not  
47 apply to any person who, or person whose spouse, is a salaried  
48 employee of a vendor or supplier under a contract subject to the  
49 provisions of said subsection if the employee, his or her spouse  
50 or child:

51 (1) Is not a party to the contract;

52 (2) Is not an owner, a shareholder, a director or an officer  
53 of a private entity under the contract;

54 (3) Receives no commission, bonus or other direct remuner-  
55 ation or thing of value by virtue of the contract;

56 (4) Does not participate in the deliberations or awarding of  
57 the contract; and

58 (5) Does not approve, vote for or otherwise authorize the  
59 payment for any services performed or supplies furnished under  
60 the contract.

61 (f) The provisions of subsection (a) of this section do not  
62 apply to any person who has a pecuniary interest in a bank  
63 within the county serving or under consideration to serve as a  
64 depository of funds for the county or board of education, as the  
65 case may be, if the person does not participate in the delibera-  
66 tions or any ultimate determination of the depository of the  
67 funds.

68 (g) The provisions of this section do not apply to publica-  
69 tions in newspapers required by law to be made.

70 (h) No school employee or school official subject to the  
71 provisions of subsection (a) of this section has an interest in the  
72 sale, proceeds or profits in any book or other thing used or to be  
73 used in the free school system of this state, as proscribed in  
74 section nine, article XII of the constitution of West Virginia, if  
75 they qualify for the exceptions set forth in either subsection (e)  
76 or (f) of this section.



---

## CHAPTER 95

(S. B. 610 — By Senators Wooton, Burnette, Caldwell,  
Fanning, Hunter, Kessler, Minard, Mitchell, Oliverio,  
Rowe, Deem, Facemyer and McKenzie)

---

[Passed March 5, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section eight, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the penalty for attempts to commit offenses punishable by life imprisonment.

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

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

### ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

#### §61-11-8. Attempts; classification and penalties therefor.

1       Every person who attempts to commit an offense, but fails  
2 to commit or is prevented from committing it, shall, where it is  
3 not otherwise provided, be punished as follows:

4       (1) If the offense attempted be punishable with life impris-  
5 onment, the person making such attempt shall be guilty of a  
6 felony and, upon conviction, shall be imprisoned in the peniten-  
7 tary not less than three nor more than fifteen years.

8       (2) If the offense attempted be punishable by imprisonment  
9 in the penitentiary for a term less than life, such person shall be

10 guilty of a felony and, upon conviction, shall, in the discretion  
11 of the court, either be imprisoned in the penitentiary for not less  
12 than one nor more than three years, or be confined in jail not  
13 less than six nor more than twelve months, and fined not  
14 exceeding five hundred dollars.

15 (3) If the offense attempted be punishable by confinement  
16 in jail, such person shall be guilty of a misdemeanor and, upon  
17 conviction, shall be confined in jail not more than six months,  
18 or fined not exceeding one hundred dollars.

---

## CHAPTER 96

(H. B. 4044 — By Delegates Flanigan and Wills)

---

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section nine, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitation of prosecution; and making statute of limitation for petit larceny one year.

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

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

### ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

#### **§61-11-9. Limitation of prosecution; lost indictment.**

1 A prosecution for committing or procuring another person  
2 to commit perjury shall be commenced within three years next  
3 after the perjury was committed. A prosecution for a misde-

4 meanor shall be commenced within one year after the offense  
 5 was committed: *Provided*, That whenever the indictment in any  
 6 case shall be stolen, lost or destroyed, a new indictment may be  
 7 found for the same offense mentioned in the former indictment,  
 8 at the first term of the court after such theft, loss or destruction  
 9 is discovered, or at the next term thereafter, and as often as any  
 10 such new indictment is stolen, lost or destroyed, another  
 11 indictment for the same offense may be found at the first term  
 12 of the court after such theft, loss or destruction is discovered, or  
 13 at the next term thereafter; and the court shall, in every case  
 14 where any such indictment has been stolen, lost or destroyed,  
 15 enter such fact on its record. Whenever such new indictment is  
 16 found, the clerk shall add to the entry of the finding thereof the  
 17 following: "This is the second (or third, etc., as the case may  
 18 be) indictment found against the said ..... for the same  
 19 offense"; and the same proceedings shall be had in all respects  
 20 on any such new indictment as might have been had on the first  
 21 indictment if it had not been stolen, lost or destroyed. And if the  
 22 offense mentioned in any such indictment is barred by the  
 23 statute of limitations, the time between the finding of the first  
 24 and last of such indictments shall not be computed or taken into  
 25 consideration in the computation of the time in which any such  
 26 indictment, after the first, should have been found.

---

## CHAPTER 97

**(Com. Sub. for H. B. 3065 — By Delegates Manuel and Doyle)**

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section seven, article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring home incarceration fees to be paid to the sheriff.

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

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

**ARTICLE 11B. HOME INCARCERATION ACT.**

**§62-11B-7. Home incarceration fees; special fund.**

1 All home incarceration fees ordered by the circuit court or  
2 a magistrate pursuant to subdivision (7), section five of this  
3 article are to be paid to the county sheriff. The county sheriff  
4 is to establish a special fund designated the home incarceration  
5 services fund, in which the sheriff is to deposit all home  
6 incarceration fees collected pursuant to this section. The county  
7 commission shall appropriate money from the fund to adminis-  
8 ter a home incarceration program, including the purchase of  
9 electronic monitoring devices and other supervision expenses,  
10 and may as necessary supplement the fund with additional  
11 appropriations. The county commission may also appropriate  
12 any excess money from the fund to defray the costs of housing  
13 county inmates or for community corrections programs, if the  
14 sheriff or other person designated to administer the fund  
15 certifies in writing to the county commission that a surplus  
16 exists in the fund at the end of the fiscal year.

---

## CHAPTER 98

**(S. B. 613 — By Senators Wooton, Burnette, Caldwell,  
Fanning, Hunter, Kessler, Minard, Mitchell, Oliverio,  
Redd, Ross, Rowe, Deem, Facemyer and McKenzie)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section twelve, article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying role of court and probation officers when persons are paroled from home incarceration; and clarifying rights and responsibilities of those on parole from home incarceration.

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

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

**ARTICLE 11B. HOME INCARCERATION ACT.**

**§62-11B-12. Supervision of home incarceration by circuit court.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, in any case where a person has been ordered to home  
3 incarceration where that person is not in the custody or control  
4 of the division of corrections, the circuit court shall have the  
5 authority of the board of probation and parole regarding the  
6 release, early release or release on parole of the person.

7 (b) Any person paroled from a sentence of home incarceration  
8 imposed by the provisions of this article shall be super-  
9 vised by the probation office of the sentencing court. If at any  
10 time during the period of parole there is reasonable cause to  
11 believe that the person paroled has violated the terms and  
12 conditions of his or her parole, he or she shall be subject to the  
13 procedures and penalties set forth in section ten, article twelve  
14 of this chapter. If at any time during the period of parole from  
15 home incarceration there is reasonable cause to believe that the  
16 person paroled has violated the terms and conditions of his or  
17 her parole and the home incarceration was imposed as an  
18 alternative sentence to another form of incarceration, he or she  
19 shall be subject to the same penalty or penalties as he or she

20 could have received at the initial disposition hearing. Time  
21 served on parole granted shall be credited for time served  
22 toward any remainder of the maximum sentence in the event of  
23 parole revocation: *Provided*, That time served on parole from  
24 home incarceration may not be credited towards any reduction  
25 of sentence for good conduct towards any remainder of the  
26 maximum sentence in the event of parole revocation.

---

## CHAPTER 99

(Com. Sub. for H. B. 4339 — By Delegates Manuel, Leach and Warner)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to creating a special revenue account designated the “parole supervision benefit fund”; and allowing moneys from the fund to be used for payment for enhanced supervision through a community corrections program.

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

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

### ARTICLE 12. PROBATION AND PAROLE.

#### §62-12-25. Parole supervision benefit fund.

1 (a) There is created a special revenue account in the state  
2 treasury designated the “parole supervision benefit fund”. The  
3 fund is to be used by the division of corrections for the benefit  
4 of parolee supervision with approval of the commissioner. The  
5 fund shall consist of moneys received from any source, includ-  
6 ing, but not limited to, funds donated by the general public or  
7 an organization dedicated to parole supervision improvement  
8 and funds seized from parolees that are forfeited pursuant to the  
9 provisions of article seven, chapter sixty-a of this code.

10 (b) Notwithstanding any other provision of this code to the  
11 contrary, the commissioner may authorize use of the money in  
12 the fund created pursuant to this section for payment to a  
13 community corrections program established pursuant to article  
14 eleven-c, chapter sixty-two of this code for providing enhanced  
15 supervision of parolees.

---

## CHAPTER 100

**(Com. Sub. for H. B. 2983 — By Delegates Fleischauer, Mahan,  
Marshall, Compton, Smirl and Doyle)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact article fourteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the dam control and safety act; amending definitions; providing that the state is not responsible for damages caused by design or construction defects of certain soil conservation service dams; clarifying rule-making authority; modifying county venue where an action or injunction may be brought; limiting time period for appealing certain injunctions upon entry of judgment; shortening time period prior to suspen-

sion of certificates of approval for failure to pay fees; and correcting certain terms.

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

That article fourteen, 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 14. DAM CONTROL AND SAFETY ACT.**

- §22-14-1. Short title.
- §22-14-2. Legislative findings; intent and purpose of article.
- §22-14-3. Definition of terms used in article.
- §22-14-4. General powers and duties of director; maximum fee established for certificates of approval and annual registration.
- §22-14-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.
- §22-14-6. Plans and specifications for dams to be in charge of registered professional engineer.
- §22-14-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.
- §22-14-8. Content of certificates of approval for dams; revocation or suspension of certificates.
- §22-14-9. Inspections during progress of work on dam.
- §22-14-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.
- §22-14-11. Requirements for dams completed prior to effective date of this section.
- §22-14-12. Dam owner not relieved of legal responsibilities by any provision of article.
- §22-14-13. Offenses and penalties.
- §22-14-14. Enforcement orders; hearings.
- §22-14-15. Civil penalties and injunctive relief.
- §22-14-16. Schedule of application fees established.
- §22-14-17. Schedule of annual registration fees established.
- §22-14-18. Continuation of dam safety fund; components of fund.

**§22-14-1. Short title.**



1        This article shall be known and cited as the “Dam Control  
2    and Safety Act”.

**§22-14-2. Legislative findings; intent and purpose of article.**

1        The Legislature finds that dams may constitute a potential  
2    hazard to people and property; therefore, dams in this state must  
3    be properly regulated and controlled to protect the health, safety  
4    and welfare of people and property in this state. It is the intent  
5    of the Legislature by this article to provide for the regulation  
6    and supervision of dams in this state to the extent necessary to  
7    protect the public health, safety and welfare. The Legislature  
8    has ordained this article to fulfill its responsibilities to the  
9    people of this state and to protect their lives and private and  
10   public property from the danger of a potential or actual dam  
11   failure. The Legislature finds and declares that in light of the  
12   limited state resources available for the purposes of this article,  
13   and in view of the high standards to which the United States  
14   natural resources conservation service designs dams, independ-  
15   ent state review of the plans and specifications for dams  
16   designed by the natural resources conservation service and  
17   construction oversight should not be required. The Legislature  
18   further finds and declares that dams designed and constructed  
19   by the natural resources conservation service but not owned or  
20   operated by it should be subject to the same provisions of  
21   inspection, after construction and certification by the natural  
22   resources conservation service, as other dams covered by this  
23   article, so long as any dam under the natural resources conser-  
24   vation service program is designed with standards equal to or  
25   exceeding state requirements under this article.

**§22-14-3. Definition of terms used in article.**

1        As used in this article, unless used in a context that clearly  
2    requires a different meaning, the term:

3 (a) "Alterations" or "repairs" means only those changes in  
4 the structure or integrity of a dam which may affect its safety,  
5 which determination shall be made by the secretary.

6 (b) "Application for a certificate of approval" means the  
7 request in writing by a person to the secretary requesting that  
8 person be issued a certificate of approval.

9 (c) "Appurtenant works" means any structure or facility  
10 which is an adjunct of, or connected, appended or annexed to a  
11 dam, including, but not limited to, spillways, a reservoir and its  
12 rim, low level outlet works or water conduits such as tunnels,  
13 pipelines and penstocks either through the dam or its abutments.

14 (d) "Certificate of approval" means the approval in writing  
15 issued by the secretary to a person who has applied to the  
16 secretary for a certificate of approval which authorizes the  
17 person to place, construct, enlarge, alter, repair or remove a  
18 dam and specifies the conditions or limitations under which the  
19 work is to be performed by that person.

20 (e) "Dam" means an artificial barrier or obstruction,  
21 including any works appurtenant to it and any reservoir created  
22 by it, which is or will be placed, constructed, enlarged, altered  
23 or repaired so that it does or will impound or divert water and:  
24 (1) Is or will be twenty-five feet or more in height from the  
25 natural bed of the stream or watercourse measured at the  
26 downstream toe of the barrier and which does or can impound  
27 fifteen acre-feet or more of water; or (2) is or will be six feet or  
28 more in height from the natural bed of the stream or water-  
29 course measured at the downstream toe of the barrier and which  
30 does or can impound fifty acre-feet or more of water: *Provided,*  
31 That the term "dam" does not include: (A) Any dam owned by  
32 the federal government; (B) any dam for which the operation  
33 and maintenance thereof is the responsibility of the federal  
34 government; (C) farm ponds constructed and used primarily for

35 agricultural purposes, including, but not limited to, livestock  
36 watering, irrigation, retention of animal wastes and fish culture,  
37 and which have no potential to cause loss of human life in the  
38 event of embankment failure; or (D) roadfill or other transporta-  
39 tion structures which do not or will not impound water under  
40 normal conditions and which have a designed culvert or similar  
41 conveyance or such capacity as would be used under a state  
42 designed highway at the same location: *Provided, however,*  
43 That the secretary may apply the provisions of section ten of  
44 this article for roadfill or other transportation structures that  
45 become a hazard to human life or property through the frequent  
46 or continuous impoundment of water.

47 (f) "Department" means the department of environmental  
48 protection.

49 (g) "Enlargement" means any change in or addition to an  
50 existing dam which: (1) Raises the height of the dam; (2) raises  
51 or may raise the water storage elevation of the water impounded  
52 by the dam; (3) increases or may increase the amount of water  
53 impounded by the dam; or (4) increases or may increase the  
54 watershed area from which water is impounded by the dam.

55 (h) "Person" means any public or private corporation,  
56 institution, association, society, firm, organization or company  
57 organized or existing under the laws of this or any other state or  
58 country; the state of West Virginia; any state governmental  
59 agency; any political subdivision of the state or of its counties  
60 or municipalities; sanitary district; public service district;  
61 drainage district; conservation district; watershed improvement  
62 district; partnership; trust; estate; person or individual; group of  
63 persons or individuals acting individually or as a group; or any  
64 other legal entity whatever. The term "person", when used in  
65 this article, includes and refers to any authorized agent, lessee  
66 or trustee of any of the foregoing or receiver or trustee ap-  
67 pointed by any court for any of the foregoing.

68 (i) "Reservoir" means any basin which contains or will  
69 contain impounded water.

70 (j) "Secretary" means the secretary of the department of  
71 environmental protection.

72 (k) "Natural resources conservation service" means the  
73 natural resource conservation service of the United States  
74 department of agriculture or any successor or predecessor  
75 agency, including the soil conservation service.

76 (l) "Water" means any liquid, including any solids or other  
77 matter which may be contained therein, which is or may be  
78 impounded by a dam.

79 (m) "Water storage elevation" means the maximum  
80 elevation that water can reach behind a dam without encroach-  
81 ing on the freeboard approved for the dam under flood condi-  
82 tions.

**§22-14-4. General powers and duties of director; maximum fee  
established for certificates of approval and annual  
registration.**

1 The secretary has the following powers and duties:

2 (a) To control and exercise regulatory jurisdiction over  
3 dams as provided for in this article;

4 (b) To review all applications for a certificate of approval  
5 for the placement, construction, enlargement, alteration, repair  
6 or removal of any dam;

7 (c) To grant, modify, amend, revoke, restrict or refuse to  
8 grant any certificate of approval if proper or necessary to  
9 protect life and property as provided in this article;

10 (d) To propose, modify, repeal and enforce rules and issue  
11 orders, to implement and make effective the powers and duties  
12 vested in the secretary by the provisions of this article;

13 (e) To take any lawful action considered necessary for the  
14 effective enforcement of the provisions of this article;

15 (f) To establish and charge reasonable fees not to exceed  
16 three hundred dollars for the review of applications for certifi-  
17 cates of approval and the issuance thereof and for assessment  
18 of an annual registration fee not to exceed one hundred dollars  
19 for persons holding a certificate of approval for existing dams.  
20 The secretary shall promulgate rules to establish a schedule of  
21 application fees and to establish annual registration fees:  
22 *Provided*, That no fee shall be assessed for dams designed and  
23 constructed by the natural resources conservation service for  
24 natural resources conservation districts;

25 (g) To employ qualified consultants or additional persons  
26 as necessary to review applications for certificates of approval  
27 and to recommend whether they should be approved, to inspect  
28 dams and to enforce the provisions of this article;

29 (h) To cooperate and coordinate with agencies of the  
30 federal government, this state and counties and municipalities  
31 of this state to improve, secure, study and enforce dam safety  
32 and dam technology within this state;

33 (i) To investigate and inspect dams as is necessary to  
34 implement or enforce the provisions of this article and when  
35 necessary to enter the public or private property of any dam  
36 owner. The secretary may investigate, inspect or enter private  
37 or public property after notifying the dam owner or other person  
38 in charge of the dam of an intent to investigate, inspect or enter:  
39 *Provided*, That where the owner or person in charge of the dam

40 is not available, the secretary may investigate, inspect and enter  
41 without notice; and

42 (j) To prepare and publish within a reasonable time, criteria  
43 to govern the design, construction, repair, inspection and  
44 maintenance of proposed dams herein defined, and to review  
45 these criteria annually in order to consider improved technology  
46 for inclusion in such criteria.

**§22-14-5. Unlawful to place, construct, enlarge, alter, repair,  
remove or abandon dam without certificate of  
approval; application required to obtain certifi-  
cate.**

1 It is unlawful for any person to place, construct, enlarge,  
2 alter, repair, remove or abandon any dam under the jurisdiction  
3 of the secretary until he or she has first: (a) Filed an application  
4 for a certificate of approval with the department; and (b)  
5 obtained from the department a certificate of approval: *Pro-*  
6 *vided*, That routine repairs which do not affect the safety of a  
7 dam are not subject to the application and approval require-  
8 ments. A separate application for a certificate of approval must  
9 be submitted by a person for each dam he or she desires to  
10 place, construct, enlarge, alter, repair, remove or abandon. One  
11 application may be valid for more than one dam involved in a  
12 single project or in the formation of a reservoir.

13 Each application for a certificate of approval shall be made  
14 in writing on a form prescribed by the secretary and shall be  
15 signed and verified by the applicant. The application shall  
16 contain and provide information which may be reasonably  
17 required by the secretary to administer the provisions of this  
18 article.

19 In the case of dams designed by the natural resources  
20 conservation service for transfer to any political subdivision,

21 the director shall, within sixty days after receipt of a completed  
22 application therefor, issue a certificate of approval without  
23 review of the plans and specifications: *Provided*, That the state,  
24 its employees and agents are not responsible or liable for errors,  
25 omissions or flaws in the design, construction or modification  
26 of such dams.

**§22-14-6. Plans and specifications for dams to be in charge of registered professional engineer.**

1 Plans and specifications for the placement, construction,  
2 enlargement, alteration, repair or removal of dams shall be in  
3 the charge of a registered professional engineer licensed to  
4 practice in West Virginia. Any plans or specifications submitted  
5 to the department shall bear the seal of a registered professional  
6 engineer.

**§22-14-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.**

1 Upon receipt of an application for a certificate of approval  
2 and the fee required under the provisions of this article, the  
3 secretary shall proceed to consider the application for suffi-  
4 ciency. The secretary shall approve or disapprove the applica-  
5 tion within sixty days after receipt.

6 If an application is defective, it shall be returned to the  
7 applicant by certified or registered mail, return receipt re-  
8 quired, in order that the applicant may correct any defect:  
9 *Provided*, That a defective application must be returned to the  
10 department by the applicant within thirty days after it has been  
11 returned to the applicant or it shall be treated as a new applica-  
12 tion: *Provided, however*, That for good cause shown, the  
13 secretary may extend the thirty-day period.

14        Upon approval by the secretary of the sufficiency of the  
15 application, the applicant shall immediately publish the  
16 application as a Class I legal advertisement in compliance with  
17 the provisions of article three, chapter fifty-nine of this code,  
18 the publication area for the publication is the county in which  
19 the proposed dam is to be located or in which the existing dam  
20 is located. The notice shall include, but not be limited to, the  
21 name and address of the owner of the dam and the location of  
22 the dam for which the application was filed.

23        Any person whose life or property may be adversely  
24 affected by the issuance of a certificate of approval has a right  
25 to a hearing before the secretary if the person demands the  
26 hearing in writing within fifteen days of publication of the  
27 certificate of approval. The written request for hearing shall  
28 include specific objections to the certificate of approval.

29        Upon receipt by the secretary of the written request for  
30 hearing, the secretary shall immediately set a date for the  
31 hearing and shall notify the person or persons demanding a  
32 hearing. The hearing shall be held within ten days after receipt  
33 of the written request. The secretary shall hear evidence from  
34 all interested parties and shall either: (1) Refuse to issue a  
35 certificate of approval; or (2) issue a certificate of approval  
36 which shall be subject to terms, conditions and limitations as  
37 the secretary may consider necessary to protect life and  
38 property.

39        Unless otherwise extended by the secretary, a certificate of  
40 approval is valid for a period of not more than one year.

**§22-14-8. Content of certificates of approval for dams; revocation  
or suspension of certificates.**



1 Each certificate of approval issued by the secretary under  
2 the provisions of this article may contain other terms and  
3 conditions as the secretary may prescribe.

4 The secretary may revoke or suspend any certificate of  
5 approval whenever it is determined that the dam for which the  
6 certificate was issued constitutes a danger to life and property.  
7 If necessary to safeguard life and property, the secretary may  
8 also amend the terms and conditions of any certificate by  
9 issuing a new certificate containing the revised terms and  
10 conditions.

11 Before any certificate of approval is amended or revoked by  
12 the secretary, the secretary shall hold a hearing in accordance  
13 with the provisions of article five, chapter twenty-nine-a of this  
14 code.

15 Any person adversely affected by an order entered follow-  
16 ing the hearing has the right to appeal to the environmental  
17 quality board pursuant to the provisions of article one, chapter  
18 twenty-two-b of this code.

#### **§22-14-9. Inspections during progress of work on dam.**

1 During the placement, construction, enlargement, repair,  
2 alteration or removal of any dam, the secretary shall, either with  
3 the department's own engineers or by consulting engineers or  
4 engineering organizations, make periodic inspections for the  
5 purpose of ascertaining compliance with the certificate of  
6 approval. The secretary shall require the owner at his or her  
7 expense to perform work or tests as necessary and to provide  
8 adequate supervision during the placement, construction,  
9 enlargement, repair, alteration or removal of a dam: *Provided,*  
10 That with respect to dams designed by and constructed under  
11 the supervision of the natural resources conservation service, as  
12 to such dams no state inspections are required.

13           If at any time during placement, construction, enlargement,  
14 repair, alteration or removal of any dam, the secretary finds that  
15 the work is not being done in accordance with the provisions of  
16 the original or revised certificate of approval, the secretary shall  
17 notify the owner by certified or registered mail, return receipt  
18 requested, to correct the deficiency, cease and desist work or to  
19 show cause as to why the certificate of approval should not be  
20 revoked.

21           The notice shall state the reason or reasons why the work is  
22 not in accordance with the certificate of approval. The secretary  
23 may order that work on the dam cease until the owner has  
24 complied with the notice.

25           If the secretary finds that amendments, modifications or  
26 changes are necessary to ensure the safety of the dam, the  
27 secretary may order the owner to revise his or her plans and  
28 specifications. If conditions are revealed which will not permit  
29 the placement, construction, enlargement, repair, alteration or  
30 removal of the dam in a safe manner, the certificate of approval  
31 may be revoked.

32           Immediately upon completion of a new dam or enlarge-  
33 ment, repair or alteration of a dam, the owner shall notify the  
34 secretary: *Provided*, That immediately upon completion of a  
35 dam constructed under the supervision of the natural resources  
36 conservation service, a certification of completion shall be sent  
37 to the director by the natural resources conservation service,  
38 and a complete set of design documents “as built” plans, and  
39 specifications and safety plan of evacuation shall be provided  
40 to the director within ninety days after completion of the dam.

**§22-14-10. Procedures for handling emergencies involving dams;  
remedial actions to alleviate emergency; payment  
of costs of remedial actions to be paid by dam  
owner.**

1       The owner of a dam has the primary responsibility for  
2 determining when an emergency involving a dam exists. When  
3 the owner of a dam determines an emergency does exist, the  
4 owner shall take necessary remedial action and shall notify the  
5 secretary and any persons who may be endangered if the dam  
6 should fail.

7       The secretary shall notify any persons, not otherwise  
8 notified, who may be endangered if the dam should fail. The  
9 secretary may take any remedial action necessary to protect life  
10 and property if: (a) The condition of the dam so endangers life  
11 and property that time is not sufficient to permit the issuance  
12 and enforcement of an order for the owner to correct the  
13 condition; or (b) passing or imminent floods or other conditions  
14 threaten the safety of the dam. Remedial actions may include,  
15 but are not limited to:

16       (1) Taking full charge and control of the dam;

17       (2) Lowering the level of water impounded by the dam by  
18 releasing such impounded water;

19       (3) Completely releasing all water impounded by the dam;

20       (4) Performing any necessary remedial or protective work  
21 at the site of the dam;

22       (5) Taking any other steps necessary to safeguard life and  
23 property.

24       Once the secretary has taken full charge of the dam, the  
25 secretary shall remain in charge and control until in the  
26 secretary's opinion it has been rendered safe or the emergency  
27 occasioning the action has ceased and the secretary concludes  
28 that the owner is competent to reassume control of the dam and  
29 its operation. The assumption of control of the dam will not

30 relieve the owner of a dam of liability for any negligent act or  
31 acts of the owner or the owner's agent or employee.

32 When the secretary declares that making repairs to the dam  
33 or breaching the dam is necessary to safeguard life and prop-  
34 erty, repairs or breaching shall be started immediately by the  
35 owner, or by the secretary at the owner's expense, if the owner  
36 fails to do so. The owner shall notify the secretary at once of  
37 any emergency repairs or breaching the owner proposes to  
38 undertake and of work he or she has under way to alleviate the  
39 emergency. The proposed repairs, breaching and work shall be  
40 made to conform with orders of the secretary. The secretary  
41 may obtain equipment and personnel for emergency work from  
42 any person as is necessary and expedient to accomplish the  
43 required work. Any person undertaking work at the request of  
44 the department shall be paid by the department and is immune  
45 from civil liability under the provisions of section fifteen,  
46 article seven, chapter fifty-five of this code.

47 The costs reasonably incurred in any remedial action taken  
48 by the secretary shall be paid out of funds appropriated to the  
49 department. All costs incurred by the department shall be  
50 promptly repaid by the owner upon request or, if not repaid, the  
51 department may recover costs and damages from the owner by  
52 appropriate civil action.

**§22-14-11. Requirements for dams completed prior to effective  
date of this section.**

1 The secretary shall give notice to file an application for a  
2 certificate of approval to every owner of a dam which was  
3 completed prior to the effective date of this section: *Provided,*  
4 That no such notice need be given to a person who has applied  
5 for and obtained a certificate of approval on or after the first  
6 day of July, one thousand nine hundred seventy-three, in  
7 accordance with the provisions of the prior enactment of section

8 five of this article. The notice shall be given by certified or  
9 registered mail, return receipt requested, to the owner at his or  
10 her last address of record in the office of the county assessor of  
11 the county in which the dam is located; mailing constitutes  
12 service. A separate application for each dam a person owns  
13 shall be filed with the director in writing upon forms supplied  
14 by him or her and shall include or be accompanied by appropri-  
15 ate information concerning the dam as the secretary requires.

16 The secretary shall make inspections of such dams or  
17 reservoirs at state expense. The secretary shall require owners  
18 of dams to perform at their expense work or tests as may  
19 reasonably be required to disclose information sufficient to  
20 enable the secretary to determine whether to issue a certificate  
21 of approval or to issue an order directing further work at the  
22 owner's expense necessary to safeguard life and property. For  
23 this purpose, the secretary may require an owner to lower the  
24 water level of, or to empty, water impounded by the dam  
25 adjudged by the secretary to be unsafe. If, upon inspection or  
26 upon completion to the satisfaction of the secretary of all work  
27 that he or she ordered, the secretary finds that the dam is safe to  
28 impound water, a certificate of approval shall be issued.

**§22-14-12. Dam owner not relieved of legal responsibilities by any provision of article.**

1 Nothing in this article relieves the owner of a dam of the  
2 legal duties, obligations or liabilities incident to the ownership  
3 or operation of a dam.

**§22-14-13. Offenses and penalties.**

1 (a) Any person who violates any of the provisions of this  
2 article or any certificate of approval, order, rule or requirement  
3 of the secretary or department is guilty of a misdemeanor and,  
4 upon conviction thereof, shall be fined not less than one

5 hundred dollars nor more than one thousand dollars, or incar-  
6 cerated in a county or regional jail not more than six months, or  
7 both fined and incarcerated.

8 (b) Any person who willfully obstructs, hinders or prevents  
9 the secretary or department or its agents or employees from  
10 performing the duties imposed on them by the provisions of this  
11 article or who willfully resists the exercise of the control and  
12 supervision conferred by the provisions of this article upon the  
13 secretary or department or its agents or employees or any owner  
14 or any person acting as a director, officer, agent or employee of  
15 an owner, or any contractor or agent or employee of a contrac-  
16 tor who engages in the placement, construction, enlargement,  
17 repair, alteration, maintenance or removal of any dam who  
18 knowingly does work or permits work to be executed on the  
19 dam without a certificate of approval or in violation of or  
20 contrary to any approval as provided for by the provisions of  
21 this article; and any inspector, agent or employee of the  
22 department who has knowledge of and who fails to notify the  
23 secretary of unapproved modifications to a dam is guilty of a  
24 misdemeanor and, upon conviction thereof, shall be fined not  
25 less than one thousand dollars nor more than five thousand  
26 dollars, or incarcerated in county jail not more than one year, or  
27 both fined and incarcerated.

**§22-14-14. Enforcement orders; hearings.**

1 (a) If the secretary, upon inspection, investigation or  
2 through other means observes, discovers or learns of a violation  
3 of the provisions of this article, any certificate of approval,  
4 notice, order or rules issued or promulgated hereunder, he or  
5 she may:

6 (1) Issue an order stating with reasonable specificity the  
7 nature of the violation and requiring compliance immediately  
8 or within a specified time. An order under this section includes,

9 but is not limited to, any or all of the following: Orders sus-  
10 pending, revoking or amending certificates of approval, orders  
11 requiring a person to take remedial action or cease and desist  
12 orders;

13 (2) Seek an injunction in accordance with subsection (c),  
14 section fifteen of this article;

15 (3) Institute a civil action in accordance with subsection (c),  
16 section fifteen of this article; or

17 (4) Request the attorney general, or the prosecuting attorney  
18 of the county in which the alleged violation occurred, to bring  
19 a criminal action in accordance with section twelve of this  
20 article.

21 (b) Any person issued a cease and desist order may file a  
22 notice of request for reconsideration with the secretary not more  
23 than seven days from the issuance of the order and shall have a  
24 hearing before the secretary contesting the terms and conditions  
25 of the order within ten days of the filing of the notice of a  
26 request for reconsideration. The filing of a notice of request for  
27 reconsideration does not stay or suspend the execution or  
28 enforcement of the cease and desist order.

#### **§22-14-15. Civil penalties and injunctive relief.**

1 (a) Any person who violates any provision of this article,  
2 any certificate of approval or any rule, notice or order issued  
3 pursuant to this article is subject to a civil administrative  
4 penalty, to be levied by the secretary, of not more than two  
5 hundred dollars for each day the violation continues, not to  
6 exceed a maximum of four hundred dollars. In assessing any  
7 penalty, the secretary shall take into account the seriousness of  
8 the violation and any good faith efforts to comply with applica-  
9 ble requirements as well as any other appropriate factors as may

10 be established by rules proposed by the secretary for legislative  
11 approval pursuant to article three, chapter twenty-nine-a of this  
12 code. No assessment may be levied pursuant to this subsection  
13 until after the alleged violator has been notified by certified  
14 mail or personal service. The notice shall include a reference to  
15 the section of the statute, rule, notice, order or statement of the  
16 certificate of approval's terms that was allegedly violated, a  
17 concise statement of the facts alleged to constitute the violation,  
18 a statement of the amount of the administrative penalty to be  
19 imposed and a statement of the alleged violator's right to an  
20 informal hearing. The alleged violator has twenty calendar days  
21 from receipt of the notice within which to deliver to the  
22 secretary a written request for an informal hearing. If no  
23 hearing is requested, the notice becomes a final order after the  
24 expiration date of the twenty-day period. If a hearing is  
25 requested, the secretary shall inform the alleged violator of the  
26 time and place of the hearing. Within thirty days following the  
27 informal hearing, the secretary shall issue and furnish to the  
28 violator a written decision, and the reasons therefor, concerning  
29 the assessment of a civil administrative penalty. The authority  
30 to levy an administrative penalty is in addition to all other  
31 enforcement provisions of this article and the payment of any  
32 assessment does not affect the availability of any other enforce-  
33 ment provision in connection with the violation for which the  
34 assessment is levied: *Provided*, That no combination of  
35 assessments against a violator shall exceed four hundred dollars  
36 per day of each violation: *Provided, however*, That any viola-  
37 tion for which the violator has paid a civil administrative  
38 penalty assessed under this subsection is not subject to a  
39 separate civil penalty action under this article to the extent of  
40 the amount of the civil administrative penalty paid. Civil  
41 administrative penalties shall be levied in accordance with the  
42 rules promulgated under the authority of section four of this  
43 article. The net proceeds of assessments collected pursuant to



44 this subsection shall be deposited in the dam safety fund  
45 established pursuant to section seventeen of this article. Any  
46 person adversely affected by the assessment of a civil adminis-  
47 trative penalty has the right to appeal to the environmental  
48 quality board pursuant to the provisions of article one, chapter  
49 twenty-two-b of this code.

50 (b) No assessment levied pursuant to subsection (a) of this  
51 section is due and payable until the procedures for review of the  
52 assessment as set out in said subsection have been completed.

53 (c) A civil penalty may be imposed and collected in any  
54 civil action instituted by the secretary in the circuit court of  
55 Kanawha County or in the county in which the violation or  
56 noncompliance exists or is taking place.

57 Upon application by the secretary, the circuit courts of this  
58 state or the judges thereof in vacation may by injunction compel  
59 compliance with and enjoin violations of the provisions of this  
60 article, and rules proposed in accordance with section four of  
61 this article, the terms and conditions of any certificate of  
62 approval granted under the provisions of this article, or any  
63 order of the secretary or environmental quality board and the  
64 venue of any action shall be in the circuit court of Kanawha  
65 County or in the county in which the violation or noncompli-  
66 ance exists or is taking place. The court or the judge thereof in  
67 vacation may issue a temporary or preliminary injunction in any  
68 case pending a decision on the merits of any injunctive applica-  
69 tion filed. In seeking an injunction, it is not necessary for the  
70 secretary to post bond or to allege or prove at any stage of the  
71 proceeding that irreparable damage will occur if the injunction  
72 is not issued or that the remedy at law is inadequate. An  
73 application for injunctive relief or a civil penalty action under  
74 this section may be filed and relief granted notwithstanding the  
75 fact that all administrative remedies provided for in this article

76 have not been exhausted or invoked against the person or  
77 persons against whom the relief is sought.

78 The judgment of the circuit court upon any application filed  
79 or in any civil action instituted under the provisions of this  
80 section shall be final unless reversed, vacated or modified on  
81 appeal to the supreme court of appeals. An appeal shall be  
82 sought in the manner provided by law for appeals from circuit  
83 courts in other civil cases, except that the petition seeking  
84 review of an order in any injunction proceeding must be filed  
85 with the supreme court of appeals within ninety days from the  
86 date of entry of the judgment of the circuit court.

87 (d) Upon request of the secretary, the attorney general or  
88 the prosecuting attorney of the county in which the violation  
89 occurs, shall assist the secretary in any civil action under this  
90 section.

91 (e) In any action brought pursuant to the provisions of this  
92 section, the state or any agency of the state which prevails, may  
93 be awarded costs and reasonable attorney's fees.

**§22-14-16. Schedule of application fees established.**

1 The secretary shall promulgate rules in accordance with the  
2 provisions of section four of this article, to establish a schedule  
3 of application fees which shall be submitted by the applicant to  
4 the department together with the application for a certificate of  
5 approval filed pursuant to this article. The schedule of applica-  
6 tion fees shall be designed to establish reasonable categories of  
7 certificate application fees based upon the complexity of the  
8 permit application review process required by the secretary  
9 pursuant to the provisions of this article and the rules promul-  
10 gated under this article. The secretary shall not process any

11 certificate application pursuant to this article until the certificate  
12 application fee has been received.

**§22-14-17. Schedule of annual registration fees established.**

1 The secretary shall promulgate rules in accordance with the  
2 provisions of section four of this article, to establish a schedule  
3 of annual registration fees which shall be assessed annually  
4 upon each person holding a certificate of approval issued  
5 pursuant to this article. Each person holding a certificate of  
6 approval shall pay the prescribed annual registration fee to the  
7 department pursuant to the rules promulgated under this article.  
8 The schedule of annual registration fees shall be designed to  
9 establish reasonable categories of annual registration fees,  
10 including, but not limited to, the size of the dam and its  
11 classification. Any certificate of approval issued pursuant to  
12 this article becomes void without notification to the person  
13 holding a certificate of approval when the annual registration  
14 fee is more than ninety days past due pursuant to the rules  
15 promulgated under this section.

**§22-14-18. Continuation of dam safety fund; components of fund.**

1 (a) The special fund designated "The Dam Safety Fund"  
2 hereinafter referred to as "the fund" shall be continued.

3 (b) All certificate application fees and annual registration  
4 fee assessments, any interest or surcharge assessed and col-  
5 lected by the department, interest accruing on investments and  
6 deposits of the fund, and any other moneys designated by the  
7 department shall be paid into the fund. Accrual of funds shall  
8 not exceed three hundred thousand dollars per year, exclusive  
9 of application fees. The department shall expend the proceeds  
10 of the fund for the review of applications, inspection of dams,  
11 payment of costs of remedial emergency actions and enforce-  
12 ment of the provisions of this article.

---

## CHAPTER 101

(S. B. 574 — By Senators Redd and Boley)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections three hundred two and three hundred seven, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred three, article eleven of said chapter; to amend and reenact section one hundred eleven, article twelve of said chapter; to further amend said article by adding thereto a new section, designated section one hundred eighteen; to amend and reenact sections four hundred one, four hundred six, four hundred seven and eight hundred one, article fourteen of said chapter; to amend and reenact sections one hundred twenty-five and one hundred thirty-two, article eighteen of said chapter; and to amend and reenact sections one hundred one and one hundred three, article twenty-four of said chapter, all relating to child support generally; clarifying code citations; reenacting sections omitted in recodification; providing for the continuation of amnesty for child support arrears; providing for payment of child support past age eighteen to a custodian as well as a parent; providing for recognition of interstate medical support; civil and criminal penalties for failure of an employer to enroll a child in medical insurance coverage; providing for reporting of start date of employees upon request of the bureau for child support enforcement; payment of support by income withholding; changing the threshold for an increase in monthly support to satisfy arrears; and clarifying genetic testing.

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

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

**Article**

- 1. General Provisions; Definitions.**
- 11. Support of Children.**
- 12. Medical Support.**
- 14. Remedies for the Enforcement of Support Obligations.**
- 18. Bureau for Child Support Enforcement.**
- 24. Establishment of Paternity.**

**ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**

**PART 3. MISCELLANEOUS PROVISIONS RELATING  
TO DOMESTIC RELATIONS.**

§48-1-302. Calculation of interest.

§48-1-307. Collection of child or spousal support by collection agencies.

**§48-1-302. Calculation of interest.**

- 1 (a) If an obligation to pay interest arises under this chapter,
- 2 the rate of interest is that specified in section 56-6-31 of this
- 3 code. Interest accrues only upon the outstanding principal of
- 4 such obligation. On and after the ninth day of June, one

5 thousand nine hundred ninety-five, this section will be con-  
6 strued to permit the accumulation of simple interest and may  
7 not be construed to permit the compounding of interest.  
8 Interest which accrued on unpaid installments accruing before  
9 the ninth day of June, one thousand nine hundred ninety-five,  
10 may not be modified by any court, irrespective of whether such  
11 installment accrued simple or compound interest: *Provided,*  
12 That unpaid installments upon which interest was compounded  
13 before the effective date of this section shall accrue only simple  
14 interest thereon on and after the ninth day of June, one thousand  
15 nine hundred ninety-five.

16 (b) Notwithstanding any other provision of law, no court  
17 may award or approve prejudgment interest in a domestic  
18 relations action against a party unless the court finds, in writing,  
19 that the party engaged in conduct that would violate subsection  
20 (b), rule eleven of the West Virginia rules of civil procedure.  
21 If prejudgment interest is awarded, the court shall calculate  
22 prejudgment interest from the date the offending representation  
23 was presented to the court.

24 (c) Upon written agreement by both parties, an obligor may  
25 petition the court to enter an order conditionally suspending the  
26 collection of all or part of the interest that has accrued on past-  
27 due child support prior to the date of the agreement: *Provided,*  
28 That said agreement shall also establish a reasonable payment  
29 plan which is calculated to fully discharge all arrearages within  
30 twenty-four months. Upon successful completion of the  
31 payment plan, the court shall enter an order which permanently  
32 relieves the obligor of the obligation to pay the accrued interest.  
33 If the obligor fails to comply with the terms of the written  
34 agreement, then the court shall enter an order which reinstates  
35 the accrued interest.

**§48-1-307. Collection of child or spousal support by collection agencies.**

1 (a) Any person attempting to collect a child or spousal  
2 support obligation or arrearage on behalf of a resident or from  
3 a resident of this state is subject to the provisions of article  
4 sixteen, chapter forty-seven of this code and the provisions of  
5 this section and is otherwise subject to the jurisdiction of this  
6 state.

7 (b) The amount of delinquent child or spousal support or  
8 arrearage established by order of a court of competent jurisdic-  
9 tion in this state is not subject to waiver or compromise, either  
10 by agreement of the parties or by a collection agency acting on  
11 behalf of a party and may only be modified by an order of a  
12 court of competent jurisdiction.

13 (c) No child or spousal support or arrearage of child or  
14 spousal support collected by the state IV-D agency may be  
15 redirected to any collection agency.

16 (d) No collection agency attempting to collect a child or  
17 spousal support obligation or arrearage on behalf of a resident  
18 or from a resident of this state may include any funds collected  
19 by a IV-D agency in the amount from which their fee is  
20 determined or collected.

21 (e) No collection agency, other than an attorney licensed to  
22 practice law in this state, attempting to collect a child support  
23 or spousal support obligation or arrearage may engage in  
24 conduct which is considered the practice of law, including, but  
25 not limited to:

26 (1) The performance of legal services, the offering of legal  
27 advice or the making of a false representation, directly or by  
28 implication, that a person is an attorney;

29 (2) Any communication with persons in the name of an  
30 attorney or upon stationery or other written matter bearing an  
31 attorney's name; and

32 (3) Any demand for or payment of money constituting a  
33 share of compensation for services performed or to be per-  
34 formed by an attorney in collecting a claim.

35 (f) No collection agency may collect or attempt to collect  
36 any money alleged to be due and owing by any threat, coercion  
37 or attempt to coerce, including, but not limited to:

38 (1) The use, or the express or implicit threat of use, of  
39 violence or other criminal means, to cause harm to the person,  
40 reputation or property of any person;

41 (2) The accusation or threat to accuse any person of fraud,  
42 of any crime, or of any conduct which, if true, would tend to  
43 disgrace the other person or in any way subject them to ridicule  
44 or contempt of society;

45 (3) False accusations made to another person, including any  
46 credit reporting agency, that a person is willfully refusing to  
47 pay a just claim, or the threat to make such false accusations;

48 (4) The threat that nonpayment of an alleged claim will  
49 result in the arrest of any person, or of the taking of any other  
50 action requiring judicial sanction, without informing the person  
51 that there must be in effect a court order permitting the action  
52 before it can be taken; and

53 (5) The threat to take any action prohibited by this section  
54 or other law regulating the conduct of a collection agency.

55 (g) No collection agency may unreasonably oppress or  
56 abuse any person in connection with the collection of or attempt  
57 to collect any child or spousal support obligation or arrearage,  
58 including, but not limited to:

59 (1) The use of profane or obscene language or language that  
60 is intended to unreasonably abuse the listener or reader;



61       (2) The placement of telephone calls without disclosure of  
62 the caller's identity and with the intent to annoy, harass or  
63 threaten any person at the called number;

64       (3) Causing expense to any person in the form of long  
65 distance telephone tolls, telegram fees or other charges incurred  
66 by a medium of communication by concealment of the true  
67 purpose of the communication; and

68       (4) Causing a telephone to ring or engaging any person in  
69 telephone conversation repeatedly or continuously, or at  
70 unusual times or at times known to be inconvenient, with intent  
71 to annoy, abuse, oppress or threaten any person at the called  
72 number.

73       (h) No collection agency may unreasonably publicize  
74 information relating to any alleged child or spousal support  
75 obligation or arrearage, including, but not limited to:

76       (1) The communication to any employer or his or her agent  
77 of any information relating to an employee's indebtedness other  
78 than through proper legal action, process or proceeding;

79       (2) The disclosure, publication or communication of  
80 information relating to a child or spousal support obligation or  
81 arrearage to any relative or family member of the obligor,  
82 except through proper legal action or process or at the express  
83 and unsolicited request of the obligor;

84       (3) The disclosure, publication or communication of any  
85 information relating to an obligor's child or spousal support  
86 obligation or arrearage to any other person other than a credit  
87 reporting agency, by publishing or posting any list of persons,  
88 commonly known as "deadbeat lists", or in any manner other  
89 than through proper legal action, process or proceeding; and

90       (4) The use of any form of communication to the obligor,  
91 which ordinarily may be seen by any other person, that displays  
92 or conveys any information about the alleged claim other than  
93 the name, address and telephone number of the collection  
94 agency.

95       (i) No collection agency may use any fraudulent, deceptive  
96 or misleading representation or means to collect or attempt to  
97 collect claims or to obtain information concerning support  
98 obligors, including, but not limited to:

99       (1) The use of any business, company or organization name  
100 while engaged in the collection of claims, other than the true  
101 name of the collection agency's business, company or organiza-  
102 tion;

103       (2) Any false representation that the collection agency has  
104 in its possession information or something of value for the  
105 obligor with the underlying purpose of soliciting or discovering  
106 information about the person;

107       (3) The failure to clearly disclose the name of the person to  
108 whom the claim is owed, at the time of making any demand for  
109 money;

110       (4) Any false representation or implication of the character,  
111 extent or amount of a claim against an obligor or of the status  
112 of any legal proceeding;

113       (5) Any false representation or false implication that any  
114 collection agency is vouched for, bonded by, affiliated with an  
115 agency, instrumentality, agent or official of this state or of the  
116 federal or local government;

117       (6) The use, distribution or sale of any written communica-  
118 tion which simulates or is falsely represented to be a document  
119 authorized, issued or approved by a court, an official or any

120 other legally constituted or authorized authority, or which  
121 creates a false impression about its source, authorization or  
122 approval;

123 (7) Any representation that an existing obligation of the  
124 obligor may be increased by the addition of attorney's fees,  
125 investigation fees, service fees or any other fees or charges  
126 when in fact the fees or charges may not legally be added to the  
127 existing obligation; and

128 (8) Any false representation or false impression about the  
129 status or true nature of the services rendered by the collection  
130 agency.

131 (j) No collection agency may use unfair or unconscionable  
132 means to collect or attempt to collect any claim, including, but  
133 not limited to:

134 (1) The collection of or the attempt to collect any interest  
135 in excess of that interest authorized by the provisions of this  
136 chapter, or other charge, fee or expense incidental to the  
137 principal obligation that exceeds ten percent of the principal  
138 amount from an obligor or obligee; and

139 (2) Any communication with an obligor whenever it  
140 appears the obligor is represented by an attorney and the  
141 attorney's name and address are known, or could be easily  
142 ascertained, unless the attorney fails to answer correspondence,  
143 return telephone calls or discuss the obligation in question, or  
144 unless the attorney and the obligor consent to direct communi-  
145 cation.

146 (k) No collection agency may use, distribute, sell or prepare  
147 for use any written communication which violates or fails to  
148 conform to United States postal laws and regulations.

149 (l) No collection agency may place a telephone call or  
150 otherwise communicate by telephone with an obligor at any  
151 place, including a place of employment, falsely stating that the  
152 call is “urgent” or an “emergency”.

153 (m) No collection agency may attempt to collect any  
154 portion of a fee from any money collected by any other entity  
155 or authority. The collection agency may only collect a fee from  
156 funds procured solely through its collection activities.

157 (n) A collection agency must provide the state IV-D agency  
158 with an accounting of any money collected and forwarded to  
159 the obligee as child support, spousal support or arrearages every  
160 sixty days until the collection agency ceases all collection  
161 activity.

162 (o) Any resident of this state who contracts for services  
163 with a collection agency to collect current or past-due child  
164 support or spousal support may, upon thirty days’ written  
165 notice, cancel the contract for collection. The notice must be  
166 mailed to the collection agency by first-class mail. All con-  
167 tracts signed by residents of this state must include written  
168 notification of this right of cancellation.

169 (p) Any person who violates the provisions of this section  
170 is subject to the penalties set forth in section 47-16-5 and  
171 section 11-12-9 of this code.

172 (q) Any person who violates the provisions of this section  
173 is liable to the injured party in a civil action. Additionally, any  
174 person who violates the provisions of this section is guilty of a  
175 misdemeanor and, upon conviction thereof, shall be fined not  
176 less than one thousand dollars nor more than five thousand  
177 dollars for each separate incident.

178 (r) For any action filed pursuant to this section alleging  
179 illegal, fraudulent or unconscionable conduct or any prohibited

180 debt collection practice, the court, in its discretion, may award  
181 all or a portion of the costs of litigation, including reasonable  
182 attorney fees, court costs and fees, to the injured party. Upon  
183 a finding by the court that an action filed pursuant to this  
184 section on the grounds of illegal, fraudulent or unconscionable  
185 conduct or any prohibited debt collection practice was brought  
186 in bad faith and for the purposes of harassment, the court may  
187 award the defendant reasonable attorney fees.

#### ARTICLE 11. SUPPORT OF CHILDREN.

##### **§48-11-103. Child support beyond age eighteen.**

1 (a) Upon a specific finding of good cause shown and upon  
2 findings of fact and conclusions of law in support thereof, an  
3 order for child support may provide that payments of such  
4 support continue beyond the date when the child reaches the  
5 age of eighteen, so long as the child is unmarried and residing  
6 with a parent, guardian or custodian and is enrolled as a  
7 full-time student in a secondary educational or vocational  
8 program and making substantial progress towards a diploma:  
9 *Provided*, That such payments may not extend past the date that  
10 the child reaches the age of twenty.

11 (b) Nothing herein shall be construed to abrogate or modify  
12 existing case law regarding the eligibility of handicapped or  
13 disabled children to receive child support beyond the age of  
14 eighteen.

15 (c) The reenactment of this section during the regular  
16 session of the Legislature in the year one thousand nine hundred  
17 ninety-four shall not, by operation of law, have any effect upon  
18 or vacate any order or portion thereof entered under the prior  
19 enactment of this section which awarded educational and  
20 related expenses for an adult child accepted or enrolled and  
21 making satisfactory progress in an educational program at a  
22 certified or accredited college. Any such order or portion

23 thereof shall continue in full force and effect until the court,  
24 upon motion of a party, modifies or vacates the order upon a  
25 finding that:

26 (1) The facts and circumstances which supported the entry  
27 of the original order have changed, in which case the order may  
28 be modified;

29 (2) The facts and circumstances which supported the entry  
30 of the original order no longer exist because the child has not  
31 been accepted or is not enrolled in and making satisfactory  
32 progress in an educational program at a certified or accredited  
33 college, or the parent ordered to pay such educational and  
34 related expenses is no longer able to make such payments, in  
35 which case the order shall be vacated;

36 (3) The child, at the time the order was entered, was under  
37 the age of sixteen years, in which case the order shall be  
38 vacated;

39 (4) The amount ordered to be paid was determined by an  
40 application of child support guidelines in accordance with the  
41 provisions of article 13-101, *et seq.*, of this chapter, or legisla-  
42 tive rules promulgated thereunder, in which case the order may  
43 be modified or vacated; or

44 (5) The order was entered after the fourteenth day of  
45 March, one thousand nine hundred ninety-four, in which case  
46 the order shall be vacated.

#### **ARTICLE 12. MEDICAL SUPPORT.**

§48-12-111. Employer's duties upon service of national medical support notice;  
notice from another state.

§48-12-118. Failure of employer to comply with medical insurance coverage;  
penalties.

**§48-12-111. Employer's duties upon service of national medical support notice; notice from another state.**

1 (a) Upon service of the national medical support notice  
2 requiring insurance coverage for the children, the employer,  
3 multiemployer trust or union shall enroll the child as a benefi-  
4 ciary in the group insurance plan and withhold any required  
5 premium from the obligated parent's income or wages, unless  
6 the child is already enrolled in this plan.

7 (b) If more than one plan is offered by the employer,  
8 multiemployer trust or union, the child shall be enrolled in the  
9 same plan as the obligated parent. If the obligated parent is not  
10 enrolled for insurance coverage, the employer shall promptly  
11 report the availability of plans to the IV-D agency. The IV-D  
12 agency, in consultation with parent, shall promptly select the  
13 most appropriate plan, considering both the health needs of the  
14 child and the cost to the parents, and shall notify the plan  
15 administrator and the parties of the selection.

16 (c) Insurance coverage for the child which is ordered  
17 pursuant to the provisions of this section shall not be terminated  
18 except as provided in section one hundred fifteen of this article.

19 (d) A medical support notice issued by the appropriate IV-  
20 D agency of another state may be sent directly to an employer  
21 in this state without the necessity of first filing a petition or  
22 similar pleading or registering the order with the IV-D agency  
23 of this state. The medical support notice shall have the same  
24 force and effect as if the notice had been issued by the IV-D  
25 agency of this state. Upon receipt of a medical support notice  
26 from the IV-D agency of another state, the employer shall  
27 immediately provide a copy of the notice to the obligor.

**§48-12-118. Failure of employer to comply with medical insurance coverage; penalties.**

1 For the failure of any employer, multiemployer trust or  
2 employee's union to comply with the requirements of this  
3 article the bureau for child support enforcement may assess a  
4 civil penalty of not more than one hundred dollars. If a court of  
5 competent jurisdiction determines that the employer,  
6 multiemployer trust or the employee's union wilfully failed to  
7 comply with the provisions of this article the employer,  
8 multiemployer trust or employee's union shall be found guilty  
9 of a misdemeanor and, upon conviction thereof, shall be fined  
10 not less than five hundred dollars nor more than one thousand  
11 dollars.

**ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT  
OBLIGATIONS.**

**PART 4. WITHHOLDING FROM INCOME OF  
AMOUNTS PAYABLE AS SUPPORT.**

§48-14-401. Support orders to provide for withholding from income.

§48-14-406. Notice to source of income; withholding in compliance with order.

§48-14-407. Contents of notice to source of income.

§48-14-801. When monthly payments may be increased to satisfy overdue support.

**§48-14-401. Support orders to provide for withholding from  
income.**

1 (a) Every order entered or modified under the provisions of  
2 this article that requires the payment of child support or spousal  
3 support must include a provision for automatic withholding  
4 from income of the obligor in order to facilitate income  
5 withholding as a means of collecting support.

6 (b) Every support order heretofore or hereafter entered by  
7 a court of competent jurisdiction is considered to provide for an  
8 order of income withholding, notwithstanding the fact that the  
9 support order does not in fact provide for an order of withhold-  
10 ing. Income withholding may be instituted under this part for



11 any arrearage without the necessity of additional judicial or  
12 legal action.

13 (c) Every such order as described in subsection (a) of this  
14 section shall contain language authorizing income withholding  
15 for both current support and for any arrearages to commence  
16 without further court action as follows:

17 The order shall provide that income withholding shall begin  
18 immediately, without regard to whether there is an arrearage;

19 (A) When a child for whom support is ordered is included  
20 or becomes included in a grant of assistance from the division  
21 of human services or a similar agency of a sister state for  
22 temporary assistance for needy families benefits, medical  
23 assistance only benefits or foster care benefits and is referred to  
24 the bureau for child support enforcement; or

25 (B) When the support obligee has applied for services from  
26 the bureau for child support enforcement created pursuant to  
27 section 18-101, *et seq.*, of this chapter, or the support enforce-  
28 ment agency of another state or is otherwise receiving services  
29 from the bureau for child support enforcement as provided for  
30 in this chapter. In any case where one of the parties demon-  
31 strates, and the court finds, that there is good cause not to  
32 require immediate income withholding, or in any case where  
33 there is filed with the court a written agreement between the  
34 parties which provides for an alternative arrangement, such  
35 order shall not provide for income withholding to begin  
36 immediately, pursuant to section four hundred three, article  
37 fourteen of this chapter.

**§48-14-406. Notice to source of income; withholding in compli-  
ance with order.**

1 (a) Withholding shall occur and the notice to withhold shall  
2 be sent either by first-class mail or by electronic means to the

3 source of income when the support order provides for immedi-  
4 ate income withholding pursuant to sections four hundred one  
5 and four hundred two of this article or if immediate income  
6 withholding is not so provided, when the support payments are  
7 in arrears in the amount specified in section four hundred three  
8 § 48-14-403 of this article.

9 (b) The source of income shall withhold so much of the  
10 obligor's income as is necessary to comply with the order  
11 authorizing such withholding, up to the maximum amount  
12 permitted under applicable law for both current support and for  
13 any arrearages which are due. Such withholding, unless  
14 otherwise terminated under the provisions of this part, shall  
15 apply to any subsequent source of income or any subsequent  
16 period of time during which income is received by the obligor.

17 (c) In addition to any amounts payable as support withheld  
18 from the obligor's income, the source of income may deduct a  
19 fee, not to exceed one dollar, for administrative costs incurred  
20 by the source of income for each withholding.

**§48-14-407. Contents of notice to source of income.**

1 (a) The source of income of any obligor who is subject to  
2 withholding, upon being given notice of withholding, shall  
3 withhold from such obligor's income the amount specified by  
4 the notice and pay such amount to the bureau for child support  
5 enforcement for distribution. The notice given to the source of  
6 income shall contain only such information as may be neces-  
7 sary for the source of income to comply with the withholding  
8 order and no source of income may require additional informa-  
9 tion or documentation. Such notice to the source of income  
10 shall include, at a minimum, the following:

11 (1) The amount to be withheld from the obligor's dispos-  
12 able earnings, and a statement that the amount to be withheld

13 for support and other purposes, including the fee specified  
14 under subdivision (3) of this subsection, may not be in excess  
15 of the maximum amounts permitted under Section 303(b) of the  
16 federal Consumer Credit Protection Act or limitations imposed  
17 under the provisions of this code;

18 (2) That the source of income shall send the amount to be  
19 withheld from the obligor's income to the bureau for child  
20 support enforcement, along with such identifying information  
21 as may be required by the bureau, the same day that the obligor  
22 is paid;

23 (3) That, in addition to the amount withheld under the  
24 provisions of subdivision (1) of this subsection, the source of  
25 income may deduct a fee, not to exceed one dollar, for adminis-  
26 trative costs incurred by the source of income for each with-  
27 holding;

28 (4) That withholding is binding on the source of income  
29 until further notice by the bureau for child support enforcement  
30 or until the source of income notifies the bureau for child  
31 support enforcement of a termination of the obligor's employ-  
32 ment in accordance with the provisions of section four hundred  
33 twelve of this article;

34 (5) That the source of income is subject to a fine for  
35 discharging an obligor from employment, refusing to employ or  
36 taking disciplinary action against any obligor because of the  
37 withholding;

38 (6) That when the source of income fails to withhold  
39 income in accordance with the provisions of the notice, the  
40 source of income is liable for the accumulated amount the  
41 source of income should have withheld from the obligor's  
42 income.

43 (7) That the withholding under the provisions of this part  
44 shall have priority over any other legal process under the laws  
45 of this state against the same income and shall be effective  
46 despite any exemption that might otherwise be applicable to the  
47 same income;

48 (8) That when an employer has more than one employee  
49 who is an obligor who is subject to wage withholding from  
50 income under the provisions of this code, the employer may  
51 combine all withheld payments to the bureau for child support  
52 enforcement when the employer properly identifies each  
53 payment with the information listed in this part. A source of  
54 income is liable to an obligee, including the state of West  
55 Virginia or the department of health and human resources  
56 where appropriate, for any amount which the source of income  
57 fails to identify with the information required by this part and  
58 is therefore not received by the obligee;

59 (9) That the source of income shall implement withholding  
60 no later than the first pay period or first date for payment of  
61 income that occurs after fourteen days following the date the  
62 notice to the source of income was mailed; and

63 (10) That the source of income shall notify the bureau for  
64 child support enforcement promptly when the obligor termi-  
65 nates his or her employment or otherwise ceases receiving  
66 income from the source of income and shall provide the  
67 obligor's last known address and the name and address of the  
68 obligor's new source of income, if known.

69 (b) The commission shall, by administrative rule, establish  
70 procedures for promptly refunding to obligors amounts which  
71 have been improperly withheld under the provisions of this part.

**§48-14-801. When monthly payments may be increased to satisfy  
overdue support.**

1 (a) For the purpose of securing overdue support, the bureau  
2 for child support enforcement has the authority to increase the  
3 monthly support payments of an obligor by as much as one  
4 hundred dollars per month to satisfy the arrearage when:

5 (1) An obligor has failed to make payments as required by  
6 a support order and arrears are equal to an amount of support  
7 payable for six months if the order requires support to be paid  
8 in monthly installments; or

9 (2) An obligor has failed to make payments as required by  
10 a support order and arrears are equal to an amount of support  
11 payable for twenty-seven weeks if the order requires support to  
12 be paid in weekly or biweekly installments.

13 (b) An increase in monthly support under this section will  
14 be in addition to any amounts withheld from income pursuant  
15 to part 4 of this article.

16 (c) This increase in monthly support may be enforced  
17 through the withholding process.

#### **ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.**

§48-18-125. Employment and income reporting.

§48-18-132. Access to information.

#### **§48-18-125. Employment and income reporting.**

1 (a) For purposes of this section:

2 (1) "Employee" means an individual who is an "employee"  
3 for purposes of federal income tax withholding, as defined in 26  
4 U.S.C. §3401;

5 (2) "Employer" means the person or entity for whom an  
6 individual performs or performed any service of whatever  
7 nature and who has control of the payment of the individual's

8 wages for performance of such service or services, as defined  
9 in 26 U.S.C. §3401;

10 (3) An individual is considered a “new hire” on the first day  
11 in which that individual performs services for remuneration and  
12 on which an employer begins to withhold amounts for income  
13 tax purposes.

14 (b) Except as provided in subsections (c) and (d) of this  
15 section, all employers doing business in the state shall report to  
16 the bureau for child support enforcement:

17 (1) The hiring of any person who resides or works in this  
18 state to whom the employer anticipates paying earnings; and

19 (2) The rehiring or return to work of any employee who  
20 resides or works in this state.

21 (c) Employers are not required to report the hiring, rehiring  
22 or return to work of any person who is an employee of a federal  
23 or state agency performing intelligence or counterintelligence  
24 functions if the head of such agency has determined that  
25 reporting could endanger the safety of the employee or compro-  
26 mise an ongoing investigation or intelligence mission.

27 (d) An employer that has employees in states other than this  
28 state and that transmits reports magnetically or electronically is  
29 not required to report to the bureau for child support enforce-  
30 ment the hiring, rehiring or return to work of any employee if  
31 the employer has filed with the secretary of the federal depart-  
32 ment of health and human services, as required by 42 U.S.C.  
33 §653A, a written designation of another state in which it has  
34 employees as the reporting state.

35 (e) Employers shall report by mailing to the bureau for  
36 child support enforcement a copy of the employee’s W-4 form;  
37 however, an employer may transmit such information through

38 another means if approved in writing by the bureau for child  
39 support enforcement prior to the transmittal. The report shall  
40 include the employee's name, address and social security  
41 number, the employer's name and address, any different  
42 address of the payroll office and the employer's federal tax  
43 identification number. The employer may report other informa-  
44 tion, such as date of birth or income information, if desired.

45 (f) Employers shall submit a report within fourteen days of  
46 the date of the hiring, rehiring or return to work of the em-  
47 ployee. However, if the employer transmits the reports  
48 magnetically or electronically by two monthly submissions, the  
49 reports shall be submitted not less than twelve days nor more  
50 than sixteen days apart.

51 (g) An employer shall provide to the bureau for child  
52 support enforcement, upon its written request, information  
53 regarding an obligor's employment, wages or salary, medical  
54 insurance, start date and location of employment.

55 (h) Any employer who fails to report in accordance with the  
56 provisions of this section shall be assessed a civil penalty of no  
57 more than twenty-five dollars per failure. If the failure to report  
58 is the result of a conspiracy between the employer and the  
59 employee not to supply the required report or to supply a false  
60 or incomplete report, the employer shall be assessed a civil  
61 penalty of no more than five hundred dollars.

62 (i) Employers required to report under this section may  
63 assess each employee so reported one dollar for the administra-  
64 tive costs of reporting.

65 (j) Uses for the new hire information include, but are not  
66 limited to, the following:

67 (1) The state directory of new hires shall furnish the  
68 information to the national directory of new hires;

69 (2) The bureau for child support enforcement shall use  
70 information received pursuant to this section to locate individu-  
71 als for purposes of establishing paternity and of establishing,  
72 modifying and enforcing child support obligations and may  
73 disclose such information to any agent of the agency that is  
74 under contract with the bureau to carry out such purposes;

75 (3) State agencies responsible for administering a program  
76 specified in 42 U.S.C. §1320b-7(b) shall have access to  
77 information reported by employers for purposes of verifying  
78 eligibility for the program; and

79 (4) The bureau of employment programs shall have access  
80 to information reported by employers for purposes of adminis-  
81 tering employment security and workers' compensation  
82 programs.

**§48-18-132. Access to information.**

1 (a) All state, county and municipal agencies' offices and  
2 employers, including profit, nonprofit and governmental  
3 employers, receiving a request for information and assistance  
4 from the bureau for child support enforcement or any out-of-  
5 state agency administering a program under Title IV-D of the  
6 Social Security Act shall cooperate with the bureau or with the  
7 out-of-state agency in the location of parents who have aban-  
8 doned and deserted children and shall provide the bureau or the  
9 out-of-state agency with all available pertinent information  
10 concerning the location, income and property of those parents.

11 (b) Notwithstanding any other provision of law to the  
12 contrary, any entity conducting business in this state or incorpo-  
13 rated under the laws of this state shall, upon certification by the  
14 bureau or any out-of-state agency administering a program  
15 under Title IV-D of the Social Security Act that the information  
16 is needed to locate a parent for the purpose of collecting or



17 distributing child support, provide the bureau or the out-of-state  
18 agency with the following information about the parent: Full  
19 name, social security number, date of birth, home address,  
20 wages and number of dependents listed for income tax pur-  
21 poses: *Provided*, That no entity may provide any information  
22 obtained in the course of providing legal services, medical  
23 treatment or medical services.

24 (c) (1) The bureau for child support enforcement shall have  
25 access, subject to safeguards on privacy and information  
26 security, and to the nonliability of entities that afford such  
27 access under this subdivision, to information contained in the  
28 following records, including automated access, in the case of  
29 records maintained in automated data bases:

30 (A) Records of other state and local government agencies,  
31 including, but not limited to:

32 (i) Vital statistics, including records of marriage, birth and  
33 divorce;

34 (ii) State and local tax and revenue records, including  
35 information on residence address, employer, income and assets;

36 (iii) Records concerning real and titled personal property;

37 (iv) Records of occupational and professional licenses and  
38 records concerning the ownership and control of corporations,  
39 partnerships and other business entities;

40 (v) Employment security records;

41 (vi) Records of agencies administering public assistance  
42 programs;

43 (vii) Records of the division of motor vehicles; and

44 (viii) Corrections records.

45 (B) Certain records held by private entities with respect to  
46 individuals who owe or are owed support or certain individuals  
47 against, or with respect to, whom a support obligation is sought,  
48 consisting of:

49 (i) The names and addresses of such individuals and the  
50 names and addresses of the employers of such individuals, as  
51 appearing in the customer records of public utilities and cable  
52 television companies, pursuant to an administrative subpoena  
53 authorized by section one hundred twenty-three, article eighteen  
54 of this chapter; and

55 (ii) Information, including information on assets and  
56 liabilities, on such individuals held by financial institutions.

57 (2) Out-of-state agencies administering programs under  
58 Title IV-D of the Social Security Act shall, without the need for  
59 any court order, have the authority to access records in this state  
60 by making a request through the bureau for child support  
61 enforcement.

62 (d) All federal and state agencies conducting activities  
63 under Title IV-D of the Social Security Act shall have access to  
64 any system used by this state to locate an individual for  
65 purposes relating to motor vehicles or law enforcement.

66 (e) Out-of-state agencies administering programs under  
67 Title IV-D of the Social Security Act shall have the authority  
68 and right to access and use, for the purpose of establishing or  
69 enforcing a support order, the state law-enforcement and motor  
70 vehicle data bases.

71 (f) The bureau for child support enforcement and out-of-  
72 state agencies administering programs under Title IV-D of the  
73 Social Security Act shall have the authority and right to access

74 and use, for the purpose of establishing or enforcing a support  
75 order, interstate networks that state law-enforcement agencies  
76 and motor vehicle agencies subscribe to or participate in, such  
77 as the national law-enforcement telecommunications system  
78 (NLETS) and the American association of motor vehicle  
79 administrators (AAMVA) networks.

80 (g) No state, county or municipal agency or licensing board  
81 required to release information pursuant to the provisions of  
82 this section to the bureau for child support enforcement or to  
83 any out-of-state agency administering programs under Title IV-  
84 D of the Social Security Act may require the bureau for child  
85 support enforcement or any out-of-state agency to obtain a  
86 court order prior to the release of the information.

87 (h) Any information received pursuant to the provisions of  
88 this section is subject to the confidentiality provisions set forth  
89 in section 18-131 of this chapter.

#### ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-101. Paternity proceedings.

§48-24-103. Medical testing procedures to aid in the determination of paternity.

#### §48-24-101. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child and to  
2 obtain an order of support for the child may be instituted, by  
3 verified complaint, in the family court of the county where the  
4 child resides: *Provided*, That if such venue creates a hardship  
5 for the parties, or either of them, or if judicial economy  
6 requires, the court may transfer the action to the county where  
7 either of the parties resides.

8 (b) A "paternity proceeding" is a summary proceeding,  
9 equitable in nature and within the domestic relations jurisdic-  
10 tion of the courts, wherein a family court upon the petition of  
11 the state or another proper party may intervene to determine and

12 protect the respective personal rights of a child for whom  
13 paternity has not been lawfully established, of the mother of the  
14 child and of the putative father of the child. The parties to a  
15 paternity proceeding are not entitled to a trial by jury.

16 (c) The sufficiency of the statement of the material allega-  
17 tions in the complaint set forth as grounds for relief and the  
18 grant or denial of the relief prayed for in a particular case shall  
19 rest in the sound discretion of the court, to be exercised by the  
20 court according to the circumstances and exigencies of the case,  
21 having due regard for precedent and the provisions of the  
22 statutory law of this state.

23 (d) A decree or order made and entered by a court in a  
24 paternity proceeding shall include a determination of the filial  
25 relationship, if any, which exists between a child and his or her  
26 putative father and, if such relationship is established, shall  
27 resolve dependent claims arising from family rights and  
28 obligations attendant to such filial relationship.

29 (e) A paternity proceeding may be brought by any of the  
30 following persons:

31 (1) An unmarried woman with physical or legal custody of  
32 a child to whom she gave birth;

33 (2) A married woman with physical or legal custody of a  
34 child to whom she gave birth, if the complaint alleges that:

35 (A) The married woman lived separate and apart from her  
36 husband preceding the birth of the child;

37 (B) The married woman did not cohabit with her husband  
38 at any time during such separation and that such separation has  
39 continued without interruption; and

40 (C) The respondent, rather than her husband, is the father  
41 of the child;

42 (3) The state of West Virginia, including the bureau for  
43 child support enforcement;

44 (4) Any person who is not the mother of the child but who  
45 has physical or legal custody of the child;

46 (5) The guardian or committee of the child;

47 (6) The next friend of the child when the child is a minor;

48 (7) By the child in his or her own right at any time after the  
49 child's eighteenth birthday but prior to the child's twenty-first  
50 birthday; or

51 (8) A man who believes he is the father of a child born out  
52 of wedlock when there has been no prior judicial determination  
53 of paternity.

54 (f) If a paternity proceeding is brought that names the father  
55 of the child as being someone other than the person whose  
56 name appears on the child's birth certificate, then the person  
57 bringing the action shall cause a copy of the verified complaint  
58 to be served on the person named as the father on the birth  
59 certificate. Service must be in accordance with rule 4 of the  
60 rules of civil procedure.

61 (g) Blood or tissue samples taken pursuant to the provisions  
62 of this article may be ordered to be taken in such locations as  
63 may be convenient for the parties so long as the integrity of the  
64 chain of custody of the samples can be preserved.

65 (h) A person who has sexual intercourse in this state  
66 submits to the jurisdiction of the courts of this state for a  
67 proceeding brought under this article with respect to a child

68 who may have been conceived by that act of intercourse.  
69 Service of process may be perfected according to the rules of  
70 civil procedure.

71 (i) When the person against whom the proceeding is  
72 brought has failed to plead or otherwise defend the action after  
73 proper service has been obtained, judgment by default shall be  
74 issued by the court as provided by the rules of civil procedure.

**§48-24-103. Medical testing procedures to aid in the determination of paternity.**

1 (a) Prior to the commencement of an action for the estab-  
2 lishment of paternity, the bureau for child support enforcement  
3 may order the mother, her child and the man to submit to  
4 genetic tests to aid in proving or disproving paternity. The  
5 bureau may order the tests upon the request, supported by a  
6 sworn statement, of any person entitled to petition the court for  
7 a determination of paternity as provided in section one of this  
8 article. If the request is made by a party alleging paternity, the  
9 statement shall set forth facts establishing a reasonable possibil-  
10 ity or requisite sexual contact between the parties. If the  
11 request is made by a party denying paternity, the statement may  
12 set forth facts establishing a reasonable possibility of the  
13 nonexistence of sexual contact between the parties or other  
14 facts supporting a denial of paternity. If genetic testing is not  
15 performed pursuant to an order of the bureau for child support  
16 enforcement, the court may, on its own motion or shall upon the  
17 motion of any party, order such tests. A request or motion may  
18 be made upon ten days' written notice to the mother and alleged  
19 father without the necessity of filing a complaint. When the  
20 tests are ordered, the court or the bureau shall direct that the  
21 inherited characteristics, including, but not limited to, blood  
22 types, be determined by appropriate testing procedures at a  
23 hospital, independent medical institution or independent

24 medical laboratory duly licensed under the laws of this state or  
25 any other state and an expert qualified as an examiner of  
26 genetic markers shall analyze, interpret and report on the results  
27 to the court or to the bureau for child support enforcement. The  
28 results shall be considered as follows:

29 (1) Blood or tissue test results which exclude the man as the  
30 father of the child are admissible and shall be clear and con-  
31 vincing evidence of nonpaternity and, if a complaint has been  
32 filed, the court shall, upon considering such evidence, dismiss  
33 the action.

34 (2) Blood or tissue test results which show a statistical  
35 probability of paternity of less than ninety-eight percent are  
36 admissible and shall be weighed along with other evidence of  
37 the respondent's paternity.

38 (3) Undisputed blood or tissue test results which show a  
39 statistical probability of paternity of more than ninety-eight  
40 percent shall, when filed, legally establish the man as the father  
41 of the child for all purposes and child support may be estab-  
42 lished pursuant to the provisions of this chapter.

43 (4) When a party desires to challenge the results of the  
44 blood or tissue tests or the expert's analysis of inherited  
45 characteristics, he or she shall file a written protest with the  
46 family court or with the bureau for child support enforcement,  
47 if appropriate, within thirty days of the filing of such test results  
48 and serve a copy of such protest upon the other party. The  
49 written protest shall be filed at least thirty days prior to any  
50 hearing involving the test results. The court or the bureau for  
51 child support enforcement, upon reasonable request of a party,  
52 shall order that additional tests be made by the same laboratory  
53 or another laboratory within thirty days of the entry of the  
54 order, at the expense of the party requesting additional testing.  
55 Costs shall be paid in advance of the testing. When the results

56 of the blood or tissue tests or the expert's analysis which show  
57 a statistical probability of paternity of more than ninety-eight  
58 percent are confirmed by the additional testing, then the results  
59 are admissible evidence which is clear and convincing evidence  
60 of paternity. The admission of the evidence creates a presump-  
61 tion that the man tested is the father.

62 (b) Documentation of the chain of custody of the blood or  
63 tissue specimens is competent evidence to establish the chain of  
64 custody. A verified expert's report shall be admitted at trial  
65 unless a challenge to the testing procedures or a challenge to the  
66 results of test analysis has been made before trial. The costs  
67 and expenses of making the tests shall be paid by the parties in  
68 proportions and at times determined by the court.

69 (c) Except as provided in subsection (d) of this section,  
70 when a blood or tissue test is ordered pursuant to this section,  
71 the moving party shall initially bear all costs associated with the  
72 blood or tissue test unless that party is determined by the court  
73 to be financially unable to pay those costs. This determination  
74 shall be made following the filing of an affidavit pursuant to  
75 section one, article two, chapter fifty-nine of this code. When  
76 the court finds that the moving party is unable to bear that cost,  
77 the cost shall be borne by the state of West Virginia. Following  
78 the finding that a person is the father based on the results of a  
79 blood or tissue test ordered pursuant to this section, the court  
80 shall order that the father be ordered to reimburse the moving  
81 party for the costs of the blood or tissue tests unless the court  
82 determines, based upon the factors set forth in this section, that  
83 the father is financially unable to pay those costs.

84 (d) When a blood or tissue test is ordered by the bureau for  
85 child support enforcement, the bureau shall initially bear all  
86 costs subject to recoupment from the alleged father if paternity  
87 is established.



---

## CHAPTER 102

(H. B. 4273 — By Mr. Speaker, Mr. Kiss, and Delegate Staton)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section two hundred four, article twenty-seven, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three hundred twelve, all relating to domestic violence; adding “father-in-law” and “mother-in-law” to the definition of family or household members; and production of documents pursuant to a subpoena duces tecum.

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

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

### ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-204. Family or household members defined.

§48-27-312. Production of documents pursuant to a subpoena duces tecum.

#### PART 2. DEFINITIONS.

##### §48-27-204. Family or household members defined.

1 “Family or household members” means persons who:

- 2 (1) Are or were married to each other;
- 3 (2) Are or were living together as spouses;
- 4 (3) Are or were sexual or intimate partners;
- 5 (4) Are or were dating: *Provided*, That a casual acquaint-  
6 tance or ordinary fraternization between persons in a business  
7 or social context does not establish a dating relationship;
- 8 (5) Are or were residing together in the same household;
- 9 (6) Have a child in common regardless of whether they  
10 have ever married or lived together;
- 11 (7) Have the following relationships to another person:
  - 12 (A) Parent;
  - 13 (B) Stepparent;
  - 14 (C) Brother or sister;
  - 15 (D) Half-brother or half-sister;
  - 16 (E) Stepbrother or stepsister;
  - 17 (F) Father-in-law or mother-in-law;
  - 18 (G) Stepfather-in-law or stepmother-in-law;
  - 19 (H) Child or stepchild;
  - 20 (I) Daughter-in-law or son-in-law;
  - 21 (J) Stepdaughter-in-law or stepson-in-law;
  - 22 (K) Grandparent;
  - 23 (L) Step grandparent;

- 24 (M) Aunt, aunt-in-law or step aunt;
- 25 (N) Uncle, uncle-in-law or step uncle;
- 26 (O) Niece or nephew;
- 27 (P) First or second cousin; or
- 28 (8) Have the relationships set forth in paragraphs (A)  
29 through (P), subdivision (7) of this section to a family or  
30 household member, as defined in subdivisions (1) through (6)  
31 of this section.

### PART 3. PROCEDURE.

#### **§48-27-312. Production of documents pursuant to a subpoena duces tecum.**

1 Notwithstanding any provision of law or any procedural  
2 rule to the contrary, any record in a proceeding filed pursuant  
3 to this article shall be supplied to any person presenting a  
4 subpoena duces tecum issued by a state or federal court in any  
5 criminal action or action filed pursuant to this article. Any  
6 record in a proceeding filed pursuant to this article is not  
7 subject to disclosure pursuant to a subpoena if the subpoena  
8 was issued in a civil action. In civil proceedings a court, for  
9 good cause shown, may enter an order permitting a person who  
10 is not otherwise permitted access to a court file to examine and  
11 copy records of a proceeding filed pursuant to this article:  
12 *Provided*, That the court shall enter such order as may be  
13 necessary to protect any document containing the address or  
14 other contact information of a person who filed a petition under  
15 this article: *Provided, however*, That any records obtained  
16 pursuant to the provisions of this section shall be used only in  
17 the context of the case in which the subpoena was issued and  
18 not for any other purpose.

---

## CHAPTER 103

(H. B. 3076 — By Delegates Webster, Manuel, Wills,  
Amores, Hrutkay and Craig)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section eight, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to evidence addressing when a person is under the influence of alcohol, controlled substances or drugs; and adding a formula for determining the percent, by weight, of alcohol in the blood.

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

That section eight, article five, 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 5. SERIOUS TRAFFIC OFFENSES.**

**§17C-5-8. Interpretation and use of chemical test.**

1       (a) Upon trial for the offense of driving a motor vehicle in  
2 this state while under the influence of alcohol, controlled  
3 substances or drugs, or upon the trial of any civil or criminal  
4 action arising out of acts alleged to have been committed by  
5 any person driving a motor vehicle while under the influence of  
6 alcohol, controlled substances or drugs, evidence of the amount  
7 of alcohol in the person's blood at the time of the arrest or of  
8 the acts alleged, as shown by a chemical analysis of his or her  
9 blood, breath or urine, is admissible, if the sample or specimen

10 was taken within two hours from and after the time of arrest or  
11 of the acts alleged. The evidence gives rise to the following  
12 presumptions or has the following effect:

13 (1) Evidence that there was, at that time, five hundredths of  
14 one percent or less, by weight, of alcohol in his or her blood, is  
15 prima facie evidence that the person was not under the influ-  
16 ence of alcohol;

17 (2) Evidence that there was, at that time, more than five  
18 hundredths of one percent and less than ten hundredths of one  
19 percent, by weight, of alcohol in the person's blood is relevant  
20 evidence, but it is not to be given prima facie effect in indicat-  
21 ing whether the person was under the influence of alcohol;

22 (3) Evidence that there was, at that time, ten hundredths of  
23 one percent or more, by weight, of alcohol in his or her blood,  
24 shall be admitted as prima facie evidence that the person was  
25 under the influence of alcohol.

26 (b) A determination of the percent, by weight, of alcohol in  
27 the blood shall be based upon a formula of:

28 (1) The number of grams of alcohol per one hundred cubic  
29 centimeters of blood;

30 (2) The number of grams of alcohol per two hundred ten  
31 liters of breath;

32 (3) The number of grams of alcohol per sixty-seven  
33 milliliters of urine; or

34 (4) The number of grams of alcohol per eighty-six millili-  
35 ters of serum.

36 (c) A chemical analysis of a person's blood, breath or urine,  
37 in order to give rise to the presumptions or to have the effect

38 provided for in subsection (a) of this section, must be per-  
39 formed in accordance with methods and standards approved by  
40 the state division of health. A chemical analysis of blood or  
41 urine to determine the alcoholic content of blood shall be  
42 conducted by a qualified laboratory or by the state police  
43 scientific laboratory of the criminal identification bureau of the  
44 West Virginia state police.

45 (d) The provisions of this article do not limit the introduc-  
46 tion in any administrative or judicial proceeding of any other  
47 competent evidence bearing on the question of whether the  
48 person was under the influence of alcohol, controlled sub-  
49 stances or drugs.

---

## CHAPTER 104

**(Com. Sub. for H. B. 4005 — By Mr. Speaker, Mr. Kiss,  
and Delegate Trump)  
[By Request of the Executive]**

---

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to repeal article thirteen-h, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section twenty-four, article twenty-three and section twenty-two, article twenty-four, all of said chapter; to repeal section five, article thirteen, chapter twenty-one of said code; to amend article one, chapter five-e, by adding thereto a new section, designated section twenty-two; to amend chapter eight of said code by adding thereto a new article, designated article thirteen-b; to amend and reenact section five-s, article ten, chapter eleven of this code; to amend article ten of said chapter by adding thereto a new section, designated section eleven-a; to

amend article thirteen-c of said chapter by adding thereto a new section, designated section sixteen; to amend article thirteen-d of said chapter by adding thereto a new section, designated section ten; to amend and reenact section four, article thirteen-n of said chapter; to further amend said chapter by adding thereto three new articles, designated articles thirteen-q, thirteen-r and thirteen-s; to amend article fifteen of said chapter by adding thereto three new sections, designated sections nine-b, nine-c and nine-f; to amend article twenty-one of said chapter by adding thereto a new section, designated section eight-h; to amend and reenact sections seven and twenty-four-a, article twenty-three of said chapter; to amend and reenact section twenty-two-a, article twenty-four of said chapter; to amend and reenact section nine-e, article six, chapter twelve of said code; and to amend and reenact sections eighteen and eighteen-a, article twenty-two, chapter twenty-nine of said code, all relating generally to economic development for public purposes; repealing the business and occupation tax credit for increased generation of electricity; repealing the business franchise tax credit and the corporation net income tax credit for coal coking facilities; repealing the tax credit for convenience store owners to meet certain requirements of the convenience food stores safety act; terminating new steel manufacturing operations tax credit; terminating the credit for producing value-added products from raw agricultural products; terminating the business investment and jobs investment tax credit; terminating the small business tax credit; terminating corporate headquarters relocation tax credit; preserving certain tax credits for eligible activity occurring prior to termination date; specifying transition rules; establishing economic opportunity tax credit; specifying short titles; specifying legislative findings and purpose for new credits; defining terms; specifying activity that qualifies for credits, how amount of allowable credits are determined, how credits may be applied and against what tax liabilities credits may be applied; providing for forfeiture of unused tax credits, redetermination of credits and recapture of credits under certain circumstances; imposing recapture tax, interest and civil money penalty and specifying circumstance

when they apply; allowing transfer of qualified investment to successors; requiring identification of investment credit property; requiring persons claiming credit to keep records and to provide information to tax commissioner; providing rules for interpretation, construction, severability and burden of proof; requiring filing of application for credit as condition precedent to claiming credit and imposing consequences for failure to make timely application; specifying business activity eligible for economic opportunity credit; requiring periodic review of tax credit and performance reports to governor and Legislature; providing internal effective dates and making technical corrections; specifying termination of credits provided in article thirteen-d, chapter eleven, specifying exception for electricity producers; preservation of entitlements; establishing tax credit for manufacturing investment; specifying short title, legislative findings and purpose; setting forth definitions; specifying amount of credit allowed for manufacturing investment; specifying procedures for determining qualified manufacturing investment; requiring certain forfeiture of unused tax credits; redetermination of credit allowed; specifying treatment for transfer of property purchased for manufacturing investment to successors, requiring identification of investment credit property; specifying treatment for failure to keep records of property purchased for manufacturing investment; requiring tax credit review and accountability; establishing tax credit for qualified research and development credit; specifying short title, legislative findings and purpose; definitions, specifying annual combined qualified research and development expenditure; qualified research and development expenses; amount of credit allowed; application of credit; requiring certain forfeiture of unused tax credits; redetermination of credit allowed; specifying treatment for transfer of qualified research and development investment to successors; requiring identification of research and development credit property; specifying treatment for failure to keep records of property purchased for research and development investment; requiring tax credit review and accountability; adding new exemption to consumers sales and service tax for purchases of tangible personal property and services for direct use in



research and development, purchased after the thirtieth day of June, two thousand two; defining certain terms; exempting from the business franchise tax persons and organizations to the extent they provide venture capital to West Virginia businesses; defining terms; specifying effective date of exemption; providing for the decertification of qualified capital companies that are not small business investment companies; specifying effective date therefor; providing an exemption from the consumers sales tax and the use tax for services providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the department of environmental protection or the bureau for public health; requiring disclosure of certain taxpayer information relating to economic opportunity tax credit, strategic research and development tax credit and manufacturing investment tax credit; authorizing municipalities to create special downtown redevelopment districts; describing redevelopment expenditures; providing for treatment of redevelopment expenditures by licensed race tracks; providing for notice and hearing; providing for approval by committee; establishing a downtown redevelopment fund; providing for the Legislature's authorization of establishment of a district; describing ordinance to create district; establishing a board to oversee operations; authorizing special district excise tax; modifications to district boundaries; procedures for abolition and dissolution of district; authorizing issuance of municipal revenue obligations; providing for administration of special district excise tax by tax commissioner; exempting certain sales and services in district from consumers sales and service tax; authorizing bond issuance for improvement projects; authorizing transfer or assignment of qualified rehabilitated building investment tax credit; authorizing nonrecourse loan from the consolidated fund; and making technical corrections.

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

That article thirteen-h, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

repealed; that sections twenty-four, article twenty-three and section twenty-two, article twenty-four, all of said chapter be repealed; that section five, article thirteen, chapter twenty-one of said code be repealed; that article one, chapter five-e be amended by adding thereto a new section, designated section twenty-two; that chapter eight of said code be amended by adding thereto a new article, designated article thirteen-b; that section five-s, article ten, chapter eleven of this code be amended and reenacted; that article ten of said chapter be amended by adding thereto a new section, designated section eleven-a; that article thirteen-c of said chapter be amended by adding thereto a new section, designated section sixteen; that article thirteen-d of said chapter be amended by adding thereto a new section, designated section ten; that section four, article thirteen-n of said chapter be amended and reenacted; that said chapter be further amended by adding thereto three new articles, designated articles thirteen-q, thirteen-r and thirteen-s; that article fifteen of said chapter be amended by adding thereto three new sections, designated sections nine-b, nine-d and nine-f; that article twenty-one of said chapter be amended by adding thereto a new section, designated section eight-h; that sections seven and twenty-four-a, article twenty-three of said chapter be amended and reenacted; that section twenty-two-a, article twenty-four of said chapter be amended and reenacted; that section nine-c, article six, chapter twelve of said code be amended and reenacted; and that sections eighteen and eighteen-a, article twenty-two, chapter twenty-nine of this code be amended and reenacted, all to read as follows:

**Chapter**

- 5E. Venture Capital Company.**
- 8. Municipal Corporations.**
- 11. Taxation.**
- 12. Public Moneys and Securities.**
- 29. Miscellaneous Boards and Officers.**

**CHAPTER 5E. VENTURE CAPITAL COMPANY.**

**ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.**

**§5E-1-22. Decertification of qualified capital companies other than small business investment companies.**

1 Notwithstanding any provision in this article to the con-  
2 trary, the authority may not hereafter allocate credit to any  
3 applicant other than a small business investment company.  
4 Every qualified capital company that is not a small business  
5 investment company may no longer be considered a qualified  
6 capital company and shall, without any further action, be  
7 decertified. Each company that has been decertified in accor-  
8 dance with the provisions of this section is no longer subject to  
9 the provisions of this article. Nothing herein may be construed  
10 to limit an investor in a qualified capital company from  
11 applying credits previously allocated by the authority including  
12 unused credits carried forward pursuant to section eight of this  
13 article.

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 13B. DOWNTOWN REDEVELOPMENT DISTRICTS.**

- §8-13B-1. Short title.
- §8-13B-2. Legislative findings and declaration of purpose.
- §8-13B-3. Definitions.
- §8-13B-4. Authorization.
- §8-13B-5. Redevelopment expenditures.
- §8-13B-6. Notice; hearing.
- §8-13B-7. Application to committee for approval of a downtown redevelopment district project.
- §8-13B-8. Establishment of the downtown redevelopment district fund; Legislature's authorization of establishment of district.
- §8-13B-9. Ordinance to create district as approved by council and authorized by the Legislature.
- §8-13B-10. District board; duties.
- §8-13B-11. Special district excise tax authorized.
- §8-13B-12. Modification of included area; notice; hearing.
- §8-13B-13. Abolishment and dissolution of district; notice; hearing.
- §8-13B-14. Bonds issued to finance downtown redevelopment district projects.
- §8-13B-15. Security for bonds.

- §8-13B-16. Redemption of bonds.
- §8-13B-17. Refunding bonds.
- §8-13B-18. Use of proceeds from sale of bonds.
- §8-13B-19. Bonds made legal investments.
- §8-13B-20. Exemption from taxation.

**§8-13B-1. Short title.**

- 1 This article is known and may be cited as the “Downtown
- 2 Redevelopment District Act”.

**§8-13B-2. Legislative findings and declaration of purpose.**

- 1 The Legislature finds that many downtown business
- 2 districts within the municipalities of this state are economically
- 3 depressed. This adversely affects the economic and general
- 4 well-being of the citizens of those municipalities. Establishment
- 5 of downtown redevelopment districts within municipalities of
- 6 the state, in accordance with the purpose and powers set forth
- 7 in this article, will serve a public purpose, and promote the
- 8 health, safety, prosperity, security and general welfare of all
- 9 citizens in the state. It will also promote the vitality of retail
- 10 business areas within municipalities, while serving as an
- 11 effective means for restoring and promoting retail and other
- 12 business activity within the downtown redevelopment districts
- 13 created herein. This will be of special benefit to the tax base of
- 14 the downtown municipalities within which any downtown
- 15 redevelopment district is created under this article and will
- 16 stimulate economic growth and job creation.

**§8-13B-3. Definitions.**

- 1 For purposes of this article, the term:
- 2 (1) “Committee” or “Council” means the committee
- 3 established in subdivision (3), subsection (d), section eighteen-
- 4 a, article twenty-two, chapter twenty-nine of this code;

5 (2) "District" means a downtown redevelopment district  
6 created pursuant to this article;

7 (3) "District board" means a district board created pursuant  
8 to section ten of this article;

9 (4) "Downtown property" means any taxable or exempt real  
10 property which is classified for ad valorem real property tax  
11 purposes as Class IV;

12 (5) "Gross annual district tax revenue amount" means the  
13 total amount of consumers sales and service tax actually  
14 remitted to the tax commissioner by vendors maintaining places  
15 of business within the district with respect to sales made and  
16 services rendered by such vendors from a location within the  
17 district for the twelve full calendar months immediately  
18 preceding the filing of an application pursuant to section seven  
19 of this article;

20 (6) "Municipality" means a municipal corporation recog-  
21 nized as such in chapter eight of this code; and

22 (7) "Redevelopment expenditures" means payments for  
23 governmental functions, programs, activities, facility construc-  
24 tion, improvements and other goods and services which a  
25 district board is authorized to perform or provide under section  
26 five of this article.

#### **§8-13B-4. Authorization.**

1 The governing body of any municipality may, in accor-  
2 dance with the procedures and subject to the limitations set  
3 forth in this article, create one or more downtown redevelop-  
4 ment districts within the municipality. The municipality may,  
5 in accordance with the procedures and subject to the limitations  
6 set forth in this article, provide for the administration and  
7 financing of redevelopment expenditures within the districts

8 and for the administration and financing of a continuing  
9 program of redevelopment expenditures within the districts.

**§8-13B-5. Redevelopment expenditures.**

1 Any municipality that has established a downtown redevel-  
2 opment district under this article may make, or authorize to be  
3 made by a district board and other public or private parties,  
4 such redevelopment expenditures as will restore or promote the  
5 economic vitality of the district and the general welfare of the  
6 municipality, including, but not limited to, expenditures for the  
7 following purposes:

8 (a) Beautification of the district, by means such as land-  
9 scaping and construction and erection of fountains, shelters,  
10 benches, sculptures, signs, lighting, decorations and similar  
11 amenities;

12 (b) Provision of special or additional public services, such  
13 as sanitation, security for persons and property and the con-  
14 struction and maintenance of public facilities, including  
15 sidewalks and other public areas;

16 (c) Making payments for principal, interest, issuance costs,  
17 any of the costs described in section eighteen of this article and  
18 appropriate reserves for bonds and other instruments and  
19 arrangements issued or entered into by the municipality for  
20 financing the expenditures of the district described in this  
21 section and to otherwise implement the purposes of this article;

22 (d) Providing financial support for public transportation and  
23 vehicle parking facilities open to the general public, whether or  
24 not physically situate within the district's boundaries;

25 (e) Acquiring, demolishing, razing, constructing, repairing,  
26 reconstructing, refurbishing, renovating, rehabilitating, expand-  
27 ing, altering, otherwise developing, operating and maintaining

28 real property generally, parking facilities, commercial struc-  
29 tures and other capital improvements to real property, fixtures  
30 and tangible personal property, whether or not physically  
31 situate within the district's boundaries;

32 (f) Developing plans for the architectural design of the  
33 district and portions thereof, and developing plans and pro-  
34 grams for the future development of the district;

35 (g) Developing, promoting and supporting community  
36 events and activities open to the general public;

37 (h) Providing the administrative costs for a district manage-  
38 ment program;

39 (i) Providing for the usual and customary maintenance and  
40 upkeep of all improvements and amenities in the district as may  
41 be commercially reasonable and necessary to sustain its  
42 economic viability on a permanent basis;

43 (j) Providing any other services which the municipality or  
44 district board is authorized to perform and which the municipal-  
45 ity does not also perform to the same extent on a municipality-  
46 wide basis;

47 (k) Making grants to the owners or tenants of downtown  
48 property for the purposes described in this section;

49 (l) Acquiring an interest in any entity or entities that own  
50 any portion of the real property situate in the district and  
51 contributing capital to any such entity or entities; and

52 (m) To do any and all things necessary, desirable or  
53 appropriate to carry out and accomplish the purposes of this  
54 article: *Provided*, That notwithstanding anything in this code to  
55 the contrary, any redevelopment expenditure made by a  
56 licensed race track, as defined in section three, article twenty-

57 two-a, chapter twenty-nine of this code, within thirty days after  
58 such redevelopment expenditure shall have been requested in  
59 writing by the district board, shall entitle such licensed race  
60 track to receive the same recoupment from its capital reinvest-  
61 ment fund account as any other capital improvement expendi-  
62 ture described in subsection (b), section ten-c, article twenty-  
63 two-a, chapter twenty-nine of this code.

**§8-13B-6. Notice; hearing.**

1 The governing body of a municipality desiring to create a  
2 downtown redevelopment district shall conduct a public  
3 hearing. A notice of the public hearing shall be published as a  
4 Class I-0 legal advertisement in compliance with article three,  
5 chapter fifty-nine of this code at least twenty days prior to the  
6 scheduled hearing. In addition to the time and place of the  
7 hearing, the notice must also state:

8 (a) The purpose of the hearing;

9 (b) The name of the proposed district;

10 (c) The general purpose of the proposed district;

11 (d) The property proposed to be included in the district; and

12 (e) The proposed method of financing any costs involved,  
13 including the base and rate of special district excise tax that  
14 may be imposed upon any businesses operating and properties  
15 situated within the proposed district.

16 At the time and place set forth in the notice, the governing  
17 body shall afford the opportunity to be heard to any owner of  
18 real property situated in the proposed district and any residents  
19 of the municipality.



20 If the governing body of the municipality, following the  
21 public hearing, determines it advisable and in the public interest  
22 to establish a downtown redevelopment district, it shall apply  
23 to the committee for approval of a downtown redevelopment  
24 district project pursuant to the procedures provided in section  
25 seven of this article.

**§8-13B-7. Application to committee for approval of a downtown  
redemption district project.**

1 (a) The committee shall receive and act on applications  
2 filed with it by municipalities pursuant to section six of this  
3 article. Each such application must contain a copy of the notice  
4 described in section six of this article; a general description of  
5 the capital improvements, additional or extended services and  
6 other proposed redevelopment expenditures to be made in the  
7 district; a description of the proposed method of financing such  
8 redevelopment expenditures, together with a description of such  
9 reserves to be established for financing on-going redevelopment  
10 expenditures necessary to permanently maintain the optimum  
11 economic viability of the district following its inception:  
12 *Provided*, That the amounts of such reserves shall not exceed  
13 the amounts that would be required by ordinary commercial  
14 capital market considerations; a description of the sources and  
15 anticipated amounts of all such financing, including, but not  
16 limited to, proceeds from the issuance of any bonds, or other  
17 instruments, revenues from the special district excise tax and  
18 enhanced revenues from municipal business and occupation  
19 taxes, property taxes and fees; a description of the financial  
20 contribution of the municipality to the funding of redevelop-  
21 ment expenditures, which contribution may include, but not be  
22 necessarily limited to, incremental business and occupation  
23 taxes generated from district; a description of the financial  
24 contribution to the funding of redevelopment expenditures by  
25 the county commission of the county in which the district is  
26 situate; identification of any entities which the municipality

27 expects to relocate their business locations from the district to  
28 another place in the state in connection with the establishment  
29 of district: *Provided, however,* That for purposes of this article,  
30 any such entities shall be designated “relocated entities”; a good  
31 faith estimate of the aggregate amount of consumers sales and  
32 service tax that was actually remitted to the tax commissioner  
33 by all relocated entities with respect to their sales made and  
34 services rendered from their business locations in the district for  
35 the twelve full calendar months next preceding the date of the  
36 application: *Provided further,* That for purposes of this article,  
37 such aggregate amount shall be designated as “the relocated tax  
38 revenue amount”; a good faith estimate of the gross annual  
39 district tax revenue amount; and the proposed application of  
40 any surplus from all funding sources to further the objectives of  
41 this article: *And provided further,* That the amount of all  
42 redevelopment expenditures proposed to be made in the first  
43 twenty-four months following the creation of the district shall  
44 be not less than fifty million dollars. The committee may  
45 establish other criteria for approving such applications: *And*  
46 *provided further,* That the committee shall act to approve or not  
47 approve any such application within thirty days following the  
48 receipt of the application: *And provided further,* That the  
49 committee may not approve more than one application in the  
50 absence of further authorization of the Legislature.

51 (b) If the committee approves a municipality’s downtown  
52 redevelopment district project application, it shall issue to the  
53 municipality a written certificate evidencing such approval:  
54 *Provided,* That such certificate shall expressly state a base tax  
55 revenue amount which, for purposes of this article shall be the  
56 difference between the gross annual district tax revenue amount  
57 and the relocated tax revenue amount all of which the council  
58 shall have determined with respect to such district’s application  
59 based on such investigation as it may deem reasonable and  
60 necessary including, but not limited to, any relevant informa-  
61 tion the council shall request from the tax commissioner and the

62 tax commissioner shall provide to the council: *Provided,*  
63 *however,* That, in determining the base tax revenue amount, in  
64 lieu of confirmation from the tax commissioner of the gross  
65 annual district tax revenue amount, the council shall use the  
66 estimate of the gross annual district tax revenue amount  
67 provided by the municipality pursuant to subsection (a) of this  
68 section.

69 (c) The council may promulgate rules to implement the  
70 downtown redevelopment district project application approval  
71 process and to describe the criteria and procedures it has  
72 established in connection therewith. These rules are not subject  
73 to the provisions of chapter twenty-nine-a of this code, but shall  
74 be filed with the secretary of state.

**§8-13B-8. Establishment of the downtown redevelopment district  
fund; Legislature's authorization of establishment  
of district.**

1 (a) There is hereby created a special revenue account in the  
2 state treasury, designated the "downtown redevelopment district  
3 fund," which shall be an interest-bearing account and shall be  
4 invested in the manner described in section nine-c, article six,  
5 chapter twelve of the code, with the interest income a proper  
6 credit of the fund. A separate and segregated sub-account  
7 within the account shall be established for each municipality's  
8 downtown redevelopment district, which has been approved by  
9 the council and authorized by the Legislature pursuant to  
10 subsection (b) of this section. Funds paid into the account for  
11 the credit of any such sub-account may also be derived from the  
12 following sources:

13 (1) All interest or return on the investment accruing to the  
14 sub-account;

15 (2) Any gifts, grants, bequests, transfers, appropriations or  
16 donations which may be received from any governmental entity  
17 or unit or any person, firm, foundation, or corporation; and

18 (3) Any appropriations by the Legislature which may be  
19 made for this purpose.

20 (b) The Legislature may authorize the establishment of a  
21 downtown redevelopment district if the district has been  
22 approved by the council pursuant to section seven of this  
23 article. Once the establishment of the district has been autho-  
24 rized by the Legislature, the auditor shall thereafter, upon  
25 receipt of a monthly requisition from the district board, issue  
26 his warrant on the state treasurer for the funds requested from  
27 the district's sub-account as provided in section eleven-a, article  
28 ten, chapter eleven of this code, to be applied for the purposes  
29 described in section five of this article, and the state treasurer  
30 shall pay the warrant out of the sub-account.

**§8-13B-9. Ordinance to create district as approved by council and  
authorized by the Legislature.**

1 (a) If a downtown redevelopment district project has been  
2 approved by the council, and the establishment of such a district  
3 has been authorized by the Legislature, all in accordance with  
4 this article, the governing body of the municipality may create  
5 the district by ordinance as provided for in article eleven of this  
6 chapter: *Provided*, That the governing body may not amend,  
7 alter or change in any manner the boundaries of the downtown  
8 redevelopment district as approved by the council. In addition  
9 to all other requirements, the ordinance shall contain the  
10 following:

11 (1) The name of the district and a description of its bound-  
12 aries;

13       (2) A summary of any proposed services to be provided and  
14 capital improvements to be made within the district and a  
15 reasonable estimate of any attendant costs;

16       (3) The base and rate of any special district excise tax that  
17 may be imposed upon the businesses for the privilege of  
18 operating within the district, which tax shall be passed on to and  
19 paid by the consumer, and the manner in which the taxes will  
20 be imposed, administered and collected, all of which shall be in  
21 conformity with the requirements of this article; and

22       (4) The district board members' terms, their method of  
23 appointment and a general description of the district board's  
24 powers and duties: *Provided*, That such powers may include the  
25 authority to: (A) Make and adopt all necessary bylaws and rules  
26 for its organization and operations not inconsistent with any  
27 applicable laws; (B) to elect its own officers, to appoint  
28 committees and to employ and fix compensation for personnel  
29 necessary for its operations; (C) to enter into contracts with any  
30 person, agency, government entity, agency or instrumentality,  
31 firm, partnership, limited partnership, limited liability company  
32 or corporation, including both public and private corporations,  
33 and for-profit and not-for-profit organizations, and generally to  
34 do any and all things necessary or convenient for the purpose of  
35 promoting, developing and advancing the purposes described in  
36 section two of this article; (D) to amend or supplement any  
37 contracts or leases or to enter into new, additional or further  
38 contracts or leases upon such terms and conditions, for such  
39 consideration and for such term of duration, with or without  
40 option of renewal, as may be agreed upon by the district board  
41 and such person, agency, government entity, agency or instru-  
42 mentality, firm, partnership, limited partnership, limited  
43 liability company or corporation; (E) unless otherwise provided  
44 for in, and subject to the provisions of, such contracts, or leases,  
45 to operate, repair, manage, and maintain such buildings and  
46 structures and provide adequate insurance of all types, and in

47 connection with the primary use thereof and incidental thereto  
48 to provide such services, such as retail stores, and restaurants,  
49 and to effectuate such incidental purposes, grant leases, permits,  
50 concessions or other authorizations to any person or persons,  
51 upon such terms and conditions, for such consideration and for  
52 such term of duration as may be agreed upon by the district  
53 board and such person, agency, governmental department, firm  
54 or corporation; (F) to delegate any authority given to it by law  
55 to any of its officers, committees, agents or employees; (G) to  
56 apply for, receive and use grants-in-aid, donations and contribu-  
57 tions from any source or sources, and to accept and use be-  
58 quests, devises, gifts and donations from any person, firm or  
59 corporation; (H) to acquire real property by gift, purchase, or  
60 construction, or in any other lawful manner, and hold title  
61 thereto in its own name and to sell, lease or otherwise dispose  
62 of all or part of such real property which it may own, either by  
63 contract or at public auction, upon the approval by the district  
64 board; (I) to purchase or otherwise acquire, own, hold, sell,  
65 lease and dispose of all or part of any personal property which  
66 it may own, either by contract or at public auction; (J) pursuant  
67 to a determination by the district board that there exists a  
68 continuing need for redevelopment expenditures, and that  
69 moneys or funds of the district are necessary therefor, to borrow  
70 money and execute and deliver the district's negotiable notes  
71 and other evidences of indebtedness therefor, on such terms as  
72 the district shall determine, and give such security therefor as  
73 shall be requisite, including, without limitation, a pledge of the  
74 district's rights in its sub-account of the downtown district  
75 redevelopment fund; (K) to acquire (either directly or on behalf  
76 of the municipality) an interest in any entity or entities that own  
77 any real property situate in the district, to contribute capital to  
78 such entity or entities and to exercise the rights of an owner  
79 with respect thereto; and (L) to expend its funds in the execu-  
80 tion of the powers and authority herein given, which expendi-  
81 tures, by the means authorized herein, are hereby determined

82 and declared as a matter of legislative finding to be for a public  
83 purpose and use, in the public interest, and for the general  
84 welfare of the people of West Virginia, to alleviate and prevent  
85 economic deterioration and to relieve the existing critical  
86 condition of unemployment existing within the state.

87 (b) The ordinance shall also state the general intention of  
88 the municipality to redevelop and increase services and to make  
89 capital improvements within the district.

**§8-13B-10. District board; duties.**

1 (a) The governing body of any municipality that has been  
2 authorized by the Legislature to establish a downtown redevelop-  
3 ment district, in accordance with this article, shall provide by  
4 ordinance for the appointment of a district board to oversee the  
5 operations of the district: *Provided*, That the governing body  
6 may, by ordinance in lieu of appointing a separate district  
7 board, designate itself to act as the district board. If a separate  
8 district board is to be appointed, it shall be made up of at least  
9 seven members, two of which shall be owners, or representa-  
10 tives of owners, of downtown property situated in the district,  
11 and the other five shall be residents of the county within which  
12 the municipality is located.

13 (b) The district board, in addition to the duties prescribed  
14 by the ordinance creating the improvement district, shall submit  
15 an annual report to the governing body and the council contain-  
16 ing:

17 (1) An itemized statement of its receipts and disbursements  
18 for the preceding fiscal year;

19 (2) A description of its activities for the preceding fiscal  
20 year;

21 (3) A recommended program of services to be performed  
22 and capital improvements to be made within the district for the  
23 coming fiscal year; and

24 (4) A proposed budget to accomplish its objectives.

25 (c) Nothing in this article prohibits any member of the  
26 district board from also serving on the board of directors of a  
27 nonprofit corporation with which the municipality may contract  
28 to provide specified services within the district.

29 (d) Each member of the district board may receive reason-  
30 able compensation for services on the board, determined by the  
31 governing body of the municipality.

**§8-13B-11. Special district excise tax authorized.**

1 (a) The governing body of a municipality, authorized by the  
2 Legislature to establish a downtown redevelopment district,  
3 may, by ordinance, impose a special district excise tax on the  
4 privilege of selling tangible personal property and rendering  
5 selected services in the district in accordance with this section.

6 (b) The base of a special district excise tax imposed  
7 pursuant to this section shall be identical to the base of the  
8 consumers sales and service tax imposed pursuant to article  
9 fifteen, chapter eleven of this code on sales made and services  
10 rendered within the boundaries of the district: *Provided*, That,  
11 except for the exemption provided in section nine-f of article  
12 fifteen, chapter eleven of this code, all exemptions and excep-  
13 tions from the consumers sales and service tax shall also apply  
14 to the special district excise tax.

15 (c) The rate of a special district excise tax imposed pursuant  
16 to this section shall be provided in an ordinance adopted by the  
17 governing body of the municipality and shall be six cents on the  
18 dollar of sales and services subject to the tax.



19 (d) The ordinance of a municipality imposing a special  
20 district excise tax shall provide procedures for the administra-  
21 tion, assessment, collection and enforcement of the tax in  
22 conformity with similar provisions and requirements set forth  
23 in articles ten and fifteen, chapter eleven of this code, and to  
24 those procedures in article ten, chapter eleven of this code, and  
25 shall conform with such provisions as they relate to waiver of  
26 penalties and additions to tax: *Provided*, That the governing  
27 body of the municipality shall, in any such ordinance, also  
28 provide that the state tax commissioner shall administer, assess,  
29 collect and enforce a special district excise tax on behalf of and  
30 as the agent for the municipality as provided in section eleven-  
31 a, article ten, chapter eleven of this code.

32 (e) The ordinance of a municipality imposing a special  
33 district excise tax shall provide that the tax commissioner shall  
34 deposit the net amount of tax collected in the special downtown  
35 redevelopment district fund to the credit of the municipality's  
36 sub-account therein, and may only be used to pay for develop-  
37 ment expenditures provided under this article: *Provided*, That  
38 the state treasurer shall withhold from the municipality's sub-  
39 account in the downtown redevelopment district fund, and shall  
40 deposit in the general revenue fund of this state, on or before  
41 the fifteenth day of each calendar month next following the  
42 effective date of a special district excise tax, a sum equal to  
43 one-twelfth of the base tax revenue amount last certified by the  
44 council pursuant to section seven of this article.

45 (f) Any taxes imposed pursuant to the authority of this  
46 section shall be effective on the first day of the calendar month  
47 that begins on or after the date of adoption of an ordinance  
48 imposing such tax, or at such later date expressly designated in  
49 the ordinance that begins on the first day of a calendar month.

**§8-13B-12. Modification of included area; notice; hearing.**

1 (a) The ordinance creating a downtown redevelopment  
2 district may be amended to include additional downtown  
3 property only after such amendment has been approved by the  
4 council in the same manner as an application to approve the  
5 establishment of the district is acted upon under section seven  
6 of this article.

7 Additional property may not be included in the district  
8 unless it is situated within the boundaries of the municipality.

9 (b) The governing body of any municipality desiring to so  
10 amend its ordinance shall designate a time and place for a  
11 public hearing upon the proposal to include additional property.  
12 The notice shall meet the requirements set forth in section six  
13 of this article.

14 (c) At the time and place set forth in the notice, the govern-  
15 ing body shall afford the opportunity to be heard to any owners  
16 of downtown property either currently included in or proposed  
17 to be added to the existing district and to any other residents of  
18 the municipality.

19 (d) Following such hearing, the governing body may, by  
20 resolution, apply to the council to approve inclusion of such  
21 additional property in the district.

22 (e) If the council shall approve inclusion of such additional  
23 property in the district, the governing body of the municipality  
24 may then amend its ordinance accordingly.

25 (f) All businesses and additional property included in a  
26 district shall thereafter be subject to all special district excise  
27 taxes whether currently existing or thereafter levied.

**§8-13B-13. Abolishment and dissolution of district; notice; hear-  
ing.**

1 (a) Except upon the express written consent of the council  
2 and of all the holders or obligees of any indebtedness or other  
3 instruments the proceeds of which were applied to any redevelop-  
4 opment expenditures or any indebtedness the payment of which  
5 is secured by revenues payable into the fund provided under  
6 section eight of this article or by any public property, a district  
7 may only be abolished by the governing body of the municipal-  
8 ity when there is no outstanding indebtedness the proceeds of  
9 which were applied to any redevelopment expenditures or the  
10 payment of which is secured by revenues payable into the fund  
11 provided under section eight of this article, or by any public  
12 property, and following a public hearing upon the proposed  
13 abolishment. Notice of such hearing must be provided by first  
14 class mail to all owners of downtown property within the  
15 district and shall be published as a Class I-0 legal advertisement  
16 in compliance with article three, chapter fifty-nine of this code  
17 at least twenty days prior to the public hearing. Upon the  
18 abolishment of any downtown redevelopment district, any  
19 funds or other assets, contractual rights or obligations, claims  
20 against holders of indebtedness or other financial benefits,  
21 liabilities or obligations, existing after full payment has been  
22 made on all existing contracts, bonds, notes or other obligations  
23 of the district, shall be transferred to and assumed by the  
24 municipality. Any funds or other assets so transferred shall be  
25 used for the benefit of the area included in the district being  
26 abolished.

27 (b) Following abolishment of a district pursuant to this  
28 section, its reinstatement shall require compliance with all  
29 requirements and procedures set forth in this article for the  
30 initial development, approval, establishment and creation of a  
31 district. Upon the dissolution of any downtown redevelopment  
32 district, any funds or other assets, contractual rights or obliga-  
33 tions, claims against holders of indebtedness, or other financial  
34 benefits, liabilities or obligations of the district, existing after  
35 full payment has been made on all obligations of the district,

36 shall be transferred and assumed by the municipality. Any  
37 funds or other assets so transferred shall be used for the benefit  
38 of the area included in the district being dissolved.

**§8-13B-14. Bonds issued to finance downtown redevelopment district projects.**

1 The governing body of a municipality may issue bonds or  
2 notes for the purpose of financing redevelopment expenditures,  
3 as described in section five of this article, with respect to one or  
4 more downtown redevelopment district projects within the  
5 municipality. All bonds issued by a municipality under the  
6 authority of this article shall be limited obligations of the  
7 municipality. No municipality may issue notes, bonds or other  
8 instruments for funding district projects or improvements that  
9 exceed a repayment schedule of forty years. The principal and  
10 interest on such bonds shall be payable out of the funds on  
11 deposit in the sub-account established for the downtown  
12 redevelopment district pursuant to section eight of this article,  
13 including without limitation any funds derived from the special  
14 district excise tax imposed by section eleven of this article, or  
15 other revenues derived from the downtown redevelopment  
16 project to the extent pledged for such purpose by the governing  
17 body of the municipality in the resolution authorizing the  
18 bonds. To the extent that the average daily amount on deposit  
19 in the sub-account established for a district pursuant to section  
20 eight of this article exceeds, for more than six consecutive  
21 calendar months, the sum of (1) one hundred thousand dollars,  
22 plus (2) the amount required to be kept on deposit pursuant to  
23 the documents authorizing, securing or otherwise relating to the  
24 bonds or notes issued under this section, then such excess shall  
25 be used by the district either to redeem the bonds or notes  
26 previously issued or shall be remitted to the general fund of this  
27 state. The bonds and any interest coupons issued under the  
28 authority of this article shall never constitute an indebtedness  
29 of the municipality issuing the same within the meaning of any

30 constitutional provision or statutory limitation and shall never  
31 constitute or give rise to a pecuniary liability of the municipal-  
32 ity issuing the same. Neither shall such bond nor interest  
33 thereon be a charge against the general credit or taxing powers  
34 of the municipality and such fact shall be plainly stated on the  
35 face of each such bond. Such bonds may be executed, issued  
36 and delivered at any time and from time to time; may be in such  
37 form and denomination; may be of such tenor, must be negotia-  
38 ble but may be registered as to the principal thereof or as to the  
39 principal and interest thereof; may be payable in such amounts  
40 and at such time or times; may be payable at such place or  
41 places; may bear interest at such rate or rates payable at such  
42 place or places and evidenced in such manner; and may contain  
43 such provisions therein not inconsistent herewith, all as shall be  
44 provided in the proceedings of the governing body of the  
45 municipality whereunder the bonds shall be authorized to be  
46 issued. Said bonds may be sold by the governing body of the  
47 municipality at public or private sale at, above or below par, as  
48 the governing body of the municipality shall authorize.

49       The bonds issued pursuant to this article shall be signed by  
50 the mayor or other chief officer thereof and attested by the  
51 clerk, recorder or other official custodian of the records of said  
52 municipality and under the seal of the municipality. Any  
53 coupons attached thereto shall bear the facsimile signature of  
54 the mayor or other chief officer of the municipality. In case any  
55 of the officials whose signatures appear on the bonds or  
56 coupons shall cease to be such officers before the delivery of  
57 such bonds, such signatures shall, nevertheless, be valid and  
58 sufficient for all purposes to the same extent as if they had  
59 remained in office until such delivery.

60       If the proceeds of such bonds, by error of calculation or  
61 otherwise, shall be less than the cost of the downtown redev-  
62 opment district project, or if additional real or personal property  
63 is to be added to the downtown redevelopment district project

64 or if it is determined that financing is needed for additional  
65 redevelopment expenditures, additional bonds may in like  
66 manner be issued to provide the amount of the deficiency, or to  
67 defray the cost of acquiring or financing such additional real or  
68 personal property or such redevelopment expenditures, and  
69 unless otherwise provided for in the trust agreement, mortgage  
70 or deed of trust, shall be deemed to be of the same issue, and  
71 shall be entitled to payment from the same fund, without  
72 preference or priority, and shall be of equal priority as to any  
73 security.

**§8-13B-15. Security for bonds.**

1 Unless the governing body of the municipality shall  
2 otherwise determine in the resolution authorizing the issuance  
3 of the revenue bonds under the authority of this article, there is  
4 hereby created a statutory lien upon the sub-account created  
5 pursuant to section eight of this article and all special district  
6 excise tax revenues collected for the benefit of the district  
7 pursuant to section eleven-a, article ten, chapter eleven of this  
8 code, for the purpose of securing the principal of said bonds and  
9 the interest thereon. The principal of and interest on any bonds  
10 issued under the authority of this article shall be secured by a  
11 pledge of the special district excise tax revenues derived from  
12 the downtown redevelopment district project by the governing  
13 body of the municipality issuing such bonds to the extent  
14 provided in the resolution adopted by the governing body of the  
15 municipality authorizing the issuance of the bonds. In the  
16 discretion and at the option of the municipality, such revenue  
17 bonds may also be secured by a trust indenture by and between  
18 the municipality and a corporate trustee, which may be a trust  
19 company or bank having trust powers, within or without the  
20 state of West Virginia. The governing body may authorize the  
21 issuance of such revenue bonds by resolution. The resolution  
22 authorizing the revenue bonds and fixing the details thereof  
23 may provide that such trust indenture may contain such

24 provisions for the protection and enforcing the rights and  
25 remedies of the bondholders as may be reasonable and proper,  
26 not in violation of law, including covenants setting forth the  
27 duties of the municipality in relation to the construction,  
28 acquisition or financing of a downtown redevelopment district  
29 project, or part thereof, or an addition thereto, and the improve-  
30 ment, repair, maintenance and insurance thereof, and for the  
31 custody, safeguarding and application of all moneys, and may  
32 provide that the downtown redevelopment district project shall  
33 be constructed and paid for under the supervision and approval  
34 of the consulting engineers or architects employed and desig-  
35 nated by the governing body or, if directed by the governing  
36 body in the resolution, by the district board, and satisfactory to  
37 the purchasers of the bonds, their successors, assigns or  
38 nominees, who may require the security given by any contractor  
39 or any depository of the proceeds of the bonds or the revenues  
40 received from the downtown redevelopment district project be  
41 satisfactory to such purchasers, their successors, assigns or  
42 nominees. Such indenture may set forth the rights and remedies  
43 of the bondholders, the municipality or such trustee, and said  
44 indenture may provide for accelerating the maturity of the  
45 revenue bonds, at the option of the bondholders or the govern-  
46 mental body issuing the same, upon default in the payment of  
47 the amounts due under the bonds. The governing body may also  
48 provide by resolution and in such trust indenture for the  
49 payment of the proceeds of the sale of the bonds and the  
50 revenues from the downtown redevelopment district project to  
51 such depository as it may determine, for the custody and  
52 investment thereof and for the method of distribution thereof,  
53 with such safeguards and restrictions as it may determine to be  
54 necessary or advisable for the protection thereof and upon the  
55 filing of a certified copy of such resolution or of the indenture  
56 for record in the office of the clerk of the county commission of  
57 the county in which a downtown redevelopment district project  
58 is located, the same shall have the same effect, as to notice, as

59 the recordation of a deed of trust or other recordable instrument.  
60 In the event that more than one such certified resolution or  
61 indenture is so recorded, the security interest granted by the  
62 first such recorded resolution or indenture shall have priority in  
63 the same manner as an earlier filed deed of trust except to the  
64 extent such earlier recorded resolution or indenture provides  
65 otherwise.

66 In addition to or in lieu of the indenture provided for  
67 hereinabove the principal of and interest on said bonds may, but  
68 need not, be secured by a mortgage or deed of trust covering all  
69 or any part of the downtown redevelopment district project  
70 from which the revenues so pledged may be derived, and the  
71 same may be secured by an assignment or pledge of the income  
72 received from the downtown redevelopment district project.  
73 The proceedings under which such bonds are authorized to be  
74 issued, when secured by a mortgage or deed of trust, may  
75 contain the same terms, conditions and provisions provided for  
76 herein when an indenture is entered into between the governing  
77 body and a trustee and any such mortgage or deed of trust may  
78 contain any agreements and provisions customarily contained  
79 in instruments securing bonds, including, without limiting the  
80 generality of the foregoing, provisions respecting the fixing and  
81 collection of revenues from the downtown redevelopment  
82 district project covered by such proceedings or mortgage, the  
83 terms to be incorporated in any lease, sale or financing agree-  
84 ment with respect to such downtown redevelopment district  
85 project, the improvement, repair, maintenance and insurance of  
86 such downtown redevelopment district project, the creation and  
87 maintenance of special funds from the revenues received from  
88 the downtown redevelopment district project and the rights and  
89 remedies available in event of default to the bondholders, the  
90 governing body, or to the trustee under an agreement, indenture,  
91 mortgage or deed of trust, all as the governing body shall deem  
92 advisable and as shall not be in conflict with the provisions of  
93 this article or any existing law: *Provided*, That in making any



94 such agreements or provisions a municipality shall not have the  
95 power to incur original indebtedness by indenture, ordinance,  
96 resolution, mortgage or deed of trust, except with respect to the  
97 downtown redevelopment district project and the application of  
98 the revenues therefrom, and shall not have the power to incur a  
99 pecuniary liability or a charge upon its general credit or against  
100 its taxing powers unless approved by the voters in accordance  
101 with article one, chapter thirteen of this code, or as otherwise  
102 permitted by the constitution of this state. The proceedings  
103 authorizing any bonds hereunder and any indenture, mortgage  
104 or deed of trust securing such bonds may provide that, in the  
105 event of default in payment of the principal of or the interest on  
106 such bonds or in the performance of any agreement contained  
107 in such proceedings, indenture, mortgage or deed of trust, such  
108 payment and performance may be enforced by the appointment  
109 of a receiver in equity with power to charge and collect rents or  
110 other amounts and to apply the revenues from the downtown  
111 redevelopment district project in accordance with such proceed-  
112 ings or the provisions of such agreement, indenture, mortgage  
113 or deed of trust. Any such agreement, indenture, mortgage or  
114 deed of trust may provide also that, in the event of default in  
115 such payment or the violation of any agreement contained in the  
116 mortgage or deed of trust, the agreement, indenture, mortgage  
117 or deed of trust may be foreclosed either by sale at public  
118 outcry or by proceedings in equity and may provide that the  
119 holder or holders of any of the bonds secured thereby may  
120 become the purchaser at any foreclosure sale, if the highest  
121 bidder therefor. No breach of any such agreement, indenture,  
122 mortgage or deed of trust shall impose any pecuniary liability  
123 upon a municipality or any charge upon its general credit or  
124 against its taxing powers.

#### **§8-13B-16. Redemption of bonds.**

1 The revenue bonds issued pursuant to this article may  
2 contain a provision therein to the effect that they, or any of

3 them, may be called for redemption at any time prior to  
4 maturity by the municipality, and at such redemption prices, or  
5 premiums, which terms shall be stated in the bond.

**§8-13B-17. Refunding bonds.**

1 Any bonds issued hereunder and at any time outstanding  
2 may at any time and from time to time be refunded by a  
3 municipality by the issuance of its refunding bonds in such  
4 amount as the governing body may deem necessary to refund  
5 the principal of the bonds so to be refunded, together with any  
6 unpaid interest thereon; to make any improvements or alter-  
7 ations in the downtown redevelopment district project; and any  
8 premiums and commissions necessary to be paid in connection  
9 therewith. Any such refunding may be effected whether the  
10 bonds to be refunded shall have then matured or shall thereafter  
11 mature, either by sale of the refunding bonds and the applica-  
12 tion of the proceeds thereof for the redemption of the bonds to  
13 be refunded thereby, or by exchange of the refunding bonds for  
14 the bonds to be refunded thereby: *Provided*, That the holders of  
15 any bonds so to be refunded shall not be compelled without  
16 their consent to surrender their bonds for payment or exchange  
17 prior to the date on which they are payable or, if they are called  
18 for redemption, prior to the date on which they are by their  
19 terms subject to redemption. Any refunding bonds issued under  
20 the authority of this article shall be subject to the provisions  
21 contained in section fourteen of this article and shall be secured  
22 in accordance with the provisions of section fifteen of this  
23 article.

**§8-13B-18. Use of proceeds from sale of bonds.**

1 The proceeds from the sale of any bonds issued under  
2 authority of this article shall be applied only for the purpose for  
3 which the bonds were issued: *Provided*, That any accrued  
4 interest received in any such sale shall be applied to the

5 payment of the interest on the bonds sold: *Provided, however,*  
6 That if for any reason any portion of such proceeds may not be  
7 needed for the purpose for which the bonds were issued, then  
8 such unneeded portion of said proceeds may be applied to the  
9 purchase of bonds for cancellation or payment of the principal  
10 of or the interest on said bonds, or held in reserve for the  
11 payment thereof. The costs that may be paid with the proceeds  
12 of the bonds include all redevelopment costs described in  
13 section five of this article and may also include, but not be  
14 limited to, the following: The cost of acquiring any real estate  
15 deemed necessary, the actual cost of the construction of any  
16 part of a downtown redevelopment district project which may  
17 be constructed, including architects', engineers', financial or  
18 other consultants' and legal fees, the purchase price or rental of  
19 any part of a downtown redevelopment district project that may  
20 be acquired by purchase or lease, all expense incurred in  
21 connection with the authorization, sale and issuance of the  
22 bonds to finance such acquisition, and the interest on such  
23 bonds for a reasonable time prior to construction, during  
24 construction, and for not exceeding twelve months after  
25 completion of construction and any other costs and expenses  
26 reasonably necessary in the establishment and acquisition of  
27 such downtown redevelopment district project and the financ-  
28 ing thereof.

**§8-13B-19. Bonds made legal investments.**

1 Bonds issued under the provisions of this article shall be  
2 legal investments for banks, building and loan associations, and  
3 insurance companies organized under the laws of this state and  
4 for a business development corporation organized pursuant to  
5 chapter thirty-one, article fourteen of this code.

**§8-13B-20. Exemption from taxation.**

1       The revenue bonds issued pursuant to this article and the  
 2 income therefrom shall be exempt from taxation except  
 3 inheritance, estate and transfer taxes; and the real and personal  
 4 property which a municipality or district board may acquire  
 5 pursuant to the provisions of this article, shall be exempt from  
 6 taxation by the state, or any county, municipality, or other  
 7 levying body, as public property, so long as the same is owned  
 8 by such municipality or district board.

## **CHAPTER 11. TAXATION.**

### **Article**

- 10. Procedure and Administration.**
- 13C. Business Investment and Jobs Tax Credit.**
- 13D. Tax Credits for Industrial Expansion and Revitalization, Research and Development Projects, Certain Housing Development.**
- 13N. Tax Credit for New Steel Manufacturing Operations After July 1, 1998.**
- 13Q. Economic Opportunity Tax Credit.**
- 13R. Strategic Research and Development Tax Credit.**
- 13S. Manufacturing Investment Tax Credit.**
- 15. Consumers Sales and Service Tax.**
- 21. Personal Income Tax.**
- 23. Business Franchise Tax.**
- 24. Corporation Net Income Tax.**

### **ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

- §11-10-5s. Disclosure of certain taxpayer information.
- §11-10-11a. Administration of special district excise tax; commission authorized.

#### **§11-10-5s. Disclosure of certain taxpayer information.**

1       (a) *Purpose.* - The Legislature hereby recognizes the  
 2 importance of confidentiality of taxpayer information as a  
 3 protection of taxpayers' privacy rights and to enhance voluntary  
 4 compliance with the tax law. The Legislature also recognizes  
 5 the citizens' right to accountable and efficient state government.  
 6 To accomplish these ends, the Legislature hereby creates

7 certain exceptions to the general principle of confidentiality of  
8 taxpayer information.

9 (b) *Exceptions to confidentiality.*

10 (1) Notwithstanding any provision in this code to the  
11 contrary, the tax commissioner shall publish in the state register  
12 the name and address of every taxpayer, and the amount, by  
13 category, of any credit asserted on a tax return under articles  
14 thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-  
15 q, thirteen-r and thirteen-s of this chapter and article one,  
16 chapter five-e of this code. The categories by dollar amount of  
17 credit received shall be as follows:

18 (A) More than \$1.00, but not more than \$50,000;

19 (B) More than \$50,000, but not more than \$100,000;

20 (C) More than \$100,000, but not more than \$250,000;

21 (D) More than \$250,000, but not more than \$500,000;

22 (E) More than \$500,000, but not more than \$1,000,000; and

23 (F) More than \$1,000,000.

24 (2) Notwithstanding any provision in this code to the  
25 contrary, the tax commissioner shall publish in the state register  
26 the following information regarding any compromise of a  
27 pending civil tax case that occurs on or after the effective date  
28 of this section in which the tax commissioner is required to seek  
29 the written recommendation of the attorney general and the  
30 attorney general has not recommended acceptance of the  
31 compromise or when the tax commissioner compromises any  
32 civil tax case for an amount that is more than two hundred fifty  
33 thousand dollars less than the assessment of tax owed made by  
34 the tax commissioner:

35 (A) The names and addresses of taxpayers that are parties  
36 to the compromise;

37 (B) A summary of the compromise;

38 (C) Any written advice or recommendation rendered by the  
39 attorney general regarding the compromise; and

40 (D) Any written advice or recommendation rendered by the  
41 tax commissioner's staff.

42 Under no circumstances may the tax return of the taxpayer  
43 or any other information which would otherwise be confidential  
44 under any other provisions of law be disclosed pursuant to the  
45 provisions of this subsection.

46 (3) Notwithstanding any provision in this code to the  
47 contrary, the tax commissioner may disclose any relevant return  
48 information to the prosecuting attorney for the county in which  
49 venue lies for a criminal tax offense when there is reasonable  
50 cause, based upon and substantiated by the return information,  
51 to believe that a criminal tax law has been or is being violated.

52 (4) Notwithstanding any provision in this code to the  
53 contrary, the tax commissioner may enter into written exchange  
54 of information agreements with the commissioners of labor,  
55 employment security and workers' compensation to disclose  
56 and receive return information: *Provided*, That the tax commis-  
57 sioner may promulgate rules pursuant to chapter twenty-nine-a  
58 of this code regarding further agencies with which written  
59 exchange of information agreements may be sought: *Provided*,  
60 *however*, That the tax commissioner may not promulgate  
61 emergency rules regarding further agencies with which written  
62 exchange of information agreements may be sought. The  
63 agreements shall be published in the state register and shall  
64 only be for the purpose of facilitating premium collection, tax  
65 collection and facilitating licensure requirements directly

66 enforced, administered or collected by the respective agencies.  
67 The provisions of this subsection shall not be construed to  
68 preclude or limit disclosure of tax information authorized by  
69 other provisions of this code. Any confidential return informa-  
70 tion so disclosed shall remain confidential in the hands of the  
71 other division to the extent provided by section five-d of this  
72 article and by other applicable federal or state laws.

73 (5) Notwithstanding any provision of this code to the  
74 contrary, the tax commissioner may enter into a written  
75 agreement with the state treasurer to disclose to the state  
76 treasurer the following business registration information:

77 (A) The names, addresses and federal employer identifica-  
78 tion numbers of businesses which have registered to do  
79 business in West Virginia; and

80 (B) The type of business activity and organization of those  
81 businesses. Disclosure of this information shall begin as soon  
82 as practicable after the effective date of this subsection and may  
83 be used only for the purpose of recovery and disposition of  
84 unclaimed property in accordance with the provisions of article  
85 eight, chapter thirty-six of this code. The provisions of this  
86 subsection shall not be construed to preclude or limit disclosure  
87 of tax information authorized by other provisions of this code.  
88 Any confidential return information disclosed hereunder or  
89 thereunder shall otherwise remain confidential to the extent  
90 provided by section five-d of this article and by other applicable  
91 federal or state laws.

92 (c) *Tax expenditure reports.* - Beginning on the fifteenth  
93 day of January, one thousand nine hundred ninety-two and  
94 every fifteenth day of January thereafter, the governor shall  
95 submit to the president of the Senate and the speaker of the  
96 House of Delegates a tax expenditure report. This report shall  
97 expressly identify all tax expenditures. Within three-year

98 cycles, the reports shall be considered together to analyze all  
99 tax expenditures by describing the annual revenue loss and  
100 benefits of the tax expenditure based upon information avail-  
101 able to the tax commissioner. For purposes of this section, the  
102 term "tax expenditure" shall mean a provision in the tax laws  
103 administered under this article, including, but not limited to,  
104 exclusions, deductions, tax preferences, credits and deferrals  
105 designed to encourage certain kinds of activities or to aid  
106 taxpayers in special circumstances: *Provided*, That the tax  
107 commissioner shall promulgate rules setting forth the procedure  
108 by which he or she will compile the reports and setting forth a  
109 priority for the order in which the reports will be compiled  
110 according to type of tax expenditure.

111 (d) *Federal and state return information confidential.* -  
112 Notwithstanding any other provisions of this section or of this  
113 code, no return information made available to the tax commis-  
114 sioner by the Internal Revenue Service or department or agency  
115 of any other state may be disclosed to another person in any  
116 manner inconsistent with the provisions of Section 6103 of the  
117 Internal Revenue Code of 1986, as amended, or of the other  
118 states' confidentiality laws.

**§11-10-11a. Administration of special district excise tax; commis-  
sion authorized.**

1 (a) Any municipality which, pursuant to section eleven,  
2 article thirteen-b, chapter eight of this code, imposes a special  
3 district excise tax, shall, by express provision in the ordinance  
4 imposing that tax, authorize the state tax commissioner to  
5 administer, assess, collect and enforce that tax on behalf of and  
6 as its agent. The municipality shall make such authorization by  
7 the adoption of a provision in its special district excise tax  
8 ordinance stating its purpose and referring to this section, and  
9 providing that such ordinance shall be effective on the first day  
10 of a month at least sixty days after its adoption. A certified copy



11 of such ordinance shall be forwarded to the tax commissioner  
12 so that it will be received within five days after its adoption.

13 (b) Any special district excise tax administered under this  
14 section shall be administered and collected by the tax commis-  
15 sioner in the same manner and subject to the same interest,  
16 additions to tax and penalties as provided for the tax imposed  
17 in article fifteen of this chapter.

18 (c) All special district excise tax moneys collected by the  
19 tax commissioner under this section shall be paid into the state  
20 treasury to the credit of each municipality's sub-account in the  
21 downtown redevelopment district fund created pursuant to  
22 section eight, article thirteen-b, chapter eight of this code. Such  
23 special district excise tax moneys shall be credited to the sub-  
24 account of each particular municipality levying a special district  
25 excise tax being administered under this section. The credit  
26 shall be made to the sub-account of the municipality in which  
27 the taxable sales were made and services rendered as shown by  
28 the records of the tax commissioner and certified by him or her  
29 monthly to the state treasurer, namely, the location of each  
30 place of business of every vendor collecting and paying the tax  
31 to the tax commissioner without regard to the place of possible  
32 use by the purchaser.

33 (d) As soon as practicable after the special district excise  
34 tax moneys have been paid into the state treasury in any month  
35 for the preceding reporting period, the district board may issue  
36 a requisition to the auditor requesting issuance of a state  
37 warrant for the proper amount in favor of each municipality  
38 entitled to the monthly remittance of its special district excise  
39 tax moneys. Upon receipt of the requisition, the auditor shall  
40 issue his warrant on the state treasurer for the funds requested,  
41 and the state treasurer shall pay the warrant out of the sub-  
42 account. If errors are made in any such payment, or adjustments  
43 are otherwise necessary, whether attributable to refunds to

44 taxpayers, or to some other fact, the errors shall be corrected  
45 and adjustments made in the payments for the next six months  
46 as follows: one sixth of the total adjustment shall be included in  
47 the payments for the next six months. In addition, the payment  
48 shall include a refund of amounts erroneously not paid to the  
49 municipality and not previously remitted during the three years  
50 preceding the discovery of the error. A correction and adjust-  
51 ment in payments described in this subsection due to the  
52 misallocation of funds by the vendor shall be made within three  
53 years of the date of the payment error.

54 (e) Notwithstanding any other provision of this code to the  
55 contrary, the tax commissioner shall deduct, and retain for the  
56 benefit of his office for expenditure pursuant to appropriation  
57 of the Legislature, from each payment into the state treasury as  
58 provided in subsection (c) of this section, one percent thereof as  
59 a commission to compensate his or her office for the discharge  
60 of the duties described in this section.

**ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX  
CREDIT.**

**§11-13C-16. Termination of credit; effective date.**

1 (a) Notwithstanding any other provision of this article to the  
2 contrary, no entitlement to any tax credit under this article may  
3 result from, and no credit is available to any taxpayer for,  
4 investment placed in service or use after the thirty-first day of  
5 December, two thousand two.

6 (b) Notwithstanding the provisions of subsection (a) of this  
7 section, the provisions of sections one through fifteen of this  
8 article continue to apply to taxpayers that have gained entitle-  
9 ment to the credit pursuant to the placement of qualified  
10 investment into service or use prior to the first day of January,  
11 two thousand three.

12 (c) *Transition rules.* — The general rule stated in subsection  
13 (a) of this section does not apply:

14 (1) To qualified investment property placed in service or  
15 use prior to the first day of January, two thousand three.

16 (2) To property purchased or leased for business expansion  
17 that is placed in service or use on or after the first day of  
18 January, two thousand three, if at least one of the following  
19 clauses applies to the property:

20 (A) The new or expanded business facility was constructed,  
21 reconstructed or erected, pursuant to a written construction  
22 contract executed prior to the first day of January, two thousand  
23 three, as limited to the provisions of the contract as of that date  
24 then binding on the taxpayer, but only to the extent the new or  
25 expanded business facility is placed in service or use prior to  
26 the first day of January, two thousand four;

27 (B) The new or expanded business facility that is part of a  
28 project described in subdivision (1), subsection (a), section  
29 four-b of this article, was constructed, reconstructed or erected,  
30 pursuant to a written construction contract executed prior to the  
31 first day of January, two thousand three, as limited to the  
32 provisions of the contract as of that date then binding on the  
33 taxpayer: *Provided*, That only that portion of the contract price  
34 attributable to that percentage of the construction contract  
35 completed prior to the first day of January, two thousand four,  
36 (determined under principles set forth in section 460(b) of the  
37 Internal Revenue Code of 1986, as in effect before the first day  
38 of January, two thousand three), which is placed in service or  
39 use prior to the first day of January, two thousand four, may be  
40 treated as property purchased for business expansion under  
41 section six of this article;

42 (C) The new or expanded business facility was purchased  
43 or leased pursuant to a written contract executed prior to the  
44 first day of January, two thousand three, as limited to the  
45 provisions then binding on the taxpayer as of that date, but only  
46 to the extent the new or expanded business facility is placed in  
47 service or use prior to the first day of January, two thousand  
48 four; or

49 (D) The machinery or equipment or other tangible personal  
50 property purchased or leased for business expansion at a new or  
51 expanded business facility was purchased or leased by the  
52 taxpayer pursuant to a written contract to purchase or lease  
53 identifiable tangible personal property executed before the first  
54 day of January, two thousand three, as limited to the provisions  
55 of the written contract then binding on the taxpayer, but only to  
56 the extent the tangible personal property purchased or leased  
57 under the contract is placed in service or use before the first day  
58 of January, two thousand four.

59 (d) *Notice of election required.* — Any person intending to  
60 claim credit under one or more of the transition rules provided  
61 in subsection (c) of this section shall file written notice of his or  
62 her intention with the tax commissioner on or before the thirty-  
63 first day of December, two thousand two. In the case of a  
64 multiparticipant project, this notice may be filed by the manag-  
65 ing project participant on behalf of all participants in the  
66 project. Notice is to be in a form prescribed by the tax commis-  
67 sioner and all information required by the form is to be pro-  
68 vided.

69 (e) *Failure to file notice.* — If any person fails to timely file  
70 the notice required by subsection (d) of this section, that person  
71 is precluded from claiming credit under this article for  
72 investment property placed in service or use after the thirty-first  
73 day of December, two thousand two, and may claim credit

74 under article thirteen-q of this chapter to the extent credit is  
75 allowable under that article.

**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 SYN-  
THETIC FUELS, AND AEROSPACE INDUSTRIAL  
FACILITY INVESTMENTS.**

**§11-13D-10. Termination of credit, exception for electricity  
producers, preservation of entitlements.**

1 (a) Except for persons taxable under section two-o, article  
2 thirteen of this chapter as described in subsection (b) of this  
3 section and persons described in subsection (c) of this section,  
4 no credit is available to any taxpayer under this article after the  
5 thirty-first day of December, two thousand two.

6 (b) Persons taxable under section two-o, article thirteen of  
7 this chapter that make eligible investment that qualifies for  
8 credit in accordance with the provisions of subsection (e),  
9 section three of this article in property used in the business  
10 activity taxable under section two-o, article thirteen of this  
11 chapter, are entitled to the credit determined under subsection  
12 (e), section three of this article, in accordance with the require-  
13 ments and limitations of this article, without regard to whether  
14 such investment is made or credit claimed after the thirty-first  
15 day of December, two thousand two.

16 (c) Taxpayers who gained entitlement to any tax credit  
17 pursuant to the terms of this article prior to the first day of  
18 January, two thousand three, retain that entitlement, and may  
19 apply the credit in due course pursuant to the requirements and  
20 limitations of this article until the original ten-year entitlement  
21 has been exhausted or otherwise terminated.

**ARTICLE 13N. TAX CREDIT FOR NEW STEEL MANUFACTURING OPERATIONS AFTER JULY 1, 1998.**

**§11-13N-4. Amount of credit allowed; expiration of the credit.**

1       (a) *Credit allowable.* — The amount of annual credit  
2 allowable under this article to an eligible taxpayer is two  
3 hundred fifty dollars for each new job at a new value-added  
4 steel product manufacturing facility located in this state, or at  
5 a new value-added steel product line of an existing manufactur-  
6 ing facility located in this state, that is filled by a full-time  
7 employee of the eligible taxpayer during the taxable year,  
8 subject to the following:

9       (1) When the new value-added steel product manufacturing  
10 facility, or the new steel product line of an existing value-added  
11 steel product manufacturing facility, is in operation for less than  
12 twelve months of the taxable year in which it is placed in  
13 service, the credit allowed by subsection (a) of this section shall  
14 be prorated by the ratio that the number of months in the  
15 taxpayer's taxable year during which the new value-added steel  
16 products facility, or the new products line of an existing  
17 value-added steel product manufacturing facility, was in service  
18 bears to twelve.

19       (2) When the eligible taxpayer stops manufacturing  
20 value-added steel products at the new value-added steel product  
21 manufacturing facility, or at the new steel product line of an  
22 existing value-added steel product manufacturing facility,  
23 during the taxable year, the credit allowed by subsection (a) of  
24 this section shall be prorated by the ratio that the number of  
25 months in the taxpayer's taxable year during which the new  
26 value-added steel products facility, or the new products line of  
27 an existing value-added steel product manufacturing facility,  
28 was in operation manufacturing value-added steel product bears  
29 to twelve.

30 (3) When determining the number of full-time employees  
31 who fill new jobs at the new value-added steel product manu-  
32 facturing facility located in this state, or who fill new jobs at a  
33 new value-added steel product line of an existing manufacturing  
34 facility located in this state, the eligible taxpayer may not  
35 include any position occupied by any employee of the eligible  
36 taxpayer, or of a related person, which existed in this state as of  
37 the first day of the second calendar month preceding the  
38 calendar month in which the new value-added steel product  
39 manufacturing facility, or a new value-added steel product line  
40 at an existing value-added steel products manufacturing facility  
41 first becomes operational, whether the positions are filled by  
42 permanent, seasonal, temporary or part-time employees.

43 (4) The amount of credit allowable each taxable year is  
44 calculated annually based upon the number of new jobs filled  
45 by full-time employees during the taxable year: *Provided*, That  
46 the credit provided for in this article may only be taken one  
47 time for each new job created, and once claimed in a tax year  
48 for a new job the credit may not be claimed in a subsequent  
49 year for that position.

50 (b) *Expiration of credit.* — This credit expires on the first  
51 day of July, two thousand two. When the first day of July in the  
52 year two thousand two falls during the taxable year of the  
53 eligible taxpayer, the amount of credit allowable for that  
54 taxable year shall be limited to that portion of the amount of  
55 credit that would have been allowable had the credit not expired  
56 multiplied by the ratio of the number of months during taxpay-  
57 ers taxable year ending before the first day of July, two thou-  
58 sand two, bears to twelve.

#### ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-1. Short title.

§11-13Q-2. Legislative finding and purpose.

§11-13Q-3. Definitions.

- §11-13Q-4. Amount of credit allowed.
- §11-13Q-5. Credit allowed for locating corporate headquarters in this state.
- §11-13Q-6. Credit allowable for certified projects.
- §11-13Q-7. Application of annual credit allowance.
- §11-13Q-8. Qualified investment.
- §11-13Q-9. New jobs percentage.
- §11-13Q-10. Credit for small business.
- §11-13Q-11. Forfeiture of unused tax credits; redetermination of credit allowed.
- §11-13Q-12. Recapture of credit; recapture tax imposed.
- §11-13Q-13. Transfer of qualified investment to successors.
- §11-13Q-14. Identification of investment credit property.
- §11-13Q-15. Failure to keep records of investment credit property.
- §11-13Q-16. Interpretation and construction.
- §11-13Q-17. Severability.
- §11-13Q-18. Burden of proof; application required; failure to make timely application.
- §11-13Q-19. Business eligible for credit entitlements.
- §11-13Q-20. Tax credit review and accountability.
- §11-13Q-21. Effective date; election; notice of claim or election under transition rules.

### **§11-13Q-1. Short title.**

- 1 This article may be cited as the “West Virginia Economic
- 2 Opportunity Tax Credit Act”.

### **§11-13Q-2. Legislative finding and purpose.**

- 1 The Legislature finds that the encouragement of economic
- 2 opportunity in this state is in the public interest and promotes
- 3 the general welfare of the people of this state. In order to
- 4 encourage greater capital investment in businesses in this state
- 5 and thereby increase economic opportunity in this state, there
- 6 is hereby enacted the economic opportunity tax credit.

### **§11-13Q-3. Definitions.**

- 1 (a) *General.* -- When used in this article, or in the adminis-
- 2 tration of this article, terms defined in subsection (b) have the



3 meanings ascribed to them by this section, unless a different  
4 meaning is clearly required by either the context in which the  
5 term is used, or by specific definition, in this article.

6 (b) *Terms defined.*

7 (1) *Business.* -- The term "business" means any activity  
8 which is engaged in by any person in this state which is taxable  
9 under article thirteen, twenty-one, twenty-three or twenty-four  
10 of this chapter (or any combination of those articles of this  
11 chapter).

12 (2) *Business expansion.* -- The term "business expansion"  
13 means capital investment in a new or expanded business facility  
14 in this state.

15 (3) *Business facility.* -- The term "business facility" means  
16 any factory, mill, plant, refinery, warehouse, building or  
17 complex of buildings located within this state, including the  
18 land on which it is located, and all machinery, equipment and  
19 other real and personal property located at or within the facility,  
20 used in connection with the operation of the facility, in a  
21 business that is taxable in this state, and all site preparation and  
22 start-up costs of the taxpayer for the business facility which it  
23 capitalizes for federal income tax purposes.

24 (4) *Commissioner or tax commissioner.* -- The terms  
25 "commissioner" and "tax commissioner" are used interchange-  
26 ably herein and mean the tax commissioner of the state of West  
27 Virginia, or his or her designee.

28 (5) *Compensation.* -- The term "compensation" means  
29 wages, salaries, commissions and any other form of remunera-  
30 tion paid to employees for personal services.

31 (6) *Controlled group.* -- The term "controlled group"  
32 means one or more chains of corporations connected through

33 stock ownership with a common parent corporation if stock  
34 possessing at least fifty percent of the voting power of all  
35 classes of stock of each of the corporations is owned directly or  
36 indirectly by one or more of the corporations; and the common  
37 parent owns directly stock possessing at least fifty percent of  
38 the voting power of all classes of stock of at least one of the  
39 other corporations.

40 (7) *Corporation.* — The term “corporation” means any  
41 corporation, joint-stock company or association, and any  
42 business conducted by a trustee or trustees wherein interest or  
43 ownership is evidenced by a certificate of interest or ownership  
44 or similar written instrument.

45 (8) *Designee.* — The term “designee” in the phrase “or his  
46 designee,” when used in reference to the commissioner, means  
47 any officer or employee of the state tax department duly  
48 authorized by the commissioner directly, or indirectly by one or  
49 more redelegations of authority, to perform the functions  
50 mentioned or described in this article.

51 (9) *Eligible taxpayer.* — The term “eligible taxpayer”  
52 means any person who makes qualified investment in a new or  
53 expanded business facility located in this state and creates at  
54 least the required number of new jobs and who is subject to any  
55 of the taxes imposed by articles thirteen, twenty-one, twenty-  
56 three and twenty-four of this chapter (or any combination of  
57 those articles). “Eligible taxpayer” shall also include an  
58 affiliated group of taxpayers if the group elects to file a  
59 consolidated corporation net income tax return under article  
60 twenty-four of this chapter.

61 (10) *Expanded facility.* — The term “expanded facility”  
62 means any business facility (other than a new or replacement  
63 business facility) resulting from the acquisition, construction,  
64 reconstruction, installation or erection of improvements or

65 additions to existing property if the improvements or additions  
66 are purchased on or after the first day of January, two thousand  
67 three, but only to the extent of the taxpayer's qualified invest-  
68 ment in the improvements or additions.

69 (11) *Includes and including.* — The terms “includes” and  
70 “including,” when used in a definition contained in this article,  
71 shall not be considered to exclude other things otherwise within  
72 the meaning of the term defined.

73 (12) *Leased property.* — The term “leased property” does  
74 not include property which the taxpayer is required to show on  
75 its books and records as an asset under generally accepted  
76 principles of financial accounting. If the taxpayer is prohibited  
77 from expensing the lease payments for federal income tax  
78 purposes, the property shall be treated as purchased property  
79 under this section.

80 (13) *New business facility.* — The term “new business  
81 facility” means a business facility which satisfies all the  
82 requirements of paragraphs (A), (B), (C) and (D) of this  
83 subdivision.

84 (A) The facility is employed by the taxpayer in the conduct  
85 of a business the net income of which is or would be taxable  
86 under article twenty-one or twenty-four of this chapter. The  
87 facility is not considered a new business facility in the hands of  
88 the taxpayer if the taxpayer's only activity with respect to the  
89 facility is to lease it to another person or persons.

90 (B) The facility is purchased by, or leased to, the taxpayer  
91 on or after the first day of January, two thousand three.

92 (C) The facility was not purchased or leased by the taxpayer  
93 from a related person. The commissioner may waive this  
94 requirement if the facility was acquired from a related party for  
95 its fair market value and the acquisition was not tax motivated.

96 (D) The facility was not in service or use during the ninety  
97 days immediately prior to transfer of the title to the facility, or  
98 prior to the commencement of the term of the lease of the  
99 facility: *Provided*, That this ninety-day period may be waived  
100 by the commissioner if the commissioner determines that  
101 persons employed at the facility may be treated as “new  
102 employees” as that term is defined in this subsection.

103 (14) *New employee.* –

104 (A) The term “new employee” means a person residing and  
105 domiciled in this state, hired by the taxpayer to fill a position or  
106 a job in this state which previously did not exist in the tax-  
107 payer’s business enterprise in this state prior to the date on  
108 which the taxpayer’s qualified investment is placed in service  
109 or use in this state. In no case may the number of new employ-  
110 ees directly attributable to the investment for purposes of this  
111 credit exceed the total net increase in the taxpayer’s employ-  
112 ment in this state: *Provided*, That the commissioner may  
113 require that the net increase in the taxpayer’s employment in  
114 this state be determined and certified for the taxpayer’s con-  
115 trolled group: *Provided, however*, That persons filling jobs  
116 saved as a direct result of taxpayer’s qualified investment in  
117 property purchased or leased for business expansion may be  
118 treated as new employees filling new jobs if the taxpayer  
119 certifies the material facts to the commissioner and the commis-  
120 sioner expressly finds that:

121 (i) But for the new employer purchasing the assets of a  
122 business in bankruptcy under chapter seven or eleven of the  
123 United States bankruptcy code and the new employer making  
124 qualified investment in property purchased or leased for  
125 business expansion, the assets would have been sold by the  
126 United States bankruptcy court in a liquidation sale and the jobs  
127 saved would have been lost; or

128 (ii) But for the taxpayer's qualified investment in property  
129 purchased or leased for business expansion in this state, the  
130 taxpayer would have closed its business facility in this state and  
131 the employees of the taxpayer located at the facility would have  
132 lost their jobs: *Provided*, That the commissioner may not make  
133 this certification unless the commissioner finds that the  
134 taxpayer is insolvent as defined in 11 U.S.C. §101(32) or that  
135 the taxpayer's business facility was destroyed, in whole or in  
136 significant part, by fire, flood or other act of God.

137 (B) A person is considered to be a "new employee" only if  
138 the person's duties in connection with the operation of the  
139 business facility are on:

140 (i) A regular, full-time and permanent basis:

141 (I) "Full-time employment" means employment for at least  
142 one hundred forty hours per month at a wage not less than the  
143 prevailing state or federal minimum wage, depending on which  
144 minimum wage provision is applicable to the business;

145 (II) "Permanent employment" does not include employment  
146 that is temporary or seasonal and therefore the wages, salaries  
147 and other compensation paid to the temporary or seasonal  
148 employees will not be considered for purposes of sections five  
149 and seven of this article; or

150 (ii) A regular, part-time and permanent basis: *Provided*,  
151 That the person is customarily performing the duties at least  
152 twenty hours per week for at least six months during the taxable  
153 year.

154 (15) *New job*. — The term "new job" means a job which  
155 did not exist in the business of the taxpayer in this state prior to  
156 the taxpayer's qualified investment being made, and which is  
157 filled by a new employee.

158 (16) *New property*. -- The term “new property” means:

159 (A) Property, the construction, reconstruction or erection of  
160 which is completed on or after the first day of January, two  
161 thousand three, and placed in service or use after that date; and

162 (B) Property leased or acquired by the taxpayer that is  
163 placed in service or use in this state on or after the first day of  
164 January, two thousand three, if the original use of the property  
165 commences with the taxpayer and commences after that date.

166 (17) *Original use*. -- The term “original use” means the  
167 first use to which the property is put, whether or not the use  
168 corresponds to the use of the property by the taxpayer.

169 (18) *Partnership and partner*. -- The term “partnership”  
170 includes a syndicate, group, pool, joint venture or other  
171 unincorporated organization through or by means of which any  
172 business, financial operation or venture is carried on, and which  
173 is not a trust or estate, a corporation or a sole proprietorship.  
174 The term “partner” includes a member in such a syndicate,  
175 group, pool, joint venture or other organization.

176 (19) *Person*. -- The term “person” includes any natural  
177 person, corporation or partnership.

178 (20) *Property purchased or leased for business expansion*.

179 (A) *Included property*. -- Except as provided in paragraph  
180 (B), the term “property purchased or leased for business  
181 expansion” means real property and improvements thereto, and  
182 tangible personal property, but only if the real or personal  
183 property was constructed, purchased, or leased and placed in  
184 service or use by the taxpayer, for use as a component part of a  
185 new or expanded business facility as defined in this section,  
186 which is located within the state of West Virginia. This term  
187 includes only:

188       (1) Real property and improvements thereto having a useful  
189 life of four or more years, placed in service or use on or after  
190 the first day of January, two thousand three, by the taxpayer.

191       (2) Real property and improvements thereto, acquired by  
192 written lease having a primary term of ten or more years and  
193 placed in service or use by the taxpayer on or after the first day  
194 of January, two thousand three.

195       (3) Tangible personal property placed in service or use by  
196 the taxpayer on or after the first day of January, two thousand  
197 three, with respect to which depreciation, or amortization in lieu  
198 of depreciation, is allowable in determining the personal or  
199 corporation net income tax liability of the business taxpayer  
200 under article twenty-one or twenty-four of this chapter, and  
201 which has a useful life, at the time the property is placed in  
202 service or use in the state, of four or more years.

203       (4) Tangible personal property acquired by written lease  
204 having a primary term of four years or longer, that commenced  
205 and was executed by the parties thereto on or after the first day  
206 of January, two thousand three, if used as a component part of  
207 a new or expanded business facility, shall be included within  
208 this definition.

209       (5) Tangible personal property owned or leased, and used  
210 by the taxpayer at a business location outside the state which is  
211 moved into the state of West Virginia on or after the first day of  
212 January, two thousand three, for use as a component part of a  
213 new or expanded business facility located in the state: *Provided*,  
214 That if the property is owned, it must be depreciable or amortiz-  
215 able personal property for income tax purposes, and have a  
216 useful life of four or more years remaining at the time it is  
217 placed in service or use in the state, and if the property is  
218 leased, the primary term of the lease remaining at the time the

219 leased property is placed in service or use in the state, must be  
220 four or more years.

221 (B) *Excluded property*. – The term “property purchased or  
222 leased for business expansion” does not include:

223 (i) Property owned or leased by the taxpayer and for which  
224 the taxpayer was previously allowed tax credit under article  
225 thirteen-c, thirteen-d or thirteen-e of this chapter, or the tax  
226 credits allowed by this article.

227 (ii) Property owned or leased by the taxpayer and for which  
228 the seller, lessor, or other transferor, was previously allowed tax  
229 credit under article thirteen-c, thirteen-d or thirteen-e of this  
230 chapter, or the tax credits allowed by this article.

231 (iii) Repair costs, including materials used in the repair,  
232 unless for federal income tax purposes the cost of the repair  
233 must be capitalized and not expensed.

234 (iv) Airplanes.

235 (v) Property which is primarily used outside the state, with  
236 use being determined based upon the amount of time the  
237 property is actually used both within and outside the state.

238 (vi) Property which is acquired incident to the purchase of  
239 the stock or assets of the seller, unless for good cause shown,  
240 the commissioner consents to waiving this requirement.

241 (vii) Natural resources in place.

242 (viii) Purchased or leased property, the cost or consider-  
243 ation for which cannot be quantified with any reasonable degree  
244 of accuracy at the time the property is placed in service or use:  
245 *Provided*, That when the contract of purchase or lease specifies  
246 a minimum purchase price or minimum annual rent the amount



247 thereof shall be used to determine the qualified investment in  
248 the property under section eight of this article if the property  
249 otherwise qualifies as property purchased or leased for business  
250 expansion.

251 (21) *Purchase*. — The term “purchase” means any acquisi-  
252 tion of property, but only if:

253 (A) The property is not acquired from a person whose  
254 relationship to the person acquiring it would result in the  
255 disallowance of deductions under section 267 or 707 (b) of the  
256 United States Internal Revenue Code of 1986, as amended, and  
257 in effect on the first day of January, two thousand three.

258 (B) The property is not acquired by one component member  
259 of a controlled group from another component member of the  
260 same controlled group. The commissioner can waive this  
261 requirement if the property was acquired from a related party  
262 for its then fair market value; and

263 (C) The basis of the property for federal income tax  
264 purposes, in the hands of the person acquiring it, is not deter-  
265 mined:

266 (i) In whole or in part by reference to the federal adjusted  
267 basis of the property in the hands of the person from whom it  
268 was acquired; or

269 (ii) Under Section 1014 (e) of the United States Internal  
270 Revenue Code of 1986, as amended, and in effect on the first  
271 day of January, two thousand two.

272 (22) *Qualified activity*. — The term “qualified activity”  
273 means any business or other activity subject to any of the taxes  
274 imposed by article thirteen, twenty-one, twenty-three or  
275 twenty-four of this chapter (or any combination of those articles

276 of this chapter), but does not include the activity of severance  
277 or production of natural resources.

278 (23) *Related person*. — The term “related person” means:

279 (A) A corporation, partnership, association or trust con-  
280 trolled by the taxpayer;

281 (B) An individual, corporation, partnership, association or  
282 trust that is in control of the taxpayer;

283 (C) A corporation, partnership, association or trust con-  
284 trolled by an individual, corporation, partnership, association or  
285 trust that is in control of the taxpayer; or

286 (D) A member of the same controlled group as the tax-  
287 payer.

288 For purposes of this section, “control,” with respect to a  
289 corporation, means ownership, directly or indirectly, of stock  
290 possessing fifty percent or more of the total combined voting  
291 power of all classes of the stock of the corporation entitled to  
292 vote. “Control,” with respect to a trust, means ownership,  
293 directly or indirectly, of fifty percent or more of the beneficial  
294 interest in the principal or income of the trust. The ownership  
295 of stock in a corporation, of a capital or profits interest in a  
296 partnership or association or of a beneficial interest in a trust is  
297 determined in accordance with the rules for constructive  
298 ownership of stock provided in section 267 (c) of the United  
299 States Internal Revenue Code of 1986, as amended, other than  
300 paragraph (3) of that section.

301 (24) *Replacement facility*. — The term “replacement  
302 facility” means any property (other than an expanded facility)  
303 that replaces or supersedes any other property located within  
304 this state that:

305 (A) The taxpayer or a related person used in or in connec-  
306 tion with any activity for more than two years during the period  
307 of five consecutive years ending on the date the replacement or  
308 superseding property is placed in service by the taxpayer; or

309 (B) Is not used by the taxpayer or a related person in or in  
310 connection with any qualified activity for a continuous period  
311 of one year or more commencing with the date the replacement  
312 or superseding property is placed in service by the taxpayer.

313 (25) *Research and development.* -- The term "research and  
314 development" means systematic scientific, engineering or  
315 technological study and investigation in a field of knowledge in  
316 the physical, computer or software sciences, often involving the  
317 formulation of hypotheses and experimentation, for the purpose  
318 of revealing new facts, theories or principles, or increasing  
319 scientific knowledge, which may reveal the basis for new or  
320 enhanced products, equipment or manufacturing processes.

321 (A) Research and development includes, but is not limited  
322 to, design, refinement and testing of prototypes of new or  
323 improved products, or design, refinement and testing of  
324 manufacturing processes before commercial sales relating  
325 thereto have begun. For purposes of this section, commercial  
326 sales includes, but is not limited to, sales of prototypes or sales  
327 for market testing.

328 (B) Research and development does not include:

329 (i) Market research;

330 (ii) Sales research;

331 (iii) Efficiency surveys;

332 (iv) Consumer surveys;

333 (v) Product market testing;

334 (vi) Product testing by product consumers or through  
335 consumer surveys for evaluation of consumer product perfor-  
336 mance or consumer product usability;

337 (vii) The ordinary testing or inspection of materials or  
338 products for quality control (quality control testing);

339 (viii) Management studies;

340 (ix) Advertising;

341 (x) Promotions;

342 (xi) The acquisition of another's patent, model, production  
343 or process or investigation or evaluation of the value or  
344 investment potential related thereto;

345 (xii) Research in connection with literary, historical, or  
346 similar activities;

347 (xiii) Research in the social sciences, economics, humani-  
348 ties or psychology and other nontechnical activities; and

349 (xiv) The providing of sales services or any other service,  
350 whether technical service or nontechnical service.

351 (26) *Taxpayer*. — The term “taxpayer” means any person  
352 subject to any of the taxes imposed by article thirteen,  
353 twenty-one, twenty-three or twenty-four of this chapter (or any  
354 combination of those articles of this chapter).

355 (27) *This code*. — The term “this code” means the code of  
356 West Virginia, one thousand nine hundred thirty-one, as  
357 amended.

358       (28) *This state.* — The term “this state” means the state of  
359 West Virginia.

360       (29) *Used property.* — The term “used property” means  
361 property acquired after the thirty-first day of December, two  
362 thousand two, that is not “new property.”

#### §11-13Q-4. Amount of credit allowed.

1       (a) *Credit allowed.* — Eligible taxpayers are allowed a  
2 credit against the portion of taxes imposed by this state that are  
3 attributable to and the consequence of the taxpayer’s qualified  
4 investment in a new or expanded business in this state, which  
5 results in the creation of new jobs. The amount of this credit is  
6 determined and applied as provided in this article.

7       (b) *Amount of credit.* — The amount of credit allowable is  
8 determined by multiplying the amount of the taxpayer’s  
9 “qualified investment” (determined under section five or eight,  
10 or both) in “property purchased or leased for business expansion”  
11 (as defined in section three) by the taxpayer’s new jobs  
12 percentage (determined under section nine). The product of this  
13 calculation establishes the maximum amount of credit allow-  
14 able under this article due to the qualified investment.

15       (c) *Application of credit over ten years.* — The amount of  
16 credit allowable must be taken over a ten-year period, at the rate  
17 of one tenth of the amount thereof per taxable year, beginning  
18 with the taxable year in which the taxpayer places the qualified  
19 investment in service or use in this state, unless the taxpayer  
20 elected to delay the beginning of the ten-year period until the  
21 next succeeding taxable year. This election shall be made in the  
22 annual income tax return filed under this chapter for the taxable  
23 year in which qualified investment is first placed into service or  
24 use by the taxpayer. Once made, the election cannot be revoked.

25 The annual credit allowance is taken in the manner prescribed  
26 in section seven of this article.

27 (d) *Placed in service or use.* — For purposes of the credit  
28 allowed by this section, property is considered placed in service  
29 or use in the earlier of the following taxable years:

30 (1) The taxable year in which, under the taxpayer's depreci-  
31 ation practice, the period for depreciation with respect to the  
32 property begins; or

33 (2) The taxable year in which the property is placed in a  
34 condition or state of readiness and availability for a specifically  
35 assigned function.

**§11-13Q-5. Credit allowed for locating corporate headquarters in  
this state.**

1 (a) *Credit allowed.* — A corporation that presently has its  
2 corporate headquarters located outside this state that relocates  
3 its corporate headquarters in this state and employs, on a  
4 full-time basis, at its new corporate headquarters location, at  
5 least fifteen people, who are domiciled in this state, is allowed  
6 credit under this article, the amount of which is determined as  
7 provided in subsection (b) of this section. The restrictions set  
8 forth in subsection (a), section nineteen of this article do not  
9 apply to the credit for corporate headquarters relocations  
10 allowed under this section.

11 (b) *Determination of credit.* — The amount of credit  
12 allowed by subsection (a) is determined, at the election of the  
13 taxpayer:

14 (1) By multiplying the taxpayer's adjusted qualified  
15 investment by its new jobs percentage (as determined under  
16 section nine of this article); or

17       (2) By multiplying the taxpayer's adjusted qualified  
18 investment by ten percent.

19       (c) *Corporate headquarters relocations after December 31,*  
20 *2002.* — For purposes of corporate headquarters relocations  
21 occurring on or after the first day of January, two thousand  
22 three, and notwithstanding any other provision of this article to  
23 the contrary:

24       (1) New jobs created in this state by relocation of a corpo-  
25 rate headquarters may include jobs created in this state within  
26 twelve months before or after the month in which the qualified  
27 investment in the corporate headquarters relocation is placed  
28 into service or use in this state by:

29       (A) Relocation or transfer of employees of the corporation  
30 or employees of a related corporation or related person from an  
31 out-of-state location to the relocated corporate headquarters in  
32 this state, who: (i) Are or become employees of the corporation  
33 within twelve months before or after the month in which the  
34 qualified investment in the corporate headquarters is placed into  
35 service or use in this state; and (ii) whose regular place of work  
36 is in the corporate headquarters; or

37       (B) New employees of the corporation whose regular place  
38 of work is in the corporate headquarters.

39       (2) Multiple year projects certified under section six of this  
40 article may be allowed for corporate headquarters relocations  
41 under this section.

42       (d) *Application of credit.* — The credit allowed by this  
43 section is applied in the manner prescribed in section seven of  
44 this article: *Provided,* That the amount of corporation net  
45 income taxes against which the credit allowed by this section  
46 may be applied is the sum of the corporation net income tax due  
47 on adjusted federal taxable income allocated to this state under

48 section seven, article twenty-four of this chapter, plus that  
49 portion of the corporation net income tax due on adjusted  
50 federal taxable income apportioned to this state under section  
51 seven, article twenty-four of this chapter, that is further  
52 apportioned to the qualified investment using the payroll factor  
53 provided in subdivision (1), subsection (h), section seven of this  
54 article or an alternative means of apportionment as prescribed  
55 by the commissioner under section seven of this article. For all  
56 other purposes, the credit allowed by this section is treated as  
57 credit allowed by section four of this article.

58 (e) *Definitions.* — For purposes of this section:

59 (1) *Adjusted qualified investment.* — The term “adjusted  
60 qualified investment” means the taxpayer’s qualified invest-  
61 ment in the corporate headquarters as determined under section  
62 eight of this article and rules of the commissioner, plus the cost  
63 of the reasonable and necessary expenses it incurred to relocate  
64 its corporate headquarters at a location in this state from its  
65 prior location outside this state.

66 (2) *Corporate headquarters.* — The term “corporate  
67 headquarters” means the place at which the corporation has its  
68 commercial domicile and from which the business of the  
69 corporation is primarily conducted.

70 (3) *Reasonable and necessary expenses incurred to relocate*  
71 *corporate headquarters.* — The phrase “reasonable and  
72 necessary expenses incurred to relocate corporate headquarters”  
73 means only those expenses incurred and paid by the corpora-  
74 tion, to unrelated third parties, to move its corporate headquar-  
75 ters and its corporate headquarters employees to this state that  
76 are, upon application by the corporation, determined by the  
77 commissioner to have been both reasonable and necessary to  
78 effectuate the move.



79       (4) *The corporation.* — For purposes of this section, the  
80 term “the corporation” means the corporation for which the  
81 corporate headquarters is relocated.

**§11-13Q-6. Credit allowable for certified projects.**

1       (a) *In general.* — A multiple year project certified by the  
2 commissioner is eligible for the credit allowable by this article.  
3 A project eligible for certification under this section is one  
4 where the qualified investment under this article creates at least  
5 the required minimum number of new jobs but the qualified  
6 investment is placed in service or use over a period of up to  
7 three successive tax years: *Provided,* That the qualified  
8 investment is made pursuant to a written business facility  
9 development plan of the taxpayer providing for an integrated  
10 project for investment at one or more new or expanded business  
11 facilities, a copy of which must be attached to the taxpayer’s  
12 application for project certification and approved by the  
13 commissioner, and the qualified investment placed in service or  
14 use during the first tax year would not have been made without  
15 the expectation of making the qualified investment placed in  
16 service or use during the next two succeeding tax years;

17       (b) *Application for certification.* — The application for  
18 certification of a project under this section shall be filed with  
19 and approved by the commissioner prior to any credit being  
20 claimed or allowed for the project’s qualified investment and  
21 new jobs created as a direct result of the qualified investment.  
22 This application shall be approved in writing and contain the  
23 information as the commissioner may require to determine  
24 whether the project should be certified as eligible for credit  
25 under this article.

26       (c) *Taking of credit.* — The participant or participants  
27 claiming the credit for qualified investments in a certified

28 project shall annually file with their income tax returns filed  
29 under this chapter:

30 (A) Certification that the participant's qualified investment  
31 property continues to be used in the project and if disposed of  
32 during the tax year, was not disposed of prior to expiration of  
33 its useful life;

34 (B) Certification that the new jobs created by the project's  
35 qualified investment continue to exist and are filled by persons  
36 who are residents of this state; and

37 (C) Any other information the commissioner requires to  
38 determine continuing eligibility to claim the annual credit  
39 allowance for the project's qualified investment.

**§11-13Q-7. Application of annual credit allowance.**

1 (a) *In general.* — The aggregate annual credit allowance for  
2 the current taxable year is an amount equal to the sum of the  
3 following:

4 (1) The one-tenth part allowed under section four of this  
5 article for qualified investment placed into service or use during  
6 a prior taxable year; plus

7 (2) The one-tenth part allowed under section four of this  
8 article for qualified investment placed into service or use during  
9 the current taxable year; plus

10 (3) The one-tenth part allowed under section five of this  
11 article for locating corporate headquarters in this state; or the  
12 amount allowed under section ten of this article of the taxable  
13 year.

14 (b) *Application of current year annual credit allowance.* —  
15 The amount determined under subsection (a) of this section is

16 allowed as a credit against eighty percent of that portion of the  
17 taxpayer's state tax liability which is attributable to and the  
18 direct result of the taxpayer's qualified investment, and applied  
19 as provided in subsections (c) through (f), both inclusive, of this  
20 section, and in that order: *Provided*, That if the median salary  
21 of the new jobs is higher than the statewide average nonfarm  
22 payroll wage, as determined annually by the West Virginia  
23 bureau of employment programs, the amount determined under  
24 subsection (a) of this section is allowed as a credit against one  
25 hundred percent of that portion of the taxpayers state tax  
26 liability which is attributable to and the direct result of the  
27 taxpayer's qualified investment, and shall be applied, as  
28 provided in subsections (c) through (f), both inclusive, of this  
29 section, and in that order.

30 (c) *Business and occupation taxes.* -- That portion of the  
31 allowable credit attributable to qualified investment in a  
32 business or other activity subject to the taxes imposed under  
33 section two-o, article thirteen of this chapter must first be  
34 applied to reduce the taxes imposed or payable under section  
35 two-o, article thirteen of this chapter, for the taxable year  
36 (determined before application of allowable credits against tax  
37 and the annual exemption). In no case may the credit allowed  
38 under this article be applied to reduce any tax imposed or  
39 payable under section two-f, or under any other section of  
40 article thirteen of this chapter except section two-o.

41 (1) If the taxes due under section two-o, article thirteen of  
42 this chapter are not solely attributable to and the direct result of  
43 the taxpayer's qualified investment in a business or other  
44 activity taxable under section two-o, article thirteen of this  
45 chapter, the amount of those taxes that are attributable is  
46 determined by multiplying the amount of taxes due under  
47 section two-o, article thirteen of this chapter, for the taxable  
48 year (determined before application of any allowable credits  
49 against tax and the annual exemption), by a fraction, the

50 numerator of which is all wages, salaries and other compensa-  
51 tion paid during the taxable year to all employees of the  
52 taxpayer employed in this state, whose positions are directly  
53 attributable to the qualified investment in a business or other  
54 activity taxable under section two-o, article thirteen of this  
55 chapter. The denominator of the fraction shall be the wages,  
56 salaries and other compensation paid during the taxable year to  
57 all employees of the taxpayer employed in this state, whose  
58 positions are directly attributable to the business or other  
59 activity of the taxpayer that is taxable under article thirteen of  
60 this chapter.

61 (2) The annual exemption allowed by section three, article  
62 thirteen of this chapter, plus any credits allowable under articles  
63 thirteen-d, thirteen-e, thirteen-r and thirteen-s of this chapter,  
64 shall be applied against and reduce only the portion of article  
65 thirteen taxes not apportioned to the qualified investment under  
66 this article: *Provided*, That any excess exemption or credits may  
67 be applied against the amount of article thirteen taxes appor-  
68 tioned to the qualified investment under this article, that is not  
69 offset by the amount of annual credit against the taxes allowed  
70 under this article for the taxable year, unless their application  
71 is otherwise prohibited by this chapter.

72 (d) *Business franchise tax.* —

73 (1) After application of subsection (c) of this section, any  
74 unused allowable credit is next applied to reduce the taxes  
75 imposed by article twenty-three of this chapter for the taxable  
76 year (determined after application of the credits against tax  
77 provided in section seventeen of article twenty-three of this  
78 chapter, but before application of any other allowable credits  
79 against tax).

80 (2) If the taxes due under article twenty-three of this  
81 chapter are not solely attributable to and the direct result of the

82 taxpayer's qualified investment in a business or other activity  
83 taxable under article twenty-three of this chapter for the taxable  
84 year, the amount of the taxes which are so attributable are  
85 determined by multiplying the amount of taxes due (determined  
86 after application of the credits against tax as provided in section  
87 seventeen, article twenty-three of this chapter, but before  
88 application of any other allowable credits), by a fraction, the  
89 numerator of which is all wages, salaries and other compensa-  
90 tion paid during the taxable year to all employees of the  
91 taxpayer employed in this state, whose positions are directly  
92 attributable to the qualified investment in a business or other  
93 activity taxable under article twenty-three of this chapter. The  
94 denominator of the fraction is wages, salaries and other  
95 compensation paid during the taxable year to all employees of  
96 the taxpayer employed in this state, whose positions are directly  
97 attributable to the business or other activity of the taxpayer that  
98 is taxable under article twenty-three of this chapter.

99 (3) Any credits allowable under articles thirteen-d, thir-  
100 teen-e, thirteen-r and thirteen-s of this chapter are applied  
101 against and reduce only the portion of article twenty-three taxes  
102 not apportioned to the qualified investment under this article:  
103 *Provided*, That any excess exemption or credits may be applied  
104 against the amount of article twenty-three taxes apportioned to  
105 the qualified investment under this article that is not offset by  
106 the amount of annual credit against those taxes allowed under  
107 this article for the taxable year, unless their application is  
108 otherwise prohibited by this chapter.

109 (e) *Corporation net income taxes.* —

110 (1) After application of subsections (c) and (d) of this  
111 section, any unused credit is next applied to reduce the taxes  
112 imposed by article twenty-four of this chapter for the taxable  
113 year (determined before application of allowable credits against  
114 tax).

115           (2) If the taxes due under article twenty-four of this chapter  
116 (determined before application of allowable credits against tax)  
117 are not solely attributable to and the direct result of the tax-  
118 payer's qualified investment, the amount of the taxes that is  
119 attributable are determined by multiplying the amount of taxes  
120 due under article twenty-four of this chapter for the taxable year  
121 (determined before application of allowable credits against tax),  
122 by a fraction, the numerator of which is all wages, salaries and  
123 other compensation paid during the taxable year to all employ-  
124 ees of the taxpayer employed in this state whose positions are  
125 directly attributable to the qualified investment. The denomina-  
126 tor of the fraction is the wages, salaries and other compensation  
127 paid during the taxable year to all employees of the taxpayer  
128 employed in this state.

129           (3) Any credits allowable under article twenty-four of this  
130 chapter are applied against and reduce only the amount of  
131 article twenty-four taxes not apportioned to the qualified  
132 investment under this article: *Provided*, That any excess credits  
133 may be applied against the amount of article twenty-four taxes  
134 apportioned to the qualified investment under this article that is  
135 not offset by the amount of annual credit against such taxes  
136 allowed under this article for the taxable year, unless their  
137 application is otherwise prohibited by this chapter.

138           (f) *Personal income taxes.* —

139           (1) If the person making the qualified investment is an  
140 electing small business corporation (as defined in section 1361  
141 of the United States Internal Revenue Code of 1986, as  
142 amended), a partnership, a limited liability company that is  
143 treated as a partnership for federal income tax purposes or a  
144 sole proprietorship, then any unused credit (after application of  
145 subsections (c), (d) and (e) of this section) is allowed as a credit  
146 against the taxes imposed by article twenty-one of this chapter  
147 on the income from business or other activity subject to tax

148 under article thirteen or twenty-three of this chapter or on  
149 income of a sole proprietor attributable to the business.

150 (2) Electing small business corporations, limited liability  
151 companies, partnerships and other unincorporated organizations  
152 shall allocate the credit allowed by this article among its  
153 members in the same manner as profits and losses are allocated  
154 for the taxable year.

155 (3) If the amount of taxes due under article twenty-one of  
156 this chapter (determined before application of allowable credits  
157 against tax) that is attributable to business, is not solely  
158 attributable to and the direct result of the qualified investment  
159 of the electing small business corporation, limited liability  
160 company, partnership, other unincorporated organization or sole  
161 proprietorship, the amount of the taxes that are so attributable  
162 are determined by multiplying the amount of taxes due under  
163 article twenty-one of this chapter (determined before applica-  
164 tion of allowable credits against tax), that is attributable to  
165 business by a fraction, the numerator of which is all wages,  
166 salaries and other compensation paid during the taxable year to  
167 all employees of the electing small business corporation,  
168 limited liability company, partnership, other unincorporated  
169 organization or sole proprietorship employed in this state,  
170 whose positions are directly attributable to the qualified  
171 investment. The denominator of the fraction is the wages,  
172 salaries and other compensation paid during the taxable year to  
173 all employees of the taxpayer.

174 (4) No credit is allowed under this section against any  
175 employer withholding taxes imposed by article twenty-one of  
176 this chapter.

177 (g) If the wages, salaries and other compensation fraction  
178 formula provisions of subsections (c) through (f) of this section,  
179 inclusive, do not fairly represent the taxes solely attributable to

180 and the direct result of qualified investment of the taxpayer the  
181 commissioner may require, in respect to all or any part of the  
182 taxpayer's businesses or activities, if reasonable:

183 (1) Separate accounting or identification;

184 (2) Adjustment to the wages, salaries and other compensa-  
185 tion fraction formula to reflect all components of the tax  
186 liability;

187 (3) The inclusion of one or more additional factors that will  
188 fairly represent the taxes solely attributable to and the direct  
189 result of the qualified investment of the taxpayer and all other  
190 project participants in the businesses or other activities subject  
191 to tax; or

192 (4) The employment of any other method to effectuate an  
193 equitable attribution of the taxes.

194 In order to effectuate the purposes of this subsection, the  
195 commissioner may propose for promulgation rules, including  
196 emergency rules, in accordance with article three, chapter  
197 twenty-nine-a of this code.

198 (h) *Unused credit.* — If any credit remains after application  
199 of subsection (b) of this section, the amount thereof is carried  
200 forward to each ensuing tax year until used or until the expira-  
201 tion of the third taxable year subsequent to the end of the initial  
202 ten year credit application period. If any unused credit remains  
203 after the thirteenth year, the amount thereof is forfeited. No  
204 carryback to a prior taxable year is allowed for the amount of  
205 any unused portion of any annual credit allowance.

#### **§11-13Q-8. Qualified investment.**

1 (a) *General.* — The qualified investment in property  
2 purchased or leased for business expansion is the applicable



3 percentage of the cost of each property purchased or leased for  
 4 the purpose of business expansion which is placed in service or  
 5 use in this state by the taxpayer during the taxable year.

6 (b) *Applicable percentage.* — For the purpose of subsection  
 7 (a), the applicable percentage of any property is determined  
 8 under the following table:

9 If useful life is:	10 The applicable percentage is:
11 Less than 4 years . . . . .	0%
12 4 years or more but less than 6 years . . . . .	33 1/3%
13 6 years or more but less than 8 years . . . . .	66 2/3%
14 8 years or more . . . . .	100%

15 The useful life of any property, for purposes of this section,  
 16 is determined as of the date the property is first placed in  
 17 service or use in this state by the taxpayer, determined in  
 18 accordance with such rules and requirements the tax commis-  
 sioner may prescribe.

19 (c) *Cost.* — For purposes of subsection (a), the cost of each  
 20 property purchased for business expansion is determined under  
 21 the following rules:

22 (1) *Trade-ins.* — Cost does not include the value of  
 23 property given in trade or exchange for the property purchased  
 24 for business expansion.

25 (2) *Damaged, destroyed or stolen property.* — If property  
 26 is damaged or destroyed by fire, flood, storm or other casualty,  
 27 or is stolen, then the cost of replacement property does not  
 28 include any insurance proceeds received in compensation for  
 29 the loss.

30 (3) *Rental property.* —

31 (A) The cost of real property acquired by written lease for  
32 a primary term of ten years or longer is one hundred percent of  
33 the rent reserved for the primary term of the lease, not to exceed  
34 twenty years.

35 (B) The cost of tangible personal property acquired by  
36 written lease for a primary term of:

37 (i) Four years, or longer, is one third of the rent reserved for  
38 the primary term of the lease;

39 (ii) Six years, or longer, is two thirds of the rent reserved  
40 for the primary term of the lease; or

41 (iii) Eight years, or longer, is one hundred percent of the  
42 rent reserved for the primary term of the lease, not to exceed  
43 twenty years: *Provided*, That in no event may rent reserved  
44 include rent for any year subsequent to expiration of the book  
45 life of the equipment, determined using the straight-line method  
46 of depreciation.

47 (4) *Self-constructed property*. — In the case of  
48 self-constructed property, the cost thereof is the amount  
49 properly charged to the capital account for depreciation in  
50 accordance with federal income tax law.

51 (5) *Transferred property*. — The cost of property used by  
52 the taxpayer out-of-state and then brought into this state, is  
53 determined based on the remaining useful life of the property  
54 at the time it is placed in service or use in this state, and the cost  
55 is the original cost of the property to the taxpayer less straight  
56 line depreciation allowable for the tax years or portions thereof  
57 the taxpayer used the property outside this state. In the case of  
58 leased tangible personal property, cost is based on the period  
59 remaining in the primary term of the lease after the property is  
60 brought into this state for use in a new or expanded business  
61 facility of the taxpayer, and is the rent reserved for the remain-

62 ing period of the primary term of the lease, not to exceed  
 63 twenty years, or the remaining useful life of the property  
 64 (determined as aforesaid), whichever is less.

**§11-13Q-9. New jobs percentage.**

1 (a) *In general.* — The new jobs percentage is based on the  
 2 number of new jobs created in this state directly attributable to  
 3 the qualified investment of the taxpayer.

4 (b) *When a job is attributable.* — An employee's position  
 5 is directly attributable to the qualified investment if:

6 (1) The employee's service is performed or his or her base  
 7 of operations is at the new or expanded business facility;

8 (2) The position did not exist prior to the construction,  
 9 renovation, expansion or acquisition of the business facility and  
 10 the making of the qualified investment; and

11 (3) But for the qualified investment, the position would not  
 12 have existed.

13 (c) *Applicable percentage.* —

14 For the purpose of subsection (a) of this section, the  
 15 applicable new jobs percentage is determined under the  
 16 following table:

17		<b>If number of</b>
18	<b>The applicable</b>	<b>new jobs</b>
19	<b>percentage is:</b>	<b>is at least:</b>
20	20%	20
21	25%	280
22	30%	520

23       (d) *Certification of new jobs.* — With the annual return for  
24 the applicable taxes filed for the taxable year in which the  
25 qualified investment is first placed in service or use in this state,  
26 the taxpayer shall estimate and certify the number of new jobs  
27 reasonably projected to be created by it in this state within the  
28 period prescribed in subsection (f), that are, or will be, directly  
29 attributable to the qualified investment of the taxpayer. For  
30 purposes of this section, “applicable taxes” means the taxes  
31 imposed by articles thirteen, twenty-one, twenty-three and  
32 twenty-four of this chapter against which this credit is applied.

33       (e) *Equivalency of permanent employees.* — The hours of  
34 part-time employees shall be aggregated to determine the  
35 number of equivalent full-time employees for the purpose of  
36 this section.

37       (f) *Redetermination of new jobs percentage.* — With the  
38 annual return for the applicable taxes imposed, filed for the  
39 third taxable year in which the qualified investment is in service  
40 or use, the taxpayer shall certify the actual number of new jobs  
41 created by it in this state, that are directly attributable to the  
42 qualified investment of the taxpayer.

43       (1) If the actual number of jobs created would result in a  
44 higher new jobs percentage, the credit allowed under this article  
45 shall be redetermined and amended returns filed for the first  
46 and second taxable years that the qualified investment was in  
47 service or use in this state.

48       (2) If the actual number of jobs created would result in a  
49 lower new jobs percentage, the credit previously allowed under  
50 this article shall be redetermined and amended returns filed for  
51 the first and second taxable years. In applying the amount of  
52 redetermined credit allowable for the two preceding taxable  
53 years, the redetermined credit shall first be applied to the extent  
54 it was originally applied in the prior two years to personal

55 income taxes, then to corporation net income taxes, then to  
56 business franchise taxes, and lastly to business and occupation  
57 taxes. Any additional taxes due under this chapter shall be  
58 remitted with the amended returns filed with the commissioner,  
59 along with interest, as provided in section seventeen, article ten  
60 of this chapter, and a ten percent penalty determined on the  
61 amount of taxes due with the amended return, which may be  
62 waived by the commissioner if the taxpayer shows that the  
63 overclaimed amount of the new jobs percentage was due to  
64 reasonable cause and not due to willful neglect.

**§11-13Q-10. Credit for small business.**

1       (a) *Small business defined.* — For purposes of this section,  
2 the term “small business” means a business which has annual  
3 gross receipts of not more than seven million dollars (including  
4 the gross receipts of any affiliates in its controlled group):  
5 *Provided,* That beginning the first day of January, two thousand  
6 four, and on the first day of January of each year thereafter, the  
7 commissioner shall prescribe an amount that shall apply in lieu  
8 of the seven million dollar amount during that calendar year.  
9 This amount is prescribed by increasing the seven million dollar  
10 amount by the cost-of-living adjustment for that calendar year.  
11 The requirements for annual gross receipts, once met by a given  
12 taxpayer in that taxable year when qualified investment is first  
13 placed in service or use, may not again be applied to that same  
14 taxpayer in subsequent years to defeat the small business credit  
15 to which the taxpayer gained entitlement in that year.

16       (1) *Cost-of-living adjustment.* — For purposes of subsection  
17 (a), the cost-of-living adjustment for any calendar year is the  
18 percentage (if any) by which the consumer price index for the  
19 preceding calendar year exceeds the consumer price index for  
20 the calendar year two thousand two.

21       (2) *Consumer price index for any calendar year.* — For  
22 purposes of subdivision (1) of this subsection, the consumer  
23 price index for any calendar year is the average of the federal  
24 consumer price index as of the close of the twelve-month period  
25 ending on the thirty-first day of August of that calendar year.

26       (3) *Consumer price index.* — For purposes of subdivision  
27 (2) above, the term “Federal Consumer Price Index” means the  
28 most recent consumer price index for all urban consumers  
29 published by the United States department of labor.

30       (4) *Rounding.* — If any increase under subdivision (1)  
31 above is not a multiple of fifty dollars, the increase shall be  
32 rounded to the next lowest multiple of fifty dollars.

33       (b) *Amount of credit allowed.*

34       (1) *Credit allowed.* — An eligible small business taxpayer  
35 is allowed a credit against the portion of taxes imposed by this  
36 state that are attributable to and the direct consequence of the  
37 eligible small business taxpayer’s qualified investment in a new  
38 or expanded business in this state which results in the creation  
39 of at least ten new jobs within twelve months after placing  
40 qualified investment into service. The amount of this credit is  
41 determined as provided in subdivision (2) of this subsection.

42       (2) *Amount of credit.* — The annual amount of credit  
43 allowable under this subsection is determined by dividing the  
44 amount of the eligible small business taxpayer’s “qualified  
45 investment” (determined under section eight of this article) in  
46 “property purchased for business expansion” (as defined in  
47 section three of this article) by ten. The amount of qualified  
48 investment so apportioned to each year of the ten-year credit  
49 period is the annual measure against which taxpayer’s annual  
50 new jobs percentage (determined under subsection (d) of this  
51 section,) is applied. The product of this calculation establishes

52 the maximum amount of credit allowable each year for ten  
53 consecutive years under this section due to the qualified  
54 investment.

55 (3) *Application of credit.* — The annual credit allowance  
56 must be taken beginning with the taxable year in which the  
57 taxpayer places the qualified investment into service or use in  
58 this state, unless the taxpayer elects to delay the beginning of  
59 the ten-year credit period until the next succeeding taxable year.  
60 This election is made in the annual income tax return filed  
61 under this chapter by the taxpayer for the taxable year in which  
62 the qualified investment is first placed in service or use. Once  
63 made, this election cannot be revoked. The annual credit  
64 allowance shall be taken and applied in the manner prescribed  
65 in section seven of this article.

66 (c) *New jobs.* — The term “new jobs” has the meaning  
67 ascribed to it in section three of this article.

68 (1) The term “new employee” has the meaning ascribed to  
69 it in section three of this article: *Provided*, That this term does  
70 not include employees filling new jobs who:

71 (A) Are related individuals, as defined in subsection (i),  
72 section 51 of the Internal Revenue Code of 1986, or a person  
73 who owns ten percent or more of the business with such  
74 ownership interest to be determined under rules set forth in  
75 subsection (b), section 267 of said Internal Revenue Code; or

76 (B) Worked for the taxpayer during the six-month period  
77 ending on the date the taxpayer’s qualified investment is placed  
78 in service or use and is rehired by the taxpayer during the  
79 six-month period beginning on the date taxpayer’s qualified  
80 investment is placed in service or use.

81 (2) *When a job is attributable.* — An employee’s position  
82 is directly attributable to the qualified investment if:

83 (A) The employee's service is performed or his or her base  
84 of operations is at the new or expanded business facility;

85 (B) The position did not exist prior to the construction,  
86 renovation, expansion or acquisition of the business facility and  
87 the making of the qualified investment; and

88 (C) But for the qualified investment, the position would not  
89 have existed.

90 (d) *New jobs percentage.* — The annual new jobs percent-  
91 age is based on the number of new jobs created in this state by  
92 the taxpayer directly attributable to taxpayer's qualified  
93 investment.

94 (1) If at least ten new jobs are created and filled during the  
95 taxable year in which the qualified investment is placed in  
96 service or use, the applicable new jobs percentage is ten  
97 percent.

98 (2) During each of the remaining nine years of the ten-year  
99 credit period, the annual new jobs percentage is based on the  
100 average number of new jobs filled during that taxable year:  
101 *Provided*, That for purposes of estimating the new jobs percent-  
102 age that will be applicable for each subsequent credit year, the  
103 taxpayer shall use the new jobs percentage allowable for the  
104 taxable year immediately prior thereto, and in the annual  
105 income tax return filed under this chapter for the then current  
106 tax year, the taxpayer shall redetermine his or her allowable  
107 new jobs percentage for that year based on the average number  
108 of new employees employed in new jobs during that year  
109 (determined on a monthly basis) created as the direct result of  
110 the taxpayer's qualified investment.

111 (e) *Certification of new jobs.* — With the annual income tax  
112 return filed under this chapter for each taxable year during the  
113 ten-year credit period, the taxpayer shall certify:



- 114 (1) The new jobs percentage for that taxable year;
- 115 (2) The amount of the credit allowance for that year;
- 116 (3) If the business is a partnership, limited liability com-  
117 pany or electing small business corporation, the amount of  
118 credit allocated to the partners, members or shareholders, as the  
119 case may be for that year;
- 120 (4) That qualified investment property continue to be used  
121 in the business, or if any of it was disposed of during the year  
122 the date of disposition and that the property was not disposed of  
123 prior to expiration of its useful life, as determined under section  
124 eight of this article; and
- 125 (5) That the new jobs created by the qualified investment  
126 continue to exist and are filled by persons who meet the  
127 definition of new employee (as defined in this section).
- 128 (f) *Small business project.* — A small business may apply  
129 to the commissioner under section six of this article for  
130 certification as a project if that project will create at least ten  
131 new jobs.
- 132 (g) *Rules.* — The commissioner may prescribe such rules  
133 as he or she determines necessary in order to determine the  
134 amount of credit allowed under this section to a taxpayer; to  
135 verify a taxpayer's continued entitlement to claim the credit;  
136 and to verify proper application of the credit allowed.
- 137 (h) The commissioner may require a taxpayer intending to  
138 claim credit under this section to file with the commissioner a  
139 notice of intent to claim this credit, before the taxpayer begins  
140 reducing his or her monthly or quarterly installment payments  
141 of estimated tax for the credit provided in this section.

**§11-13Q-11. Forfeiture of unused tax credits; redetermination of credit allowed.**

1           (a) *Disposition of property or cessation of use.* — If during  
2 any taxable year, property with respect to which a tax credit has  
3 been allowed under this article:

4           (1) Is disposed of prior to the end of its useful life, as  
5 determined under section eight of this article; or

6           (2) Ceases to be used in an eligible business of the taxpayer  
7 in this state prior to the end of its useful life, as determined  
8 under section eight of this article, then the unused portion of the  
9 credit allowed for the property is forfeited for the taxable year  
10 and all ensuing years. Additionally, except when the property  
11 is damaged or destroyed by fire, flood, storm or other casualty,  
12 or is stolen, the taxpayer shall redetermine the amount of credit  
13 allowed in all earlier years by reducing the applicable percent-  
14 age of cost of the property allowed under section eight of this  
15 article, to correspond with the percentage of cost allowable for  
16 the period of time that the property was actually used in this  
17 state in the new or expanded business of the taxpayer. The  
18 taxpayer shall then file a reconciliation statement for the year  
19 in which the forfeiture occurs and pay any additional taxes  
20 owed due to reduction of the amount of credit allowable for the  
21 earlier years, plus interest and any applicable penalties. The  
22 reconciliation statement shall be filed with the annual return for  
23 the primary tax for which the taxpayer is liable under articles  
24 thirteen and twenty-three of this chapter.

25           (b) *Cessation of operation of business facility.* — If during  
26 any taxable year the taxpayer ceases operation of a business  
27 facility in this state for which credit was allowed under this  
28 article, before expiration of the useful life of property with  
29 respect to which tax credit has been allowed under this article,  
30 then the unused portion of the allowed credit is forfeited for the

31 taxable year and for all ensuing years. Additionally, except  
32 when the cessation is due to fire, flood, storm or other casualty,  
33 the taxpayer shall redetermine the amount of credit allowed in  
34 earlier years by reducing the applicable percentage of cost of  
35 the property allowed under section eight of this article, to  
36 correspond with the percentage of cost allowable for the period  
37 of time that the property was actually used in this state in a  
38 business of the taxpayer that is taxable under article thirteen,  
39 twenty-three or twenty-four of this chapter, or in the case of a  
40 sole proprietorship, article twenty-one of this chapter. The  
41 taxpayer shall then file a reconciliation statement with the  
42 annual return for the primary tax for which the taxpayer is  
43 liable under articles thirteen, twenty-one or twenty-three of this  
44 chapter, for the year in which the forfeiture occurs, and pay any  
45 additional taxes owed due to the reduction of the amount of  
46 credit allowable for the earlier years, plus interest and any  
47 applicable penalties.

48 (c) *Reduction in number of employees.* — If during any  
49 taxable year subsequent to the taxable year in which the new  
50 jobs percentage is redetermined as provided in section nine of  
51 this article, the average number of employees of the taxpayer,  
52 for the then current taxable year, employed in positions created  
53 because of and directly attributable to the qualified investment  
54 falls below the minimum number of new jobs created upon  
55 which the taxpayer's annual credit allowance is based, the  
56 taxpayer shall calculate what his or her annual credit allowance  
57 would have been had his or her new jobs percentage been  
58 determined based upon the average number of employees, for  
59 the then current taxable year, employed in positions created  
60 because of and directly attributable to the qualified investment.  
61 The difference between the result of this calculation and the  
62 taxpayer's annual credit allowance for the qualified investment  
63 as determined under section four of this article, is forfeited for  
64 the then current taxable year, and for each succeeding taxable  
65 year unless for a succeeding taxable year the taxpayer's average

66 employment in positions directly attributable to the qualified  
67 investment once again meets the level required to enable the  
68 taxpayer to utilize its full annual credit allowance for that  
69 taxable year.

**§11-13Q-12. Recapture of credit; recapture tax imposed.**

1 (a) *When recapture tax applies.* —

2 (1) Any person who places qualified investment property in  
3 service or use and who fails to use the qualified investment  
4 property for at least the period of its useful life (determined as  
5 of the time the property was placed in service or use), or the  
6 period of time over which tax credits allowed under this article  
7 with respect to the property are applied under this article,  
8 whichever period is less, and who reduces the number of its  
9 employees filling new jobs in its business in this state, which  
10 were created and are directly attributable to the qualified  
11 investment property, after the third taxable year in which the  
12 qualified investment property was placed in service or use, or  
13 fails to continue to employ individuals in all the new jobs  
14 created as a direct result of the qualified investment property  
15 and used to qualify for the credit allowed by this article, prior  
16 to the end of the tenth taxable year after the qualified invest-  
17 ment property was placed in service or use, the person shall pay  
18 the recapture tax imposed by subsection (b) of this section.

19 (2) This section does not apply when section thirteen of this  
20 article applies. However, the successor, or the successors, and  
21 the person, or persons, who previously claimed credit under this  
22 article with respect to the qualified investment property and the  
23 new jobs attributable thereto, are jointly and severally liable for  
24 payment of any recapture tax subsequently imposed under this  
25 section with respect to the qualified investment property and  
26 new jobs.

27           (b) *Recapture tax imposed.* —

28           The recapture tax imposed by this subsection is the amount  
29           determined as follows:

30           (1) *Full recapture.* — If the taxpayer prematurely removes  
31           qualified investment property placed in service (when consid-  
32           ered as a class) from economic service in the taxpayer's  
33           qualified investment business activity in this state, and the  
34           number of employees filling the new jobs created by the person  
35           falls below the number of new jobs required to be created in  
36           order to qualify for the amount of credit being claimed, the  
37           taxpayer shall recapture the amount of credit claimed under  
38           section seven of this article for the taxable year, and all preced-  
39           ing taxable years, on qualified investment property which has  
40           been prematurely removed from service. The amount of tax due  
41           under this subdivision is an amount equal to the amount of  
42           credit that is recaptured under this subdivision.

43           (2) *Partial recapture.* — If the taxpayer prematurely  
44           removes qualified investment property from economic service  
45           in the taxpayer's qualified investment business activity in this  
46           state, and the number of employees filling the new jobs created  
47           by the person remains twenty or more, but falls below the  
48           number necessary to sustain continued application of credit  
49           determined by use of the new job percentage upon which the  
50           taxpayer's one-tenth annual credit allowance was determined  
51           under section four or section ten of this article, taxpayer shall  
52           recapture an amount of credit equal to the difference between:

53           (A) The amount of credit claimed under section seven of  
54           this article for the taxable year, and all preceding taxable years;  
55           and

56           (B) The amount of credit that would have been claimed in  
57           those years if the amount of credit allowable under section four  
58           or ten of this article had been determined based on the qualified

59 investment property which remains in service using the average  
60 number of new jobs filled by employees in the taxable year for  
61 which recapture occurs. The amount of tax due under this  
62 subdivision is an amount equal to the amount of credit that is  
63 recaptured under this subdivision.

64 (3) *Additional recapture.* — If after a partial recapture  
65 under subdivision (2) of this subsection, the taxpayer further  
66 reduces the number of employees filling new jobs, the taxpayer  
67 shall recapture an additional amount determined as provided  
68 under subdivision (1) of this subsection. The amount of tax due  
69 under this subdivision is an amount equal to the amount of  
70 credit that is recaptured under this subdivision.

71 (c) *Recapture of credit allowed for projects.* — The  
72 commissioner may file in the West Virginia register an emer-  
73 gency legislative rule explaining how the provisions of this  
74 section are applied in the case of projects certified under section  
75 six of this article.

76 (d) *Payment of recapture tax.* — The amount of tax  
77 recaptured under this section is due and payable on the day the  
78 person's annual return is due for the taxable year in which this  
79 section applies, under article twenty-one or twenty-four of this  
80 chapter. When the employer is a partnership, limited liability  
81 company or S corporation for federal income tax purposes, the  
82 recapture tax shall be paid by those persons who are partners in  
83 the partnership, members in the company, or shareholders in the  
84 S corporation, in the taxable year in which recapture occurs  
85 under this section.

86 (e) *Rules.* — The commissioner may promulgate such rules  
87 as may be useful or necessary to carry out the purpose of this  
88 section and to implement the intent of the Legislature. Rules  
89 shall be promulgated in accordance with the provisions of  
90 article three, chapter twenty-nine-a of this code.

**§11-13Q-13. Transfer of qualified investment to successors.**

1       (a) *Mere change in form of business.* — Property may not  
2 be treated as disposed of under section eleven of this article, by  
3 reason of a mere change in the form of conducting the business  
4 as long as the property is retained in the successor business in  
5 this state, and the transferor business retains a controlling  
6 interest in the successor business. In this event, the successor  
7 business is allowed to claim the amount of credit still available  
8 with respect to the business facility or facilities transferred, and  
9 the transferor business may not be required to redetermine the  
10 amount of credit allowed in earlier years.

11       (b) *Transfer or sale to successor.* — Property is not treated  
12 as disposed of under section eleven of this article by reason of  
13 any transfer or sale to a successor business which continues to  
14 operate the business facility in this state. Upon transfer or sale,  
15 the successor shall acquire the amount of credit that remains  
16 available under this article for each subsequent taxable year and  
17 the transferor business is not required to redetermine the  
18 amount of credit allowed in earlier years.

**§11-13Q-14. Identification of investment credit property.**

1       Every taxpayer who claims credit under this article shall  
2 maintain sufficient records to establish the following facts for  
3 each item of qualified property:

4       (1) Its identity;

5       (2) Its actual or reasonably determined cost;

6       (3) Its straight-line depreciation life;

7       (4) The month and taxable year in which it was placed in  
8 service;

9       (5) The amount of credit taken; and

- 10 (6) The date it was disposed of or otherwise ceased to be  
11 qualified property.

**§11-13Q-15. Failure to keep records of investment credit property.**

1 A taxpayer who does not keep the records required for  
2 identification of investment credit property is subject to the  
3 following rules:

4 (1) A taxpayer is treated as having disposed of, during the  
5 taxable year, any investment credit property which the taxpayer  
6 cannot establish was still on hand, in this state, at the end of that  
7 year.

8 (2) If a taxpayer cannot establish when investment credit  
9 property reported for purposes of claiming this credit returned  
10 during the taxable year was placed in service, the taxpayer is  
11 treated as having placed it in service in the most recent prior  
12 year in which similar property was placed in service, unless the  
13 taxpayer can establish that the property placed in service in the  
14 most recent year is still on hand. In that event, the taxpayer will  
15 be treated as having placed the returned property in service in  
16 the next most recent year.

**§11-13Q-16. Interpretation and construction.**

1 (a) No inference, implication or presumption of legislative  
2 construction or intent may be drawn or made by reason of the  
3 location or grouping of any particular section, provision or  
4 portion of this article; and no legal effect may be given to any  
5 descriptive matter or heading relating to any section, subsection  
6 or paragraph of this article.

7 (b) The provisions of this article shall be reasonably  
8 construed in order to effectuate the legislative intent recited in  
9 section two of this article.



**§11-13Q-17. Severability.**

1 (a) If any provision of this article or the application thereof  
2 is for any reason adjudged by any court of competent jurisdic-  
3 tion to be invalid, the judgment may not affect, impair or  
4 invalidate the remainder of the article, but shall be confined in  
5 its operation to the provision thereof directly involved in the  
6 controversy in which the judgment shall have been rendered,  
7 and the applicability of the provision to other persons or  
8 circumstances may not be affected thereby.

9 (b) If any provision of this article or the application thereof  
10 is made invalid or inapplicable by reason of the repeal or any  
11 other invalidation of any statute therein addressed or referred  
12 to, such invalidation or inapplicability may not affect, impair or  
13 invalidate the remainder of the article, but shall be confined in  
14 its operation to the provision thereof directly involved with,  
15 pertaining to, addressing or referring to the statute, and the  
16 application of the provision with regard to other statutes or in  
17 other instances not affected by any such repealed or invalid  
18 statute may not be abrogated or diminished in any way.

**§11-13Q-18. Burden of proof; application required; failure to make timely application.**

1 (a) The burden of proof is on the taxpayer to establish by  
2 clear and convincing evidence that the taxpayer is entitled to the  
3 benefits allowed by this article.

4 (b) *Application for credit required.*

5 (1) *Application required.* — Notwithstanding any provision  
6 of this article to the contrary, no credit is allowed or applied  
7 under this article for any qualified investment property placed  
8 in service or use until the person asserting a claim for the  
9 allowance of credit under this article makes written application  
10 to the commissioner for allowance of credit as provided in this

11 subsection. An application for credit shall be filed no later than  
12 the last day of the due date for filing the tax returns required  
13 under article twenty-one or twenty-four of this chapter for the  
14 taxable year in which the property to which the credit relates is  
15 placed in service or use and all information required by the  
16 form is provided.

17 (2) *Failure to make timely application.* — The failure to  
18 timely apply for the credit results in the forfeiture of fifty  
19 percent of the annual credit allowance otherwise allowable  
20 under this article. This penalty applies annually until the  
21 application is filed.

**§11-13Q-19. Business eligible for credit entitlements.**

1 (a) Notwithstanding any other provision of this article to the  
2 contrary, except as provided in section five of this article, no  
3 entitlement to the economic opportunity tax credit may result  
4 from, and no credit is available to any taxpayer for, investment  
5 placed in service or use except for taxpayers engaged in the  
6 following industries or business activities:

7 (1) Manufacturing, including, but not limited to, chemical  
8 processing and chemical manufacturing, manufacture of wood  
9 products and forestry products, manufacture of aluminum,  
10 manufacture of paper, paper processing, recyclable paper  
11 processing, food processing, commercial hydroponic growing  
12 of food crops, manufacture of aircraft or aircraft parts, manu-  
13 facture of automobiles or automobile parts, and all other  
14 manufacturing activities, but not timbering or timber severance  
15 or timber hauling, or mineral severance, hauling, processing or  
16 preparation, or coal severance, hauling, processing or prepara-  
17 tion or synthetic fuel manufacturing taxable under section two-  
18 f, article thirteen of this chapter;

19 (2) Information processing, including, but not limited to,  
20 telemarketing, information processing, systems engineering,  
21 back office operations and software development;

22 (3) The activity of warehousing, including, but not limited  
23 to, commercial warehousing and the operation of regional  
24 distribution centers by manufacturers, wholesalers or retailers;

25 (4) The activity of goods distribution (exclusive of retail  
26 trade);

27 (5) Destination-oriented recreation and tourism; and

28 (6) Research and development, as defined in section three  
29 of this article.

30 (b) Notwithstanding the fact that a company, entity or  
31 taxpayer is engaged in an industry or business activity enumer-  
32 ated in subsection (a) of this section, the company, entity or  
33 taxpayer must qualify for the economic opportunity tax credit  
34 by fulfilling the qualified investment, jobs creation and other  
35 credit entitlement requirements of this article in order to obtain  
36 entitlement to any credit under this article. Failure to fulfill the  
37 statutory requirements of this article results in a partial or  
38 complete loss of the tax credit.

**§11-13Q-20. Tax credit review and accountability.**

1 (a) Beginning on the first day of February, two thousand six  
2 and every third year thereafter, the commissioner shall submit  
3 to the governor, the president of the Senate and the speaker of  
4 the House of Delegates a tax credit review and accountability  
5 report evaluating the cost effectiveness of the economic  
6 opportunity credit during the most recent three-year period for  
7 which information is available. The criteria to be evaluated  
8 shall include, but not be limited to, for each year of the three-  
9 year period:

- 10 (1) The numbers of taxpayers claiming the credit;
- 11 (2) The net number of new jobs created by all taxpayers  
12 claiming the credit;
- 13 (3) The cost of the credit;
- 14 (4) The cost of the credit per new job created; and
- 15 (5) Comparison of employment trends for an industry and  
16 for taxpayers within the industry that claim the credit.
- 17 (b) Taxpayers claiming the credit shall provide any infor-  
18 mation the tax commissioner may require to prepare the report:  
19 *Provided*, That the information provided is subject to the  
20 confidentiality and disclosure provisions of sections five-d and  
21 five-s, article ten of this chapter.

**§11-13Q-21. Effective date; election; notice of claim or election  
under transition rules.**

- 1 (a) The credit allowed by this article is allowed for quali-  
2 fied investment placed in service or use on or after the first day  
3 of January, two thousand three, subject to the rules contained in  
4 this section.
- 5 (b) *Election*. — Notwithstanding the general rule stated in  
6 subsection (a), the taxpayer may elect to apply the credit  
7 allowed under article thirteen-c of this chapter in lieu of the  
8 credit allowed by this article to property purchased or leased for  
9 business expansion that is placed in service or use on or after  
10 the first day of January, two thousand three, if at least one of  
11 the following subdivisions applies to the property:
- 12 (1) The new or expanded business facility was constructed,  
13 reconstructed or erected, pursuant to a written construction  
14 contract executed prior to the first day of January, two thousand

15 three, as limited to the provisions of the contract as of that date  
16 then binding on the taxpayer, but only to the extent the new or  
17 expanded business facility is placed in service or use prior to  
18 the first day of January, two thousand four;

19 (2) The new or expanded business facility that is part of a  
20 project described in subsection (a), section six of this article,  
21 was constructed, reconstructed or erected, pursuant to a written  
22 construction contract executed prior to the first day of January,  
23 two thousand three, as limited to the provisions of such contract  
24 as of such date then binding on the taxpayer;

25 (3) The new or expanded business facility was purchased or  
26 leased pursuant to a written contract executed prior to the first  
27 day of January, two thousand three, as limited to the provisions  
28 then binding on the taxpayer as of that date, but only to the  
29 extent the new or expanded business facility is placed in service  
30 or use prior to the first day of January, two thousand four; or

31 (4) The machinery or equipment or other tangible personal  
32 property purchased or leased for business expansion at a new or  
33 expanded business facility was purchased or leased by the  
34 taxpayer pursuant to a written contract to purchase or lease  
35 identifiable tangible personal property executed before the first  
36 day of January, two thousand three, as limited to the provisions  
37 of the written contract then binding on the taxpayer, but only to  
38 the extent the tangible personal property purchased or leased  
39 under the contract is placed in service or use before the first day  
40 of January, two thousand four.

41 (c) *Notice of election required.* – Any person intending to  
42 make the election allowed in subsection (b) of this section shall  
43 file written notice of his or her intention with the tax commis-  
44 sioner on or before the thirty-first day of December, two  
45 thousand two. In the case of a multiparticipant project, this  
46 notice may be filed by the managing project participant on

47 behalf of all participants in the project. The notice shall be in a  
 48 form prescribed by the tax commissioner and all information  
 49 required by the form shall be provided.

50 (d) *Failure to file notice.* — If any person fails to timely  
 51 file the notice required by subsection (c) of this section, that  
 52 person is precluded from claiming credit under article thirteen-c  
 53 of this chapter for property placed in service or use after the  
 54 thirty-first day of December, two thousand two, and may claim  
 55 credit under this article to the extent the credit is allowable  
 56 under this article.

**ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.**

- §11-13R-1. Short title.
- §11-13R-2. Legislative finding and purpose.
- §11-13R-3. Definitions.
- §11-13R-4. Annual combined qualified research and development expenditure, qualified research and development expenses.
- §11-13R-5. Amount of credit allowed.
- §11-13R-6. Application of credit.
- §11-13R-7. Forfeiture of unused tax credit; redetermination of credit allowed.
- §11-13R-8. Transfer of qualified research and development investment to successors.
- §11-13R-9. Identification of investment credit property.
- §11-13R-10. Failure to keep records of qualified research and development credit property.
- §11-13R-11. Tax credit review and accountability.
- §11-13R-12. Effective date.

**§11-13R-1. Short title.**

- 1 This article may be cited as the “West Virginia Strategic
- 2 Research and Development Tax Credit Act”.

**§11-13R-2. Legislative finding and purpose.**

- 1 The Legislature finds that the encouragement of research
- 2 and development in this state is in the public interest and

3 promotes economic growth and development and the general  
4 welfare of the people of this state. In order to encourage  
5 research and development in this state and thereby increase  
6 employment and economic development, there is hereby  
7 provided a strategic research and development tax credit.

### §11-13R-3. Definitions.

1 (a) *General.* — When used in this article, or in the adminis-  
2 tration of this article, terms defined in subsection (b) of this  
3 section have the meanings ascribed to them by this section,  
4 unless a different meaning is clearly required by either the  
5 context in which the term is used, or by specific definition, in  
6 this article.

7 (b) *Terms defined.*

8 (1) “Base amount” means:

9 (A) The average annual combined qualified research and  
10 development expenditure for the three taxable years immedi-  
11 ately preceding the taxable year for which a credit is claimed  
12 under this article;

13 (B) For a taxpayer that has filed a tax return under article  
14 twenty-three of this chapter for fewer than three but at least one  
15 prior taxable year, determined on the basis of all filings by the  
16 taxpayer’s controlled group, the base amount is the average  
17 annual combined qualified research and development expendi-  
18 ture for the number of immediately preceding taxable years,  
19 other than short taxable years, during which the taxpayer has  
20 filed a tax return under article twenty-three of this chapter; or

21 (C) For a taxpayer that has not filed a tax return under  
22 article twenty-three of this chapter for at least one taxable year,  
23 determined on the basis of all filings by the taxpayer’s con-  
24 trolled group, the base amount is zero.

25       (2) “Commissioner” and “tax commissioner” are used  
26 interchangeably herein and mean the tax commissioner of the  
27 state of West Virginia, or his or her delegate.

28       (3) “Controlled group” means a controlled group as defined  
29 by section 1563 of the Internal Revenue Code of 1986, as  
30 amended.

31       (4) “Corporation” means any corporation, limited liability  
32 company, joint-stock company or association, and any business  
33 conducted by a trustee or trustees wherein interest or ownership  
34 is evidenced by a certificate of interest or ownership or similar  
35 written instrument.

36       (5) “Delegate” in the phrase “or his or her delegate,” when  
37 used in reference to the tax commissioner, means any officer or  
38 employee of the state tax division of the department of tax and  
39 revenue duly authorized by the tax commissioner directly, or  
40 indirectly by one or more redelegations of authority, to perform  
41 the functions mentioned or described in this article.

42       (6) “Eligible taxpayer” means any person that is subject to  
43 the tax imposed by article twenty-three or article twenty-four of  
44 this chapter that is engaged in qualified research and develop-  
45 ment that has paid or incurred investment in qualified research  
46 and development credit property or that has paid or incurred  
47 qualified research and development expenses as defined in  
48 section four of this article. In the case of a sole proprietorship  
49 subject to neither the tax imposed by article twenty-three nor  
50 the tax imposed by article twenty-four, the term “eligible  
51 taxpayer” means any sole proprietor who is subject to the tax  
52 imposed by article twenty-one of this chapter and who is  
53 engaged in qualified research and development that has paid or  
54 incurred investment in qualified research and development  
55 credit property or that has paid or incurred qualified research



56 and development expenses as defined in section four of this  
57 article.

58 (7) "Partnership" includes a syndicate, group, pool, joint  
59 venture or other unincorporated organization through or by  
60 means of which any business, financial operation or venture is  
61 carried on, and which is not a trust or estate, a corporation or a  
62 sole proprietorship. The term "partner" includes a member in  
63 such a syndicate, group, pool, joint venture or other organiza-  
64 tion.

65 (8) "Person" includes any natural person, corporation,  
66 limited liability company or partnership.

67 (9) "Qualified research and development credit property"  
68 means depreciable property purchased for the conduct of  
69 qualified research and development.

70 (10) "Research and development" means systematic  
71 scientific, engineering or technological study and investigation  
72 in a field of knowledge in the physical, computer or software  
73 sciences, often involving the formulation of hypotheses and  
74 experimentation, for the purpose of revealing new facts,  
75 theories or principles, or increasing scientific knowledge, which  
76 may reveal the basis for new or enhanced products, equipment  
77 or manufacturing processes.

78 (A) Research and development includes, but is not limited  
79 to, design, refinement and testing of prototypes of new or  
80 improved products, or design, refinement and testing of  
81 manufacturing processes before commercial sales relating  
82 thereto have begun. For purposes of this section, commercial  
83 sales includes, but is not limited to, sales of prototypes or sales  
84 for market testing.

85 (B) Research and development does not include:

- 86 (i) Market research;
- 87 (ii) Sales research;
- 88 (iii) Efficiency surveys;
- 89 (iv) Consumer surveys;
- 90 (v) Product market testing;
- 91 (vi) Product testing by product consumers or through  
92 consumer surveys for evaluation of consumer product perfor-  
93 mance or consumer product usability;
- 94 (vii) The ordinary testing or inspection of materials or  
95 products for quality control (quality control testing);
- 96 (viii) Management studies;
- 97 (ix) Advertising;
- 98 (x) Promotions;
- 99 (xi) The acquisition of another's patent, model, production  
100 or process or investigation or evaluation of the value or  
101 investment potential related thereto;
- 102 (xii) Research in connection with literary, historical or  
103 similar activities;
- 104 (xiii) Research in the social sciences, economics, humani-  
105 ties or psychology and other non-technical activities; and
- 106 (xiv) The providing of sales services or any other service,  
107 whether technical service or non-technical service.
- 108 (11) "Related person" means:

109 (A) A corporation, limited liability company, partnership,  
110 association or trust controlled by the taxpayer;

111 (B) An individual, corporation, limited liability company,  
112 partnership, association or trust that is in control of the tax-  
113 payer;

114 (C) A corporation, limited liability company, partnership,  
115 association or trust controlled by an individual, corporation,  
116 partnership, association or trust that is in control of the tax-  
117 payer; or

118 (D) A member of the same controlled group as the tax-  
119 payer.

120 For purposes of this article, “control,” with respect to a  
121 corporation, means ownership, directly or indirectly, of stock  
122 possessing fifty percent or more of the total combined voting  
123 power of all classes of the stock of the corporation entitled to  
124 vote. “Control,” with respect to a trust, means ownership,  
125 directly or indirectly, of fifty percent or more of the beneficial  
126 interest in the principal or income of the trust. The ownership  
127 of stock in a corporation, of a capital or profits interest in a  
128 partnership or association or of a beneficial interest in a trust is  
129 determined in accordance with the rules for constructive  
130 ownership of stock provided in section 267(c) of the United  
131 States Internal Revenue Code of 1986, as amended, other than  
132 paragraph (3) of that section.

133 (12) “Taxpayer” means any person subject to the tax  
134 imposed by article twenty-three or twenty-four of this chapter  
135 or both. In the case of a sole proprietorship subject to neither  
136 the tax imposed by article twenty-three nor the tax imposed by  
137 article twenty-four, the term “taxpayer” means any sole  
138 proprietor who is subject to the tax imposed by article twenty-  
139 one of this chapter.

140 (13) "This code" means the code of West Virginia, one  
141 thousand nine hundred thirty-one, as amended.

142 (14) "This state" means the state of West Virginia.

**§11-13R-4. Annual combined qualified research and development  
expenditure, qualified research and development  
expenses.**

1 (a) *General.* — The annual combined qualified research  
2 and development expenditure is the sum of the applicable  
3 percentage of the cost of depreciable property purchased for the  
4 conduct of a qualified research and development activity, which  
5 is placed in service or use in this state during the taxable year,  
6 plus the amount of qualified research and development ex-  
7 penses (as defined in this section) deducted by the eligible  
8 taxpayer, for federal income tax purposes for the taxable year.

9 (b) *Applicable percentage of the cost of depreciable*  
10 *property.* — For the purpose of subsection (a), the applicable  
11 percentage of the cost of depreciable property is determined  
12 under the following table:

13 If useful life is:	The applicable percentage is:
14 Less than 4 years . . . . .	33 1/3
15 4 years or more but less than 6 years . . . . .	66 2/3
16 6 years or more . . . . .	100

17 The useful life of any property for purposes of this section  
18 is determined by those methods as the tax commissioner may  
19 require as of the date the property is first placed in service or  
20 use in this state by the taxpayer.

21 (c) *Placed in service or use.* — For purposes of the credit  
22 allowed by this article, property is considered placed in service  
23 or use in the earlier of the following taxable years:

24       (1) The taxable year in which, under the taxpayer's depreci-  
25       ation practice, the period for depreciation with respect to the  
26       property begins; or

27       (2) The taxable year in which the property is placed in a  
28       condition or state of readiness and availability for a specifically  
29       assigned function.

30       (d) *Cost of property.* — For purposes of subsection (a) of  
31       this section, the cost of each property purchased for the conduct  
32       of a qualified research and development activity is determined  
33       under the following rules:

34       (1) *Trade-ins.* — Cost does not include the value of  
35       property given in trade or exchange for the property purchased  
36       for conduct of the research and development activity.

37       (2) *Damaged, destroyed or stolen property.* — If property  
38       is damaged or destroyed by fire, flood, storm or other casualty,  
39       or is stolen, then the cost of replacement property does not  
40       include any insurance proceeds received in compensation for  
41       the loss.

42       (3) *Rental property.* — The cost of property acquired by  
43       lease for a term of ten years or longer shall be one hundred  
44       percent of the rent reserved for the primary term of the lease,  
45       not to exceed twenty years.

46       (4) *Property purchased for multiple use.* — The cost of  
47       property purchased for multiple business use, including direct  
48       use in the conduct of a qualified research and development  
49       activity, together with some other business or activity not  
50       eligible under this section, shall be apportioned between such  
51       activities. The amount apportioned to the conduct of the  
52       qualified research and development activity is considered to be  
53       eligible investment subject to the conditions and limitations of  
54       this section.

55       (5) *Self-constructed property.* — In the case of  
56 self-constructed property, the cost thereof is the amount  
57 properly charged to the capital account for depreciation in  
58 accordance with federal income tax law.

59       (e) *Qualified research and development expenses.* — For  
60 purposes of this section:

61       (1) “Qualified research and development expenses” means  
62 the sum of in-house and contract research and development  
63 expenses for qualified research and development allocated to  
64 this state, which are paid or incurred by the eligible taxpayer  
65 during the taxable year. In no event does “qualified research  
66 and development expenses” include:

67       (A) Any expense that must be capitalized and depreciated  
68 for federal income tax purposes, or any expenditure paid or  
69 incurred for the purpose of ascertaining the existence, location,  
70 extent or quality of any deposit of coal, limestone or other  
71 natural resource, including oil and natural gas; or

72       (B) Any wage or salary expense for wages or salary  
73 reported on form W-2 for federal income tax purposes on which  
74 the personal income tax is imposed under article twenty-one of  
75 this chapter, and against which tax the credit allowed under this  
76 article is applied.

77       (2) “In-house research and development expenses” means:

78       (A) Wages paid or incurred to an employee for qualified  
79 services performed in this state by the employee;

80       (B) Amounts paid or incurred for supplies used in the  
81 conduct of qualified research and development in this state; or

82 (C) Amounts paid or incurred to another person for the right  
83 to use personal property in the conduct of qualified research and  
84 development in this state.

85 (3) "Qualified services" means services consisting of:

86 (A) Engaging in qualified research and development;

87 (B) Engaging in the direct supervision or direct support of  
88 qualified research and development; or

89 (C) If substantially all of the services performed by an  
90 individual for the taxpayer during the taxable year consist of  
91 services meeting the requirements of paragraph (A) or (B) of  
92 this subdivision, the term "qualified services" means all  
93 services performed by the individual for the taxable year.

94 (4) "Supplies" means any tangible property other than:

95 (A) Land or improvements to land; or

96 (B) Property of a character subject to depreciation for  
97 federal income tax purposes.

98 (5) "Wages" has the meaning given to that term by section  
99 3401(a) of the Internal Revenue Code of 1986, as amended. In  
100 the case of self-employed individuals and owner-employees  
101 (within the meaning of section 401(c)(1) of the Internal  
102 Revenue Code), the term "wages" includes the earned income  
103 (as defined in section 401(c)(2) of the Internal Revenue Code)  
104 of the employee. The term "wages" shall not include any  
105 amount taken into account in determining the federal targeted  
106 jobs credit under section 51(a) of the Internal Revenue Code.

107 (6) "Contract research and development expenses" means:

108 (A) In general, sixty-five percent of any amount paid or  
109 incurred by the taxpayer to any person (other than an employee  
110 of the taxpayer) for qualified research and development; and

111 (B) If any contract research and development expenses paid  
112 or incurred during any taxable year are attributable to qualified  
113 research and development to be conducted after the close of the  
114 taxable year, that amount is treated as paid or incurred during  
115 the taxable year during which the qualified research and  
116 development is conducted.

117 (7) “Qualified research and development” means research  
118 and development that occurs in West Virginia.

119 (8) *Excluded property.* — Any property owned or leased by  
120 the taxpayer, the cost of which was the basis of a credit against  
121 tax taken under any other article of this chapter, does not  
122 qualify as property purchased for the conduct of a qualified  
123 research and development activity for purposes of this article.

124 (9) *Excluded expense.* — Any expense paid or incurred by  
125 the taxpayer, which was the basis of a credit against tax taken  
126 under any other article of this chapter, does not qualify as a  
127 qualified research and development expense for purposes of this  
128 article.

129 (f) *Research and development by colleges, universities and*  
130 *certain research and development organizations.* — In general,  
131 sixty-five percent of the amount paid or incurred by a taxpayer  
132 to a research institution as defined in this section for research  
133 and development to be performed by the research institution is  
134 treated as contract research and development expenses. The  
135 preceding sentence applies only if the amount is paid or  
136 incurred pursuant to a written research and development  
137 agreement between the taxpayer and the research institution.



138 For purposes of this section, the term “research institution”  
139 means any nonprofit educational organization which is an  
140 institution of higher education (as defined in section 3304(f) of  
141 the Internal Revenue Code of 1986, as amended), a West  
142 Virginia institution of higher education subject to the jurisdic-  
143 tion of a board described in article two-a, chapter eighteen-b of  
144 this code, or any other nonprofit organization exempt from  
145 federal income taxes which is organized and operated primarily  
146 to conduct scientific research and is not a private foundation for  
147 federal income tax purposes.

148 (g) *Standards for determining qualified research and*  
149 *development expenses.* — In prescribing standards for deter-  
150 mining which research and development expenses are consid-  
151 ered to be qualified research and development expenses for  
152 purposes of this section, the tax commissioner may consider:  
153 (1) The place where the services are performed; (2) the resi-  
154 dence or business location of the person or persons performing  
155 the services; (3) the place where research and development  
156 supplies are consumed; and (4) other factors that the tax  
157 commissioner believes relevant in determining whether or not  
158 the research and development expenses were made for qualified  
159 research and development, and depreciable property was  
160 purchased and used for qualified research and development,  
161 during the taxable year.

162 (h) *Depreciable property.* — Purchases of depreciable  
163 property for the conduct of qualified research qualify as part of  
164 the annual combined qualified research and development  
165 expenditure for purposes of this article only if:

166 (1) The property is not acquired from a person whose  
167 relationship to the person acquiring it would result in the  
168 disallowance of deductions under section 267 or 707(b) of the  
169 United States Internal Revenue Code of 1986, as amended;

170 (2) The property is not acquired from a related person or by  
171 one component member of a controlled group from another  
172 component member of the same controlled group. The tax  
173 commissioner may waive this requirement if the property was  
174 acquired from a related party for its then fair market value; and

175 (3) The basis of the property for federal income tax  
176 purposes, in the hands of the person acquiring it, is not deter-  
177 mined:

178 (A) In whole or in part by reference to the federal adjusted  
179 basis of such property in the hands of the person from whom it  
180 was acquired; or

181 (B) Under section 1014(e) of the United States Internal  
182 Revenue Code of 1986, as amended.

**§11-13R-5. Amount of credit allowed.**

1 The allowable credit is the greater of:

2 (1) Three percent of the annual combined qualified research  
3 and development expenditure; or

4 (2) Ten percent of the excess of the annual combined  
5 qualified research and development expenditure over the base  
6 amount.

**§11-13R-6. Application of credit.**

1 (a) *Credit allowed.* — Beginning in the year that the annual  
2 combined qualified research and development expenditure is  
3 paid or incurred, eligible taxpayers and owners of eligible  
4 taxpayers described in subsections (d) and (f) of this section are  
5 allowed a credit against the taxes imposed by articles  
6 twenty-three, twenty-four and twenty-one of this chapter, in that  
7 order, as specified in this section.

8       (b) *Business franchise tax.* — The credit is first applied to  
9 reduce the taxes imposed by article twenty-three of this chapter  
10 for the taxable year (determined after application of the credits  
11 against tax provided in section seventeen of said article, but  
12 before application of any other allowable credits against tax).

13       (c) *Corporation net income taxes.* — After application of  
14 subsection (b) of this section, any unused credit is next applied  
15 to reduce the taxes imposed by article twenty-four of this  
16 chapter for the taxable year (determined before application of  
17 allowable credits against tax).

18       (d) If the eligible taxpayer is a limited liability company,  
19 small business corporation, or a partnership, then any unused  
20 credit (after application of subsections (b) and (c) of this  
21 section) is allowed as a credit against the taxes imposed by  
22 article twenty-four of this chapter on owners of the eligible  
23 taxpayer on the conduit income directly derived from the  
24 eligible taxpayer by its owners. Only those portions of the tax  
25 imposed by article twenty-four of this chapter that are imposed  
26 on income directly derived by the owner from the eligible  
27 taxpayer are subject to offset by this credit.

28       (1) Small business corporations, limited liability compa-  
29 nies, partnerships and other unincorporated organizations shall  
30 allocate the credit allowed by this article among their members  
31 in the same manner as profits and losses are allocated for the  
32 taxable year.

33       (2) No credit is allowed under this article against any  
34 withholding tax imposed by, or payable under, article twenty-  
35 one of this chapter.

36       (e) *Personal income tax taxes.* — After application of  
37 subsections (b), (c) and (d) of this section, any unused credit is  
38 next applied to reduce the taxes imposed by article twenty-one

39 of this chapter for the taxable year (determined before applica-  
40 tion of allowable credits against tax) of the eligible taxpayer.

41 (f) If the eligible taxpayer is a limited liability company,  
42 small business corporation, or a partnership, then any unused  
43 credit (after application of subsections (b), (c), (d) and (e) of  
44 this section) is allowed as a credit against the taxes imposed by  
45 article twenty-one of this chapter on owners of the eligible  
46 taxpayer on the conduit income directly derived from the  
47 eligible taxpayer by its owners. Only those portions of the tax  
48 imposed by article twenty-one of this chapter that are imposed  
49 on income directly derived by the owner from the eligible  
50 taxpayer are subject to offset by this credit.

51 (1) Small business corporations, limited liability compa-  
52 nies, partnerships and other unincorporated organizations shall  
53 allocate the credit allowed by this article among their members  
54 in the same manner as profits and losses are allocated for the  
55 taxable year.

56 (2) No credit is allowed under this article against any  
57 withholding tax imposed by, or payable under, article twenty-  
58 one of this chapter.

59 (g) The total amount of tax credit that may be used in any  
60 taxable year by any eligible taxpayer in combination with the  
61 owners of the eligible taxpayer under subsections (d) and (f) of  
62 this section may not exceed two million dollars.

63 (h) *Unused credit carry forward.* — If the credit allowed  
64 under this article in any taxable year exceeds the sum of the  
65 taxes enumerated in subsections (b), (c), (d), (e) and (f) of this  
66 section for that taxable year, the eligible taxpayer and owners  
67 of eligible taxpayers described in subsections (d) and (f) of this  
68 section may apply the excess as a credit against those taxes, in

69 the order and manner stated in this section, for succeeding  
70 taxable years until the earlier of the following:

71 (1) The full amount of the excess credit is used; or

72 (2) The expiration of the tenth taxable year after the taxable  
73 year in which the annual combined qualified research and  
74 development expenditure was paid or incurred. Credit remain-  
75 ing thereafter is forfeited.

76 (i) *Application for certification.* — No credit is allowed or  
77 may be applied under this article until the person seeking to  
78 claim the credit has filed a written application for certification  
79 of the proposed research and development program or project  
80 with the tax commissioner, and has received certification of the  
81 research and development program or project from the tax  
82 commissioner pursuant to that written application. The certifi-  
83 cation of the program or project must be received by the  
84 eligible taxpayer from the tax commissioner prior to any credit  
85 being claimed or allowed for any annual combined qualified  
86 research and development expenditure for any research activity  
87 or project.

88 (1) In the case of owners of eligible taxpayers described in  
89 subsections (d) or (f) of this section, the application for certifi-  
90 cation filed under this section by the limited liability company,  
91 small business corporation or partnership owned by the person  
92 is considered to be filed on behalf of the owner, and no separate  
93 filing of the application is required of the owner.

94 (2) *Form of application.* — The application for certification  
95 must be filed in the form as the tax commissioner may pre-  
96 scribe, and shall contain the information as the tax commis-  
97 sioner may require, to determine whether the project should be  
98 certified as eligible for credit under this article.

99           (3) *Time period covered by certification.* — The application  
100 may request certification of the research and development  
101 program for one taxable year or multiple taxable years, as  
102 applicable, based on the nature and character of the program or  
103 project plan for the particular research and development project  
104 or activity.

105           (4) *Requirements for application.* — The application shall  
106 specifically set forth a written research and development  
107 program plan generally describing the nature of the research  
108 and development to be undertaken, the projected time period  
109 over which the research and development shall be carried out,  
110 the period of time for which the applicant seeks certification of  
111 the program or project, and such other information as the tax  
112 commissioner may require.

113           (5) *Certification.* — The tax commissioner may issue  
114 certification of a research and development program or project  
115 if it appears to the tax commissioner that the applicant intends  
116 to engage in a bona fide research and development activity, as  
117 described in this article, and will otherwise comply with the  
118 requirements of this article and all rules and requirements  
119 applicable thereto.

120           (6) *Time period covered by certification.* — The tax  
121 commissioner may issue certification for the period of time for  
122 which the eligible taxpayer seeks certification, or a different  
123 period of time, within the discretion of the tax commissioner.  
124 In his or her discretion, the tax commissioner may require that  
125 a separate application be filed for each tax year in which  
126 qualified research and development activity is to be undertaken  
127 or in which qualified research and development property is to  
128 be placed in service or use.

129           (7) *Failure to file.* — The failure to timely file the applica-  
130 tion for certification of a research and development program or

131 project under this section results in forfeiture of one hundred  
132 percent of the annual credit otherwise allowable under this  
133 article. This penalty applies annually until such application is  
134 filed.

135       (8) *Research and development undertaken without certifica-*  
136 *tion.* — If a person has filed an application for certification of  
137 a research and development program or project, and has failed  
138 to receive certification of the plan or program from the tax  
139 commissioner, no credit is allowed under this article for the  
140 research and development activity or investment relating  
141 thereto.

142       (9) *Failure to comply with terms of certification.* — If a  
143 person has filed an application for certification of a research  
144 and development program or project, and has received certifica-  
145 tion of the plan or program from the tax commissioner, but fails  
146 to conform to the terms of the certification, no credit is allowed  
147 under this article for the research and development activity or  
148 for investment in the research and development activity by the  
149 eligible taxpayer. This restriction may be waived by the tax  
150 commissioner upon a finding that the research and development  
151 undertaken was within the requirements of this article, and that  
152 there was no intent to defraud the state or willful neglect in the  
153 applicant's failure to conform to the terms of the certification.

154       (10) *Failure to comply with certification time restrictions.*  
155 — If a person has filed an application for certification of a  
156 research and development program or project, and has received  
157 certification of the plan or program from the tax commissioner,  
158 but fails to conform to the time periods specified therein for the  
159 certified research and development program or project, or fails  
160 to renew the certification so as to cover ongoing or subsequent  
161 research and development activity, the research and develop-  
162 ment activity is out of compliance with the terms of the  
163 certification, and no credit is allowed under this article for, or

164 relating to, the research and development activity by any person  
165 or taxpayer. This restriction may be waived by the tax commis-  
166 sioner upon a finding that the research and development thus  
167 undertaken was within the requirements of this article, and that  
168 there was no intent to defraud the state or willful neglect in the  
169 applicant's failure to conform to the terms of the certification.

**§11-13R-7. Forfeiture of unused tax credits; redetermination of credit allowed.**

1       (a) *Disposition of property or cessation of use.* — If during  
2 any taxable year, property with respect to which a tax credit has  
3 been allowed under this article:

4       (1) Is disposed of prior to the end of its useful life, as  
5 determined under section four of this article; or

6       (2) Ceases to be used in a qualified research and develop-  
7 ment activity of the taxpayer in this state prior to the end of its  
8 useful life, as determined under section four of this article, then  
9 the unused portion of the credit allowed for such property is  
10 forfeited for the taxable year and all ensuing years. Except  
11 when the property is damaged or destroyed by fire, flood, storm  
12 or other casualty, or is stolen, the taxpayer shall redetermine the  
13 amount of credit allowed in all earlier years by reducing the  
14 applicable percentage of cost of such property allowed under  
15 section four of this article, to correspond with the percentage of  
16 cost allowable for the period of time that the property was  
17 actually used in the qualified research and development activity  
18 of the taxpayer. The taxpayer shall then file a reconciliation  
19 statement with its annual return filed under article twenty-three  
20 of this chapter, for the year in which the forfeiture occurs and  
21 pay any additional taxes owed due to reduction of the amount  
22 of credit allowable for such earlier years, plus interest and any  
23 applicable penalties.



**§11-13R-8. Transfer of qualified research and development investment to successors.**

1       (a) *Mere change in form of business.* — Property may not  
2 be treated as disposed of under section seven of this article, by  
3 reason of a mere change in the form of conducting the business  
4 as long as the property is retained in a business in this state for  
5 use in qualified research and development, and the taxpayer  
6 retains a controlling interest in the successor business. In this  
7 event, the successor business is allowed to claim the amount of  
8 credit still available with respect to the property transferred, and  
9 the taxpayer (transferor) may not be required to redetermine the  
10 amount of credit allowed in earlier years.

11       (b) *Transfer or sale to successor.* — Property may not be  
12 treated as disposed of under section seven of this article by  
13 reason of any transfer or sale to a successor business which  
14 continues to use the property in qualified research and develop-  
15 ment. Upon transfer or sale, the successor shall acquire the  
16 amount of credit that remains available under this article for  
17 each subsequent taxable year, and the taxpayer (transferor) may  
18 not be required to redetermine the amount of credit allowed in  
19 earlier years.

**§11-13R-9. Identification of investment credit property.**

1       Every taxpayer who claims credit under this article shall  
2 maintain sufficient records to establish the following facts for  
3 each item of qualified research and development property:

4       (1) Its identity;

5       (2) Its actual or reasonably determined cost;

6       (3) Its straight-line depreciation life;

7 (4) The month and taxable year in which it was placed in  
8 service;

9 (5) The amount of credit taken; and

10 (6) The date it was disposed of or otherwise ceased to be  
11 qualified research and development property.

**§11-13R-10. Failure to keep records of qualified research and  
development credit property.**

1 A taxpayer who does not keep the records required for  
2 identification of qualified research and development credit  
3 property, is subject to the following rules:

4 (1) A taxpayer is treated as having disposed of, during the  
5 taxable year, any qualified research and development credit  
6 property which the taxpayer cannot establish was still on hand  
7 and used in qualified research and development activity at the  
8 end of that year.

9 (2) If a taxpayer cannot establish when qualified research  
10 and development credit property reported for purposes of  
11 claiming this credit returned during the taxable year was placed  
12 in service, the taxpayer is treated as having placed it in service  
13 in the most recent prior year in which similar property was  
14 placed in service, unless the taxpayer can establish that the  
15 property placed in service in the most recent year is still on  
16 hand and used in qualified research and development activity at  
17 the end of that year. In that event, the taxpayer will be treated  
18 as having placed the returned property in service in the next  
19 most recent year.

**§11-13R-11. Tax credit review and accountability.**

1 (a) Beginning on the first day of February, two thousand six  
2 and on the first day of February every third year thereafter, the

3 commissioner shall submit to the governor, the president of the  
 4 Senate and the speaker of the House of Delegates a tax credit  
 5 review and accountability report evaluating the cost effective-  
 6 ness of the credit allowed under this article during the most  
 7 recent three-year period for which information is available. The  
 8 criteria to be evaluated includes, but is not limited to, for each  
 9 year of the three-year period:

10 (1) The numbers of taxpayers claiming the credit;

11 (2) The net number of new jobs created by all taxpayers  
 12 claiming the credit;

13 (3) The cost of the credit;

14 (4) The cost of the credit per new job created; and

15 (5) Comparison of employment trends for the industry and  
 16 for taxpayers within the industry that claim the credit.

17 (b) Taxpayers claiming the credit shall provide such  
 18 information as the tax commissioner may require to prepare the  
 19 report: *Provided*, That such information shall be subject to the  
 20 confidentiality and disclosure provisions of sections five-d and  
 21 five-s, article ten of this chapter.

**§11-13R-12. Effective date.**

1 The provisions of this article become effective on the first  
 2 day of January, two thousand three, and apply only to qualified  
 3 investment made on or after that date.

**ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

§11-13S-1. Short title.

§11-13S-2. Legislative findings and purpose.

§11-13S-3. Definitions.

§11-13S-4. Amount of credit allowed for manufacturing investment.

§11-13S-5. Qualified manufacturing investment.

- §11-13S-6. Forfeiture of unused tax credits; redetermination of credit allowed.
- §11-13S-7. Transfer of property purchased for manufacturing investment to successors.
- §11-13S-8. Identification of investment credit property.
- §11-13S-9. Failure to keep records of property purchased for manufacturing investment.
- §11-13S-10. Tax credit review and accountability.

**§11-13S-1. Short title.**

- 1 This article may be cited as the “West Virginia Manufactur-  
2 ing Investment Tax Credit Act”.

**§11-13S-2. Legislative findings and purpose.**

- 1 The Legislature finds that the encouragement of the  
2 location of new industry in this state, and the expansion, growth  
3 and revitalization of existing industrial facilities in this state is  
4 in the public interest and promotes the general welfare of the  
5 people of this state.

**§11-13S-3. Definitions.**

- 1 (a) Any term used in this article has the meaning ascribed  
2 by this section, unless a different meaning is clearly required by  
3 the context of its use or by definition in this article.

- 4 (b) For purpose of this article, the term:

- 5 (1) “Eligible taxpayer” means an industrial taxpayer who  
6 purchases new property for the purpose of industrial expansion,  
7 or for the purpose of industrial revitalization of an existing  
8 industrial facility in this state.

- 9 (2) “Industrial expansion” means capital investment in a  
10 new or expanded industrial facility in this state.

- 11 (3) “Industrial facility” means any factory, mill, plant,  
12 refinery, warehouse, building or complex of buildings located

13 within this state, including the land on which it is located, and  
14 all machinery, equipment and other real and tangible personal  
15 property located at or within the facility primarily used in  
16 connection with the operation of the manufacturing business.

17 (4) "Industrial revitalization" or "revitalization" means  
18 capital investment in an industrial facility located in this state  
19 to replace or modernize buildings, equipment, machinery and  
20 other tangible personal property used in connection with the  
21 operation of the facility in an industrial business of the tax-  
22 payer, including the acquisition of any real property necessary  
23 to the industrial revitalization.

24 (5) "Industrial taxpayer" means any taxpayer who is  
25 primarily engaged in a manufacturing business.

26 (6) "Manufacturing" means any business activity classified  
27 as having a sector identifier, consisting of the first two digits of  
28 the six-digit North American Industry Classification System  
29 code number, of thirty-one, thirty-two or thirty-three.

30 (7) "Property purchased for manufacturing investment"  
31 means real property, and improvements thereto, and tangible  
32 personal property, but only if the property was constructed, or  
33 purchased, on or after the first day of January, two thousand  
34 three, for use as a component part of a new, expanded or  
35 revitalized industrial facility. This term includes only that  
36 tangible personal property with respect to which depreciation,  
37 or amortization in lieu of depreciation, is allowable in determin-  
38 ing the federal income tax liability of the industrial taxpayer,  
39 that has a useful life, at the time the property is placed in  
40 service or use in this state, of four years or more. Property  
41 acquired by written lease, for a primary term of ten years or  
42 longer, if used as a component part of a new or expanded  
43 industrial facility, is included within this definition.

44 (A) "Property purchased for manufacturing investment"  
45 does not include:

46 (i) Repair costs including materials used in the repair,  
47 unless for federal income tax purposes, the cost of the repair  
48 must be capitalized and not expensed;

49 (ii) Motor vehicles licensed by the department of motor  
50 vehicles;

51 (iii) Airplanes;

52 (iv) Off-premises transportation equipment;

53 (v) Property which is primarily used outside this state; and

54 (vi) Property which is acquired incident to the purchase of  
55 the stock or assets of an industrial taxpayer, which property was  
56 or had been used by the seller in his or her industrial business  
57 in this state, or in which investment was previously the basis of  
58 a credit against tax taken under any other article of this chapter.

59 (B) Purchases or acquisitions of land or depreciable  
60 property qualify as purchases of property purchased for  
61 manufacturing investment for purposes of this article only if:

62 (i) The property is not acquired from a person whose  
63 relationship to the person acquiring it would result in the  
64 disallowance of deductions under section 267 or 707(b) of the  
65 United States Internal Revenue Code of 1986, as amended;

66 (ii) The property is not acquired from a related person or by  
67 one component member of a controlled group from another  
68 component member of the same controlled group. The tax  
69 commissioner may waive this requirement if the property was  
70 acquired from a related party for its then fair market value; and

71 (iii) The basis of the property for federal income tax  
72 purposes, in the hands of the person acquiring it, is not deter-  
73 mined, in whole or in part, by reference to the federal adjusted  
74 basis of the property in the hands of the person from whom it  
75 was acquired; or under Section 1014(e) of the United States  
76 Internal Revenue Code of 1986, as amended.

77 (8) “Qualified manufacturing investment” means that  
78 amount determined under section five of this article as qualified  
79 manufacturing investment.

80 (9) “Taxpayer” means any person subject to any of the  
81 taxes imposed by article thirteen-a, twenty-three or twenty-four  
82 of this chapter (or any combination of those articles of this  
83 chapter).

**§11-13S-4. Amount of credit allowed for manufacturing invest-  
ment.**

1 (a) *Credit allowed.* — There is allowed to eligible taxpayers  
2 and to persons described in subdivision (5), subsection (b) of  
3 this section, a credit against the taxes imposed by articles  
4 thirteen-a, twenty-three and twenty-four of this chapter. The  
5 amount of credit shall be determined as hereinafter provided in  
6 this section.

7 (b) *Amount of credit allowable.* — The amount of allowable  
8 credit under this article is equal to five percent of the qualified  
9 manufacturing investment (as determined in section five of this  
10 article), and shall reduce the severance tax, imposed under  
11 article thirteen-a of this chapter, the business franchise tax  
12 imposed under article twenty-three of this chapter and the  
13 corporation net income tax imposed under article twenty-four  
14 of this chapter, in that order, subject to the following conditions  
15 and limitations:

16       (1) The amount of credit allowable is applied over a ten-  
17 year period, at the rate of one-tenth thereof per taxable year,  
18 beginning with the taxable year in which the property purchased  
19 for manufacturing investment is first placed in service or use in  
20 this state;

21       (2) *Severance tax.* — The credit is applied to reduce the  
22 severance tax, imposed under article thirteen-a of this chapter  
23 (determined before application of the credit allowed by section  
24 three, article twelve-b of this chapter and before any other  
25 allowable credits against tax and before application of the  
26 annual exemption allowed by section ten, article thirteen-a of  
27 this chapter). The amount of annual credit allowed may not  
28 reduce the severance tax, imposed under article thirteen-a of  
29 this chapter, below fifty percent of the amount which would be  
30 imposed for such taxable year in the absence of this credit  
31 against tax. When in any taxable year the taxpayer is entitled to  
32 claim credit under this article and article thirteen-d of this  
33 chapter, the total amount of all credits allowable for the taxable  
34 year may not reduce the amount of the severance tax, imposed  
35 under article thirteen-a of this chapter, below fifty percent of  
36 the amount which would be imposed for such taxable year  
37 (determined before application of the credit allowed by section  
38 three, article twelve-b of this chapter and before any other  
39 allowable credits against tax and before application of the  
40 annual exemption allowed by section ten, article thirteen-a of  
41 this chapter);

42       (3) *Business franchise tax.* — After application of subdivi-  
43 sion (2) of this subsection, any unused credit is next applied to  
44 reduce the business franchise tax, imposed under article twenty-  
45 three of this chapter (determined after application of the credits  
46 against tax provided in section seventeen of article twenty-three  
47 of this chapter, but before application of any other allowable  
48 credits against tax). The amount of annual credit allowed will  
49 not reduce the business franchise tax imposed under article



50 twenty-three of this chapter, below fifty percent of the amount  
51 which would be imposed for such taxable year in the absence  
52 of this credit against tax. When in any taxable year the taxpayer  
53 is entitled to claim credit under this article and article thirteen-d  
54 of this chapter, the total amount of all credits allowable for the  
55 taxable year will not reduce the amount of the business fran-  
56 chise tax, imposed under article twenty-three of this chapter,  
57 below fifty percent of the amount which would be imposed for  
58 the taxable year (determined after application of the credits  
59 against tax provided in section seventeen of article twenty-three  
60 of this chapter, but before application of any other allowable  
61 credits against tax);

62 (4) *Corporation net income tax.* — After application of  
63 subdivision (3) of this subsection, any unused credit is next  
64 applied to reduce the corporation net income tax, imposed  
65 under article twenty-four of this chapter (determined before  
66 application of any other allowable credits against tax). The  
67 amount of annual credit allowed will not reduce corporation net  
68 income tax imposed under article twenty-four of this chapter,  
69 below fifty percent of the amount which would be imposed for  
70 such taxable year in the absence of this credit against tax. When  
71 in any taxable year the taxpayer is entitled to claim credit under  
72 this article and article thirteen-d of this chapter, the total  
73 amount of all credits allowable for the taxable year may not  
74 reduce the amount of the corporation net income tax, imposed  
75 under article twenty-four of this chapter, below fifty percent of  
76 the amount which would be imposed for the taxable year  
77 (determined before application of any other allowable credits  
78 against tax);

79 (5) *Pass-through entities.* —

80 (A) If the eligible taxpayer is a limited liability company,  
81 small business corporation, or a partnership, then any unused  
82 credit (after application of subdivisions (2), (3) and (4) of this

83 subsection) is allowed as a credit against the taxes imposed by  
84 article twenty-four of this chapter on owners of the eligible  
85 taxpayer on the conduit income directly derived from the  
86 eligible taxpayer by its owners. Only those portions of the tax  
87 imposed by article twenty-four of this chapter that are imposed  
88 on income directly derived by the owner from the eligible  
89 taxpayer are subject to offset by this credit.

90 (B) The amount of annual credit allowed will not reduce  
91 corporation net income tax imposed under article twenty-four  
92 of this chapter, below fifty percent of the amount which would  
93 be imposed on the conduit income directly derived from the  
94 eligible taxpayer by each owner for such taxable year in the  
95 absence of this credit against the taxes (determined before  
96 application of any other allowable credits against tax).

97 (C) When in any taxable year the taxpayer is entitled to  
98 claim credit under this article and article thirteen-d of this  
99 chapter, the total amount of all credits allowable for the taxable  
100 year will not reduce the corporation net income tax imposed on  
101 the conduit income directly derived from the eligible taxpayer  
102 by each owner, below fifty percent of the amount that would be  
103 imposed for such taxable year on the conduit income (deter-  
104 mined before application of any other allowable credits against  
105 tax).

106 (6) Small business corporations, limited liability compa-  
107 nies, partnerships and other unincorporated organizations shall  
108 allocate any unused credit (after application of subdivisions (2),  
109 (3) and (4) of this subsection) among their members in the same  
110 manner as profits and losses are allocated for the taxable year;  
111 and

112 (7) No credit is allowed under this article against any tax  
113 imposed by article twenty-one of this chapter.

114 (c) No carryover to a subsequent taxable year or carryback  
 115 to a prior taxable year is allowed for the amount of any unused  
 116 portion of any annual credit allowance. Such unused credit is  
 117 forfeited.

118 (d) *Application for credit required.* — (1) Application  
 119 required. - No credit is allowed or applied under this article for  
 120 any manufacturing investment until the eligible taxpayer makes  
 121 written application to the tax commissioner for allowance of  
 122 credit as provided in this section. An application for credit shall  
 123 be filed, in the form as the tax commissioner shall prescribe,  
 124 prior to the first date when qualified investment property is first  
 125 placed in service or use. All information required by the form  
 126 is provided. A separate application shall be filed for each tax  
 127 year in which property purchased for manufacturing investment  
 128 is placed in service or use.

129 (2) *Failure to file.* — The failure to timely apply the  
 130 application for credit under this section results in forfeiture of  
 131 fifty percent of the annual credit allowance otherwise allowable  
 132 under this article. This penalty applies annually until such  
 133 application is filed.

#### §11-13S-5. Qualified manufacturing investment.

1 (a) *General.* — The qualified manufacturing investment is  
 2 the applicable percentage of the cost of property purchased for  
 3 manufacturing investment, which is placed in service or use in  
 4 this state, by the eligible taxpayer during the taxable year.

5 (b) *Applicable percentage.* — For the purposes of subsec-  
 6 tion (a) of this section, the applicable percentage for any  
 7 property is determined under the following table:

8 If useful life is:	The applicable percentage is:
9 4 years or more but less than 6 years . . . . .	33 1/3

10        6 years or more but less than 8 years . . . . . 66 2/3  
 11        8 years or more . . . . . 100

12        The useful life of any property for purposes of this section  
 13 is determined pursuant to the methods as the tax commissioner  
 14 may require as of the date the property is first placed in service  
 15 or use in this state by the taxpayer, determined as the tax  
 16 commissioner may require.

17        (c) *Placed in service or use.* — For purposes of the credit  
 18 allowed by this article, property is considered placed in service  
 19 or use in the earlier of the following taxable years:

20        (1) The taxable year in which, under the taxpayer’s depreci-  
 21 ation practice, the period for depreciation with respect to the  
 22 property begins; or

23        (2) The taxable year in which the property is placed in a  
 24 condition or state of readiness and availability for a specifically  
 25 assigned function.

26        (d) *Cost.* — For purposes of this section, the cost of  
 27 property purchased for manufacturing investment, is deter-  
 28 mined under the following rules:

29        (1) *Trade-ins.* — Cost will not include the value of property  
 30 given in trade or exchange for property purchased for manufac-  
 31 turing investment;

32        (2) *Damaged, destroyed or stolen property.* — If property  
 33 is damaged or destroyed by fire, flood, storm or other casualty,  
 34 or is stolen, then the cost of replacement property will not  
 35 include any insurance proceeds received in compensation for  
 36 the loss;

37        (3) *Rental property.* — The cost of property acquired by  
 38 lease for a term of ten years or longer is one hundred percent of

39 the rent reserved for the primary term of the lease, not to exceed  
40 twenty years;

41 (4) *Property purchased for multiple use.* — The cost of  
42 property purchased for multiple business use including use as  
43 a component part of a new or expanded or revitalized industrial  
44 facility, together with some other business or activity not  
45 eligible for credit under this article, is apportioned between the  
46 businesses and occupations. The amount apportioned to the new  
47 or expanded or revitalized industrial facility is considered as a  
48 qualified investment, subject to the conditions and limitations  
49 of this section; and

50 (5) *Self-constructed property.* — In the case of  
51 self-constructed property, the cost thereof shall be the amount  
52 properly charged to the capital account for purposes of depreci-  
53 ation.

**§11-13S-6. Forfeiture of unused tax credits; redetermination of credit allowed.**

1 (a) *Disposition of property or cessation of use.* — If during  
2 any taxable year, property with respect to which a tax credit has  
3 been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life, as  
5 determined under section five of this article; or

6 (2) Ceases to be used in an industrial facility of the taxpayer  
7 in this state prior to the end of its useful life, as determined  
8 under section five of this article, then the unused portion of the  
9 credit allowed for such property is forfeited for the taxable year  
10 and all ensuing years. Except when the property is damaged or  
11 destroyed by fire, flood, storm or other casualty, or is stolen, the  
12 taxpayer shall redetermine the amount of credit allowed in all  
13 earlier years by reducing the applicable percentage of cost of  
14 the property allowed under section five of this article, to

15 correspond with the percentage of cost allowable for the period  
16 of time that the property was actually used in manufacturing  
17 activity as part of an industrial facility of the taxpayer. The  
18 taxpayer must then file a reconciliation statement with its  
19 annual return filed under article twenty-three of this chapter, for  
20 the year in which the forfeiture occurs and pay any additional  
21 taxes owed due to reduction of the amount of credit allowable  
22 for the earlier years, plus interest and any applicable penalties.

**§11-13S-7. Transfer of property purchased for manufacturing investment to successors.**

1       (a) *Mere change in form of business.* — Property may not  
2 be treated as disposed of under section six of this article, by  
3 reason of a mere change in the form of conducting the business  
4 as long as the property is retained in a business in this state for  
5 use in the activity of manufacturing in an industrial facility in  
6 West Virginia, and the taxpayer retains a controlling interest in  
7 the successor business. In this event, the successor business is  
8 allowed to claim the amount of credit still available with  
9 respect to the property or industrial facility transferred, and the  
10 taxpayer (transferor) may not be required to redetermine the  
11 amount of credit allowed in earlier years.

12       (b) *Transfer or sale to successor.* — Property will not be  
13 treated as disposed of under section six of this article by reason  
14 of any transfer or sale to a successor business which continues  
15 to use the property in manufacturing in an industrial facility in  
16 West Virginia. Upon transfer or sale, the successor shall acquire  
17 the amount of credit that remains available under this article for  
18 each subsequent taxable year, and the taxpayer (transferor) shall  
19 not be required to redetermine the amount of credit allowed in  
20 earlier years.

**§11-13S-8. Identification of investment credit property.**

1 Every taxpayer who claims credit under this article shall  
2 maintain sufficient records to establish the following facts for  
3 each item of property purchased for manufacturing investment:

4 (1) Its identity;

5 (2) Its actual or reasonably determined cost;

6 (3) Its straight-line depreciation life;

7 (4) The month and taxable year in which it was placed in  
8 service;

9 (5) The amount of credit taken; and

10 (6) The date it was disposed of or otherwise ceased to be  
11 property purchased for manufacturing investment.

**§11-13S-9. Failure to keep records of property purchased for  
manufacturing investment.**

1 A taxpayer who does not keep the records required for  
2 property purchased for manufacturing investment, is subject to  
3 the following rules:

4 (1) A taxpayer is treated as having disposed of, during the  
5 taxable year, any property purchased for manufacturing  
6 investment which the taxpayer cannot establish was still on  
7 hand and used in manufacturing activity in this state at the end  
8 of that year; and

9 (2) If a taxpayer cannot establish when property purchased  
10 for manufacturing investment reported for purposes of claiming  
11 this credit returned during the taxable year was placed in  
12 service, the taxpayer is treated as having placed it in service in  
13 the most recent prior year in which similar property was placed  
14 in service, unless the taxpayer can establish that the property

15 placed in service in the most recent year is still on hand and  
16 used in manufacturing activity at the end of that year. In that  
17 event, the taxpayer will be treated as having placed the returned  
18 property in service in the next most recent year.

**§11-13S-10. Tax credit review and accountability.**

1 (a) Beginning on the first day of February, two thousand  
2 six, and on the first day of February every third year thereafter,  
3 the commissioner shall submit to the governor, the president of  
4 the Senate and the speaker of the House of Delegates a tax  
5 credit review and accountability report evaluating the cost  
6 effectiveness of the credit allowed under this article during the  
7 most recent three-year period for which information is avail-  
8 able. The criteria to be evaluated includes, but is not limited to,  
9 for each year of the three-year period:

10 (1) The numbers of taxpayers claiming the credit;

11 (2) The net number of new jobs created by all taxpayers  
12 claiming the credit;

13 (3) The cost of the credit;

14 (4) The cost of the credit per new job created; and

15 (5) Comparison of employment trends for the industry and  
16 for taxpayers within the industry that claim the credit.

17 (b) Taxpayers claiming the credit shall provide the informa-  
18 tion as the tax commissioner may require to prepare the report:  
19 *Provided*, That the information is subject to the confidentiality  
20 and disclosure provisions of sections five-d and five-s, article  
21 ten of this chapter of the code.

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**



§11-15-9b. Exemption for purchases of tangible personal property and services for direct use in research and development.

§11-15-9c. Exemption for services and materials regarding technical evaluation for compliance to federal and state environmental standards provided by environmental and industrial consultants.

§11-15-9f. Exemption for sales and services subject to special district excise tax.

**§11-15-9b. Exemption for purchases of tangible personal property and services for direct use in research and development.**

1 (a) Sales of tangible personal property and services after the  
2 thirtieth day of June, two thousand two, directly used or  
3 consumed in the activity of research and development are  
4 exempt from tax imposed by this article. Any person having a  
5 right or claim to the exemption set forth in this section shall  
6 first pay to the vendor the tax imposed by this article and then  
7 apply to the tax commissioner for a refund or credit or give to  
8 the vendor the person's West Virginia direct pay permit number  
9 in accordance with the provisions of section nine-d of this  
10 article.

11 (b) For purposes of this article:

12 (1) "Directly used or consumed in the activity of research  
13 and development" means used or consumed in those activities  
14 or operations which constitute an integral and essential part of  
15 research and development, as contrasted with and distinguished  
16 from those activities or operations which are simply incidental,  
17 convenient or remote to research and development.

18 (A) Uses of property or consumption of services which  
19 constitute direct use or consumption in the activity of research  
20 and development include only:

21 (i) In the case of tangible personal property, physical  
22 incorporation of property into tangible personal property that is  
23 the subject of, or directly used in, research and development;

- 24       (ii) Causing a direct physical, chemical or other change  
25 upon property that is the subject of, or directly used in, research  
26 and development;
- 27       (iii) Transporting or storing property that is the subject of,  
28 or directly used in, research and development;
- 29       (iv) Measuring or verifying a change in property that is the  
30 subject of, or directly used in, research and development;
- 31       (v) Physically controlling or directing the physical move-  
32 ment or operation of property that is the subject of, or directly  
33 used in, research and development;
- 34       (vi) Directly and physically recording the flow of property  
35 that is the subject of, or directly used in, research and develop-  
36 ment;
- 37       (vii) Producing energy for property that is the subject of, or  
38 directly used in, research and development;
- 39       (viii) Controlling or otherwise regulating atmospheric or  
40 other environmental conditions required for research and  
41 development;
- 42       (ix) Serving as an operating supply for property that is the  
43 subject of, or directly used in, research and development;
- 44       (x) Maintenance or repair of property, including mainte-  
45 nance equipment, that is directly used in research and develop-  
46 ment;
- 47       (xi) Storage, removal or transportation of economic or other  
48 waste resulting from the activity of research and development;
- 49       (xii) Pollution control or environmental quality or environ-  
50 mental protection activity directly relating to the activity of

51 research and development, and personnel, plant, property or  
52 community safety or security activity directly relating to the  
53 activity of research and development; or

54 (xiii) Otherwise being used as an integral and essential part  
55 of research and development.

56 (B) Uses of property or services which do not constitute  
57 direct use or consumption in the activity of research and  
58 development include, but are not limited to:

59 (i) Heating and illumination of office buildings;

60 (ii) Janitorial or general cleaning activities;

61 (iii) Personal comfort of personnel;

62 (iv) Planning or scheduling of work or inventory control;

63 (v) Marketing, general management, supervision, finance,  
64 training, accounting and administration; or

65 (vi) An activity or function incidental or convenient to  
66 research and development, rather than an integral and essential  
67 part of these activities.

68 (2) "Research and development" means systematic scien-  
69 tific, engineering or technological study and investigation in a  
70 field of knowledge in the physical, computer or software  
71 sciences, often involving the formulation of hypotheses and  
72 experimentation, for the purpose of revealing new facts,  
73 theories or principles, or increasing scientific knowledge, which  
74 may reveal the basis for new or enhanced products, equipment  
75 or manufacturing processes. Research and development  
76 includes, but is not limited to, design, refinement and testing of  
77 prototypes of new or improved products, or design, refinement  
78 and testing of manufacturing processes before commercial sales

79 relating thereto have begun. For purposes of this section  
80 commercial sales include, but are not limited to, sales of  
81 prototypes or sales for market testing.

82 (A) Research and development does not include:

83 (i) Market research;

84 (ii) Sales research;

85 (iii) Efficiency surveys;

86 (iv) Consumer surveys;

87 (v) Product market testing;

88 (vi) Product testing by product consumers or through  
89 consumer surveys for evaluation of consumer product perfor-  
90 mance or consumer product usability;

91 (vii) The ordinary testing or inspection of materials or  
92 products for quality control (quality control testing);

93 (viii) Management studies;

94 (ix) Advertising;

95 (x) Promotions;

96 (xi) The acquisition of another's patent, model, production  
97 or process or investigation or evaluation of the value or  
98 investment potential related thereto;

99 (xii) Research in connection with literary, historical or  
100 similar projects;

101 (xiii) Research in the social sciences, economics, humani-  
102 ties or psychology and other nontechnical activities; and

103 (xiv) The providing of sales services or any other service,  
104 whether technical service or nontechnical service.

105 (c) No provision of this section may be interpreted to alter,  
106 abrogate or impede application of the exemption for sales of  
107 primary opinion research services set forth in section nine of  
108 this article.

**§11-15-9c. Exemption for services and materials regarding  
technical evaluation for compliance to federal and  
state environmental standards provided by envi-  
ronmental and industrial consultants.**

1 The service of providing technical evaluations for compli-  
2 ance with federal and state environmental standards provided  
3 by environmental and industrial consultants who have formal  
4 certification through the West Virginia department of environ-  
5 mental protection or the West Virginia bureau for public health  
6 or both is exempt from the tax imposed by this article. For  
7 purposes of this exemption, the service of providing technical  
8 evaluations for compliance with federal and state environmental  
9 standards includes those costs of tangible personal property  
10 directly used in providing the services that are separately billed  
11 to the purchaser of the services, and on which the tax imposed  
12 by this article has previously been paid by the service provider.

**§11-15-9f. Exemption for sales and services subject to special  
district excise tax.**

1 Notwithstanding any provision of this article to the con-  
2 trary, any sale or service upon which a special district excise tax  
3 is paid, pursuant to the provisions of section eleven, article  
4 thirteen-b, chapter eight of this code, shall be exempt from the  
5 tax imposed by this article.

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-8h. Distribution, sale, transfer or assignment of qualified rehabilitated building investment tax credit.**

1 (a) Any person eligible for credit under section eight-a or  
2 eight-g of this article may transfer, sell or assign any unused  
3 credits. Any person that transfers, sells or assigns any unused  
4 portion of a tax credit shall obtain a certificate of approval from  
5 the division of culture and history to transfer, sell or assign the  
6 stated amount of unused tax credit. The division of culture and  
7 history shall, by the last day of January each year provide in an  
8 electronic medium acceptable to the tax commissioner, a report  
9 listing the name of the transferor, the transferor's tax identifica-  
10 tion number, the name of the transferee, the transferee's tax  
11 identification number, the amount of credit transferred, sold or  
12 assigned and the date of the transfer, sale or assignment for  
13 each transfer, sale or assignment approved by the division of  
14 culture and history during the preceding calendar year.

15 (b) Credits granted to or acquired by a pass-through entity  
16 created or recognized under West Virginia law, or by multiple  
17 owners of property, if not transferred, sold or assigned, may be  
18 divided among the partners, members, shareholders or owners  
19 either according to the distributive shares of income of the  
20 entity or pursuant to an executed agreement among the partners,  
21 members, shareholders or owners if the agreement documents  
22 an alternate method of distribution, as provided in section eight-  
23 e of this article.

24 (c) Any transferee, purchaser or assignee of tax credits  
25 under this section may use the acquired credits to offset the tax  
26 imposed by this article or article twenty-four of this chapter  
27 upon the transferee, purchaser or assignee. To claim the tax  
28 credit, the transferee, purchaser or assignee shall attach the  
29 certificate obtained by the transferor, seller or assignor in  
30 accordance with subsection (a) of this section to the tax return

31 against which the credit is claimed when the tax return is filed  
32 with the tax commissioner.

33 (d) If the credit allowed under this section exceeds the  
34 transferee's, purchaser's or assignee's tax due for the current  
35 tax year, the transferee, purchaser or assignee of the tax credit  
36 may carry forward the excess in accordance with section eight-e  
37 of this article, or section twenty-three-e, article twenty-four of  
38 this chapter when the transferee, purchaser or assignee is  
39 subject to the tax imposed by that article.

40 (e) The tax commissioner may promulgate procedural rules  
41 in accordance with article three, chapter twenty-nine-a of this  
42 code, necessary to provide procedures for the distribution,  
43 transfer, or assignment and the claiming of the credit allowed  
44 by sections eight-a and eight-g of this article.

#### **ARTICLE 23. BUSINESS FRANCHISE TAX.**

§11-23-7. Persons and other organizations exempt from tax.

§11-23-24a. Tax credit for value-added products from raw agriculture products;  
regulations; termination of credit.

#### **§11-23-7. Persons and other organizations exempt from tax.**

1 The following organizations and persons are exempt from  
2 the tax imposed by this article to the extent provided in this  
3 section:

4 (a) Natural persons doing business in this state that are not  
5 doing business in the form of a partnership (as defined in  
6 section three of this article) or in the form of a corporation (as  
7 defined in section three of this article). Natural persons include  
8 persons doing business as sole proprietors, sole practitioners  
9 and other self-employed persons;

10 (b) Corporations and organizations which by reason of their  
11 purposes or activities are exempt from federal income tax:

12 *Provided*, That this exemption does not apply to that portion of  
13 their capital (as defined in section three of this article) which is  
14 used, directly or indirectly, in the generation of unrelated  
15 business income (as defined in the Internal Revenue Code) of  
16 any corporation or organization if the unrelated business  
17 income is subject to federal income tax;

18 (c) Insurance companies which pay this state a tax upon  
19 premiums;

20 (d) Production credit associations organized under the  
21 provisions of the federal "Farm Credit Act of 1933": *Provided*,  
22 That this exemption does not apply to corporations or associa-  
23 tions organized under the provisions of article four, chapter  
24 nineteen of this code;

25 (e) Any trust established pursuant to section one hundred  
26 eighty-six, chapter seven, title twenty-nine of the code of the  
27 laws of the United States (enacted as section three hundred two  
28 (c) of the labor management relations act, one thousand nine  
29 hundred forty-seven), as amended prior to the first day of  
30 January, one thousand nine hundred eighty-five;

31 (f) Any credit union organized under the provisions of  
32 chapter thirty-one, or any other chapter of this code: *Provided*,  
33 That this exemption does not apply to corporations or coopera-  
34 tive associations organized under the provisions of article four,  
35 chapter nineteen of this code;

36 (g) Any corporation organized under this code which is a  
37 political subdivision of the state of West Virginia, or is an  
38 instrumentality of a political subdivision of this state, and was  
39 created pursuant to this code;

40 (h) Any corporation or partnership engaged in the activity  
41 of agriculture and farming, as defined in subdivision (8),  
42 subsection (b), section three of this article: *Provided*, That if a



43 corporation or partnership is not exclusively engaged in that  
44 activity, its tax base under this article is apportioned, in  
45 accordance with regulations promulgated by the tax commis-  
46 sioner, among its several activities and only that portion  
47 attributable to the activity of agriculture and farming is exempt  
48 from tax under this article;

49 (i) Any corporation or partnership licensed under article  
50 twenty-three, chapter nineteen of this code, to conduct horse or  
51 dog racing meetings or a pari-mutuel system of wagering:  
52 *Provided*, That if the corporation or partnership is not exclu-  
53 sively engaged in this activity, its tax base under this article is  
54 apportioned, in accordance with regulations promulgated by the  
55 tax commissioner, among its several activities and only that  
56 portion attributable to the activity of conducting a horse or dog  
57 racing meeting or a pari-mutuel system of wagering is exempt  
58 from tax under this article;

59 (j) For those tax years beginning after the thirtieth day of  
60 June, one thousand nine hundred ninety-eight, any corporation  
61 or partnership operating as a hunting club: *Provided*, That the  
62 corporation or partnership distributes no income or dividends  
63 to its owners or stockholders. For the purposes of this subsec-  
64 tion, a hunting club is a group of persons owning land which is  
65 used principally for hunting purposes by the members of the  
66 club and guests, and where any charges made for hunting are  
67 principally for the purpose of defraying the costs of operating  
68 and maintaining the club and club properties or establishing a  
69 reasonable reserve to meet the operating and maintenance costs  
70 of the club. The tax commissioner shall by legislative rule  
71 promulgated in accordance with article three of chapter  
72 twenty-nine of this code further prescribe the definition of a  
73 hunting club and the manner and method in which this credit  
74 may be claimed; and

75 (k) For tax years beginning after the thirty-first day of  
76 December, two thousand two, any person or other organization  
77 engaged in the activity of providing venture capital to West  
78 Virginia businesses: *Provided*, That if the person or organiza-  
79 tion is not exclusively engaged in that activity, only that portion  
80 of its tax base under this article that is attributable to the  
81 providing of venture capital to West Virginia businesses is  
82 exempt from tax under this article, and its tax liability under  
83 this article is determined by multiplying its pre-credit tax  
84 liability by a fraction equal to one minus a fraction, the numera-  
85 tor of which is its gross receipts attributable to its venture  
86 capital activities in this state and the denominator of which is  
87 its total gross receipts from all of its business activities in this  
88 state. For purposes of this exemption, a “person or organization  
89 engaged in the activity of providing venture capital to West  
90 Virginia business” means a certified West Virginia capital  
91 company as defined in section four, article one, chapter five-e  
92 of this code.

**§11-23-24a. Tax credit for value-added products from raw agri-  
cultural products; regulations; termination of  
credit.**

1 (a) Effective for taxable years beginning the first day of  
2 July, one thousand nine hundred ninety-seven, notwithstanding  
3 any provisions of this code to the contrary, any person, newly  
4 and solely engaged in the production of value-added products  
5 from raw agricultural products are allowed a credit, in the  
6 amount of one thousand dollars for each taxable year against  
7 the tax imposed by this article, for a period of five years from  
8 the date the person becomes subject to this article. The credit is  
9 allowed only against the tax imposed on that capital which is  
10 attributable to the value-added production activity in this state.

11 (b) For purposes of this section, “value-added product”  
12 means the following products derived from processing a raw

13 agricultural product, whether for human consumption or for  
14 other use. The following enterprises qualify as processing raw  
15 agricultural products into value-added products: (1) The  
16 conversion of lumber into furniture, toys, collectibles and home  
17 furnishings; (2) the conversion of fruit into wine; (3) the  
18 conversion of honey into wine; (4) the conversion of wool into  
19 fabric; (5) the conversion of raw hides into semifinished or  
20 finished leather products; (6) the conversion of milk into  
21 cheese; (7) the conversion of fruits or vegetables into a dried,  
22 canned or frozen product; (8) the conversion of feeder cattle  
23 into commonly acceptable marketable retail portions; (9) the  
24 conversion of aquatic animals into a dried, canned, cooked or  
25 frozen product; and (10) the conversion of poultry into a dried,  
26 canned, cooked or frozen product.

27 (c) The tax commissioner may propose rules for promulga-  
28 tion in accordance with article three, chapter twenty-nine-a as  
29 necessary to effectuate the purposes of this section.

30 (d) No credit is available to any taxpayer under this section  
31 after the first day of July, two thousand two: *Provided*, That  
32 taxpayers which have gained entitlement to the credit pursuant  
33 to the terms of this section prior to the first day of July, two  
34 thousand two, shall retain that entitlement and apply the credit  
35 in due course pursuant to the requirements and limitations of  
36 this section until the original five-year credit entitlement has  
37 been exhausted or otherwise terminated.

#### ARTICLE 24. CORPORATION NET INCOME TAX.

##### **§11-24-22a. Tax credit for value-added products from raw agricultural products; regulations; termination of credit.**

1 (a) Effective for taxable years beginning the first day of  
2 July, one thousand nine hundred ninety-seven, notwithstanding  
3 any provisions of this code to the contrary, any new corporation

4 engaged solely in the production of value-added products from  
5 raw agricultural products are allowed a credit, in the amount of  
6 one thousand dollars for each taxable year against the tax  
7 imposed by this article, for a period of five years from the date  
8 the person becomes subject to this article. The credit is allowed  
9 only against the tax on taxable income which is attributable to  
10 the production of value-added products.

11 (b) Effective for taxable years beginning the first day of  
12 July, one thousand nine hundred ninety-seven, any new  
13 corporation engaged solely in the production of value-added  
14 products in West Virginia is allowed a tax credit, according to  
15 the schedule herein, for every one hour spent by a new perma-  
16 nent, full-time employee training to learn a skill specific to the  
17 production of value-added products as defined in article  
18 twenty-one, chapter thirty-one of this code. The tax credit is  
19 allowed for a maximum of sixty hours, per company, per year.

20 (c) For purposes of this section, tax credits for hours spent  
21 by a new permanent, full-time employee in training is allowed  
22 as follows:

23 (1) Corporations which employ up to five new employees  
24 is allowed a tax credit of two dollars for every one hour spent  
25 by a new employee in training as specified herein;

26 (2) Corporations which employ between six and  
27 twenty-five new employees are allowed a tax credit of one  
28 dollar and fifty cents for every one hour spent by a new  
29 employee in training as specified herein;

30 (3) Corporations which employ between twenty-six and  
31 seventy-five new employees are allowed a tax credit of one  
32 dollar and twenty-five cents for every one hour spent by a new  
33 employee in training as specified herein;

34 (4) Corporations which employ between seventy-six and  
35 one hundred and twenty-five new employees are allowed a tax  
36 credit of one dollar for every one hour spent by a new employee  
37 in training as specified herein; and

38 (5) Corporations which employ more than one hundred  
39 twenty-five new employees are allowed a tax credit of sev-  
40 enty-five cents for every one hour spent by a new employee in  
41 training as specified herein.

42 (d) For purposes of this section, "value-added product"  
43 means the following products derived from processing a raw  
44 agricultural product, whether for human consumption or for  
45 other use. The following enterprises qualify as processing raw  
46 agricultural products into value-added products: (1) The  
47 conversion of lumber into furniture, toys, collectibles and home  
48 furnishings; (2) the conversion of fruit into wine; (3) the  
49 conversion of honey into wine; (4) the conversion of wool into  
50 fabric; (5) the conversion of raw hides into semifinished or  
51 finished leather products; (6) the conversion of milk into  
52 cheese; (7) the conversion of fruits or vegetables into a dried,  
53 canned or frozen product; (8) the conversion of feeder cattle  
54 into commonly acceptable marketable retail portions; (9) the  
55 conversion of aquatic animals into a dried, canned, cooked or  
56 frozen product; and (10) the conversion of poultry into a dried,  
57 canned, cooked or frozen product.

58 (e) The tax commissioner may propose rules for promulga-  
59 tion in accordance with the provisions of article three, chapter  
60 twenty-nine-a of this code as necessary to effectuate the  
61 purposes of this article.

62 (f) No credit is available to any taxpayer under this section  
63 subsequent to the first day of July, two thousand two: *Provided,*  
64 That taxpayers which have gained entitlement to the credit  
65 pursuant to the terms of this section prior to the first day of

66 July, two thousand two, shall retain that entitlement and apply  
67 the credit in due course pursuant to the requirements and  
68 limitations of this section until the original five-year credit  
69 entitlement has been exhausted or otherwise terminated.

## CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

### ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

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

1 (a) The Legislature hereby finds and declares that the  
2 citizens of the state benefit from the creation of jobs and  
3 businesses within the state; that a business and industrial  
4 development loan program provides for economic growth and  
5 stimulation within the state; that loans from pools established  
6 in the consolidated fund will assist in providing the needed  
7 capital to assist business and industrial development; and that  
8 time constraints relating to business and industrial development  
9 projects prohibit duplicative review by both the board and the  
10 West Virginia economic development authority board. The  
11 Legislature further finds and declares that an investment in the  
12 West Virginia Enterprise Capital Fund, LLC, of moneys in the  
13 consolidated fund as hereinafter provided will assist in creating  
14 jobs and businesses within the state and providing the needed  
15 risk capital to assist business and industrial development. This  
16 section is enacted in view of these findings.

17 (b) The board shall make available, subject to cash avail-  
18 ability, in the form of a revolving loan, up to one hundred fifty  
19 million dollars from the consolidated fund to loan the West  
20 Virginia economic development authority for business or  
21 industrial development projects authorized by section seven,  
22 article fifteen, chapter thirty-one of this code and to consolidate  
23 existing loans authorized to be made to the West Virginia  
24 economic development authority pursuant to this section and

25 pursuant to section twenty, article fifteen, chapter thirty-one of  
26 this code which authorizes a one hundred fifty million dollar  
27 revolving loan and article eighteen-b, chapter thirty-one of this  
28 code which authorizes a fifty million dollar investment pool:  
29 *Provided*, That the West Virginia economic development  
30 authority may not loan more than fifteen million dollars for any  
31 one business or industrial development project. The revolving  
32 loan authorized by this subsection shall be secured by one note  
33 at a variable interest rate equal to the twelve-month average of  
34 the board's yield on its cash liquidity pool. The rate shall be set  
35 on the first day of July and the rate shall be adjusted annually  
36 on the same date. The maximum annual adjustment may not  
37 exceed one percent. Monthly payments made by the West  
38 Virginia economic development authority to the board shall be  
39 calculated on a one hundred twenty-month amortization. The  
40 revolving loan shall be secured by a security interest that  
41 pledges and assigns the cash proceeds of collateral from all  
42 loans under this revolving loan pool. The West Virginia  
43 economic development authority may also pledge as collateral  
44 certain revenue streams from other revolving loan pools which  
45 source of funds does not originate from federal sources or from  
46 the board.

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

56 (c) The interest rates and maturity dates on the loans made  
57 by the West Virginia economic development authority for  
58 business and industrial development projects authorized by

59 section seven, article fifteen, chapter thirty-one of this code  
60 shall be at competitive rates and maturities as determined by the  
61 West Virginia economic development authority board.

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

69 (e) The trustees of the board shall bear no fiduciary  
70 responsibility as provided in section eleven §12-6-11 of this  
71 article with specific regard to the revolving loan contemplated  
72 in this section.

73 (f) Subject to cash availability, the board shall make  
74 available to the West Virginia economic development authority  
75 from the consolidated fund a non-recourse loan in an amount up  
76 to twenty-five million dollars, for the purpose of the West  
77 Virginia economic development authority making a loan or  
78 loans from time to time to the West Virginia enterprise ad-  
79 vancement corporation, an affiliated nonprofit corporation of  
80 the West Virginia economic development authority. The  
81 respective loans authorized by this subsection by the board to  
82 the West Virginia economic development authority and by the  
83 West Virginia economic development authority to the West  
84 Virginia enterprise advancement corporation shall each be  
85 evidenced by one note and shall each bear interest at the rate of  
86 three percent per annum. The proceeds of any and all loans  
87 made by the West Virginia economic development authority to  
88 the West Virginia enterprise advancement corporation pursuant  
89 to this subsection shall be invested by the West Virginia  
90 enterprise corporation in the West Virginia enterprise capital  
91 fund, LLC, the manager of which is the West Virginia enter-



92 prise advancement corporation. The loan to West Virginia  
93 economic development authority authorized by this subsection  
94 shall be non-revolving, and advances thereunder shall be made  
95 at times and in amounts as may be requested or directed by the  
96 West Virginia economic development authority, upon reason-  
97 able notice to the board, the loan authorized by this subsection  
98 is not subject to or included in the limitations set forth in  
99 subsection (b) of this section with respect to the fifteen million  
100 dollar limitation for any one business or industrial development  
101 project and limitation of one hundred three percent of outstand-  
102 ing loans, and may not be included in the revolving fund loan  
103 principal balance for purposes of calculating the loan amortiza-  
104 tion in subsection (b) of this section. The loan authorized by  
105 this subsection to the West Virginia economic development  
106 authority shall be classified by the board as a long-term, fixed  
107 income investment, shall bear interest on the outstanding  
108 principal balance thereof at the rate of three percent per annum  
109 payable annually on or before the thirtieth day of June of each  
110 year, and the principal of which shall be repaid no later than the  
111 thirtieth day of June, two thousand twenty-two, in annual  
112 installments due on or before the thirtieth day of June of each  
113 year, which annual installments shall commence no later than  
114 the thirtieth day of June, two thousand three, in annual principal  
115 amounts as may be agreed upon between the board and the  
116 West Virginia economic development authority, and which  
117 annual installments need not be equal. The loan authorized by  
118 this subsection shall be non-recourse and shall be payable by  
119 the West Virginia economic development authority solely from  
120 amounts or returns received by the West Virginia economic  
121 development authority in respect of the loan authorized by this  
122 subsection to the West Virginia enterprise advancement  
123 corporation, whether in the form of interest, dividends, realized  
124 capital gains, return of capital or otherwise, in all of which the  
125 board shall have a security interest to secure repayment of the  
126 loan to the West Virginia economic development authority

127 authorized by this subsection. Any and all loans from the West  
128 Virginia economic development authority to the West Virginia  
129 enterprise advancement corporation made pursuant to this  
130 subsection shall also bear interest on the outstanding principal  
131 balance thereof at the rate of three percent per annum payable  
132 annually on or before the thirtieth day of June of each year,  
133 shall be non-recourse and shall be payable by the West Virginia  
134 enterprise advancement corporation solely from amounts of  
135 returns received by the West Virginia enterprise advancement  
136 corporation in respect of its investment in the West Virginia  
137 enterprise capital fund, LLC, whether in the form of interest,  
138 dividends, realized capital gains, return of capital or otherwise,  
139 in all of which the board shall have a security interest to secure  
140 repayment of the loan to the West Virginia economic develop-  
141 ment authority authorized by this subsection. In the event the  
142 amounts or returns received by the West Virginia enterprise  
143 corporation in respect of its investment in the West Virginia  
144 enterprise capital fund, LLC, are not adequate to pay when due  
145 the principal or interest installments, or both, with respect to the  
146 loan from the West Virginia economic development authority  
147 and, as a result thereof, the West Virginia economic develop-  
148 ment authority is unable to pay the principal or interest install-  
149 ments, or both, with respect to the loan authorized by this  
150 subsection by the board to the West Virginia economic devel-  
151 opment authority, the principal or interest, or both, as the case  
152 may be due on the loan made to the West Virginia economic  
153 development authority pursuant to this subsection shall be  
154 deferred, and any and all such past-due principal and interest  
155 payments shall promptly be paid to the fullest extent possible  
156 upon receipt by the West Virginia enterprise advancement  
157 corporation of moneys in respect of its investments in the West  
158 Virginia enterprise capital fund, LLC. The trustees or the board  
159 shall bear no fiduciary responsibility as provided in section  
160 eleven, article six, chapter twelve of this code with regard to the  
161 loan authorized by this subsection.

**CHAPTER 29. MISCELLANEOUS BOARDS  
AND OFFICERS.**

**ARTICLE 22. STATE LOTTERY ACT.**

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

§29-22-18a. State excess lottery revenue.

**§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  
2 the state treasury which shall be designated and known as the  
3 "state lottery fund". The fund consists of all appropriations to  
4 the fund and all interest earned from investment of the fund and  
5 any gifts, grants or contributions received by the fund. All  
6 revenues received from the sale of lottery tickets, materials and  
7 games shall be deposited with the state treasurer and placed into  
8 the "state lottery fund". The revenue shall be disbursed in the  
9 manner provided in this section for the purposes stated in this  
10 section and shall not be treated by the auditor and treasurer as  
11 part of the general revenue of the state.

12 (b) No appropriation, loan or other transfer of state funds  
13 may be made to the commission or lottery fund after the initial  
14 appropriation.

15           (c) A minimum annual average of forty-five percent of  
16 the gross amount received from each lottery shall be allocated  
17 and disbursed as prizes.

18           (d) Not more than fifteen percent of the gross amount  
19 received from each lottery may be allocated to and may be  
20 disbursed as necessary for fund operation and administration  
21 expenses: *Provided*, That for the period beginning the first day  
22 of January, two thousand two, through the thirtieth day of June,  
23 two thousand three, not more than seventeen percent of the  
24 gross amount received from each lottery shall be allocated to  
25 and may be disbursed as necessary for fund operation and  
26 administration expenses.

27           (e) The excess of the aggregate of the gross amount  
28 received from all lotteries over the sum of the amounts allo-  
29 cated by subsections (c) and (d) of this section shall be allo-  
30 cated as net profit. In the event that the percentage allotted for  
31 operations and administration generates a surplus, the surplus  
32 shall be allowed to accumulate to an amount not to exceed two  
33 hundred fifty thousand dollars. On a monthly basis, the director  
34 shall report to the joint committee on government and finance  
35 of the Legislature any surplus in excess of two hundred fifty  
36 thousand dollars and remit to the state treasurer the entire  
37 amount of those surplus funds in excess of two hundred fifty  
38 thousand dollars which shall be allocated as net profit.

39           (f) After first satisfying the requirements for funds  
40 dedicated to the school building debt service fund in subsection  
41 (h) of this section to retire the bonds authorized to be issued  
42 pursuant to section eight, article nine-d, chapter eighteen of this  
43 code, and then satisfying the requirements for funds dedicated  
44 to the education, arts, sciences and tourism debt service fund in  
45 subsection (i) of this section to retire the bonds authorized to be  
46 issued pursuant to section eleven-a, article six, chapter five of  
47 this code, any and all remaining funds in the state lottery fund

48 shall be made available to pay debt service in connection with  
49 any revenue bonds issued pursuant to section eighteen-a of this  
50 article, if and to the extent needed for such purpose from time  
51 to time. The Legislature shall annually appropriate all of the  
52 remaining amounts allocated as net profits in subsection (e) of  
53 this section, in such proportions as it considers beneficial to the  
54 citizens of this state, to: (1) The lottery education fund created  
55 in subsection (g) of this section; (2) the school construction  
56 fund created in section six, article nine-d, chapter eighteen of  
57 this code; (3) the lottery senior citizens fund created in subsec-  
58 tion (j) of this section; and (4) the division of natural resources  
59 created in section three, article one, chapter twenty of this code  
60 and the West Virginia development office as created in section  
61 one, article two, chapter five-b of this code, in accordance with  
62 subsection (k) of this section. No transfer to any account other  
63 than the school building debt service account, the education,  
64 arts, sciences and tourism debt service fund, the economic  
65 development project fund created under section eighteen-a,  
66 article twenty-two, chapter twenty-nine of this code, or any  
67 fund from which debt service is paid under subsection (c),  
68 section eighteen-a of this article, may be made in any period of  
69 time in which a default exists in respect to debt service on  
70 bonds issued by the school building authority, the state building  
71 commission, the economic development authority or which are  
72 otherwise secured by lottery proceeds. No additional transfer  
73 may be made to any account other than the school building debt  
74 service account and the education, arts, sciences and tourism  
75 debt service fund when net profits for the preceding twelve  
76 months are not at least equal to one hundred fifty percent of  
77 debt service on bonds issued by the school building authority  
78 and the state building commission which are secured by net  
79 profits.

80 (g) There is hereby continued a special revenue fund in  
81 the state treasury which shall be designated and known as the  
82 "lottery education fund". The fund shall consist of the amounts

83 allocated pursuant to subsection (f) of this section, which shall  
84 be deposited into the lottery education fund by the state  
85 treasurer. The lottery education fund shall also consist of all  
86 interest earned from investment of the lottery education fund  
87 and any other appropriations, gifts, grants, contributions or  
88 moneys received by the lottery education fund from any source.  
89 The revenues received or earned by the lottery education fund  
90 shall be disbursed in the manner provided below and may not  
91 be treated by the auditor and treasurer as part of the general  
92 revenue of the state. Annually, the Legislature shall appropriate  
93 the revenues received or earned by the lottery education fund to  
94 the state system of public and higher education for these  
95 educational programs it considers beneficial to the citizens of  
96 this state.

97 (h) On or before the twenty-eighth day of each month, as  
98 long as revenue bonds or refunding bonds are outstanding, the  
99 lottery director shall allocate to the school building debt service  
100 fund created pursuant to the provisions of section six, article  
101 nine-d, chapter eighteen of this code, as a first priority from the  
102 net profits of the lottery for the preceding month, an amount  
103 equal to one tenth of the projected annual principal, interest and  
104 coverage ratio requirements on any and all revenue bonds and  
105 refunding bonds issued, or to be issued, on or after the first day  
106 of April, one thousand nine hundred ninety-four, as certified to  
107 the lottery director in accordance with the provisions of section  
108 six, article nine-d, chapter eighteen of this code. In no event  
109 shall the monthly amount allocated exceed one million eight  
110 hundred thousand dollars, nor may the total allocation of the net  
111 profits to be paid into the school building debt service fund, as  
112 provided in this section, in any fiscal year exceed the lesser of  
113 the principal and interest requirements certified to the lottery  
114 director or eighteen million dollars. In the event there are  
115 insufficient funds available in any month to transfer the amount  
116 required to be transferred pursuant to this subsection to the  
117 school debt service fund, the deficiency shall be added to the

118 amount transferred in the next succeeding month in which  
119 revenues are available to transfer the deficiency. A lien on the  
120 proceeds of the state lottery fund up to a maximum amount  
121 equal to the projected annual principal, interest and coverage  
122 ratio requirements, not to exceed twenty-seven million dollars  
123 annually, may be granted by the school building authority in  
124 favor of the bonds it issues which are secured by the net lottery  
125 profits.

126           When the school improvement bonds, secured by profits  
127 from the lottery and deposited in the school debt service fund,  
128 mature, the profits shall become available for debt service on  
129 additional school improvement bonds as a first priority from the  
130 net profits of the lottery or may at the discretion of the authority  
131 be placed into the school construction fund created pursuant to  
132 the provisions of section six, article nine-d, chapter eighteen of  
133 this code.

134           (i) Beginning on or before the twenty-eighth day of July,  
135 one thousand nine hundred ninety-six, and continuing on or  
136 before the twenty-eighth day of each succeeding month  
137 thereafter, as long as revenue bonds or refunding bonds are  
138 outstanding, the lottery director shall allocate to the education,  
139 arts, sciences and tourism debt service fund created pursuant to  
140 the provisions of section eleven-a, article six, chapter five of  
141 this code, as a second priority from the net profits of the lottery  
142 for the preceding month, an amount equal to one tenth of the  
143 projected annual principal, interest and coverage ratio require-  
144 ments on any and all revenue bonds and refunding bonds  
145 issued, or to be issued, on or after the first day of April, one  
146 thousand nine hundred ninety-six, as certified to the lottery  
147 director in accordance with the provisions of that section. In no  
148 event may the monthly amount allocated exceed one million  
149 dollars nor may the total allocation paid into the education, arts,  
150 sciences and tourism debt service fund, as provided in this  
151 section, in any fiscal year exceed the lesser of the principal and

152 interest requirements certified to the lottery director or ten  
153 million dollars. In the event there are insufficient funds  
154 available in any month to transfer the amount required pursuant  
155 to this subsection to the education, arts, sciences and tourism  
156 debt service fund, the deficiency shall be added to the amount  
157 transferred in the next succeeding month in which revenues are  
158 available to transfer the deficiency. A second-in-priority lien on  
159 the proceeds of the state lottery fund up to a maximum amount  
160 equal to the projected annual principal, interest and coverage  
161 ratio requirements, not to exceed fifteen million dollars  
162 annually, may be granted by the state building commission in  
163 favor of the bonds it issues which are secured by the net lottery  
164 profits.

165           When the bonds, secured by profits from the lottery and  
166 deposited in the education, arts, sciences and tourism debt  
167 service fund, mature, the profits shall become available for debt  
168 service on additional bonds as a second priority from the net  
169 profits of the lottery.

170           (j) There is hereby continued a special revenue fund in  
171 the state treasury which shall be designated and known as the  
172 "lottery senior citizens fund". The fund shall consist of the  
173 amounts allocated pursuant to subsection (f) of this section,  
174 which amounts shall be deposited into the lottery senior citizens  
175 fund by the state treasurer. The lottery senior citizens fund shall  
176 also consist of all interest earned from investment of the lottery  
177 senior citizens fund and any other appropriations, gifts, grants,  
178 contributions or moneys received by the lottery senior citizens  
179 fund from any source. The revenues received or earned by the  
180 lottery senior citizens fund shall be distributed in the manner  
181 provided below and may not be treated by the auditor or  
182 treasurer as part of the general revenue of the state. Annually,  
183 the Legislature shall appropriate the revenues received or  
184 earned by the lottery senior citizens fund to such senior citizens



185 medical care and other programs as it considers beneficial to  
186 the citizens of this state.

187 (k) The division of natural resources and the West Virginia  
188 development office, as appropriated by the Legislature, may use  
189 the amounts allocated to them pursuant to subsection (f) of this  
190 section for one or more of the following purposes: (1) The  
191 payment of any or all of the costs incurred in the development,  
192 construction, reconstruction, maintenance or repair of any  
193 project or recreational facility, as these terms are defined in  
194 section four, article five, chapter twenty of this code, pursuant  
195 to the authority granted to it under article five, chapter twenty  
196 of this code; (2) the payment, funding or refunding of the  
197 principal of, interest on or redemption premiums on any bonds,  
198 security interests or notes issued by the parks and recreation  
199 section of the division of natural resources under article five,  
200 chapter twenty of this code; or (3) the payment of any advertis-  
201 ing and marketing expenses for the promotion and development  
202 of tourism or any tourist facility or attraction in this state.

**§29-22-18a. State excess lottery revenue fund.**

1 (a) There is hereby created a special revenue fund within  
2 the state lottery fund in the state treasury which shall be  
3 designated and known as the "state excess lottery revenue  
4 fund". The fund shall consist of all appropriations to the fund  
5 and all interest earned from investment of the fund and any  
6 gifts, grants or contributions received by the fund. All revenues  
7 received under the provisions of sections ten-b and ten-c, article  
8 twenty-two-a of this chapter and under article twenty-two-b of  
9 this chapter, except the amounts due the commission under  
10 section 29-22B-1408(a)(1) of this chapter, shall be deposited in  
11 the state treasury and placed into the "state excess lottery  
12 revenue fund". The revenue shall be disbursed in the manner  
13 provided in this section for the purposes stated in this section

14 and shall not be treated by the auditor and the state treasurer as  
15 part of the general revenue of the state.

16 (b) For the fiscal year beginning the first day of July, two  
17 thousand one, the moneys of the fund established in this section  
18 shall be used for the purpose of subsidizing salary increases and  
19 associated employee benefits paid from the state general  
20 revenue fund as determined by the secretary of administration  
21 effective the first day of July, two thousand one or thereafter,  
22 including, but not limited to, the salary increase for teachers  
23 provided in section two, article four, chapter eighteen-a of this  
24 code, by enactment of the Legislature in two thousand one; the  
25 salary increase for members of the state police provided in  
26 section five, article two, chapter fifteen of this code by enact-  
27 ment of the Legislature in two thousand one; and general salary  
28 increases for state employees: *Provided*, That effective the first  
29 day of October, two thousand one, the full year salary increases  
30 for state employees other than correctional officers and mem-  
31 bers of the state police equal seven hundred fifty-six dollars for  
32 each full-time employee: *Provided, however*, That effective the  
33 first day of July, two thousand one, the full year salary in-  
34 creases for uniformed correctional officers equal two thousand  
35 dollars for each full-time employee; and that the full year salary  
36 increases for non-uniformed correctional staff, whose core  
37 duties include contact with inmates or juvenile detainees on a  
38 regular and frequent basis, equal one thousand two hundred  
39 fifty dollars for each full-time employee; but that for all other  
40 division of correction and division of juvenile services employ-  
41 ees, the full year salary increase equals seven hundred fifty-six  
42 dollars for each full-time employee. Until the thirtieth day of  
43 June, two thousand two, the lottery commission shall, upon  
44 direction from the governor, transfer the moneys of the account  
45 to the state general revenue fund in the amounts specified in the  
46 governor's official revenue estimates to subsidize the funding  
47 of the salary increases described in this subsection. Beginning  
48 the first day of July, two thousand two, and thereafter, the

49 transfer authority granted by this subsection is terminated. After  
50 first satisfying the funding requirements directed by this  
51 subsection, the moneys remaining in the fund shall be disbursed  
52 in the manner provided by subsection (c) of this section.

53 (c) For the fiscal year beginning the first day of July, two  
54 thousand one, the commission shall deposit: (1) Five million  
55 five hundred thousand dollars into the account hereby created  
56 in the state treasury to be known as the “education improvement  
57 fund” for appropriation by the Legislature to the “promise  
58 scholarship fund” created in section seven, article seven,  
59 chapter eighteen-c of this code; (2) twenty-five million dollars  
60 to the school building debt service fund created in section six,  
61 article nine-d, chapter eighteen of this code for the issuance of  
62 revenue bonds; (3) twenty-five million dollars in the West  
63 Virginia infrastructure fund created in section nine, article  
64 fifteen-a, chapter thirty-one of this code to be spent in accor-  
65 dance with the provisions of that article; (4) ten million dollars  
66 into a separate account within the state lottery fund to be known  
67 as the higher education improvement fund for higher education;  
68 and (5) nine million dollars into a separate account within the  
69 state lottery fund to be known as the state park improvement  
70 fund for park improvements. For the fiscal year beginning the  
71 first day of July, two thousand two, the commission shall  
72 deposit: (1) Sixty-five million dollars into the subaccount of the  
73 state excess lottery revenue fund hereby created in the state  
74 treasury to be known as the “general purpose account” to be  
75 expended pursuant to appropriation of the Legislature; (2) ten  
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) nineteen million dollars into the economic  
80 development project fund created in subsection (d) of this  
81 section, for the issuance of revenue bonds and to be spent in  
82 accordance with the provisions of said subsection; (4) twenty  
83 million dollars to the school building debt service fund created

84 in section six, article nine-d, chapter eighteen of this code for  
85 the issuance of revenue bonds; (5) forty million dollars in the  
86 West Virginia infrastructure fund created in section nine, article  
87 fifteen-a, chapter thirty-one of this code to be spent in accor-  
88 dance with the provisions of that article; (6) ten million dollars  
89 into the higher education improvement fund for higher educa-  
90 tion; and (7) five million dollars into the state park improve-  
91 ment fund for park improvements. For the fiscal year beginning  
92 the first day of July, two thousand three, the commission shall  
93 deposit: (1) Sixty-five million dollars into the general purpose  
94 account to be expended pursuant to appropriation of the  
95 Legislature; (2) seventeen million dollars into the education  
96 improvement fund for appropriation by the Legislature to the  
97 “promise scholarship fund” created in section seven, article  
98 seven, chapter eighteen-c of this code; (3) nineteen million  
99 dollars into the economic development project fund created in  
100 subsection (d) of this section, for the issuance of revenue bonds  
101 and to be spent in accordance with the provisions of said  
102 subsection; (4) twenty million dollars to the school building  
103 debt service fund created in section six, article nine-d, chapter  
104 eighteen of this code for the issuance of revenue bonds; (5)  
105 forty million dollars in the West Virginia infrastructure fund  
106 created in section nine, article fifteen-a, chapter thirty-one of  
107 this code to be spent in accordance with the provisions of that  
108 article; (6) ten million dollars into the higher education im-  
109 provement fund for higher education; and (7) five million  
110 dollars into the state park improvement fund for park improve-  
111 ments. For the fiscal year beginning the first day of July, two  
112 thousand four, and subsequent fiscal years, the commission  
113 shall deposit: (1) Sixty-five million dollars into the general  
114 purpose account to be expended pursuant to appropriation of the  
115 Legislature; (2) twenty-seven million dollars into the education  
116 improvement fund for appropriation by the Legislature to the  
117 “promise scholarship fund” created in section seven, article  
118 seven, chapter eighteen-c of this code; (3) nineteen million

119 dollars into the economic development project fund created in  
120 subsection (d) of this section, for the issuance of revenue bonds  
121 and to be spent in accordance with the provisions of said  
122 subsection; (4) nineteen million dollars to the school building  
123 debt service fund created in section six, article nine-d, chapter  
124 eighteen of this code for the issuance of revenue bonds; (5)  
125 forty million dollars in the West Virginia infrastructure fund  
126 created in section nine, article fifteen-a, chapter thirty-one of  
127 this code to be spent in accordance with the provisions of that  
128 article; (6) ten million dollars into the higher education im-  
129 provement fund for higher education; and (7) five million  
130 dollars into the state park improvement fund for park improve-  
131 ments. No portion of the distributions made as provided in  
132 subsection (c) of this section, except distributions made in  
133 connection with bonds issued under subsection (d) of this  
134 section, may be used to pay debt service on bonded indebted-  
135 ness until after the Legislature expressly authorizes issuance of  
136 the bonds and payment of debt service on the bonds through  
137 statutory enactment or the passage of a concurrent resolution by  
138 both houses of the Legislature. Until subsequent legislative  
139 enactment or adoption of a resolution that expressly authorizes  
140 issuance of the bonds and payment of debt service on the bonds  
141 with funds distributed under subsection (c) of this section,  
142 except distributions made in connection with bonds issued  
143 under subsection (d) of this section, the distributions may be  
144 used only to fund capital improvements that are not financed by  
145 bonds and only pursuant to appropriation of the Legislature.

146 (d) The Legislature finds and declares that in order to  
147 attract new business, commerce and industry to this state, to  
148 retain existing business and industry providing the citizens of  
149 this state with economic security and to advance the business  
150 prosperity of this state and the economic welfare of the citizens  
151 of this state, it is necessary to provide public financial support  
152 for constructing, equipping, improving and maintaining  
153 economic development projects, capital improvement projects

154 and infrastructure which promote economic development in this  
155 state.

156 (1) The West Virginia economic development authority  
157 created and provided for in article fifteen, chapter thirty-one of  
158 this code, shall, by resolution, in accordance with the provisions  
159 of this article, and article fifteen, chapter thirty-one of this code,  
160 and upon direction of the governor, issue revenue bonds of the  
161 economic development authority in no more than two series to  
162 pay for all or a portion of the cost of constructing, equipping,  
163 improving or maintaining projects under this section or to  
164 refund the bonds, at the discretion of the authority. Any revenue  
165 bonds issued on or after the first day of July, two thousand two,  
166 which are secured by state excess lottery revenue proceeds shall  
167 mature at a time or times not exceeding thirty years from their  
168 respective dates. The principal of, and the interest and redemp-  
169 tion premium, if any, on the bonds shall be payable solely from  
170 the special fund provided in this section for the payment.

171 (2) There is hereby created in the state treasury a special  
172 revenue fund named the "economic development project fund"  
173 into which shall be deposited on and after the first day of July,  
174 two thousand two, the amounts to be deposited in said fund as  
175 specified in subsection (c) of this section. The economic  
176 development project fund shall consist of all such moneys, all  
177 appropriations to the fund, all interest earned from investment  
178 of the fund, and any gifts, grants or contributions received by  
179 the fund. All amounts deposited in the fund shall be pledged to  
180 the repayment of the principal, interest and redemption pre-  
181 mium, if any, on any revenue bonds or refunding revenue bonds  
182 authorized by this section, including any and all commercially  
183 customary and reasonable costs and expenses which may be  
184 incurred in connection with the issuance, refunding, redemption  
185 or defeasance thereof. The West Virginia economic develop-  
186 ment authority may further provide in the resolution and in the  
187 trust agreement for priorities on the revenues paid into the

188 economic development project fund as may be necessary for the  
189 protection of the prior rights of the holders of bonds issued at  
190 different times under the provisions of this section. The bonds  
191 issued pursuant to this section shall be separate from all other  
192 bonds which may be or have been issued from time to time  
193 under the provisions of this article.

194 After the West Virginia economic development authority  
195 has issued bonds authorized by this section, and after the  
196 requirements of all funds have been satisfied, including any  
197 coverage and reserve funds established in connection with the  
198 bonds issued pursuant to this section, any balance remaining in  
199 the economic development project fund may be used for the  
200 redemption of any of the outstanding bonds issued under this  
201 section which, by their terms, are then redeemable or for the  
202 purchase of the outstanding bonds at the market price, but not  
203 to exceed the price, if any, at which redeemable, and all bonds  
204 redeemed or purchased shall be immediately canceled and shall  
205 not again be issued.

206 (3) The West Virginia economic development authority  
207 shall expend the bond proceeds from the revenue bond issues  
208 authorized and directed by this section of this code for such  
209 projects as may be certified under the provision of this subsection:  
210 *Provided*, That the bond proceeds shall be expended in  
211 accordance with the requirements and provisions of article five-  
212 a, chapter twenty-one of this code and either article twenty-two  
213 or article twenty-two-a, chapter five of this code, as the case  
214 may be: *Provided, however*, That if such bond proceeds are  
215 expended pursuant to article twenty-two-a, chapter five of this  
216 code, and if the design-build board created under said article  
217 determines that the execution of a design-build contract in  
218 connection with a project is appropriate pursuant to the criteria  
219 set forth in said article, and that a competitive bidding process  
220 was used in selecting the design builder and awarding such  
221 contract, such determination shall be conclusive for all purposes

222 and shall be deemed to satisfy all the requirements of said  
223 article. For the purpose of certifying the projects that will  
224 receive funds from the bond proceeds, a committee is hereby  
225 established and comprised of the governor, or his or her  
226 designee, the secretary of the department of tax and revenue,  
227 the executive director of the West Virginia development office,  
228 three persons appointed by the governor from a list of five  
229 names to be submitted to the governor by the president of the  
230 West Virginia Senate, and three persons appointed by the  
231 governor from a list of five names to be submitted to the  
232 governor by the speaker of the West Virginia House of Dele-  
233 gates. The committee shall meet as often as necessary and take  
234 recommendations from any source whatever regarding possible  
235 projects to be funded, in whole or in part, and make certifica-  
236 tions, from bond proceeds in accordance with this subsection.  
237 The committee shall meet within thirty days of the effective  
238 date of this section. Prior to making each certification, the  
239 committee shall conduct at least one public hearing, which may  
240 be held outside of Kanawha County. Notice of the time, place,  
241 date and purpose of the hearing shall be published in at least  
242 one newspaper in each of the three congressional districts at  
243 least fourteen days prior to the date of the public hearing. Prior  
244 to the issuance of bonds under this subsection, the committee  
245 shall certify to the economic development authority a list of  
246 those projects that will receive funds from the proceeds of the  
247 bonds. Once certified, the list may not thereafter be altered or  
248 amended other than by legislative enactment.

249 (e) If the commission receives revenues in an amount that  
250 is not sufficient to fully comply with the requirements of  
251 subsections (c) and (h) of this section, the commission shall  
252 first make the distribution to the economic development project  
253 fund, second, make the distribution or distributions to the other  
254 funds from which debt service is to be paid, third, make the  
255 distribution to the education improvement fund for appropria-  
256 tion by the Legislature to the promise scholarship fund, and



257 fourth, make the distribution to the general purpose account:  
258 *Provided, That*, subject to the foregoing, to the extent such  
259 revenues are not pledged in support of revenue bonds which are  
260 or may be issued from time to time under this section, the  
261 aforesaid revenues shall be distributed on a pro rata basis.

262 (f) For the fiscal year beginning on the first day of July, two  
263 thousand two, and each fiscal year thereafter, the commission  
264 shall, after meeting the requirements of subsections (c) and (h)  
265 of this section, and after transferring to the state lottery fund  
266 created under section eighteen of this article, an amount equal  
267 to any transfer from the state lottery fund to the excess lottery  
268 fund pursuant to subsection (f) of said section, deposit fifty  
269 percent of the amount by which annual gross revenue deposited  
270 in the state excess lottery revenue fund exceeds two hundred  
271 twenty-five million dollars in a fiscal year in a separate account  
272 in the state lottery fund to be available for appropriation by the  
273 Legislature.

274 (g) When bonds are issued for projects under subsection (d)  
275 of this section or for the school building authority, infrastruc-  
276 ture, higher education or park improvement purposes described  
277 in this section that are secured by profits from lotteries depos-  
278 ited in the state excess lottery revenue fund, the lottery director  
279 shall allocate first, to the economic development project fund  
280 an amount equal to one tenth of the projected annual principal,  
281 interest and coverage requirements on any and all revenue  
282 bonds issued, or to be issued, on or after the first day of July,  
283 two thousand two, as certified to the lottery director, and  
284 second, to the fund or funds from which debt service is paid on  
285 bonds issued under this section for the school building author-  
286 ity, infrastructure, higher education and park improvements an  
287 amount equal to one tenth of the projected annual principal,  
288 interest and coverage requirements on any and all revenue  
289 bonds issued, or to be issued, on or after the first day of April,  
290 two thousand two, as certified to the lottery director. In the

291 event there are insufficient funds available in any month to  
292 transfer the amounts required pursuant to this subsection, the  
293 deficiency shall be added to the amount transferred in the next  
294 succeeding month in which revenues are available to transfer  
295 the deficiency.

296 (h) In fiscal year two thousand four, and thereafter, prior to  
297 the distributions provided in subsection (c) of this section, the  
298 lottery commission shall deposit into the general revenue fund  
299 amounts necessary to provide reimbursement for the refundable  
300 credit allowable under section twenty-one, article twenty-one,  
301 chapter eleven of this code.

302 (i) (1) The Legislature considers the following as priorities  
303 in the expenditure of any surplus revenue funds:

304 (A) Providing salary and/or increment increases for  
305 professional educators and public employees;

306 (B) Providing adequate funding for the public employees  
307 insurance agency; and

308 (C) Providing funding to help address the shortage of  
309 qualified teachers and substitutes in areas of need, both in  
310 number of teachers and in subject matters areas.

311 (2) The provisions of this subsection may not be construed  
312 by any court to require any appropriation or any specific  
313 appropriation or level of funding for the purposes set forth in  
314 this subsection.

315 (j) The Legislature further directs the governor to focus  
316 resources on the creation of a prescription drug program for  
317 senior citizens by pursuing a medicaid waiver to offer prescrip-  
318 tion drug services to senior citizens; by investigating the  
319 establishment of purchasing agreements with other entities to  
320 reduce costs; by providing discount prices or rebate programs

321 for seniors; by coordinating programs offered by pharmaceuti-  
322 cal manufacturers that provide reduced cost or free drugs; by  
323 coordinating a collaborative effort among all state agencies to  
324 ensure the most efficient and cost effective program possible  
325 for the senior citizens of this state; and by working closely with  
326 the state's congressional delegation to ensure that a national  
327 program is implemented. The Legislature further directs that the  
328 governor report his progress back to the joint committee on  
329 government and finance on an annual basis beginning in  
330 November of the year two thousand one, until a comprehensive  
331 program has been fully implemented.

## CHAPTER 105

**(Com. Sub. for S. B. 247 — By Senators Tomblin,  
Mr. President, and Sprouse)  
[By Request of the Executive]**

---

[Passed March 9, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend and reenact section five, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine; to amend article two-e, chapter eighteen of said code by adding thereto a new section, designated section three-e; to amend and reenact sections thirteen, fifteen, eighteen and twenty-two, article five of said chapter; to further amend said article by adding thereto three new sections, designated sections eighteen-e, forty-four and forty-five; to amend and reenact section five, article five-a of said chapter; to amend and reenact section five, article nine-a of said chapter; to further amend said article by adding thereto a new

section, designated section five-b; to amend article nine-d of said chapter by adding thereto a new section, designated section nineteen; to amend article twenty-eight of said chapter by adding thereto a new section, designated section seven; to amend and reenact section two, article two, chapter eighteen-a of said code; to amend and reenact sections six and nine, article three of said chapter; to amend and reenact sections two, three, five, seven-a, eight, eight-a, eight-b and sixteen, article four of said chapter; and to further amend said article by adding thereto a new section, designated section fourteen-a, all relating to education generally; prohibiting the governor's cabinet on children, youth and families from transferring funds; prohibiting the governor's cabinet on children, youth and families from being service provider; creating the West Virginia science education enhancement initiative competitive grant program and providing procedures for grant application and selection; requiring board minutes to reflect student transfers across county lines; establishing conditions for kindergarten programs for children below age five and removing obsolete language; requiring a study of the pupil teacher ratio in grade levels included in elementary and middle schools; including secretaries in definition of school employees who provide certain specialized health procedures; requiring provision of early childhood education programs for children attaining age of four and specifying implementation process, provisions for standards and enrollment; report to legislative committee and specifying intent; providing further specification for school calendar; providing for faculty senate meeting times; including transportation of students to county and multi-county vocational-technical centers as consideration for service personnel ratio waiver; creating foundation allowance for increasing net enrollment ratios; providing certain considerations, assistance and criteria for funding of comprehensive high schools by the school building authority; authorizing state superintendent to waive assessment requirement for parochial schools under certain conditions; requiring county boards to provide released time for certain

professional educators for certain purposes without jeopardizing certain rights, privileges, benefits or accrual of experience; allowing superintendent to designate commission for professional teaching standards or members thereof to conduct hearings in proceedings related to the denial or revocation of certificates; requiring county service personnel staff development council chair to be member elected by council and requiring certain reports regarding council and account; increasing salaries of professional and service personnel; increasing principal's index; updating references to salary schedules used in calculation of salary equity; requiring a board to rescind a transfer of professional personnel in certain instances; creating new service personnel class title of West Virginia education information system data entry and administrative clerk and assigning pay grade; including mechanics, mechanic assistants and chief mechanics in the same classification category; study on daily planning periods; and right of service personnel to retain extracurricular assignment.

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

That section five, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section nine; that article two-e, chapter eighteen of said code be amended by adding thereto a new section, designated section three-e; that sections thirteen, fifteen, eighteen and twenty-two, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections eighteen-e, forty-four and forty-five; that section five, article five-a of said chapter be amended and reenacted; that section five, article nine-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section five-b; that article nine-d of said chapter be amended by adding thereto a new section, designated section nineteen; that article twenty-eight of said chapter be amended

by adding thereto a new section, designated section seven; that section two, article two, chapter eighteen-a of said code be amended and reenacted; that sections six and nine, article three of said chapter be amended and reenacted; that sections two, three, five, seven-a, eight, eight-a, eight-b and sixteen, article four of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section fourteen-a, 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.**
- 18A. School Personnel.**

**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 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.**

- §5-26-5. Powers and duties relating to funding and budgetary needs for children and families.
- §5-26-9. Prohibition of providing services.

**§5-26-5. Powers and duties relating to funding and budgetary needs for children and families.**

- 1 (a) The cabinet shall analyze the budgets of the departments
- 2 of state government to the extent that they address or impact
- 3 upon programs and services for children and families, review
- 4 budgetary needs and revenue sources, and make recommenda-
- 5 tions regarding the governor's proposed budget and the

6 redirection of resources. In making such recommendations, the  
7 cabinet shall educate themselves on the availability of and  
8 eligibility for federal, local and private funding, with the goal  
9 of maximizing federal, local and private revenues for use in  
10 areas directly benefitting children and families.

11 (b) Any legislative recommendation shall be accompanied  
12 by a proposal or plan for sufficient funding. In exploring all  
13 aspects of funding possibilities, the cabinet shall consider  
14 innovative, flexible funding such as interagency funding, joint  
15 funding pools, interagency reimbursement, and funding by the  
16 families serviced based on ability to pay.

17 (c) The cabinet shall develop fiscal incentives for the  
18 establishment of family resource networks and for programs  
19 resulting in substantial cost savings, such as programs which  
20 keep children at home and which thereby avoid unnecessary  
21 out-of-home care. Any savings resulting from the coordination  
22 of programs and services for children and families shall be  
23 reinvested for expenditure in areas directly benefitting children  
24 and families.

#### **§5-26-9. Prohibition of providing services.**

1 It is the cabinet's primary duty to coordinate services and  
2 resources but not to become a provider of services. Beginning  
3 on the first day of July, two thousand three, the cabinet may not  
4 provide services other than coordination of services provided by  
5 other entities.

### **CHAPTER 18. EDUCATION.**

#### **Article**

**2E. High Quality Educational Programs.**

**5. County Board of Education.**

**5A. Local School Involvement.**

**9A. Public School Support.**

**9D. School Building Authority.**

**28. Private, Parochial or Church Schools, or Schools of a Religious Order.**

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.****§18-2E-3e. West Virginia Science Education Enhancement Initiative grant program created; legislative findings and purpose of section.**

1 (a) The Legislature hereby finds and acknowledges that, if  
2 remediation is necessary, it should be provided when students  
3 are younger and before patterns of failure are established. The  
4 Legislature further acknowledges that the people of West  
5 Virginia would be better served if the state acted to ensure that  
6 all public school students were able to execute science skills at  
7 or above grade level upon exiting grade eight, that county  
8 boards are in the best position to determine if remediation is  
9 necessary for students in grades four through eight and that the  
10 counties should have the option of providing summer school for  
11 students and may consider student attendance as a factor in  
12 determining whether a child is eligible to be promoted to the  
13 next grade.

14 The Legislature further finds that not all students are  
15 financially able to pay for summer school, nor do all county  
16 schools hold summer school. It is, therefore, the purpose of this  
17 section to help the county boards to provide, either individually  
18 or cooperatively, free summer school and summer school  
19 transportation for those students in grades four through eight  
20 who did not perform at grade level during the regular school  
21 year. It also is the purpose of this section to help students in  
22 grades four through eight who are identified as being in danger  
23 of failing to execute science skills at grade level by the end of  
24 the school year to receive intensive science instruction during  
25 their regularly scheduled science time throughout the regular  
26 school year.

27 (b) Subject to appropriation by the Legislature therefor, the  
28 state board shall establish a competitive grant program as set  
29 forth in this section to provide science programs for students in



30 grades four through eight who are not performing at grade  
31 level. The program shall be designated and known as the “West  
32 Virginia Science Education Enhancement Initiative” program.

33 (c) Priorities for awarding the grants shall include, but are  
34 not limited to:

35 (1) Schools that have science test scores below the state  
36 averages; or

37 (2) Schools that receive federal funds for the improvement  
38 of science.

39 (d) Competitive grant applications must be submitted by the  
40 county boards, or by a community collaborative with the county  
41 board as a partner with leadership responsibility, and shall  
42 describe how the program will:

43 (1) Employ strategies, proven methods and innovative  
44 techniques for student learning, teaching and school manage-  
45 ment that are based on reliable research and effective practices,  
46 and can be replicated in other schools to improve the science  
47 skills of students;

48 (2) Contain measurable goals for the improvement of  
49 student science skills and benchmarks for meeting those goals;

50 (3) Include a plan for the evaluation of student progress  
51 toward achieving the state’s high standards;

52 (4) Identify how other federal, state, local and private  
53 resources, including volunteers, will be utilized to further the  
54 intent of this section;

55 (5) Link summer improvement programs for science with  
56 science instruction and remediation throughout the school year;

57       (6) Determine the feasibility of collaborating with colleges  
58 of education for the purpose of providing educational experi-  
59 ences for prospective teachers;

60       (7) Identify the use of technology, including computers and  
61 calculators, and demonstrate how technology will be integrated  
62 into the program; and

63       (8) Accomplish other objectives as deemed necessary by  
64 the state board.

65       (e) Any county receiving a grant should encourage students  
66 in grades four through eight who did not perform at grade level  
67 during the regular school year to attend summer school and may  
68 consider summer school attendance as a factor in determining  
69 whether a child is eligible to be promoted to the next grade.  
70 The county board shall provide intensive science instruction  
71 during regularly scheduled science time throughout the regular  
72 school year to students in grades four through eight who are  
73 identified by the classroom teacher as being in danger of failing  
74 to execute science skills at grade level by the end of the school  
75 year. Nothing in this section prohibits county boards from  
76 permitting students to participate in science programs on a  
77 student fee basis.

78       (f) The state board shall approve procedures for the  
79 implementation of this section. To assist the state board in  
80 developing procedures for the implementation of this section,  
81 including the grant application and the grant review and  
82 selection process, the state board shall appoint an advisory  
83 board consisting of the science education coordinator from the  
84 state department of education, a college or university professor  
85 of science, a county science curriculum specialist, an elemen-  
86 tary teacher and an elementary principal, a middle school  
87 teacher with a science certification and a middle school  
88 principal, a science teacher with a certificate issued by the

89 national board of professional teaching standards, if available,  
90 and a representative from the West Virginia science teachers  
91 association, or a representative of the like successor organiza-  
92 tion should this named organization cease to exist. The  
93 procedures shall provide for:

94 (1) The appointment of a grant review and selection panel  
95 by the state board consisting of persons with expertise and  
96 practical experience in delivering programs to increase the  
97 science skills of young students, not more than one half of  
98 whom may be employees of the state department of education,  
99 or the state board may designate the advisory board as the grant  
100 review and selection panel;

101 (2) Notice to all schools of the grant competition and the  
102 availability of applications on or before the thirtieth day of  
103 September, in each fiscal year for which grant funds are  
104 available;

105 (3) A grant application deadline postmarked on or before  
106 the fifteenth day of December, in each fiscal year for which  
107 grant funds are available;

108 (4) Notice of grant awards on or before the first day of  
109 March, in each fiscal year for which grant funds are available;  
110 and

111 (5) Other such requirements as deemed necessary by the  
112 state board.

113 (g) The state board may fund, from any other funds  
114 available for such purposes, the programs required by this  
115 section for students in grades four through eight and any  
116 programs required by state board rules such as, but not limited  
117 to, the following:

118 (1) Tutoring;

- 119       (2) Summer school educational services;
- 120       (3) Additional certified personnel to provide intensive  
121 instruction in science throughout the school year;
- 122       (4) Staff development for teachers; and
- 123       (5) Hot meal programs.
- 124       (h) Nothing in this section supersedes the individualized  
125 education program (IEP) of any student.
- 126       (i) Nothing in this section requires any specific level of  
127 funding by the Legislature.

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

- §18-5-13. Authority of boards generally.
- §18-5-15. Ages of persons to whom schools are open; enrollment of suspended or expelled student.
- §18-5-18. Kindergarten programs.
- §18-5-18e. Study of limits on the number of pupils per teacher in a classroom in elementary and middle schools.
- §18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.
- §18-5-44. Early childhood education programs.
- §18-5-45. School calendar.

**§18-5-13. Authority of boards generally.**

1           The boards, subject to the provisions of this chapter and the  
2 rules of the state board, have authority:

- 3           (a) To control and manage all of the schools and school  
4 interests for all school activities and upon all school property,  
5 whether owned or leased by the county, including the authority  
6 to require that records be kept of all receipts and disbursements  
7 of all funds collected or received by any principal, teacher,  
8 student or other person in connection with the schools and

9 school interests, any programs, activities or other endeavors of  
10 any nature operated or carried on by or in the name of the  
11 school, or any organization or body directly connected with the  
12 school, to audit the records and to conserve the funds, which  
13 shall be considered quasi-public moneys, including securing  
14 surety bonds by expenditure of board moneys;

15 (b) To establish schools, from preschool through high  
16 school, inclusive of vocational schools; and to establish schools  
17 and programs, or both, for post high school instruction, subject  
18 to approval of the state board of education;

19 (c) To close any school which is unnecessary and to assign  
20 the pupils of the school to other schools: *Provided*, That the  
21 closing shall be officially acted upon and teachers and service  
22 personnel involved notified on or before the first Monday in  
23 April, in the same manner as provided in section four of this  
24 article, except in an emergency, subject to the approval of the  
25 state superintendent, or under subdivision (e) of this section;

26 (d) To consolidate schools;

27 (e) To close any elementary school whose average daily  
28 attendance falls below twenty pupils for two months in succes-  
29 sion and send the pupils to other schools in the district or to  
30 schools in adjoining districts. If the teachers in the closed  
31 school are not transferred or reassigned to other schools, they  
32 shall receive one month's salary;

33 (f)(1) To provide at public expense adequate means of  
34 transportation, including transportation across county lines for  
35 students whose transfer from one district to another is agreed to  
36 by both boards as reflected in the minutes of their respective  
37 meetings, for all children of school age who live more than two  
38 miles distance from school by the nearest available road; to  
39 provide at public expense and according to such rules as the  
40 board may establish, adequate means of transportation for

41 school children participating in board-approved curricular and  
42 extracurricular activities; and to provide in addition thereto at  
43 public expense, by rules and within the available revenues,  
44 transportation for those within two miles distance; to provide in  
45 addition thereto, at no cost to the board and according to rules  
46 established by the board, transportation for participants in  
47 projects operated, financed, sponsored or approved by the  
48 commission on aging: *Provided*, That all costs and expenses  
49 incident in any way to transportation for projects connected  
50 with the commission on aging shall be borne by the commis-  
51 sion, or the local or county chapter of the commission: *Pro-*  
52 *vided, however*, That in all cases the school buses owned by the  
53 board of education shall be driven or operated only by drivers  
54 regularly employed by the board of education: *Provided*  
55 *further*, That the county board may provide, under rules  
56 established by the state board, for the certification of profes-  
57 sional employees as drivers of board-owned vehicles with a  
58 seating capacity of less than ten passengers used for the  
59 transportation of pupils for school-sponsored activities other  
60 than transporting students between school and home: *And*  
61 *provided further*, That the use of the vehicles shall be limited to  
62 one for each school-sponsored activity: *And provided further*,  
63 That buses shall be used for extracurricular activities as  
64 provided in this section only when the insurance provided for  
65 by this section is in effect;

66 (2) To enter into agreements with one another as reflected in  
67 the minutes of their respective meetings to provide, on a coopera-  
68 tive basis, adequate means of transportation across county lines  
69 for children of school age subject to the conditions and restric-  
70 tions of this subdivision and subdivision (h) of this section;

71 (g)(1) To lease school buses operated only by drivers  
72 regularly employed by the board to public and private nonprofit  
73 organizations or private corporations to transport school-age  
74 children to and from camps or educational activities in accor-

75 dance with rules established by the board. All costs and  
76 expenses incurred by or incidental to the transportation of the  
77 children shall be borne by the lessee;

78 (2) To contract with any college or university or officially  
79 recognized campus organizations to provide transportation for  
80 college or university students, faculty or staff to and from the  
81 college or university: *Provided*, That only college and univer-  
82 sity students, faculty and staff are being transported. The  
83 contract shall include consideration and compensation for bus  
84 operators, repairs and other costs of service, insurance and any  
85 rules concerning student behavior;

86 (h) To provide at public expense for insurance against the  
87 negligence of the drivers of school buses, trucks or other  
88 vehicles operated by the board; and if the transportation of  
89 pupils is contracted, then the contract for the transportation  
90 shall provide that the contractor shall carry insurance against  
91 negligence in an amount specified by the board;

92 (i) To provide solely from county funds for all regular full-  
93 time employees of the board all or any part of the cost of a  
94 group plan or plans of insurance coverage not provided or  
95 available under the West Virginia public employees insurance  
96 act;

97 (j) To employ teacher aides, to provide in-service training  
98 for teacher aides, the training to be in accordance with rules of  
99 the state board and, in the case of service personnel assuming  
100 duties as teacher aides in exceptional children programs, to  
101 provide a four-clock-hour program of training prior to the  
102 assignment which shall, in accordance with rules of the state  
103 board, consist of training in areas specifically related to the  
104 education of exceptional children;

105 (k) To establish and conduct a self-supporting dormitory for  
106 the accommodation of the pupils attending a high school or

107 participating in a post high school program and of persons  
108 employed to teach in the high school or post high school  
109 program;

110 (l) To employ legal counsel;

111 (m) To provide appropriate uniforms for school service  
112 personnel;

113 (n) To provide at public expense and under rules as  
114 established by any county board of education for the payment  
115 of traveling expenses incurred by any person invited to appear  
116 to be interviewed concerning possible employment by the  
117 county board of education;

118 (o) To allow or disallow their designated employees to use  
119 publicly provided carriage to travel from their residences to  
120 their workplace and return: *Provided*, That the usage is subject  
121 to the supervision of the board and is directly connected with  
122 and required by the nature and in the performance of the  
123 employee's duties and responsibilities;

124 (p) To provide, at public expense, adequate public liability  
125 insurance, including professional liability insurance for board  
126 employees;

127 (q) To enter into agreements with one another to provide,  
128 on a cooperative basis, improvements to the instructional needs  
129 of each county. The cooperative agreements may be used to  
130 employ specialists in a field of academic study or support  
131 functions or services, for the academic study. The agreements  
132 are subject to approval by the state board of education;

133 (r) To provide information about vocational or higher  
134 education opportunities to students with handicapping condi-  
135 tions. The board shall provide in writing to the students and  
136 their parents or guardians information relating to programs of



137 vocational education and to programs available at state funded  
138 institutions of higher education. The information may include  
139 sources of available funding, including grants, mentorships and  
140 loans for students who wish to attend classes at institutions of  
141 higher education;

142 (s) To enter into agreements with one another, with the  
143 approval of the state board, for the transfer and receipt of any  
144 and all funds determined to be fair when students are permitted  
145 or required to attend school in a county other than the county of  
146 their residence; and

147 (t) To enter into job-sharing arrangements, as defined in  
148 section one, article one, chapter eighteen-a of this code, with its  
149 professional employees: *Provided*, That a job-sharing arrange-  
150 ment shall meet all the requirements relating to posting,  
151 qualifications and seniority, as provided for in article four,  
152 chapter eighteen-a of this code: *Provided, however*, That,  
153 notwithstanding any provisions of this code or legislative rule  
154 and specifically the provisions of article fifteen, chapter five of  
155 this code to the contrary, a county board which enters into a  
156 job-sharing arrangement wherein two or more professional  
157 employees voluntarily share an authorized full-time position  
158 shall provide the mutually agreed upon employee coverage but  
159 shall not offer insurance coverage to more than one of the job-  
160 sharing employees, including any group plan or group plans  
161 available under the state public employees insurance act:  
162 *Provided further*, That all employees involved in the job-  
163 sharing agreement meet the requirements of subdivision (4),  
164 section two, article sixteen, chapter five of this code.

165 “Quasi-public funds” as used in this section means any  
166 money received by any principal, teacher, student or other  
167 person for the benefit of the school system as a result of  
168 curricular or noncurricular activities.

169 The board of each county shall expend under rules it  
170 establishes for each child an amount not to exceed the propor-  
171 tion of all school funds of the district that each child would be  
172 entitled to receive if all the funds were distributed equally  
173 among all the children of school age in the district upon a per  
174 capita basis.

**§18-5-15. Ages of persons to whom schools are open; enrollment of suspended or expelled student.**

1 (a) The public schools shall be open for the full instruc-  
2 tional term to all persons who have attained the entrance age as  
3 stated in section five, article two and section eighteen, article  
4 five, chapter eighteen of this code: *Provided*, That any student  
5 suspended or expelled from public or private school shall only  
6 be permitted to enroll in public school upon the approval of the  
7 superintendent of the county where the student seeks enroll-  
8 ment: *Provided, however*, That in making such decision, the  
9 principal of the school in which the student may enroll shall be  
10 consulted by the superintendent and the principal may make a  
11 recommendation to the superintendent concerning the student's  
12 enrollment in his or her new school: *Provided further*, That if  
13 enrollment to public school is denied by the superintendent, the  
14 student may petition the board of education where the student  
15 seeks enrollment.

16 (b) Persons over the age of twenty-one may enter only those  
17 programs or classes authorized by the state board of education  
18 and deemed appropriate by the county board of education  
19 conducting any such program or class: *Provided*, That authori-  
20 zation for such programs or classes shall in no way serve to  
21 affect or eliminate programs or classes offered by county  
22 boards of education at the adult level for which fees are charged  
23 to support such programs or classes.

**§18-5-18. Kindergarten programs.**

1       (a) County boards shall provide kindergarten programs for  
2 all children who have attained the age of five prior to the first  
3 day of September of the school year in which the pupil enters  
4 the kindergarten program and may, pursuant to the provisions  
5 of section forty-four, article five, chapter eighteen of this code,  
6 establish kindergarten programs designed for children below  
7 the age of five. The programs for children who shall have  
8 attained the age of five shall be full-day everyday programs.

9       (b) Persons employed as kindergarten teachers, as distin-  
10 guished from paraprofessional personnel, shall be required to  
11 hold a certificate valid for teaching at the assigned level as  
12 prescribed by regulations established by the state board. The  
13 state board shall establish and prescribe guidelines and criteria  
14 setting forth the minimum requirements for all paraprofessional  
15 personnel employed in kindergarten programs established  
16 pursuant to the provisions of this section and no such  
17 paraprofessional personnel shall be employed in any kindergar-  
18 ten program unless he meets such minimum requirements.

19       (c) The state board with the advice of the state superinten-  
20 dent shall establish and prescribe guidelines and criteria relating  
21 to the establishment, operation and successful completion of  
22 kindergarten programs in accordance with the other provisions  
23 of this section. Guidelines and criteria so established and  
24 prescribed also are intended to serve for the establishment and  
25 operation of nonpublic kindergarten programs and shall be used  
26 for the evaluation and approval of such programs by the state  
27 superintendent, provided application for such evaluation and  
28 approval is made in writing by proper authorities in control of  
29 such programs. The state superintendent, annually, shall  
30 publish a list of nonpublic kindergarten programs, including  
31 Montessori kindergartens that have been approved in accor-  
32 dance with the provisions of this section. Montessori kinder-  
33 gartens established and operated in accordance with usual and  
34 customary practices for the use of the Montessori method which

35 have teachers who have training or experience, regardless of  
36 additional certification, in the use of the Montessori method of  
37 instruction for kindergartens shall be considered to be ap-  
38 proved.

39 (d) Pursuant to such guidelines and criteria, and only  
40 pursuant to such guidelines and criteria, the county boards may  
41 establish programs taking kindergarten to the homes of the  
42 children involved, using educational television,  
43 paraprofessional personnel in addition to and to supplement  
44 regularly certified teachers, mobile or permanent classrooms  
45 and other means developed to best carry kindergarten to the  
46 child in its home and enlist the aid and involvement of its  
47 parent or parents in presenting the program to the child; or may  
48 develop programs of a more formal kindergarten type, in  
49 existing school buildings, or both, as such county board may  
50 determine, taking into consideration the cost, the terrain, the  
51 existing available facilities, the distances each child may be  
52 required to travel, the time each child may be required to be  
53 away from home, the child's health, the involvement of parents  
54 and such other factors as each county board may find pertinent.  
55 Such determinations by any county board shall be final and  
56 conclusive.

**§18-5-18e. Study of limits on the number of pupils per teacher in  
a classroom in elementary and middle schools.**

1 (a) The legislative oversight commission on education  
2 accountability shall conduct a study of the effect of limits on  
3 the number of pupils per teacher in a classroom. The commis-  
4 sion may conduct the study as a whole or may appoint a  
5 subcommittee to conduct the study under its direction. The  
6 study includes, but is not limited to, an examination of the  
7 following issues:

8 (1) The effect on student learning of limits on the number  
9 of pupils per teacher in a classroom in elementary classes and  
10 in a middle school format in which students have different  
11 teachers for different subject matter instruction;

12 (2) The effect on the equity among teachers in a middle  
13 school in which the number of pupils per teacher in a classroom  
14 is limited for some teachers and not for others, including the  
15 additional pay for certain teachers in whose classrooms the  
16 limits are exceeded; and

17 (3) The effect limits on the number of pupils per teacher in  
18 a classroom have on the ability of school systems to offer  
19 elective courses in secondary schools.

20 (b) The legislative oversight commission on education  
21 accountability shall issue a report of its findings and recommen-  
22 dations, together with any legislation necessary to effectuate its  
23 recommendations, on or before the second day of January, two  
24 thousand three. In making its findings and recommendations  
25 the commission:

26 (1) Shall include, at a minimum, a recommendation on  
27 whether the limits on the number of pupils per teacher in a  
28 classroom in a middle school format should be removed or  
29 capped on a county-wide or individual school basis; and

30 (2) May not include as a recommendation consideration of  
31 imposing limits on the number of pupils per teacher at grade  
32 levels above the sixth grade.

**§18-5-22. Medical and dental inspection; school nurses; special-  
ized health procedures; establishment of council  
of school nurses.**

1 (a) County boards shall provide proper medical and dental  
2 inspections for all pupils attending the schools of their county

3 and have the authority to take any other action necessary to  
4 protect the pupils from infectious diseases, including the  
5 authority to require from all school personnel employed in their  
6 county, certificates of good health and of physical fitness.

7 (b) Each county board shall employ full time at least one  
8 school nurse for every one thousand five hundred kindergarten  
9 through seventh grade pupils in net enrollment or major fraction  
10 thereof: *Provided*, That each county shall employ full time at  
11 least one school nurse: *Provided, however*, That a county board  
12 may contract with a public health department for services  
13 considered equivalent to those required by this section in  
14 accordance with a plan to be approved by the state board:  
15 *Provided further*, That the state board shall promulgate rules  
16 requiring the employment of school nurses in excess of the  
17 number required by this section to ensure adequate provision of  
18 services to severely handicapped pupils.

19 (c) Any person employed as a school nurse must be a  
20 registered professional nurse properly licensed by the West  
21 Virginia board of examiners for registered professional nurses  
22 in accordance with article seven, chapter thirty of this code.

23 (d) Specialized health procedures that require the skill,  
24 knowledge and judgment of a licensed health professional, may  
25 be performed only by school nurses, other licensed school  
26 health care providers as provided for in this section, or school  
27 employees who have been trained and retrained every two years  
28 who are subject to the supervision and approval by school  
29 nurses. After assessing the health status of the individual  
30 student, a school nurse, in collaboration with the student's  
31 physician, parents and in some instances an individualized  
32 education program team, may delegate certain health care  
33 procedures to a school employee who shall be trained pursuant  
34 to this section, considered competent, have consultation with,  
35 and be monitored or supervised by the school nurse: *Provided*,

36 That nothing in this section prohibits any school employee from  
37 providing specialized health procedures or any other prudent  
38 action to aid any person who is in acute physical distress or  
39 requires emergency assistance. For the purposes of this section  
40 “specialized health procedures” means, but is not limited to,  
41 catheterization, suctioning of tracheostomy, naso-gastric tube  
42 feeding or gastrostomy tube feeding. “School employee”  
43 means “teachers”, as defined in section one, article one of this  
44 chapter and “aides”, as defined in section eight, article four,  
45 chapter eighteen-a of this code. Commencing with the school  
46 year beginning on the first day of July, two thousand two,  
47 “school employee” also means “secretary I”, “secretary II” and  
48 “secretary III”, as defined in section eight, article four, chapter  
49 eighteen-a of this code: *Provided, however,* That a “secretary  
50 I”, “secretary II” and “secretary III” shall be limited to the  
51 dispensing of medications.

52 (e) Any school service employee who elects, or is required  
53 by this section, to undergo training or retraining to provide, in  
54 the manner specified in this section, the specialized health care  
55 procedures for those students for which the selection has been  
56 approved by both the principal and the county board, shall  
57 receive additional pay of at least one pay grade higher than the  
58 highest pay grade for which the employee is paid: *Provided,*  
59 That any training required in this section may be considered in  
60 lieu of required in-service training of the school employee and  
61 a school employee may not be required to elect to undergo the  
62 training or retraining: *Provided, however,* That commencing  
63 with the first day of July, one thousand nine hundred  
64 eighty-nine any newly employed school employee in the field  
65 of special education is required to undergo the training and  
66 retraining as provided for in this section: *Provided further,* That  
67 if an employee who holds a class title of an aide is employed in  
68 a school and the aide has received the training, pursuant to this  
69 section, then an employee in the field of special education is not  
70 required to perform the specialized health care procedures.

71 (f) Each county school nurse, as designated and defined by  
72 this section, shall perform a needs assessment. These nurses  
73 shall meet on the basis of the area served by their regional  
74 educational service agency, prepare recommendations and elect  
75 a representative to serve on the council of school nurses  
76 established under this section.

77 (g) There shall be a council of school nurses which shall be  
78 convened by the state board of education. This council shall  
79 prepare a procedural manual and shall provide recommenda-  
80 tions regarding a training course to the commissioner of the  
81 bureau for public health who shall consult with the state  
82 department of education. The commissioner then has the  
83 authority to promulgate a rule in accordance with the provisions  
84 of article three, chapter twenty-nine-a of this code, to imple-  
85 ment the training and to create standards used by those school  
86 nurses and school employees performing specialized health  
87 procedures. The council shall meet every two years to review  
88 the certification and training program regarding school employ-  
89 ees.

90 (h) The state board of education shall work in conjunction  
91 with county boards to provide training and retraining every two  
92 years as recommended by the council of school nurses and  
93 implemented by the rule promulgated by the commissioner.

**§18-5-44. Early childhood education programs.**

1 (a) For the purposes of this section, “early childhood  
2 education” means programs for children who have attained the  
3 age of four prior to the first day of September of the school year  
4 in which the pupil enters the program created in this section.

5 (b) *Findings.* –

6 (1) Among other positive outcomes, early childhood  
7 education programs have been determined to:



- 8 (A) Improve overall readiness when children enter school;
- 9 (B) Decrease behavioral problems;
- 10 (C) Improve student attendance;
- 11 (D) Increase scores on achievement tests;
- 12 (E) Decrease the percentage of students repeating a grade;
- 13 and
- 14 (F) Decrease the number of students placed in special
- 15 education programs.
- 16 (2) Quality early childhood education programs improve
- 17 school performance and low-quality early childhood education
- 18 programs may have negative effects, especially for at-risk
- 19 children;
- 20 (3) West Virginia has the lowest percentage of its adult
- 21 population with a college degree and the education level of
- 22 parents is a strong indicator of how their children will perform
- 23 in school;
- 24 (4) West Virginia currently ranks forty-fourth among the
- 25 fifty states in the percentage of school children eligible for free
- 26 and reduced lunches and this percentage is a strong indicator of
- 27 how the children will perform in school;
- 28 (5) For the school year two thousand one - two thousand
- 29 two, six thousand eight hundred fifty-three students less than
- 30 five years of age were enrolled in the public schools, a number
- 31 equal to approximately thirty-three percent of the number of
- 32 five-year-old students enrolled in kindergarten;
- 33 (6) Projections indicate that total student enrollment in
- 34 West Virginia will decline by as much as eighteen percent, or

35 by approximately fifty thousand students, by the school year  
36 two thousand twelve - two thousand thirteen;

37 (7) In part, because of the dynamics of the state aid for-  
38 mula, county boards will continue to enroll four-year-old  
39 students to offset the declining enrollments;

40 (8) West Virginia has a comprehensive kindergarten  
41 program for five-year olds but the program was established in  
42 a manner that resulted in unequal implementation among the  
43 counties which helped create deficit financial situations for  
44 several county school boards;

45 (9) Expansion of current efforts to implement a comprehen-  
46 sive early childhood education program should avoid the  
47 problems encountered in kindergarten implementation;

48 (10) Because of the dynamics of the state aid formula,  
49 counties experiencing growth are at a disadvantage in imple-  
50 menting comprehensive early childhood education programs;  
51 and

52 (11) West Virginia citizens will benefit from the establish-  
53 ment of quality comprehensive early childhood education  
54 programs.

55 (c) Beginning no later than the school year two thousand  
56 twelve - two thousand thirteen, and continuing thereafter,  
57 county boards shall provide early childhood education pro-  
58 grams for all children who have attained the age of four prior to  
59 the first day of September of the school year in which the pupil  
60 enters the early childhood education program.

61 (d) The program shall meet the following criteria:

62 (1) It shall be voluntary, except, upon enrollment, the  
63 provisions of section one, article eight of this chapter shall  
64 apply to an enrolled student; and

65 (2) It may be for fewer than five days per week and may be  
66 less than full day.

67 (e) Enrollment of students in head start, or in any other  
68 program approved by the state superintendent as provided in  
69 subsection (k) of this section, shall be counted toward satisfying  
70 the requirement of subsection (c) of this section.

71 (f) For the purposes of implementation financing, all  
72 counties are encouraged to make use of funds from existing  
73 sources, including:

74 (1) Federal funds provided under the Elementary and  
75 Secondary Education Act pursuant to 20 U.S.C. §6301, *et seq.*;

76 (2) Federal funds provided for head start pursuant to 42  
77 U.S.C. §9831, *et seq.*;

78 (3) Federal funds for temporary assistance to needy families  
79 pursuant to 42 U.S.C. §601, *et seq.*;

80 (4) Funds provided by the school building authority  
81 pursuant to article nine-d of this chapter;

82 (5) In the case of counties with declining enrollments, funds  
83 from the state aid formula above the amount indicated for the  
84 number of students actually enrolled in any school year; and

85 (6) Any other public or private funds.

86 (g) Prior to the school year beginning two thousand three,  
87 each county shall develop a plan for implementing the program  
88 required by this section. The plan shall include the following  
89 elements:

90 (1) An analysis of the demographics of the county related  
91 to early childhood education program implementation;

92 (2) An analysis of facility and personnel needs;

93 (3) Financial requirements for implementation and potential  
94 sources of funding to assist implementation;

95 (4) Details of how the county board will cooperate and  
96 collaborate with other early childhood education programs  
97 including, but not limited to, head start, to maximize federal  
98 and other sources of revenue;

99 (5) Specific time lines for implementation; and

100 (6) Such other items as the state board by policy may  
101 require.

102 (h) Prior to the school year beginning two thousand three,  
103 a county board shall submit its plan to the secretary of the  
104 department of health and human resources. The secretary shall  
105 approve the plan if the following conditions are met:

106 (1) The county has maximized the use of federal and other  
107 available funds for early childhood programs;

108 (2) The county has provided for the maximum implementa-  
109 tion of head start programs and other public and private  
110 programs approved by the state superintendent pursuant to the  
111 terms of subsection (k) of this section; and

112 (3) If the secretary of the department of health and human  
113 resources finds that the county has not met one or more of the  
114 requirements of this subsection, but that the county has acted in  
115 good faith and the failure to comply was not the primary fault  
116 of the county board, then the secretary shall approve the plan.

117 Any denial by the secretary may be appealed to the circuit court  
118 of the county in which the county board is located.

119 (i) Prior to the school year beginning two thousand three,  
120 the county board shall submit its plan for approval to the state  
121 board. The state board shall approve the plan if the county  
122 board has complied substantially with the requirements of  
123 subsection (g) of this section and has obtained the approval  
124 required in subsection (h) of this section.

125 (j) Every county board shall submit its plan for reapproval  
126 by the secretary of the department of health and human re-  
127 sources and by the state board at least every two years after the  
128 initial approval of the plan and until full implementation of the  
129 early childhood education program in the county. As part of the  
130 submission, the county board shall provide a detailed statement  
131 of the progress made in implementing its plan. The standards  
132 and procedures provided for the original approval of the plan  
133 apply to any reapproval.

134 (k) Commencing with the school year beginning on the first  
135 day of July, two thousand four, and thereafter, no county board  
136 may increase the total number of students enrolled in the county  
137 in an early childhood program until its program is approved by  
138 the secretary of the department of health and human resources  
139 and the state board has been granted.

140 (l) The state board annually may grant a county board a  
141 waiver for total or partial implementation if the state board  
142 finds that all of the following conditions exist:

143 (1) The county board is unable to comply either because:

144 (A) It does not have sufficient facilities available; or

145 (B) It does not and has not had available funds sufficient to  
146 implement the program;

147 (2) The county has not experienced a decline in enrollment  
148 at least equal to the total number of students to be enrolled; and

149 (3) Other agencies of government have not made sufficient  
150 funds or facilities available to assist in implementation.

151 Any county seeking a waiver must apply with the support-  
152 ing data to meet the criteria for which they are eligible on or  
153 before the twenty-fifth day of March for the following school  
154 year. The state superintendent shall grant or deny the requested  
155 waiver on or before the fifteenth day of April of that same year.

156 (m) The provisions of subsections (b), (c) and (d), section  
157 eighteen of this article relating to kindergarten shall apply to  
158 early childhood education programs in the same manner in  
159 which they apply to kindergarten programs.

160 (n) On or before the first day of December, two thousand  
161 four, and each year thereafter, the state board shall report to the  
162 legislative oversight commission on education accountability  
163 on the progress of implementation of this section.

164 (o) During or after the school year beginning in two  
165 thousand four, and except as may be required by federal law or  
166 regulation, no county shall enroll students who will be less than  
167 four years of age prior to the first day of September for the year  
168 they enter school.

169 (p) Neither the state board nor the state department may  
170 provide any funds to any county for the purpose of implement-  
171 ing this section unless the county board has a plan approved  
172 pursuant to subsections (h), (i) and (j) of this section.

173 (q) The state board shall promulgate a rule in accordance  
174 with the provisions of article three-b, chapter twenty-nine-a of  
175 this code for the purposes of implementing the provisions of  
176 this section. The state board shall consult with the secretary of

177 the department of health and human resources in the prepara-  
178 tion of the rule. The rule shall contain the following:

179 (1) Standards for curriculum;

180 (2) Standards for preparing students;

181 (3) Attendance requirements;

182 (4) Standards for personnel; and

183 (5) Such other terms as may be necessary to implement the  
184 provisions of this section.

185 (r) The rule shall include the following elements relating to  
186 curriculum standards:

187 (1) A requirement that the curriculum be designed to  
188 address the developmental needs of four-year-old children,  
189 consistent with prevailing research on how children learn;

190 (2) A requirement that the curriculum be designed to  
191 achieve long range goals for the social, emotional, physical and  
192 academic development of young children;

193 (3) A method for including a broad range of content that is  
194 relevant, engaging and meaningful to young children;

195 (4) A requirement that the curriculum incorporate a wide  
196 variety of learning experiences, materials and equipment, and  
197 instructional strategies to respond to differences in prior  
198 experience, maturation rates and learning styles that young  
199 children bring to the classroom;

200 (5) A requirement that the curriculum be designed to build  
201 on what children already know in order to consolidate their  
202 learning and foster their acquisition of new concepts and skills;

203 (6) A requirement that the curriculum meet the recognized  
204 standards of the relevant subject matter disciplines;

205 (7) A requirement that the curriculum engage children  
206 actively in the learning process and provide them with opportu-  
207 nities to make meaningful choices;

208 (8) A requirement that the curriculum emphasize the  
209 development of thinking, reasoning, decision-making and  
210 problem-solving skills;

211 (9) A set of clear guidelines for communicating with  
212 parents and involving them in decisions about the instructional  
213 needs of their children; and

214 (10) A systematic plan for evaluating program success in  
215 meeting the needs of young children and for helping them to be  
216 ready to succeed in school.

217 (s) On or before the second day of January, two thousand  
218 four, the secretary and the state superintendent submit a report  
219 to the legislative oversight commission on education account-  
220 ability and the joint committee on government and finance  
221 which address, at a minimum, the following issues:

222 (1) A summary of the approved county plans for providing  
223 the early childhood education programs pursuant to this section;

224 (2) An analysis of the total cost to the state and counties of  
225 implementing the plans;

226 (3) A separate analysis of the impact of the plans on  
227 counties with increasing enrollment; and

228 (4) An analysis of the effect of the programs on the  
229 maximization of the use of federal funds for early childhood  
230 programs.



231       The intent of this subsection is to enable the Legislature to  
232 proceed in a fiscally responsible manner and make any program  
233 improvements as may be necessary based on reported informa-  
234 tion prior to implementation of the early childhood education  
235 programs.

**§18-5-45. School calendar.**

1       (a) As used in this section, the following terms have the  
2 following meanings:

3       (1) Instructional day means a day within the instructional  
4 term which meets the following criteria:

5       (A) Instruction is offered to students for the amounts of  
6 time provided by state board rule;

7       (B) A minimum percentage of students, as defined by state  
8 board rule, is present in the county schools;

9       (C) Instructional time is used for instruction, cocurricular  
10 activities and approved extracurricular activities, and pursuant  
11 to the provisions of subdivision (12), subsection (b), section  
12 five, article five-a of this chapter, faculty senates;

13       (D) Such other criteria as the state board determines  
14 appropriate.

15       (2) Bank time means time added beyond the required  
16 instructional day which may be accumulated and used in larger  
17 blocks of time during the school year for instructional or  
18 noninstructional activities, as further defined by the state board.

19       (3) Extracurricular activities are activities under the  
20 supervision of the school such as athletics, noninstructional  
21 assemblies, social programs, entertainment and other similar  
22 activities, as further defined by the state board.

23 (4) Cocurricular activities are activities that are closely  
24 related to identifiable academic programs or areas of study that  
25 serve to complement academic curricula as further defined by  
26 the state board.

27 (b) *Findings.* –

28 (1) The primary purpose of the school system is to provide  
29 instruction for students.

30 (2) The school calendar, as defined in this section, is  
31 designed to define the school term both for employees and for  
32 instruction.

33 (3) The school calendar traditionally has provided for one  
34 hundred eighty actual days of instruction but numerous circum-  
35 stances have combined to cause the actual number of instruc-  
36 tional days to be less than one hundred eighty.

37 (4) The quality and amount of instruction offered during the  
38 instructional term is affected by the extracurricular and  
39 cocurricular activities allowed to occur during scheduled  
40 instructional time.

41 (5) Within reasonable guidelines, the school calendar  
42 should be designed at least to guarantee that one hundred eighty  
43 actual days of instruction are possible.

44 (c) The county board shall provide a school term for its  
45 schools that contains the following:

46 (1) An employment term for teachers of no less than two  
47 hundred days, exclusive of Saturdays and Sundays; and

48 (2) Within the employment term, an instructional term for  
49 students of no less than one hundred eighty separate instruc-  
50 tional days.

51 (d) The instructional term shall commence no earlier than  
52 the twenty-sixth day of August and terminate no later than the  
53 eighth day of June.

54 (e) Noninstructional days shall total twenty and shall be  
55 comprised of the following:

56 (1) Seven holidays as specified in section two, article five,  
57 chapter eighteen-a of this code;

58 (2) Election day as specified in section two, article five,  
59 chapter eighteen-a of this code;

60 (3) Six days to be designated by the county board to be used  
61 by the employees outside the school environment; and

62 (4) Six days to be designated by the county board for any of  
63 the following purposes:

64 (A) Curriculum development;

65 (B) Preparation for opening and closing school;

66 (C) Professional development;

67 (D) Teacher-pupil-parent conferences;

68 (E) Professional meetings; and

69 (F) Making up days when instruction was scheduled but not  
70 conducted.

71 (f) Three of the days described in subdivision (4), subsec-  
72 tion (e) of this section shall be scheduled prior to the twenty-  
73 sixth day of August for the purposes of preparing for the  
74 opening of school and staff development.

75 (g) At least one of the days described in subdivision (4),  
76 subsection (e) of this section shall be scheduled after the eighth  
77 day of June for the purpose of preparing for the closing of  
78 school. If one hundred eighty separate instruction days occur  
79 prior to the eighth day of June, this day may be scheduled on or  
80 before the eighth day of June.

81 (h) At least four of the days described in subdivision (3),  
82 subsection (e) of this section shall be scheduled after the first  
83 day of March.

84 (i) At least two of the days described in subdivision (4),  
85 subsection (e) of this section, will be scheduled for professional  
86 development. The professional development conducted on  
87 these days will be consistent with the goals established by the  
88 state board pursuant to the provisions of section twenty-three-a,  
89 article two, chapter eighteen of this code.

90 (j) Subject to the provisions of subsection (g) of this  
91 section, all noninstructional days will be scheduled prior to the  
92 eighth day of June.

93 (k) The state board may not schedule the primary statewide  
94 assessment program prior to the fifteenth day of May of the  
95 instructional year unless the state board determines that the  
96 nature of the test mandates an earlier testing date.

97 (l) If, on or after the first day of March, the county board  
98 determines that it is not possible to complete one hundred  
99 eighty separate days of instruction, the county board shall  
100 schedule instruction on any available noninstructional day,  
101 regardless of the purpose for which the day originally was  
102 scheduled, and the day will be used for instruction. The  
103 provisions of this subsection do not apply to: (1) Holidays; and  
104 (2) election day.

105 (m) The following applies to bank time:

106 (1) Bank time may not be used to avoid one hundred eighty  
107 separate days of instruction;

108 (2) Bank time may not be used to lengthen the time  
109 provided in law for faculty senates;

110 (3) The use of bank time for extracurricular activities will  
111 be limited by the state board; and

112 (4) Such other requirements or restrictions as the state  
113 board may provide in the rule required to be promulgated by  
114 this section.

115 (n) The following applies to cocurricular activities:

116 (1) The state board shall determine what activities may be  
117 considered cocurricular;

118 (2) The state board shall determine the amount of instruc-  
119 tional time that may be consumed by cocurricular activities; and

120 (3) Such other requirements or restrictions as the state  
121 board may provide in the rule required to be promulgated by  
122 this section.

123 (o) The following applies to extracurricular activities:

124 (1) Except as provided by subdivision (3) of this subsection,  
125 extracurricular activities may not be scheduled during instruc-  
126 tional time;

127 (2) The use of bank time for extracurricular activities will  
128 be limited by the state board; and

129 (3) The state board shall provide for the attendance by  
130 students of certain activities sanctioned by the secondary  
131 schools activities commission when those activities are related

132 to statewide tournaments or playoffs or are programs required  
133 for secondary schools activities commission approval.

134 (p) Noninstructional interruptions to the instructional day  
135 shall be minimized to allow the classroom teacher to teach.

136 (q) Nothing in this section prohibits establishing year-round  
137 schools in accordance with rules to be established by the state  
138 board.

139 (r) Prior to implementing the school calendar, the county  
140 board shall secure approval of its proposed calendar from the  
141 state board or, if so designated by the state board, from the state  
142 superintendent.

143 (s) The county board may contract with all or part of the  
144 personnel for a longer term.

145 (t) The minimum instructional term may be decreased by  
146 order of the state superintendent in any county declared a  
147 federal disaster area and where the event causing the declara-  
148 tion is substantially related to a reduction of instructional days.

149 (u) Where the employment term overlaps a teacher's or  
150 service personnel's participation in a summer institute or  
151 institution of higher education for the purpose of advancement  
152 or professional growth, the teacher or service personnel may  
153 substitute, with the approval of the county superintendent, the  
154 participation for up to five of the noninstructional days of the  
155 employment term.

156 (v) The state board shall promulgate a rule in accordance  
157 with the provisions of article three-b, chapter twenty-nine-a of  
158 this code for the purpose of implementing the provisions of this  
159 section.

#### **ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

**§18-5A-5. Public school faculty senates established; election of officers; powers and duties.**

1       (a) There is established at every public school in this state  
2 a faculty senate which is comprised of all permanent, full-time  
3 professional educators employed at the school who shall all be  
4 voting members. Professional educators, as used in this section,  
5 means professional educators as defined in chapter eighteen-a  
6 of this code. A quorum of more than one half of the voting  
7 members of the faculty shall be present at any meeting of the  
8 faculty senate at which official business is conducted. Prior to  
9 the beginning of the instructional term each year, but within the  
10 employment term, the principal shall convene a meeting of the  
11 faculty senate to elect a chair, vice chair and secretary and  
12 discuss matters relevant to the beginning of the school year.  
13 The vice chair shall preside at meetings when the chair is  
14 absent. Meetings of the faculty senate shall be held on a regular  
15 basis as determined by a schedule approved by the faculty  
16 senate and amended periodically if needed. Emergency  
17 meetings may be held at the call of the chair or a majority of the  
18 voting members by petition submitted to the chair and vice  
19 chair. An agenda of matters to be considered at a scheduled  
20 meeting of the faculty senate shall be available to the members  
21 at least two employment days prior to the meeting. For  
22 emergency meetings the agenda shall be available as soon as  
23 possible prior to the meeting. The chair of the faculty senate  
24 may appoint such committees as may be desirable to study and  
25 submit recommendations to the full faculty senate, but the acts  
26 of the faculty senate shall be voted upon by the full body.

27       (b) In addition to any other powers and duties conferred by  
28 law, or authorized by policies adopted by the state or county  
29 board of education or bylaws which may be adopted by the  
30 faculty senate not inconsistent with law, the powers and duties  
31 listed in this subsection are specifically reserved for the faculty  
32 senate. The intent of these provisions is neither to restrict nor

33 to require the activities of every faculty senate to the enumer-  
34 ated items except as otherwise stated. Each faculty senate shall  
35 organize its activities as it deems most effective and efficient  
36 based on school size, departmental structure and other relevant  
37 factors.

38 (1) Each faculty senate shall control funds allocated to the  
39 school from legislative appropriations pursuant to section nine,  
40 article nine-a of this chapter. From such funds, each classroom  
41 teacher and librarian shall be allotted fifty dollars for expendi-  
42 ture during the instructional year for academic materials,  
43 supplies or equipment which, in the judgment of the teacher or  
44 librarian, will assist him or her in providing instruction in his or  
45 her assigned academic subjects or shall be returned to the  
46 faculty senate: *Provided*, That nothing contained herein  
47 prohibits the funds from being used for programs and materials  
48 that, in the opinion of the teacher, enhance student behavior,  
49 increase academic achievement, improve self-esteem and  
50 address the problems of students at-risk. The remainder of  
51 funds shall be expended for academic materials, supplies or  
52 equipment in accordance with a budget approved by the faculty  
53 senate. Notwithstanding any other provisions of the law to the  
54 contrary, funds not expended in one school year are available  
55 for expenditure in the next school year: *Provided, however*,  
56 That the amount of county funds budgeted in a fiscal year may  
57 not be reduced throughout the year as a result of the faculty  
58 appropriations in the same fiscal year for such materials,  
59 supplies and equipment. Accounts shall be maintained of the  
60 allocations and expenditures of such funds for the purpose of  
61 financial audit. Academic materials, supplies or equipment  
62 shall be interpreted broadly, but does not include materials,  
63 supplies or equipment which will be used in or connected with  
64 interscholastic athletic events.

65 (2) A faculty senate may establish a process for faculty  
66 members to interview new prospective professional educators



67 and paraprofessional employees at the school and submit  
68 recommendations regarding employment to the principal, who  
69 may also make independent recommendations, for submission  
70 to the county superintendent: *Provided*, That such process shall  
71 be chaired by the school principal and must permit the timely  
72 employment of persons to perform necessary duties.

73 (3) A faculty senate may nominate teachers for recognition  
74 as outstanding teachers under state and local teacher recognition  
75 programs and other personnel at the school, including parents,  
76 for recognition under other appropriate recognition programs  
77 and may establish such programs for operation at the school.

78 (4) A faculty senate may submit recommendations to the  
79 principal regarding the assignment scheduling of secretaries,  
80 clerks, aides and paraprofessionals at the school.

81 (5) A faculty senate may submit recommendations to the  
82 principal regarding establishment of the master curriculum  
83 schedule for the next ensuing school year.

84 (6) A faculty senate may establish a process for the review  
85 and comment on sabbatical leave requests submitted by  
86 employees at the school pursuant to section eleven, article two  
87 of this chapter.

88 (7) Each faculty senate shall elect three faculty representa-  
89 tives to the local school improvement council established  
90 pursuant to section two of this article.

91 (8) Each faculty senate may nominate a member for  
92 election to the county staff development council pursuant to  
93 section eight, article three, chapter eighteen-a of this code.

94 (9) Each faculty senate shall have an opportunity to make  
95 recommendations on the selection of faculty to serve as mentors

96 for beginning teachers under beginning teacher internship  
97 programs at the school.

98 (10) A faculty senate may solicit, accept and expend any  
99 grants, gifts, bequests, donations and any other funds made  
100 available to the faculty senate: *Provided*, That the faculty senate  
101 shall select a member who has the duty of maintaining a record  
102 of all funds received and expended by the faculty senate, which  
103 record shall be kept in the school office and is subject to normal  
104 auditing procedures.

105 (11) Any faculty senate may review the evaluation proce-  
106 dure as conducted in their school to ascertain whether the  
107 evaluations were conducted in accordance with the written  
108 system required pursuant to section twelve, article two, chapter  
109 eighteen-a of this code and the general intent of this Legislature  
110 regarding meaningful performance evaluations of school  
111 personnel. If a majority of members of the faculty senate  
112 determine that such evaluations were not so conducted, they  
113 shall submit a report in writing to the state board of education:  
114 *Provided*, That nothing herein creates any new right of access  
115 to or review of any individual's evaluations.

116 (12) A local board shall provide to each faculty senate  
117 either: (A) A two-hour per month block of instructional time  
118 within the instructional day; or (B) an unlimited block of time  
119 per month during noninstructional days. A faculty senate  
120 scheduled on a noninstructional day shall be considered as part  
121 of the purpose for which the noninstructional day is scheduled.  
122 This time may be utilized and determined at the local school  
123 level and includes, but is not limited to, faculty senate meetings.

124 (13) Each faculty senate shall develop a strategic plan to  
125 manage the integration of special needs students into the regular  
126 classroom at their respective schools and submit the strategic  
127 plan to the superintendent of the county board of education

128 periodically pursuant to guidelines developed by the state  
129 department of education. Each faculty senate shall encourage  
130 the participation of local school improvement councils, parents  
131 and the community at large in developing the strategic plan for  
132 each school.

133 Each strategic plan developed by the faculty senate shall  
134 include at least: (A) A mission statement; (B) goals; (C) needs;  
135 (D) objectives and activities to implement plans relating to each  
136 goal; (E) work in progress to implement the strategic plan; (F)  
137 guidelines for placing additional staff into integrated class-  
138 rooms to meet the needs of exceptional needs students without  
139 diminishing the services rendered to the other students in  
140 integrated classrooms; (G) guidelines for implementation of  
141 collaborative planning and instruction; and (H) training for all  
142 regular classroom teachers who serve students with exceptional  
143 needs in integrated classrooms.

#### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

§18-9A-5. Foundation allowance for service personnel.

§18-9A-5b. Foundation allowance for increasing professional and service personnel positions.

#### **§18-9A-5. Foundation allowance for service personnel.**

1 The basic foundation allowance to the county for service  
2 personnel shall be the amount of money required to pay the  
3 annual state minimum salaries in accordance with the provi-  
4 sions of article four, chapter eighteen-a of this code, to such  
5 service personnel employed: *Provided*, That no county shall  
6 receive an allowance for an amount in excess of thirty-four  
7 service personnel per one thousand students in adjusted  
8 enrollment: *Provided, however*, That the state superintendent  
9 of schools is authorized in accordance with rules and regula-  
10 tions established by the state board and upon request of a  
11 county superintendent to waive the maximum ratio of thirty-

12 four service personnel per one thousand students in adjusted  
13 enrollment and the twenty percent per year growth cap provided  
14 in this section, to the extent appropriations are provided, in  
15 those cases where the state superintendent determines that  
16 student population density and miles of bus route driven or the  
17 transportation of students to a county or a multi-county  
18 vocational-technical center justify the waiver, except that no  
19 waiver shall be granted to any county whose financial statement  
20 shows a net balance in general current expense funds greater  
21 than three percent at the end of the previous fiscal year:  
22 *Provided further*, That on or before the first day of each regular  
23 session of the Legislature, the state board, through the state  
24 superintendent, shall make to the Legislature a full report  
25 concerning the number of waivers granted and the fiscal impact  
26 related thereto. Every county shall utilize methods other than  
27 reduction in force, such as attrition and early retirement, before  
28 implementing their reductions in force policy to comply with  
29 the limitations of this section.

30 For any county which has in excess of thirty-four service  
31 personnel per one thousand students in adjusted enrollment, the  
32 allowance shall be computed based upon the average state  
33 minimum pay scale salary of all service personnel in the  
34 county: *Provided*, That for any county having fewer than  
35 thirty-four service personnel per one thousand students in  
36 adjusted enrollment, in any one year, the number of service  
37 personnel used in making this computation may be increased  
38 the succeeding years by no more than twenty percent per year  
39 of its total potential increase under this provision, except that in  
40 no case shall the limit be fewer than two service personnel until  
41 the county attains the maximum ratio set forth: *Provided*,  
42 *however*, That where two or more counties join together in  
43 support of a vocational or comprehensive high school or any  
44 other program or service, the service personnel for the school  
45 or program may be prorated among the participating counties

46 on the basis of each one's enrollment therein and that the  
47 personnel shall be considered within the above-stated limit.

**§18-9A-5b. Foundation allowance for increasing professional  
and service personnel positions.**

1 Commencing with the school year beginning on the first  
2 day of July, two thousand five, two million five hundred  
3 thousand dollars shall be appropriated for the purpose of  
4 increasing the ratios of professional and service personnel per  
5 one thousand students in net enrollment. For each of the eleven  
6 following school years, an additional two million five hundred  
7 thousand dollars shall be added to the appropriation for this  
8 purpose. The increases in the ratios of professional and service  
9 personnel per one thousand students in net enrollment shall be  
10 made in a manner which reflects the greater need of counties  
11 with a low student population density for additional personnel.

**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

**§18-9D-19. Comprehensive high schools.**

1 (a) The Legislature finds the following:

2 (1) The decline in student enrollment over the last twenty  
3 years has necessitated consolidation of schools in many  
4 counties;

5 (2) It is projected that the decline in student enrollment  
6 during the period two thousand two through two thousand  
7 twelve may be as great as eighteen percent and will continue  
8 the necessity to consolidate schools;

9 (3) The new consolidated school buildings now being built  
10 across the state provide an opportunity for communities to have  
11 comprehensive high schools that include space for vocational-  
12 technical courses, community college courses and other

13 workforce related courses for the students and the public at  
14 large;

15 (4) Requiring students to be bused to remote vocational  
16 centers has sometimes deterred student participation in voca-  
17 tional courses and has sometimes been considered a stigma  
18 upon those students attending vocational courses;

19 (5) Offering vocational, community college and workforce  
20 programs in close proximity to each other compliment the high  
21 school and the programs; and

22 (6) The change in the season for girls' basketball to coincide  
23 with boys' basketball has placed significant pressures on the  
24 availability of gymnasium space and often has caused practices  
25 to be scheduled late in the evenings and on weekends, interfer-  
26 ing with time needed for studying and rest.

27 (b) When planning the construction of a high school which  
28 has been approved by the authority and which meets the  
29 required authority efficiencies, the authority shall provide  
30 funding for comprehensive vocational facilities to be located,  
31 when feasible, on the same site as the high school and may, in  
32 cooperation with the higher education policy commission,  
33 established in section one, article one-b, chapter eighteen-b,  
34 provide funding for facilities for community and technical  
35 college education. When building in conjunction with the  
36 higher education policy commission, an educational specifica-  
37 tion shall be developed for the proposed new facility by the  
38 appropriate institutional governing board as defined in section  
39 two, article one, chapter eighteen-b of this code. The county  
40 board is the fiscal agent for construction. All planning, design,  
41 bidding and construction shall be completed with authority  
42 guidelines and under the supervision of the authority.

43 (c) When planning the construction of a high school which  
44 has been approved by the authority and meets the required  
45 authority efficiencies, the authority shall provide funding  
46 sufficient for the construction of at least one auxiliary gymna-  
47 sium. The authority may establish standards for the auxiliary  
48 gymnasium.

49 (d) Upon application of a county board to construct  
50 comprehensive vocational facilities at an existing high school,  
51 the authority will provide technical assistance to the county in  
52 developing a plan for construction of the comprehensive  
53 vocational facility. Upon development of the plan, the author-  
54 ity shall consider funding based on the following criteria:

55 (1) The distance of any existing vocational facilities from  
56 the high schools it serves;

57 (2) The time required to travel to and from the vocational  
58 facility to the high schools it serves;

59 (3) The ability of the county board to provide local funds  
60 for the construction of new comprehensive vocational facilities;

61 (4) The size of the existing high schools and the demand for  
62 vocational technical courses;

63 (5) The age and physical condition of the existing voca-  
64 tional facilities; and

65 (6) Such other criteria as the authority shall consider  
66 appropriate.

**ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR  
SCHOOLS OF A RELIGIOUS ORDER.**

**§18-28-7. Waiver of required assessment for certain students  
attending parochial school.**

1       The state superintendent may waive the assessment  
 2 requirement for parochial schools set forth in section three of  
 3 this article if the state superintendent determines that a court of  
 4 law has held that the assessment requirement would violate a  
 5 provision of the state or federal constitution.

## CHAPTER 18A. SCHOOL PERSONNEL.

### Article

2. School Personnel.
3. Training, Certification, Licensing, Professional Development.
4. Salaries, Wages and Other Benefits.

### ARTICLE 2. SCHOOL PERSONNEL.

#### **§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.**

1       (a) Before entering upon their duties, all teachers shall  
 2 execute a contract with their boards of education, which  
 3 contract shall state the salary to be paid and shall be in the form  
 4 prescribed by the state superintendent of schools. Every such  
 5 contract shall be signed by the teacher and by the president and  
 6 secretary of the board of education and when so signed shall be  
 7 filed, together with the certificate of the teacher, by the secre-  
 8 tary of the office of the board.

9       (b) A teacher's contract, under this section, shall be for a  
 10 term of not less than one nor more than three years, one of  
 11 which shall be for completion of a beginning teacher internship  
 12 pursuant to the provisions of section two-b, article three of this  
 13 chapter, if applicable; and if, after three years of such employ-  
 14 ment, the teacher who holds a professional certificate, based on  
 15 at least a bachelor's degree, has met the qualifications for the  
 16 same and the board of education enter into a new contract of  
 17 employment, it shall be a continuing contract: *Provided*, That



18 any teacher holding a valid certificate with less than a bache-  
19 lor's degree who is employed in a county beyond the said three-  
20 year probationary period shall upon qualifying for said profes-  
21 sional certificate based upon a bachelor's degree, if reemployed,  
22 be granted continuing contract status: *Provided, however,* That  
23 a teacher holding continuing contract status with one county  
24 shall be granted continuing contract status with any other  
25 county upon completion of one year of acceptable employment  
26 if such employment is during the next succeeding school year  
27 or immediately following an approved leave of absence  
28 extending no more than one year.

29 (c) The continuing contract of any teacher shall remain in  
30 full force and effect except as modified by mutual consent of  
31 the school board and the teacher, unless and until terminated:  
32 (1) By a majority vote of the full membership of the board on  
33 or before the first Monday of April of the then current year,  
34 after written notice, served upon the teacher, return receipt  
35 requested, stating cause or causes and an opportunity to be  
36 heard at a meeting of the board prior to the board's action  
37 thereon; or (2) by written resignation of the teacher before that  
38 date, to initiate termination of a continuing contract. Such  
39 termination shall take effect at the close of the school year in  
40 which the contract is so terminated: *Provided,* That the contract  
41 may be terminated at any time by mutual consent of the school  
42 board and the teacher and that this section shall not affect the  
43 powers of the school board to suspend or dismiss a principal or  
44 teacher pursuant to section eight of this article: *Provided,*  
45 *however,* That a continuing contract for any teacher holding a  
46 certificate valid for more than one year and in full force and  
47 effect during the school year one thousand nine hundred eighty-  
48 four and one thousand nine hundred eighty-five shall remain in  
49 full force and effect: *Provided further,* That a continuing  
50 contract shall not operate to prevent a teacher's dismissal based  
51 upon the lack of need for the teacher's services pursuant to the  
52 provisions of law relating to the allocation to teachers and

53 pupil-teacher ratios. The written notification of teachers being  
54 considered for dismissal for lack of need shall be limited to  
55 only those teachers whose consideration for dismissal is based  
56 upon known or expected circumstances which will require  
57 dismissal for lack of need. An employee who was not provided  
58 notice and an opportunity for a hearing pursuant to subsection  
59 (a) of this section may not be included on the list. In case of  
60 such dismissal, the teachers so dismissed shall be placed upon  
61 a preferred list in the order of their length of service with that  
62 board, and no teacher shall be employed by the board until each  
63 qualified teacher upon the preferred list, in order, shall have  
64 been offered the opportunity for reemployment in a position for  
65 which they are qualified: *And provided further*, That he or she  
66 has not accepted a teaching position elsewhere. Such  
67 reemployment shall be upon a teacher's preexisting continuing  
68 contract and shall have the same effect as though the contract  
69 had been suspended during the time the teacher was not  
70 employed.

71 (d) In the assignment of position or duties of a teacher  
72 under said continuing contract, the board may provide for  
73 released time of a teacher for any special professional or  
74 governmental assignment without jeopardizing the contractual  
75 rights of such teacher or any other rights, privileges or benefits  
76 under the provisions of this chapter. Released time shall be  
77 provided for any professional educator while serving as a  
78 member of the Legislature during any duly constituted session  
79 of that body and its interim and statutory committees and  
80 commissions without jeopardizing his or her contractual rights  
81 or any other rights, privileges, benefits or accrual of experience  
82 for placement on the state minimum salary schedule in the  
83 following school year under the provisions of this chapter,  
84 board policy and law.

85 (e) Any teacher who fails to fulfill his contract with the  
86 board, unless prevented from so doing by personal illness or

87 other just cause or unless released from such contract by the  
88 board, or who violates any lawful provision thereof, shall be  
89 disqualified to teach in any other public school in the state for  
90 a period of the next ensuing school year and the state depart-  
91 ment of education or board may hold all papers and credentials  
92 of such teacher on file for a period of one year for such viola-  
93 tion: *Provided*, That marriage of a teacher shall not be consid-  
94 ered a failure to fulfill, or violation of, the contract.

95 (f) Any classroom teacher, as defined in section one, article  
96 one of this chapter, who desires to resign employment with a  
97 board of education or request a leave of absence, such resigna-  
98 tion or leave of absence to become effective on or before the  
99 fifteenth day of July of the same year and after completion of  
100 the employment term, may do so at any time during the school  
101 year by written notification thereof and any such notification  
102 received by a board of education shall automatically extend  
103 such teacher's public employee insurance coverage until the  
104 thirty-first day of August of the same year.

105 (g) Any classroom teacher who gives written notice to the  
106 county board of education on or before the first day of February  
107 of the school year of their resignation or retirement from  
108 employment with the board at the conclusion of the school year  
109 shall be paid five hundred dollars from the "Early Notification  
110 of Retirement" line item established for the department of  
111 education for this purpose, subject to appropriation by the  
112 Legislature. If the appropriations to the department of educa-  
113 tion for this purpose are insufficient to compensate all applica-  
114 ble teachers, the department of education shall request a  
115 supplemental appropriation in an amount sufficient to compen-  
116 sate all such teachers. Additionally, if funds are still insuffi-  
117 cient to compensate all applicable teachers, the priority of  
118 payment is for teachers who give written notice the earliest.  
119 This payment shall not be counted as part of the final average  
120 salary for the purpose of calculating retirement.

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

§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

§18A-3-9. County service personnel staff development councils.

**§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.**

1       The state superintendent may, after ten days' notice and  
2 upon proper evidence, revoke the certificates of any teacher for  
3 drunkenness, untruthfulness, immorality, or for any physical,  
4 mental or moral defect which would render him unfit for the  
5 proper performance of his duties as a teacher, or for any neglect  
6 of duty or refusal to perform the same, or for using fraudulent,  
7 unapproved, or insufficient credit, or for any other cause which  
8 would have justified the withholding of a certificate when the  
9 same was issued. The state superintendent may designate the  
10 West Virginia commission for professional teaching standards  
11 or members thereof to conduct hearings on revocations or  
12 licensure denials and make recommendations for action by the  
13 state superintendent.

14       It shall be the duty of any county superintendent who  
15 knows of any immorality or neglect of duty on the part of any  
16 teacher to report the same, together with all the facts and  
17 evidence, to the state superintendent for such action as in his  
18 judgment may be proper.

19       If a certificate has been granted through an error, oversight,  
20 or misinformation, the state superintendent of schools shall  
21 have authority to recall the certificate and make such correc-  
22 tions as will conform to the requirements of law and the state  
23 board of education.

**§18A-3-9. County service personnel staff development councils.**

1       (a) The Legislature finds the professional expertise and  
2 insight of service personnel to be an invaluable ingredient in the

3 development and delivery of staff development programs which  
4 meet the needs of service personnel.

5 (b) Therefore, a service personnel staff development  
6 council comprised of representation from the various categories  
7 of service personnel employment shall be established in each  
8 school district in the state in accordance with rules adopted by  
9 the state board of education. Nominations of service personnel  
10 to serve on the county service personnel staff development  
11 council may be submitted by the six groups, as defined in  
12 subsection (e), section one, article one of this chapter, of the  
13 district to the county superintendent who shall prepare and  
14 distribute ballots and tabulate the votes of the counties service  
15 personnel voting on the persons nominated. Each county staff  
16 service personnel development council shall consist of two  
17 employees from each category of employment one of whom  
18 shall be elected as chairperson by the staff development council  
19 members. The councils have final authority to propose staff  
20 development programs for their peers based upon rules estab-  
21 lished by statute and the council on service personnel education.  
22 The county superintendent or a designee has an advisory,  
23 nonvoting role on the council. The county board shall make  
24 available an amount equal to one tenth of one percent of the  
25 amounts provided in accordance with section five, article  
26 nine-a, chapter eighteen of this code and credit the funds to an  
27 account to be used by the council to fulfill its objectives. The  
28 local board has the final approval of all proposed disburse-  
29 ments. Any funds credited to the council during a fiscal year,  
30 but not used by the council, shall be carried over in the council  
31 account for use in the next fiscal year. Any carried-over funds  
32 shall be separate and apart from, and in addition to, the funds to  
33 be credited to the council pursuant to this section.

34 (c) At the end of each fiscal year, the county board of  
35 education shall report to the staff development chairperson the  
36 total amount and balance of the staff development council

37 account, the amount appropriated for the recent fiscal year, the  
 38 amount of funds requested and used by the staff development  
 39 council, and the amount of funds carried over into the next  
 40 fiscal year. The county board of education shall further provide  
 41 to the state superintendent of schools at the end of each fiscal  
 42 year the names of the service personnel staff development  
 43 council members, the name of the chairperson, the number of  
 44 meetings the service personnel staff development council held  
 45 to plan staff development programs and the number of hours  
 46 service employees were provided during their employment  
 47 terms to implement their staff development programs.

#### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

§18A-4-2. State minimum salaries for teachers.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

§18A-4-5. Salary equity among the counties; state salary supplement.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8b. Seniority rights for school service personnel.

§18A-4-14a. Study on daily planning periods.

§18A-4-16. Extracurricular assignments.

#### **§18A-4-2. State minimum salaries for teachers.**

1 (a) Each teacher shall receive the amount prescribed in the  
 2 "state minimum salary schedule I" as set forth in this section,  
 3 specific additional amounts prescribed in this section or article,  
 4 and any county supplement in effect in a county pursuant to  
 5 section five-a of this article during the contract year: *Provided*,  
 6 That beginning on the first day of July, two thousand two, and  
 7 thereafter, each teacher shall receive the amount prescribed in  
 8 "state minimum salary schedule II" as set forth in this section,  
 9 specific additional amounts prescribed in this section or article,

10 and any county supplement in effect in a county pursuant to  
 11 section five-a of this article during the contract year.

**STATE MINIMUM SALARY SCHEDULE I**

(1) Years Exp.	(2) 4 <sup>th</sup> Class	(3) 3 <sup>rd</sup> Class	(4) 2 <sup>nd</sup> Class	(5) A.B.	(6) A.B. +15	(7) M.A.	(8) M.A. +15	(9) M.A. +30	(10) M.A. +45	(11) Doc- torate
0	21,084	21,721	21,976	23,186	23,921	25,629	26,364	27,099	27,834	28,834
1	21,365	22,002	22,257	23,651	24,386	26,094	26,829	27,564	28,299	29,299
2	21,646	22,284	22,539	24,116	24,851	26,559	27,294	28,029	28,764	29,764
3	21,928	22,565	22,820	24,581	25,316	27,024	27,759	28,494	29,229	30,229
4	22,445	23,082	23,338	25,282	26,017	27,725	28,460	29,195	29,930	30,930
5	22,726	23,364	23,619	25,747	26,482	28,190	28,925	29,660	30,395	31,395
6	23,008	23,645	23,900	26,212	26,947	28,655	29,390	30,125	30,860	31,860
7		23,926	24,182	26,677	27,412	29,120	29,855	30,590	31,325	32,325
8		24,208	24,463	27,142	27,877	29,585	30,320	31,055	31,790	32,790
9			24,744	27,607	28,342	30,050	30,785	31,520	32,255	33,255
10			25,025	28,073	28,808	30,516	31,251	31,986	32,721	33,721
11				28,538	29,273	30,981	31,716	32,451	33,186	34,186
12				29,003	29,738	31,446	32,181	32,916	33,651	34,651
13				29,468	30,203	31,911	32,646	33,381	34,116	35,116
14						32,376	33,111	33,846	34,581	35,581
15						32,841	33,576	34,311	35,046	36,046
16						33,306	34,041	34,776	35,511	36,511
17								35,241	35,976	36,976
18								35,706	36,441	37,441
19								36,171	36,906	37,906

**STATE MINIMUM SALARY SCHEDULE II**

(1) Years Exp.	(2) 4 <sup>th</sup> Class	(3) 3 <sup>rd</sup> Class	(4) 2 <sup>nd</sup> Class	(5) A.B.	(6) A.B. +15	(7) M.A.	(8) M.A. +15	(9) M.A. +30	(10) M.A. +45	(11) Doc- torate
0	21,888	22,525	22,780	23,990	24,725	26,433	27,168	27,903	28,638	29,638
1	22,205	22,842	23,097	24,491	25,226	26,934	27,669	28,404	29,139	30,139
2	22,522	23,160	23,415	24,992	25,727	27,435	28,170	28,905	29,640	30,640
3	22,840	23,477	23,732	25,493	26,228	27,936	28,671	29,406	30,141	31,141
4	23,393	24,030	24,286	26,230	26,965	28,673	29,408	30,143	30,878	31,878

5	23,710	24,348	24,603	26,731	27,466	29,174	29,909	30,644	31,379	32,379
6	24,028	24,665	24,920	27,232	27,967	29,675	30,410	31,145	31,880	32,880
7		24,982	25,238	27,733	28,468	30,176	30,911	31,646	32,381	33,381
8		25,300	25,555	28,234	28,969	30,677	31,412	32,147	32,882	33,882
9			25,872	28,735	29,470	31,178	31,913	32,648	33,383	34,383
10			26,189	29,237	29,972	31,680	32,415	33,150	33,885	34,885
11				29,738	30,473	32,181	32,916	33,651	34,386	35,386
12				30,239	30,974	32,682	33,417	34,152	34,887	35,887
13				30,740	31,475	33,183	33,918	34,653	35,388	36,388
14						33,684	34,419	35,154	35,889	36,889
15						34,185	34,920	35,655	36,390	37,390
16						34,686	35,421	36,156	36,891	37,891
17								36,657	37,392	38,392
18								37,158	37,893	38,893
19								37,659	38,394	39,394

12 (b) Six hundred dollars shall be paid annually to each  
 13 classroom teacher who has at least twenty years of teaching  
 14 experience. The payments: (i) Shall be in addition to any  
 15 amounts prescribed in the applicable state minimum salary  
 16 schedule; (ii) shall be paid in equal monthly installments; and  
 17 (iii) shall be considered a part of the state minimum salaries for  
 18 teachers.

19 (c) Effective until the first day of July, two thousand two,  
 20 in addition to any amounts prescribed in the applicable state  
 21 minimum salary schedule, each professional educator shall be  
 22 paid annually the following incremental increases in accordance  
 23 with their years of experience. The payments shall be paid in  
 24 equal monthly installments and shall be considered a part of the  
 25 state minimum salaries for teachers.

26	<b>Years of Experience</b>	<b>Increment</b>
27	31	534
28	32	534
29	33	534
30	34	534



31                    35    534

32            (d) On and after the first day of July, two thousand two, in  
 33 addition to any amounts prescribed in the applicable state  
 34 minimum salary schedule, each professional educator shall be  
 35 paid annually the following incremental increases in accordance  
 36 with their years of experience. The payments shall be paid in  
 37 equal monthly installments and shall be considered a part of the  
 38 state minimum salaries for teachers.

39	<b>Years of Experience</b>	<b>Increment</b>
40	29	570
41	30	570
42	31	570
43	32	570
44	33	570
45	34	570
46	35	570

**§18A-4-3. State minimum annual salary increments for principals and assistant principals.**

1            In addition to any salary increments for principals and  
 2 assistant principals, in effect on the first day of January, two  
 3 thousand two, and paid from local funds, and in addition to the  
 4 county schedule in effect for teachers, the county board shall  
 5 pay each principal, a principal's salary increment and each  
 6 assistant principal an assistant principal's salary increment as  
 7 prescribed by this section from state funds appropriated for the  
 8 salary increments.

9            State funds for this purpose shall be paid within the West  
 10 Virginia public school support plan in accordance with article  
 11 nine-a, chapter eighteen of this code.

12            The salary increment in this section for each principal shall  
 13 be determined by multiplying the basic salary for teachers in

14 accordance with the classification of certification and of  
 15 training of the principal as prescribed in this article, by the  
 16 appropriate percentage rate prescribed in this section according  
 17 to the number of teachers supervised.

18 STATE MINIMUM SALARY INCREMENT  
 19 RATES FOR PRINCIPALS  
 20 EFFECTIVE UNTIL JULY 1, 2002

21	No. of Teachers	
22	Supervised	Rates
23	1-7	9.0%
24	8-14	9.5%
25	15-24	10.0%
26	25-38	10.5%
27	39-57	11.0%
28	58 and up	11.5%

29 STATE MINIMUM SALARY INCREMENT  
 30 RATES FOR PRINCIPALS  
 31 EFFECTIVE ON AND AFTER JULY 1, 2002

32	No. of Teachers	
33	Supervised	Rates
34	1-7	10.0%
35	8-14	10.5%
36	15-24	11.0%
37	25-38	11.5%
38	39-57	12.0%
39	58 and up	12.5%

40 The salary increment in this section for each assistant  
 41 principal shall be determined in the same manner as that for  
 42 principals, utilizing the number of teachers supervised by the  
 43 principal under whose direction the assistant principal works,

44 except that the percentage rate shall be fifty percent of the rate  
45 prescribed for the principal.

46 Salaries for employment beyond the minimum employment  
47 term shall be at the same daily rate as the salaries for the  
48 minimum employment terms.

49 For the purpose of determining the number of teachers  
50 supervised by a principal, the county board shall use data for  
51 the second school month of the prior school term and the  
52 number of teachers shall be interpreted to mean the total  
53 number of professional educators assigned to each school on a  
54 full-time equivalency basis: *Provided*, That if there is a change  
55 in circumstances because of consolidation or catastrophe, the  
56 county board shall determine what is a reasonable number of  
57 supervised teachers in order to establish the appropriate  
58 increment percentage rate.

59 No county may reduce local funds allocated for salary  
60 increments for principals and assistant principals in effect on  
61 the first day of January, two thousand two, and used in supple-  
62 menting the state minimum salaries as provided for in this  
63 article, unless forced to do so by defeat of a special levy, or a  
64 loss in assessed values or events over which it has no control  
65 and for which the county board has received approval from the  
66 state board prior to making the reduction.

67 Nothing in this section prevents a county board from  
68 providing, in a uniform manner, salary increments greater than  
69 those required by this section.

**§18A-4-5. Salary equity among the counties; state salary supplement.**

1 (a) For the purposes of this section, salary equity among the  
2 counties means that the salary potential of school employees  
3 employed by the various districts throughout the state does not

4 differ by greater than ten percent between those offering the  
5 highest salaries and those offering the lowest salaries. In the  
6 case of professional educators, the difference shall be calculated  
7 utilizing the average of the professional educator salary  
8 schedules, degree classifications B.A. through doctorate and  
9 the years of experience provided for in the most recent state  
10 minimum salary schedule for teachers, in effect in the five  
11 counties offering the highest salary schedules compared to the  
12 lowest salary schedule in effect among the fifty-five counties.  
13 In the case of school service personnel, the difference shall be  
14 calculated utilizing the average of the school service personnel  
15 salary schedules, pay grades "A" through "H" and the years of  
16 experience provided for in the most recent state minimum pay  
17 scale pay grade for service personnel, in effect in the five  
18 counties offering the highest salary schedules compared to the  
19 lowest salary schedule in effect among the fifty-five counties.

20 For the school year beginning the first day of July, one  
21 thousand nine hundred ninety-four, and thereafter, in the  
22 counties that jointly support a multicounty vocational school,  
23 salary equity funding shall be distributed to nonfiscal agent  
24 counties based on: (1) Calculating the amount of salary equity  
25 funding each nonfiscal agent county would receive for the  
26 employees for which it is charged in the public school support  
27 program, as provided in section four, article nine-a, chapter  
28 eighteen of this code, if this salary equity funding were distrib-  
29 uted to nonfiscal agent counties; and (2) deducting the salary  
30 equity funding to be received by the fiscal agent county in the  
31 public school support program for those employees for which  
32 the nonfiscal agent county is charged in the public school  
33 support program.

34 (b) To assist the state in meeting its objective of salary  
35 equity among the counties, as defined in subsection (a) of this  
36 section, on and after the first day of July, one thousand nine  
37 hundred eighty-four, subject to available state appropriations

38 and the conditions set forth herein, each teacher and school  
39 service personnel shall receive a supplemental amount in  
40 addition to the amount from the state minimum salary schedules  
41 provided for in this article.

42 State funds for this purpose shall be paid within the West  
43 Virginia public school support plan in accordance with article  
44 nine-a, chapter eighteen of this code. The amount allocated for  
45 salary equity shall be apportioned between teachers and school  
46 service personnel in direct proportion to that amount necessary  
47 to support the professional salaries and service personnel  
48 salaries statewide under sections four and five, article nine-a,  
49 chapter eighteen of this code: *Provided*, That in making this  
50 division an adequate amount of state equity funds shall be  
51 reserved to finance the appropriate foundation allowances and  
52 staffing incentives provided for in article nine-a, chapter  
53 eighteen of this code.

54 Pursuant to this section, each teacher and school service  
55 personnel shall receive the amount that is the difference  
56 between their authorized state minimum salary and ninety-five  
57 percent of the maximum salary schedules prescribed in sections  
58 five-a and five-b of this article, reduced by any amount pro-  
59 vided by the county as a salary supplement for teachers and  
60 school service personnel on the first day of January of the fiscal  
61 year immediately preceding that in which the salary equity  
62 appropriation is distributed: *Provided*, That the amount received  
63 pursuant to this section shall not be decreased as a result of any  
64 county supplement increase instituted after the first day of  
65 January, one thousand nine hundred eighty-four, until the  
66 objective of salary equity is reached: *Provided, however*, That  
67 any amount received pursuant to this section may be reduced  
68 proportionately based upon the amount of funds appropriated  
69 for this purpose.

70 No county may reduce any salary supplement that was in  
71 effect on the first day of January, one thousand nine hundred  
72 eighty-four, except as permitted by sections five-a and five-b of  
73 this article.

**§18A-4-7a. Employment, promotion and transfer of professional  
personnel; seniority.**

1 (a) A county board of education shall make decisions  
2 affecting the hiring of professional personnel other than  
3 classroom teachers on the basis of the applicant with the highest  
4 qualifications.

5 (b) The county board shall make decisions affecting the  
6 hiring of new classroom teachers on the basis of the applicant  
7 with the highest qualifications.

8 (c) In judging qualifications for hiring employees pursuant  
9 to subsections (a) and (b) of this section, consideration shall be  
10 given to each of the following:

11 (1) Appropriate certification and/or licensure;

12 (2) Amount of experience relevant to the position; or, in the  
13 case of a classroom teaching position, the amount of teaching  
14 experience in the subject area;

15 (3) The amount of course work and/or degree level in the  
16 relevant field and degree level generally;

17 (4) Academic achievement;

18 (5) Relevant specialized training;

19 (6) Past performance evaluations conducted pursuant to  
20 section twelve, article two of this chapter; and

21 (7) Other measures or indicators upon which the relative  
22 qualifications of the applicant may fairly be judged.

23 (d) If one or more permanently employed instructional  
24 personnel apply for a classroom teaching position and meet the  
25 standards set forth in the job posting, the county board of  
26 education shall make decisions affecting the filling of such  
27 positions on the basis of the following criteria:

28 (1) Appropriate certification and/or licensure;

29 (2) Total amount of teaching experience;

30 (3) The existence of teaching experience in the required  
31 certification area;

32 (4) Degree level in the required certification area;

33 (5) Specialized training directly related to the performance  
34 of the job as stated in the job description;

35 (6) Receiving an overall rating of satisfactory in evaluations  
36 over the previous two years; and

37 (7) Seniority.

38 (e) In filling positions pursuant to subsection (d) of this  
39 section, consideration shall be given to each criterion with each  
40 criterion being given equal weight. If the applicant with the  
41 most seniority is not selected for the position, upon the request  
42 of the applicant a written statement of reasons shall be given to  
43 the applicant with suggestions for improving the applicant's  
44 qualifications.

45 (f) The seniority of classroom teachers, as defined in  
46 section one, article one of this chapter, with the exception of  
47 guidance counselors, shall be determined on the basis of the  
48 length of time the employee has been employed as a regular

49 full-time certified and/or licensed professional educator by the  
50 county board of education and shall be granted in all areas that  
51 the employee is certified and/or licensed.

52 (g) Upon completion of one hundred thirty-three days of  
53 employment in any one school year, substitute teachers, except  
54 retired teachers and other retired professional educators  
55 employed as substitutes, shall accrue seniority exclusively for  
56 the purpose of applying for employment as a permanent, full-  
57 time professional employee. One hundred thirty-three days or  
58 more of said employment shall be prorated and shall vest as a  
59 fraction of the school year worked by the permanent, full-time  
60 teacher.

61 (h) Guidance counselors and all other professional employ-  
62 ees, as defined in section one, article one of this chapter, except  
63 classroom teachers, shall gain seniority in their nonteaching  
64 area of professional employment on the basis of the length of  
65 time the employee has been employed by the county board of  
66 education in that area: *Provided*, That if an employee is  
67 certified as a classroom teacher, the employee accrues class-  
68 room teaching seniority for the time that that employee is  
69 employed in another professional area. For the purposes of  
70 accruing seniority under this paragraph, employment as  
71 principal, supervisor or central office administrator, as defined  
72 in section one, article one of this chapter, shall be considered  
73 one area of employment.

74 (i) Employment for a full employment term shall equal one  
75 year of seniority, but no employee may accrue more than one  
76 year of seniority during any given fiscal year. Employment for  
77 less than the full employment term shall be prorated. A random  
78 selection system established by the employees and approved by  
79 the board shall be used to determine the priority if two or more  
80 employees accumulate identical seniority: *Provided*, That when  
81 two or more principals have accumulated identical seniority,



82 decisions on reductions in force shall be based on qualifica-  
83 tions.

84 (j) Whenever a county board is required to reduce the  
85 number of professional personnel in its employment, the  
86 employee with the least amount of seniority shall be properly  
87 notified and released from employment pursuant to the provi-  
88 sions of section two, article two of this chapter. The provisions  
89 of this subsection are subject to the following:

90 (1) All persons employed in a certification area to be  
91 reduced who are employed under a temporary permit shall be  
92 properly notified and released before a fully certified employee  
93 in such a position is subject to release;

94 (2) An employee subject to release shall be employed in  
95 any other professional position where such employee is  
96 certified and was previously employed or to any lateral area for  
97 which such employee is certified and/or licensed, if such  
98 employee's seniority is greater than the seniority of any other  
99 employee in that area of certification and/or licensure;

100 (3) If an employee subject to release holds certification  
101 and/or licensure in more than one lateral area and if such  
102 employee's seniority is greater than the seniority of any other  
103 employee in one or more of those areas of certification and/or  
104 licensure, the employee subject to release shall be employed in  
105 the professional position held by the employee with the least  
106 seniority in any of those areas of certification and/or licensure;  
107 and

108 (4) If, prior to the first day of August of the year a reduction  
109 in force is approved, the reason for any particular reduction in  
110 force no longer exists as determined by the county board in its  
111 sole and exclusive judgment, the board shall rescind the  
112 reduction in force or transfer and shall notify the released  
113 employee in writing of his or her right to be restored to his or

114 her position of employment. Within five days of being so  
115 notified, the released employee shall notify the board, in  
116 writing, of his or her intent to resume his or her position of  
117 employment or the right to be restored shall terminate. Not-  
118 withstanding any other provision of this subdivision, if there is  
119 another employee on the preferred recall list with proper  
120 certification and higher seniority, that person shall be placed in  
121 the position restored as a result of the reduction in force being  
122 rescinded.

123 (k) For the purpose of this article, all positions which meet  
124 the definition of classroom teacher as defined in section one,  
125 article one of this chapter shall be lateral positions. For all  
126 other professional positions the county board of education shall  
127 adopt a policy by the thirty-first day of October, one thousand  
128 nine hundred ninety-three, and may modify said policy thereaf-  
129 ter as necessary, which defines which positions shall be lateral  
130 positions. The board shall submit a copy of its policy to the  
131 state board within thirty days of adoption or any modification,  
132 and the state board shall compile a report and submit same to  
133 the legislative oversight commission on education accountabil-  
134 ity by the thirty-first day of December, one thousand nine  
135 hundred ninety-three, and by such date in any succeeding year  
136 in which any county board submits a modification of its policy  
137 relating to lateral positions. In adopting such a policy, the  
138 board shall give consideration to the rank of each position in  
139 terms of title, nature of responsibilities, salary level, certifica-  
140 tion and/or licensure and days in the period of employment.

141 (l) After the fifth day prior to the beginning of the instruc-  
142 tional term, no person employed and assigned to a professional  
143 position may transfer to another professional position in the  
144 county during that instructional term unless the person holding  
145 that position does not have valid certification. The provisions  
146 of this subsection are subject to the following:

147 (1) The person may apply for any posted, vacant positions  
148 with the successful applicant assuming the position at the  
149 beginning of the next instructional term;

150 (2) Professional personnel who have been on an approved  
151 leave of absence may fill these vacancies upon their return from  
152 the approved leave of absence; and

153 (3) The county board, upon recommendation of the superin-  
154 tendent may fill a position before the next instructional term  
155 when it is determined to be in the best interest of the students:  
156 *Provided*, That the county superintendent shall notify the state  
157 board of each transfer of a person employed in a professional  
158 position to another professional position after the fifth day prior  
159 to the beginning of the instructional term. The Legislature finds  
160 that it is not in the best interest of the students particularly in  
161 the elementary grades to have multiple teachers for any one  
162 grade level or course during the instructional term. It is the  
163 intent of the Legislature that the filling of positions through  
164 transfers of personnel from one professional position to another  
165 after the fifth day prior to the beginning of the instructional  
166 term should be kept to a minimum.

167 (m) All professional personnel whose seniority with the  
168 county board is insufficient to allow their retention by the  
169 county board during a reduction in work force shall be placed  
170 upon a preferred recall list. As to any professional position  
171 opening within the area where they had previously been  
172 employed or to any lateral area for which they have certification  
173 and/or licensure, the employee shall be recalled on the basis of  
174 seniority if no regular, full-time professional personnel, or those  
175 returning from leaves of absence with greater seniority, are  
176 qualified, apply for and accept such position.

177 (n) Before position openings that are known or expected to  
178 extend for twenty consecutive employment days or longer for

179 professional personnel may be filled by the board, the board  
180 shall be required to notify all qualified professional personnel  
181 on the preferred list and give them an opportunity to apply, but  
182 failure to apply shall not cause the employee to forfeit any right  
183 to recall. The notice shall be sent by certified mail to the last  
184 known address of the employee, and it shall be the duty of each  
185 professional personnel to notify the board of continued avail-  
186 ability annually, of any change in address or of any change in  
187 certification and/or licensure.

188 (o) Openings in established, existing or newly created  
189 positions shall be processed as follows:

190 (1) Boards shall be required to post and date notices which  
191 shall be subject to the following:

192 (A) The notices shall be posted in conspicuous working  
193 places for all professional personnel to observe for at least five  
194 working days;

195 (B) The notice shall be posted within twenty working days  
196 of the position openings and shall include the job description;

197 (C) Any special criteria or skills that are required by the  
198 position shall be specifically stated in the job description and  
199 directly related to the performance of the job;

200 (D) Postings for vacancies made pursuant to this section  
201 shall be written so as to ensure that the largest possible pool of  
202 qualified applicants may apply; and

203 (E) Job postings may not require criteria which are not  
204 necessary for the successful performance of the job and may not  
205 be written with the intent to favor a specific applicant;

206 (2) No vacancy shall be filled until after the five-day  
207 minimum posting period;

208       (3) If one or more applicants meets the qualifications listed  
209       in the job posting, the successful applicant to fill the vacancy  
210       shall be selected by the board within thirty working days of the  
211       end of the posting period;

212       (4) A position held by a certified and/or licensed teacher  
213       who has been issued a permit for full-time employment and is  
214       working toward certification in the permit area shall not be  
215       subject to posting if the certificate is awarded within five years;  
216       and

217       (5) Nothing provided herein shall prevent the county board  
218       of education from eliminating a position due to lack of need.

219       (p) Notwithstanding any other provision of the code to the  
220       contrary, where the total number of classroom teaching  
221       positions in an elementary school does not increase from one  
222       school year to the next, but there exists in that school a need to  
223       realign the number of teachers in one or more grade levels,  
224       kindergarten through six, teachers at the school may be reas-  
225       signed to grade levels for which they are certified without that  
226       position being posted: *Provided*, That the employee and the  
227       county board of education mutually agree to the reassignment.

228       (q) Reductions in classroom teaching positions in elemen-  
229       tary schools shall be processed as follows:

230       (1) When the total number of classroom teaching positions  
231       in an elementary school needs to be reduced, the reduction shall  
232       be made on the basis of seniority with the least senior class-  
233       room teacher being recommended for transfer; and

234       (2) When a specified grade level needs to be reduced and  
235       the least senior employee in the school is not in that grade level,  
236       the least senior classroom teacher in the grade level that needs  
237       to be reduced shall be reassigned to the position made vacant by  
238       the transfer of the least senior classroom teacher in the school

239 without that position being posted: *Provided*, That the em-  
240 ployee is certified and/or licensed and agrees to the reassign-  
241 ment.

242 (r) Any board failing to comply with the provisions of this  
243 article may be compelled to do so by mandamus and shall be  
244 liable to any party prevailing against the board for court costs  
245 and reasonable attorney fees as determined and established by  
246 the court. Further, employees denied promotion or employment  
247 in violation of this section shall be awarded the job, pay and  
248 any applicable benefits retroactive to the date of the violation  
249 and payable entirely from local funds. Further, the board shall  
250 be liable to any party prevailing against the board for any court  
251 reporter costs including copies of transcripts.

252 (s) The county board shall compile, update annually on the  
253 first day of July and make available by electronic or other  
254 means to all employees a list of all professional personnel  
255 employed by the county, their areas of certification and their  
256 seniority.

**§18A-4-8. Employment term and class titles of service personnel;  
definitions.**

1 (a) The purpose of this section is to establish an employ-  
2 ment term and class titles for service personnel. The employ-  
3 ment term for service personnel may be no less than ten  
4 months. A month is defined as twenty employment days:  
5 *Provided*, That the county board may contract with all or part  
6 of these service personnel for a longer term. The beginning and  
7 closing dates of the ten-month employment term may not  
8 exceed forty-three weeks.

9 (b) Service personnel employed on a yearly or twelve-  
10 month basis may be employed by calendar months. Whenever

11 there is a change in job assignment during the school year, the  
12 minimum pay scale and any county supplement are applicable.

13 (c) Service personnel employed in the same classification  
14 for more than the two hundred day minimum employment term  
15 shall be paid for additional employment at a daily rate of not  
16 less than the daily rate paid for the two hundred day minimum  
17 employment term.

18 (d) No service employee, without his or her agreement, may  
19 be required to report for work more than five days per week and  
20 no part of any working day may be accumulated by the em-  
21 ployer for future work assignments, unless the employee agrees  
22 thereto.

23 (e) If an employee whose regular work week is scheduled  
24 from Monday through Friday agrees to perform any work  
25 assignments on a Saturday or Sunday, the employee shall be  
26 paid for at least one-half day of work for each day he or she  
27 reports for work, and if the employee works more than three  
28 and one-half hours on any Saturday or Sunday, he or she shall  
29 be paid for at least a full day of work for each day.

30 (f) Custodians, aides, maintenance, office and school lunch  
31 employees required to work a daily work schedule that is  
32 interrupted, that is, who do not work a continuous period in one  
33 day, shall be paid additional compensation equal to at least one  
34 eighth of their total salary as provided by their state minimum  
35 salary and any county pay supplement, and payable entirely  
36 from county funds: *Provided*, That when engaged in duties of  
37 transporting students exclusively, aides shall not be regarded as  
38 working an interrupted schedule. Maintenance personnel are  
39 defined as personnel who hold a classification title other than  
40 in a custodial, aide, school lunch, office or transportation  
41 category as provided in section one, article one of this chapter.

42 (g) Upon the change in classification or upon meeting the  
43 requirements of an advanced classification of or by any  
44 employee, the employee's salary shall be made to comply with  
45 the requirements of this article, and to any county salary  
46 schedule in excess of the minimum requirements of this article,  
47 based upon the employee's advanced classification and allow-  
48 able years of employment.

49 (h) An employee's contract as provided in section five,  
50 article two of this chapter shall state the appropriate monthly  
51 salary the employee is to be paid, based on the class title as  
52 provided in this article and any county salary schedule in excess  
53 of the minimum requirements of this article.

54 (i) The column heads of the state minimum pay scale and  
55 class titles, set forth in section eight-a of this article, are defined  
56 as follows:

57 (1) "Pay grade" means the monthly salary applicable to  
58 class titles of service personnel;

59 (2) "Years of employment" means the number of years  
60 which an employee classified as service personnel has been  
61 employed by a board in any position prior to or subsequent to  
62 the effective date of this section and including service in the  
63 armed forces of the United States, if the employee were  
64 employed at the time of his or her induction. For the purpose  
65 of section eight-a of this article, years of employment shall be  
66 limited to the number of years shown and allowed under the  
67 state minimum pay scale as set forth in section eight-a of this  
68 article;

69 (3) "Class title" means the name of the position or job held  
70 by service personnel;



71 (4) "Accountant I" means personnel employed to maintain  
72 payroll records and reports and perform one or more operations  
73 relating to a phase of the total payroll;

74 (5) "Accountant II" means personnel employed to maintain  
75 accounting records and to be responsible for the accounting  
76 process associated with billing, budgets, purchasing and related  
77 operations;

78 (6) "Accountant III" means personnel who are employed in  
79 the county board office to manage and supervise accounts  
80 payable and/or payroll procedures;

81 (7) "Accounts payable supervisor" means personnel who  
82 are employed in the county board office who have primary  
83 responsibility for the accounts payable function, which may  
84 include the supervision of other personnel, and who have either  
85 completed twelve college hours of accounting courses from an  
86 accredited institution of higher education or have at least eight  
87 years of experience performing progressively difficult account-  
88 ing tasks;

89 (8) "Aide I" means those personnel selected and trained for  
90 teacher-aide classifications such as monitor aide, clerical aide,  
91 classroom aide or general aide;

92 (9) "Aide II" means those personnel referred to in the "Aide  
93 I" classification who have completed a training program  
94 approved by the state board, or who hold a high school diploma  
95 or have received a general educational development certificate.  
96 Only personnel classified in an Aide II class title may be  
97 employed as an aide in any special education program;

98 (10) "Aide III" means those personnel referred to in the  
99 "Aide I" classification who hold a high school diploma or a  
100 general educational development certificate and have completed  
101 six semester hours of college credit at an institution of higher

102 education or are employed as an aide in a special education  
103 program and have one year's experience as an aide in special  
104 education;

105 (11) "Aide IV" means personnel referred to in the "Aide I"  
106 classification who hold a high school diploma or a general  
107 educational development certificate and who have completed  
108 eighteen hours of state board-approved college credit at a  
109 regionally accredited institution of higher education, or who  
110 have completed fifteen hours of state board-approved college  
111 credit at a regionally accredited institution of higher education  
112 and successfully completed an in-service training program  
113 determined by the state board to be the equivalent of three  
114 hours of college credit;

115 (12) "Audiovisual technician" means personnel employed  
116 to perform minor maintenance on audiovisual equipment, films,  
117 supplies and the filling of requests for equipment;

118 (13) "Auditor" means personnel employed to examine and  
119 verify accounts of individual schools and to assist schools and  
120 school personnel in maintaining complete and accurate records  
121 of their accounts;

122 (14) "Autism mentor" means personnel who work with  
123 autistic students and who meet standards and experience to be  
124 determined by the state board: *Provided*, That if any employee  
125 has held or holds an aide title and becomes employed as an  
126 autism mentor, the employee shall hold a multiclassification  
127 status that includes aide and autism mentor titles, in accordance  
128 with section eight-b of this article;

129 (15) "Braille or sign language specialist" means personnel  
130 employed to provide braille and/or sign language assistance to  
131 students: *Provided*, That if any employee has held or holds an  
132 aide title and becomes employed as a braille or sign language

133 specialist, the employee shall hold a multiclassification status  
134 that includes aide and braille or sign language specialist title, in  
135 accordance with section eight-b of this article;

136 (16) "Bus operator" means personnel employed to operate  
137 school buses and other school transportation vehicles as  
138 provided by the state board;

139 (17) "Buyer" means personnel employed to review and  
140 write specifications, negotiate purchase bids and recommend  
141 purchase agreements for materials and services that meet  
142 predetermined specifications at the lowest available costs;

143 (18) "Cabinetmaker" means personnel employed to  
144 construct cabinets, tables, bookcases and other furniture;

145 (19) "Cafeteria manager" means personnel employed to  
146 direct the operation of a food services program in a school,  
147 including assigning duties to employees, approving requisitions  
148 for supplies and repairs, keeping inventories, inspecting areas  
149 to maintain high standards of sanitation, preparing financial  
150 reports and keeping records pertinent to food services of a  
151 school;

152 (20) "Carpenter I" means personnel classified as a carpen-  
153 ter's helper;

154 (21) "Carpenter II" means personnel classified as a journey-  
155 man carpenter;

156 (22) "Chief mechanic" means personnel employed to be  
157 responsible for directing activities which ensure that student  
158 transportation or other board-owned vehicles are properly and  
159 safely maintained;

160 (23) "Clerk I" means personnel employed to perform  
161 clerical tasks;

162 (24) "Clerk II" means personnel employed to perform  
163 general clerical tasks, prepare reports and tabulations and  
164 operate office machines;

165 (25) "Computer operator" means qualified personnel  
166 employed to operate computers;

167 (26) "Cook I" means personnel employed as a cook's  
168 helper;

169 (27) "Cook II" means personnel employed to interpret  
170 menus, to prepare and serve meals in a food service program of  
171 a school and shall include personnel who have been employed  
172 as a "Cook I" for a period of four years, if the personnel have  
173 not been elevated to this classification within that period of  
174 time;

175 (28) "Cook III" means personnel employed to prepare and  
176 serve meals, make reports, prepare requisitions for supplies,  
177 order equipment and repairs for a food service program of a  
178 school system;

179 (29) "Crew leader" means personnel employed to organize  
180 the work for a crew of maintenance employees to carry out  
181 assigned projects;

182 (30) "Custodian I" means personnel employed to keep  
183 buildings clean and free of refuse;

184 (31) "Custodian II" means personnel employed as a  
185 watchman or groundsman;

186 (32) "Custodian III" means personnel employed to keep  
187 buildings clean and free of refuse, to operate the heating or  
188 cooling systems and to make minor repairs;

189       (33) “Custodian IV” means personnel employed as head  
190 custodians. In addition to providing services as defined in  
191 “custodian III,” their duties may include supervising other  
192 custodian personnel;

193       (34) “Director or coordinator of services” means personnel  
194 who are assigned to direct a department or division. Nothing in  
195 this subdivision may prohibit professional personnel or profes-  
196 sional educators as defined in section one, article one of this  
197 chapter, from holding this class title, but professional personnel  
198 may not be defined or classified as service personnel unless the  
199 professional personnel held a service personnel title under this  
200 section prior to holding class title of “director or coordinator of  
201 services.” Directors or coordinators of service positions shall be  
202 classified as either a professional personnel or service personnel  
203 position for state aid formula funding purposes and funding for  
204 directors or coordinators of service positions shall be based  
205 upon the employment status of the director or coordinator either  
206 as a professional personnel or service personnel;

207       (35) “Draftsman” means personnel employed to plan,  
208 design and produce detailed architectural/engineering drawings;

209       (36) “Electrician I” means personnel employed as an  
210 apprentice electrician helper or who holds an electrician helper  
211 license issued by the state fire marshal;

212       (37) “Electrician II” means personnel employed as an  
213 electrician journeyman or who holds a journeyman electrician  
214 license issued by the state fire marshal;

215       (38) “Electronic technician I” means personnel employed  
216 at the apprentice level to repair and maintain electronic equip-  
217 ment;

218 (39) "Electronic technician II" means personnel employed  
219 at the journeyman level to repair and maintain electronic  
220 equipment;

221 (40) "Executive secretary" means personnel employed as  
222 the county school superintendent's secretary or as a secretary  
223 who is assigned to a position characterized by significant  
224 administrative duties;

225 (41) "Food services supervisor" means qualified personnel  
226 not defined as professional personnel or professional educators  
227 in section one, article one of this chapter, employed to manage  
228 and supervise a county school system's food service program.  
229 The duties would include preparing in-service training pro-  
230 grams for cooks and food service employees, instructing  
231 personnel in the areas of quantity cooking with economy and  
232 efficiency and keeping aggregate records and reports;

233 (42) "Foremen" means skilled persons employed for  
234 supervision of personnel who work in the areas of repair and  
235 maintenance of school property and equipment;

236 (43) "General maintenance" means personnel employed as  
237 helpers to skilled maintenance employees and to perform minor  
238 repairs to equipment and buildings of a county school system;

239 (44) "Glazier" means personnel employed to replace glass  
240 or other materials in windows and doors and to do minor  
241 carpentry tasks;

242 (45) "Graphic artist" means personnel employed to prepare  
243 graphic illustrations;

244 (46) "Groundsmen" means personnel employed to perform  
245 duties that relate to the appearance, repair and general care of  
246 school grounds in a county school system. Additional assign-

247 ments may include the operation of a small heating plant and  
248 routine cleaning duties in buildings;

249 (47) "Handyman" means personnel employed to perform  
250 routine manual tasks in any operation of the county school  
251 system;

252 (48) "Heating and air conditioning mechanic I" means  
253 personnel employed at the apprentice level to install, repair and  
254 maintain heating and air conditioning plants and related  
255 electrical equipment;

256 (49) "Heating and air conditioning mechanic II" means  
257 personnel employed at the journeyman level to install, repair  
258 and maintain heating and air conditioning plants and related  
259 electrical equipment;

260 (50) "Heavy equipment operator" means personnel em-  
261 ployed to operate heavy equipment;

262 (51) "Inventory supervisor" means personnel who are  
263 employed to supervise or maintain operations in the receipt,  
264 storage, inventory and issuance of materials and supplies;

265 (52) "Key punch operator" means qualified personnel  
266 employed to operate key punch machines or verifying ma-  
267 chines;

268 (53) "Locksmith" means personnel employed to repair and  
269 maintain locks and safes;

270 (54) "Lubrication man" means personnel employed to  
271 lubricate and service gasoline or diesel-powered equipment of  
272 a county school system;

273 (55) "Machinist" means personnel employed to perform  
274 machinist tasks which include the ability to operate a lathe,

275 planer, shaper, threading machine and wheel press. These  
276 personnel should also have, the ability to work from blueprints  
277 and drawings;

278 (56) "Mail clerk" means personnel employed to receive,  
279 sort, dispatch, deliver or otherwise handle letters, parcels and  
280 other mail;

281 (57) "Maintenance clerk" means personnel employed to  
282 maintain and control a stocking facility to keep adequate tools  
283 and supplies on hand for daily withdrawal for all school  
284 maintenance crafts;

285 (58) "Mason" means personnel employed to perform tasks  
286 connected with brick and block laying and carpentry tasks  
287 related to such laying;

288 (59) "Mechanic" means personnel employed who can  
289 independently perform skilled duties in the maintenance and  
290 repair of automobiles, school buses and other mechanical and  
291 mobile equipment to use in a county school system;

292 (60) "Mechanic assistant" means personnel employed as a  
293 mechanic apprentice and helper;

294 (61) "Multiclassification" means personnel employed to  
295 perform tasks that involve the combination of two or more class  
296 titles in this section. In these instances the minimum salary  
297 scale shall be the higher pay grade of the class titles involved;

298 (62) "Office equipment repairman I" means personnel  
299 employed as an office equipment repairman apprentice or  
300 helper;

301 (63) "Office equipment repairman II" means personnel  
302 responsible for servicing and repairing all office machines and  
303 equipment. Personnel are responsible for parts being purchased



304 necessary for the proper operation of a program of continuous  
305 maintenance and repair;

306 (64) "Painter" means personnel employed to perform duties  
307 of painting, finishing and decorating of wood, metal and  
308 concrete surfaces of buildings, other structures, equipment,  
309 machinery and furnishings of a county school system;

310 (65) "Paraprofessional" means a person certified pursuant  
311 to section two-a, article three of this chapter to perform duties  
312 in a support capacity including, but not limited to, facilitating  
313 in the instruction and direct or indirect supervision of pupils  
314 under the direction of a principal, a teacher or another desig-  
315 nated professional educator: *Provided*, That no person em-  
316 ployed on the effective date of this section in the position of an  
317 aide may be reduced in force or transferred to create a vacancy  
318 for the employment of a paraprofessional: *Provided, however*,  
319 That if any employee has held or holds an aide title and  
320 becomes employed as a paraprofessional, the employee shall  
321 hold a multiclassification status that includes aide and  
322 paraprofessional titles in accordance with section eight-b of this  
323 article: *Provided further*, That once an employee who holds an  
324 aide title becomes certified as a paraprofessional and is required  
325 to perform duties that may not be performed by an aide without  
326 paraprofessional certification, he or she shall receive the  
327 paraprofessional title pay grade;

328 (66) "Payroll supervisor" means personnel who are  
329 employed in the county board office who have primary respon-  
330 sibility for the payroll function, which may include the supervi-  
331 sion of other personnel, and who have either completed twelve  
332 college hours of accounting from an accredited institution of  
333 higher education or have at least eight years of experience  
334 performing progressively difficult accounting tasks;

335 (67) "Plumber I" means personnel employed as an appren-  
336 tice plumber and helper;

337 (68) "Plumber II" means personnel employed as a journey-  
338 man plumber;

339 (69) "Printing operator" means personnel employed to  
340 operate duplication equipment, and as required, to cut, collate,  
341 staple, bind and shelve materials;

342 (70) "Printing supervisor" means personnel employed to  
343 supervise the operation of a print shop;

344 (71) "Programmer" means personnel employed to design  
345 and prepare programs for computer operation;

346 (72) "Roofing/sheet metal mechanic" means personnel  
347 employed to install, repair, fabricate and maintain roofs,  
348 gutters, flashing and duct work for heating and ventilation;

349 (73) "Sanitation plant operator" means personnel employed  
350 to operate and maintain a water or sewage treatment plant to  
351 ensure the safety of the plant's effluent for human consumption  
352 or environmental protection;

353 (74) "School bus supervisor" means qualified personnel  
354 employed to assist in selecting school bus operators and routing  
355 and scheduling of school buses, operate a bus when needed,  
356 relay instructions to bus operators, plan emergency routing of  
357 buses and promoting good relationships with parents, pupils,  
358 bus operators and other employees;

359 (75) "Secretary I" means personnel employed to transcribe  
360 from notes or mechanical equipment, receive callers, perform  
361 clerical tasks, prepare reports and operate office machines;

362       (76) "Secretary II" means personnel employed in any  
363 elementary, secondary, kindergarten, nursery, special education,  
364 vocational or any other school as a secretary. The duties may  
365 include performing general clerical tasks, transcribing from  
366 notes or stenotype or mechanical equipment or a sound-  
367 producing machine, preparing reports, receiving callers and  
368 referring them to proper persons, operating office machines,  
369 keeping records and handling routine correspondence. There is  
370 nothing implied in this subdivision that would prevent the  
371 employees from holding or being elevated to a higher classifi-  
372 cation;

373       (77) "Secretary III" means personnel assigned to the county  
374 board office administrators in charge of various instructional,  
375 maintenance, transportation, food services, operations and  
376 health departments, federal programs or departments with  
377 particular responsibilities of purchasing and financial control or  
378 any personnel who have served in a position which meets the  
379 definition of "secretary II" or "secretary III" in this section for  
380 eight years;

381       (78) "Supervisor of maintenance" means skilled personnel  
382 not defined as professional personnel or professional educators  
383 as in section one, article one of this chapter. The responsibili-  
384 ties would include directing the upkeep of buildings and shops,  
385 issuing instructions to subordinates relating to cleaning, repairs  
386 and maintenance of all structures and mechanical and electrical  
387 equipment of a board;

388       (79) "Supervisor of transportation" means qualified  
389 personnel employed to direct school transportation activities,  
390 properly and safely, and to supervise the maintenance and  
391 repair of vehicles, buses and other mechanical and mobile  
392 equipment used by the county school system;

393 (80) "Switchboard operator-receptionist" means personnel  
394 employed to refer incoming calls, to assume contact with the  
395 public, to direct and to give instructions as necessary, to operate  
396 switchboard equipment and to provide clerical assistance;

397 (81) "Truck driver" means personnel employed to operate  
398 light or heavy duty gasoline and diesel-powered vehicles;

399 (82) "Warehouse clerk" means personnel employed to be  
400 responsible for receiving, storing, packing and shipping goods;

401 (83) "Watchman" means personnel employed to protect  
402 school property against damage or theft. Additional assign-  
403 ments may include operation of a small heating plant and  
404 routine cleaning duties;

405 (84) "Welder" means personnel employed to provide  
406 acetylene or electric welding services for a school system; and

407 (85) "WVEIS data entry and administrative clerk" means  
408 personnel employed to work under the direction of a school  
409 principal to assist the school counselor or counselors in the  
410 performance of administrative duties, to perform data entry  
411 tasks on the West Virginia education information system, and  
412 to perform other administrative duties assigned by the principal.

413 (j) In addition to the compensation provided for in section  
414 eight-a of this article, for service personnel, each service  
415 employee is, notwithstanding any provisions in this code to the  
416 contrary, entitled to all service personnel employee rights,  
417 privileges and benefits provided under this or any other chapter  
418 of this code without regard to the employee's hours of employ-  
419 ment or the methods or sources of compensation.

420 (k) Service personnel whose years of employment exceed  
421 the number of years shown and provided for under the state  
422 minimum pay scale set forth in section eight-a of this article

423 may not be paid less than the amount shown for the maximum  
424 years of employment shown and provided for in the classifica-  
425 tion in which he or she is employed.

426 (l) The county boards shall review each service personnel  
427 employee job classification annually and shall reclassify all  
428 service employees as required by the job classifications. The  
429 state superintendent of schools may withhold state funds  
430 appropriated pursuant to this article for salaries for service  
431 personnel who are improperly classified by the county boards.  
432 Further, the state superintendent shall order county boards to  
433 correct immediately any improper classification matter and with  
434 the assistance of the attorney general shall take any legal action  
435 necessary against any county board to enforce the order.

436 (m) No service employee, without his or her written  
437 consent, may be reclassified by class title, nor may a service  
438 employee, without his or her written consent, be relegated to  
439 any condition of employment which would result in a reduction  
440 of his or her salary, rate of pay, compensation or benefits  
441 earned during the current fiscal year or which would result in a  
442 reduction of his or her salary, rate of pay, compensation or  
443 benefits for which he or she would qualify by continuing in the  
444 same job position and classification held during that fiscal year  
445 and subsequent years.

446 (n) Any board failing to comply with the provisions of this  
447 article may be compelled to do so by mandamus, and is liable  
448 to any party prevailing against the board for court costs and the  
449 prevailing party's reasonable attorney fee, as determined and  
450 established by the court.

451 (o) Notwithstanding any provisions in this code to the  
452 contrary, service personnel who hold a continuing contract in a  
453 specific job classification and who are physically unable to  
454 perform the job's duties as confirmed by a physician chosen by

455 the employee shall be given priority status over any employee  
 456 not holding a continuing contract in filling other service  
 457 personnel job vacancies if qualified as provided in section  
 458 eight-e of this article.

**§18A-4-8a. Service personnel minimum monthly salaries.**

1 (1) Until the first day of July, two thousand two, the  
 2 minimum monthly pay for each service employee whose  
 3 employment is for a period of more than three and one-half  
 4 hours a day shall be at least the amounts indicated in the “state  
 5 minimum pay scale pay grade I” and the minimum monthly pay  
 6 for each service employee whose employment is for a period of  
 7 three and one-half hours or less a day shall be at least one-half  
 8 the amount indicated in the “state minimum pay scale pay grade  
 9 I” set forth in this section. Beginning the first day of July, two  
 10 thousand two, the minimum monthly pay for each service  
 11 employee whose employment is for a period of more than three  
 12 and one-half hours a day shall be at least the amounts indicated  
 13 in the “state minimum pay scale pay grade II” and the minimum  
 14 monthly pay for each service employee whose employment is  
 15 for a period of three and one-half hours or less a day shall be at  
 16 least one-half the amount indicated in the “state minimum pay  
 17 scale pay grade II” set forth in this section.

**STATE MINIMUM PAY SCALE PAY GRADE I**

**Years of  
Employment**

**Pay Grade**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
0	1,295	1,315	1,355	1,405	1,455	1,515	1,545	1,615
1	1,325	1,345	1,385	1,435	1,485	1,545	1,575	1,645
2	1,355	1,375	1,415	1,465	1,515	1,575	1,605	1,675
3	1,385	1,405	1,445	1,495	1,545	1,605	1,635	1,705
4	1,415	1,435	1,475	1,525	1,575	1,635	1,665	1,735
5	1,445	1,465	1,505	1,555	1,605	1,665	1,695	1,765

6	1,475	1,495	1,535	1,585	1,635	1,695	1,725	1,795
7	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825
8	1,535	1,555	1,595	1,645	1,695	1,755	1,785	1,855
9	1,565	1,585	1,625	1,675	1,725	1,785	1,815	1,885
10	1,595	1,615	1,655	1,705	1,755	1,815	1,845	1,915
11	1,625	1,645	1,685	1,735	1,785	1,845	1,875	1,945
12	1,655	1,675	1,715	1,765	1,815	1,875	1,905	1,975
13	1,685	1,705	1,745	1,795	1,845	1,905	1,935	2,005
14	1,715	1,735	1,775	1,825	1,875	1,935	1,965	2,035
15	1,745	1,765	1,805	1,855	1,905	1,965	1,995	2,065
16	1,775	1,795	1,835	1,885	1,935	1,995	2,025	2,095
17	1,805	1,825	1,865	1,915	1,965	2,025	2,055	2,125
18	1,835	1,855	1,895	1,945	1,995	2,055	2,085	2,155
19	1,865	1,885	1,925	1,975	2,025	2,085	2,115	2,185
20	1,895	1,915	1,955	2,005	2,055	2,115	2,145	2,215
21	1,925	1,945	1,985	2,035	2,085	2,145	2,175	2,245
22	1,955	1,975	2,015	2,065	2,115	2,175	2,205	2,275
23	1,985	2,005	2,045	2,095	2,145	2,205	2,235	2,305
24	2,015	2,035	2,075	2,125	2,175	2,235	2,265	2,335
25	2,045	2,065	2,105	2,155	2,205	2,265	2,295	2,365
26	2,075	2,095	2,135	2,185	2,235	2,295	2,325	2,395
27	2,105	2,125	2,165	2,215	2,265	2,325	2,355	2,425
28	2,135	2,155	2,195	2,245	2,295	2,355	2,385	2,455
29	2,165	2,185	2,225	2,275	2,325	2,385	2,415	2,485
30	2,195	2,215	2,255	2,305	2,355	2,415	2,445	2,515
31	2,225	2,245	2,285	2,335	2,385	2,445	2,475	2,545
32	2,255	2,275	2,315	2,365	2,415	2,475	2,505	2,575
33	2,285	2,305	2,345	2,395	2,445	2,505	2,535	2,605
34	2,315	2,335	2,375	2,425	2,475	2,535	2,565	2,635
35	2,345	2,365	2,405	2,455	2,505	2,565	2,595	2,665
36	2,375	2,395	2,435	2,485	2,535	2,595	2,625	2,695
37	2,405	2,425	2,465	2,515	2,565	2,625	2,655	2,725
38	2,435	2,455	2,495	2,545	2,595	2,655	2,685	2,755
39	2,465	2,485	2,525	2,575	2,625	2,685	2,715	2,785
40	2,495	2,515	2,555	2,605	2,655	2,715	2,745	2,815

### STATE MINIMUM PAY SCALE PAY GRADE II

**Years of  
Employment**

**Pay Grade**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
0	1,366	1,386	1,426	1,476	1,526	1,586	1,616	1,686
1	1,397	1,417	1,457	1,507	1,557	1,617	1,647	1,717
2	1,428	1,448	1,488	1,538	1,588	1,648	1,678	1,748

3	1,459	1,479	1,519	1,569	1,619	1,679	1,709	1,779
4	1,490	1,510	1,550	1,600	1,650	1,710	1,740	1,810
5	1,521	1,541	1,581	1,631	1,681	1,741	1,771	1,841
6	1,552	1,572	1,612	1,662	1,712	1,772	1,802	1,872
7	1,583	1,603	1,643	1,693	1,743	1,803	1,833	1,903
8	1,614	1,634	1,674	1,724	1,774	1,834	1,864	1,934
9	1,645	1,665	1,705	1,755	1,805	1,865	1,895	1,965
10	1,676	1,696	1,736	1,786	1,836	1,896	1,926	1,996
11	1,707	1,727	1,767	1,817	1,867	1,927	1,957	2,027
12	1,738	1,758	1,798	1,848	1,898	1,958	1,988	2,058
13	1,769	1,789	1,829	1,879	1,929	1,989	2,019	2,089
14	1,800	1,820	1,860	1,910	1,960	2,020	2,050	2,120
15	1,831	1,851	1,891	1,941	1,991	2,051	2,081	2,151
16	1,862	1,882	1,922	1,972	2,022	2,082	2,112	2,182
17	1,893	1,913	1,953	2,003	2,053	2,113	2,143	2,213
18	1,924	1,944	1,984	2,034	2,084	2,144	2,174	2,244
19	1,955	1,975	2,015	2,065	2,115	2,175	2,205	2,275
20	1,986	2,006	2,046	2,096	2,146	2,206	2,236	2,306
21	2,017	2,037	2,077	2,127	2,177	2,237	2,267	2,337
22	2,048	2,068	2,108	2,158	2,208	2,268	2,298	2,368
23	2,079	2,099	2,139	2,189	2,239	2,299	2,329	2,399
24	2,110	2,130	2,170	2,220	2,270	2,330	2,360	2,430
25	2,141	2,161	2,201	2,251	2,301	2,361	2,391	2,461
26	2,172	2,192	2,232	2,282	2,332	2,392	2,422	2,492
27	2,203	2,223	2,263	2,313	2,363	2,423	2,453	2,523
28	2,234	2,254	2,294	2,344	2,394	2,454	2,484	2,554
29	2,265	2,285	2,325	2,375	2,425	2,485	2,515	2,585
30	2,296	2,316	2,356	2,406	2,456	2,516	2,546	2,616
31	2,327	2,347	2,387	2,437	2,487	2,547	2,577	2,647
32	2,358	2,378	2,418	2,468	2,518	2,578	2,608	2,678
33	2,389	2,409	2,449	2,499	2,549	2,609	2,639	2,709
34	2,420	2,440	2,480	2,530	2,580	2,640	2,670	2,740
35	2,451	2,471	2,511	2,561	2,611	2,671	2,701	2,771
36	2,482	2,502	2,542	2,592	2,642	2,702	2,732	2,802
37	2,513	2,533	2,573	2,623	2,673	2,733	2,763	2,833
38	2,544	2,564	2,604	2,654	2,704	2,764	2,794	2,864
39	2,575	2,595	2,635	2,685	2,735	2,795	2,825	2,895
40	2,606	2,626	2,666	2,716	2,766	2,826	2,856	2,926

**CLASS TITLE**

**PAY GRADE**

Accountant I . . . . .	D
Accountant II . . . . .	E
Accountant III . . . . .	F
Accounts Payable Supervisor . . . . .	G
Aide I . . . . .	A



Aide II .....	B
Aide III .....	C
Aide IV .....	D
Audiovisual Technician .....	C
Auditor .....	G
Autism Mentor .....	E
Braille or Sign Language Specialist .....	E
Bus Operator .....	D
Buyer .....	F
Cabinetmaker .....	G
Cafeteria Manager .....	D
Carpenter I .....	E
Carpenter II .....	F
Chief Mechanic .....	G
Clerk I .....	B
Clerk II .....	C
Computer Operator .....	E
Cook I .....	A
Cook II .....	B
Cook III .....	C
Crew Leader .....	F
Custodian I .....	A
Custodian II .....	B
Custodian III .....	C
Custodian IV .....	D
Director or Coordinator of Services .....	H
Draftsman .....	D
Electrician I .....	F
Electrician II .....	G
Electronic Technician I .....	F
Electronic Technician II .....	G
Executive Secretary .....	G
Food Services Supervisor .....	G
Foreman .....	G
General Maintenance .....	C

Glazier .....	D
Graphic Artist .....	D
Groundsman .....	B
Handyman .....	B
Heating and Air Conditioning Mechanic I .....	E
Heating and Air Conditioning Mechanic II .....	G
Heavy Equipment Operator .....	E
Inventory Supervisor .....	D
Key Punch Operator .....	B
Locksmith .....	G
Lubrication Man .....	C
Machinist .....	F
Mail Clerk .....	D
Maintenance Clerk .....	C
Mason .....	G
Mechanic .....	F
Mechanic Assistant .....	E
Office Equipment Repairman I .....	F
Office Equipment Repairman II .....	G
Painter .....	E
Paraprofessional .....	F
Payroll Supervisor .....	G
Plumber I .....	E
Plumber II .....	G
Printing Operator .....	B
Printing Supervisor .....	D
Programmer .....	H
Roofing/Sheet Metal Mechanic .....	F
Sanitation Plant Operator .....	F
School Bus Supervisor .....	E
Secretary I .....	D
Secretary II .....	E
Secretary III .....	F
Supervisor of Maintenance .....	H
Supervisor of Transportation .....	H

Switchboard Operator-Receptionist . . . . . D  
 Truck Driver . . . . . D  
 Warehouse Clerk . . . . . C  
 Watchman . . . . . B  
 Welder . . . . . F  
 WVEIS Data Entry and Administrative Clerk . . . . . B

18       (2) An additional twelve dollars per month shall be added  
 19 to the minimum monthly pay of each service employee who  
 20 holds a high school diploma or its equivalent.

21       (3) Until the first day of July, two thousand two, an  
 22 additional ten dollars per month also shall be added to the  
 23 minimum monthly pay of each service employee for each of the  
 24 following, and beginning the first day of July, two thousand  
 25 two, the ten dollars per month shall be increased to an addi-  
 26 tional eleven dollars per month for each of subdivisions (A)  
 27 through (J), inclusive, of this subsection only, and beginning the  
 28 first day of July, two thousand two, the ten dollars per month  
 29 shall be increased to an additional forty dollars per month for  
 30 each of subdivisions (K) through (N), inclusive, of this subsec-  
 31 tion only:

32       (A) A service employee who holds twelve college hours or  
 33 comparable credit obtained in a trade or vocational school as  
 34 approved by the state board;

35       (B) A service employee who holds twenty-four college  
 36 hours or comparable credit obtained in a trade or vocational  
 37 school as approved by the state board;

38       (C) A service employee who holds thirty-six college hours  
 39 or comparable credit obtained in a trade or vocational school as  
 40 approved by the state board;

41 (D) A service employee who holds forty-eight college hours  
42 or comparable credit obtained in a trade or vocational school as  
43 approved by the state board;

44 (E) A service employee who holds sixty college hours or  
45 comparable credit obtained in a trade or vocational school as  
46 approved by the state board;

47 (F) A service employee who holds seventy-two college  
48 hours or comparable credit obtained in a trade or vocational  
49 school as approved by the state board;

50 (G) A service employee who holds eighty-four college  
51 hours or comparable credit obtained in a trade or vocational  
52 school as approved by the state board;

53 (H) A service employee who holds ninety-six college hours  
54 or comparable credit obtained in a trade or vocational school as  
55 approved by the state board;

56 (I) A service employee who holds one hundred eight  
57 college hours or comparable credit obtained in a trade or  
58 vocational school as approved by the state board;

59 (J) A service employee who holds one hundred twenty  
60 college hours or comparable credit obtained in a trade or  
61 vocational school as approved by the state board;

62 (K) A service employee who holds an associate's degree;

63 (L) A service employee who holds a bachelor's degree;

64 (M) A service employee who holds a master's degree;

65 (N) A service employee who holds a doctorate degree.

66 (4) Effective the first day of July, two thousand two, an  
67 additional eleven dollars per month shall be added to the

68 minimum monthly pay of each service employee for each of the  
69 following:

70 (A) A service employee who holds a bachelor's degree plus  
71 fifteen college hours;

72 (B) A service employee who holds a master's degree plus  
73 fifteen college hours;

74 (C) A service employee who holds a master's degree plus  
75 thirty college hours;

76 (D) A service employee who holds a master's degree plus  
77 forty-five college hours; and

78 (E) A service employee who holds a master's degree plus  
79 sixty college hours.

80 (5) When any part of a school service employee's daily  
81 shift of work is performed between the hours of six o'clock  
82 p.m. and five o'clock a.m. the following day, the employee  
83 shall be paid no less than an additional ten dollars per month  
84 and one half of the pay shall be paid with local funds.

85 (6) Any service employee required to work on any legal  
86 school holiday shall be paid at a rate one and one-half times the  
87 employee's usual hourly rate.

88 (7) Any full-time service personnel required to work in  
89 excess of their normal working day during any week which  
90 contains a school holiday for which they are paid shall be paid  
91 for the additional hours or fraction of the additional hours at a  
92 rate of one and one-half times their usual hourly rate and paid  
93 entirely from county board funds.

94 (8) No service employee may have his or her daily work  
95 schedule changed during the school year without the em-

96 ployee's written consent and the employee's required daily  
97 work hours may not be changed to prevent the payment of time  
98 and one-half wages or the employment of another employee.

99       (9) The minimum hourly rate of pay for extra duty assign-  
100 ments as defined in section eight-b of this article shall be no  
101 less than one seventh of the employee's daily total salary for  
102 each hour the employee is involved in performing the assign-  
103 ment and paid entirely from local funds: *Provided*, That an  
104 alternative minimum hourly rate of pay for performing extra  
105 duty assignments within a particular category of employment  
106 may be utilized if the alternate hourly rate of pay is approved  
107 both by the county board and by the affirmative vote of a two-  
108 thirds majority of the regular full-time employees within that  
109 classification category of employment within that county:  
110 *Provided, however*, That the vote shall be by secret ballot if  
111 requested by a service personnel employee within that classifi-  
112 cation category within that county. The salary for any fraction  
113 of an hour the employee is involved in performing the assign-  
114 ment shall be prorated accordingly. When performing extra  
115 duty assignments, employees who are regularly employed on a  
116 one-half day salary basis shall receive the same hourly extra  
117 duty assignment pay computed as though the employee were  
118 employed on a full-day salary basis.

119       (10) The minimum pay for any service personnel employ-  
120 ees engaged in the removal of asbestos material or related  
121 duties required for asbestos removal shall be their regular total  
122 daily rate of pay and no less than an additional three dollars per  
123 hour or no less than five dollars per hour for service personnel  
124 supervising asbestos removal responsibilities for each hour  
125 these employees are involved in asbestos related duties.  
126 Related duties required for asbestos removal include, but are  
127 not limited to, travel, preparation of the work site, removal of  
128 asbestos decontamination of the work site, placing and removal  
129 of equipment and removal of structures from the site. If any

130 member of an asbestos crew is engaged in asbestos related  
131 duties outside of the employee's regular employment county,  
132 the daily rate of pay shall be no less than the minimum amount  
133 as established in the employee's regular employment county for  
134 asbestos removal and an additional thirty dollars per each day  
135 the employee is engaged in asbestos removal and related duties.  
136 The additional pay for asbestos removal and related duties shall  
137 be payable entirely from county funds. Before service person-  
138 nel employees may be utilized in the removal of asbestos  
139 material or related duties, they shall have completed a federal  
140 Environmental Protection Act approved training program and  
141 be licensed. The employer shall provide all necessary protec-  
142 tive equipment and maintain all records required by the  
143 Environmental Protection Act.

144 (11) For the purpose of qualifying for additional pay as  
145 provided in section eight, article five of this chapter, an aide  
146 shall be considered to be exercising the authority of a supervi-  
147 sory aide and control over pupils if the aide is required to  
148 supervise, control, direct, monitor, escort or render service to a  
149 child or children when not under the direct supervision of  
150 certificated professional personnel within the classroom,  
151 library, hallway, lunchroom, gymnasium, school building,  
152 school grounds or wherever supervision is required. For  
153 purposes of this section, "under the direct supervision of  
154 certificated professional personnel" means that certificated  
155 professional personnel is present, with and accompanying the  
156 aide.

**§18A-4-8b. Seniority rights for school service personnel.**

1 (a) A county board shall make decisions affecting promo-  
2 tions and the filling of any service personnel positions of  
3 employment or jobs occurring throughout the school year that  
4 are to be performed by service personnel as provided in section

5 eight of this article, on the basis of seniority, qualifications and  
6 evaluation of past service.

7 (b) Qualifications shall mean that the applicant holds a  
8 classification title in his category of employment as provided in  
9 this section and must be given first opportunity for promotion  
10 and filling vacancies. Other employees then must be consid-  
11 ered and shall qualify by meeting the definition of the job title  
12 as defined in section eight of this article, that relates to the  
13 promotion or vacancy. If requested by the employee, the board  
14 must show valid cause why an employee with the most senior-  
15 ity is not promoted or employed in the position for which he or  
16 she applies. Applicants shall be considered in the following  
17 order:

18 (1) Regularly employed service personnel;

19 (2) Service personnel whose employment has been discon-  
20 tinued in accordance with this section;

21 (3) Professional personnel who held temporary service  
22 personnel jobs or positions prior to the ninth day of June, one  
23 thousand nine hundred eighty-two, and who apply only for such  
24 temporary jobs or positions;

25 (4) Substitute service personnel; and

26 (5) New service personnel.

27 (c) The county board may not prohibit a service employee  
28 from retaining or continuing his employment in any positions  
29 or jobs held prior to the effective date of this section and  
30 thereafter.

31 (d) A promotion shall be defined as any change in his  
32 employment that the employee deems to improve his working  
33 circumstance within his classification category of employment



34 and shall include a transfer to another classification category or  
35 place of employment if the position is not filled by an employee  
36 who holds a title within that classification category of employ-  
37 ment. Each class title listed in section eight of this article shall  
38 be considered a separate classification category of employment  
39 for service personnel, except for those class titles having  
40 Roman numeral designations, which shall be considered a  
41 single classification of employment. The cafeteria manager  
42 class title shall be included in the same classification category  
43 as cooks. The executive secretary class title shall be included  
44 in the same classification category as secretaries.  
45 Paraprofessional, autism mentor and braille or sign language  
46 specialist class titles shall be included in the same classification  
47 category as aides. The mechanic assistant and chief mechanic  
48 class titles shall be included in the same classification category  
49 as mechanics.

50 (e) For purposes of determining seniority under this section  
51 an employee's seniority begins on the date that he or she enters  
52 into his assigned duties.

53 (f) Notwithstanding any other provisions of this chapter to  
54 the contrary, decisions affecting service personnel with respect  
55 to extra-duty assignments shall be made in the following  
56 manner: An employee with the greatest length of service time  
57 in a particular category of employment shall be given priority  
58 in accepting extra duty assignments, followed by other fellow  
59 employees on a rotating basis according to the length of their  
60 service time until all such employees have had an opportunity  
61 to perform similar assignments. The cycle then shall be  
62 repeated: *Provided*, That an alternative procedure for making  
63 extra-duty assignments within a particular classification  
64 category of employment may be utilized if the alternative  
65 procedure is approved both by the county board and by an  
66 affirmative vote of two thirds of the employees within that  
67 classification category of employment. For the purpose of this

68 section, "extra-duty assignments" are defined as irregular jobs  
69 that occur periodically or occasionally such as, but not limited  
70 to, field trips, athletic events, proms, banquets and band festival  
71 trips.

72 (g) Boards shall post and date notices of all job vacancies  
73 of established existing or newly created positions in conspicu-  
74 ous places for all school service employees to observe for at  
75 least five working days. The notice of the job vacancies shall  
76 include the job description, the period of employment, the  
77 amount of pay and any benefits and other information that is  
78 helpful to the employees to understand the particulars of the  
79 job. After the five-day minimum posting period all vacancies  
80 shall be filled within twenty working days from the posting date  
81 notice of any job vacancies of established existing or newly  
82 created positions. Job postings for vacancies made pursuant to  
83 this section shall be written so as to ensure that the largest  
84 possible pool of qualified applicants may apply. Job postings  
85 may not require criteria which are not necessary for the  
86 successful performance of the job and may not be written with  
87 the intent to favor a specific applicant.

88 (h) All decisions by county boards concerning reduction in  
89 work force of service personnel shall be made on the basis of  
90 seniority, as provided in this section.

91 (i) The seniority of any service personnel shall be deter-  
92 mined on the basis of the length of time the employee has been  
93 employed by the county board within a particular job classifica-  
94 tion. For the purpose of establishing seniority for a preferred  
95 recall list as provided in this section, when an employee has  
96 been employed in one or more classifications, the seniority  
97 accrued in each previous classification shall be retained by the  
98 employee.

99           (j) If a county board is required to reduce the number of  
100 employees within a particular job classification, the employee  
101 with the least amount of seniority within that classification or  
102 grades of classification shall be properly released and employed  
103 in a different grade of that classification if there is a job  
104 vacancy: *Provided*, That if there is no job vacancy for employ-  
105 ment within the classification or grades of classification, he or  
106 she shall be employed in any other job classification which he  
107 or she previously held with the county board if there is a  
108 vacancy and shall retain any seniority accrued in the job  
109 classification or grade of classification.

110           (k) If, prior to the first day of August after a reduction in  
111 force or transfer is approved, the reason for any particular  
112 reduction in force or transfer no longer exists as determined by  
113 the county board in its sole and exclusive judgment, the board  
114 shall rescind the reduction in force or transfer and shall notify  
115 the affected employee in writing of his or her right to be  
116 restored to his or her former position of employment. Within  
117 five days of being so notified, the affected employee shall  
118 notify the board of his or her intent to return to his or her  
119 former position of employment or the right of restoration to the  
120 former position shall terminate: *Provided*, That the board shall  
121 not rescind the reduction in force of an employee until all  
122 employees with more seniority in the classification category on  
123 the preferred recall list have been offered the opportunity for  
124 recall to regular employment as provided in this section. If  
125 there are insufficient vacant positions to permit reemployment  
126 of all more senior employees on the preferred recall list within  
127 the classification category of the employee who was subject to  
128 reduction in force, the position of the released employee shall  
129 be posted and filled in accordance with this section.

130           (l) If two or more employees accumulate identical seniority,  
131 the priority shall be determined by a random selection system

132 established by the employees and approved by the county  
133 board.

134 (m) All employees whose seniority with the county board  
135 is insufficient to allow their retention by the county board  
136 during a reduction in work force shall be placed upon a pre-  
137 ferred recall list and shall be recalled to employment by the  
138 county board on the basis of seniority.

139 (n) Employees placed upon the preferred list shall be  
140 recalled to any position openings by the county board within the  
141 classification(s), where they had previously been employed, or  
142 to any lateral position for which the employee is qualified or to  
143 a lateral area for which an employee has certification and/or  
144 licensure.

145 (o) Employees on the preferred recall list shall not forfeit  
146 their right to recall by the county board if compelling reasons  
147 require an employee to refuse an offer of reemployment by the  
148 county board.

149 (p) The county board shall notify all employees on the  
150 preferred recall list of all position openings that from time to  
151 time exist. The notice shall be sent by certified mail to the last  
152 known address of the employee; it is the duty of each such  
153 employee to notify the county board of any change in the  
154 address of the employee.

155 (q) No position openings may be filled by the county board,  
156 whether temporary or permanent, until all employees on the  
157 preferred recall list have been properly notified of existing  
158 vacancies and have been given an opportunity to accept  
159 reemployment.

160 (r) An employee released from employment for lack of  
161 need as provided in section eight-a or six, article two of this  
162 chapter shall be accorded preferred recall status on the first day

163 of July of the succeeding school year if the employee has not  
164 been reemployed as a regular employee.

165 (s) Any board failing to comply with the provisions of this  
166 article may be compelled to do so by mandamus and is liable to  
167 any party prevailing against the board for court costs and the  
168 prevailing party's reasonable attorney fee, as determined and  
169 established by the court. Further, employees denied promotion  
170 or employment in violation of this section shall be awarded the  
171 job, pay and any applicable benefits retroactively to the date of  
172 the violation and shall be paid entirely from local funds.  
173 Further, the board is liable to any party prevailing against the  
174 board for any court reporter costs including copies of tran-  
175 scripts.

**§18A-4-14a. Study on daily planning periods.**

1 (a) The legislative oversight commission on education  
2 accountability shall conduct a study of the length of time within  
3 the instructional day needed by teachers to plan. The commis-  
4 sion may conduct the study as a whole or may appoint a  
5 subcommittee to conduct the study under its direction. The  
6 study shall include, but is not limited to, an examination of the  
7 following issues:

8 (1) The length of planning periods in different grade levels  
9 and under different class period schedules;

10 (2) A comparison of the amount and difficulty of the  
11 subject matter to be covered during the instructional day and the  
12 length of the planning period in different grade levels and under  
13 different class period schedules;

14 (3) An analysis of the appropriate use of planning period  
15 time and actual practices; and

16 (4) An analysis of the cost to the state and the counties of  
17 daily planning periods of different lengths and the potential for  
18 savings through appropriate measures for standardization.

19 (b) The legislative oversight commission on education  
20 accountability shall issue a report of its findings and recommen-  
21 dations, together with any legislation necessary to effectuate its  
22 recommendations, on or before the second day of January, two  
23 thousand three. In making its findings and recommendations,  
24 the commission shall:

25 (1) Consider measures for standardization in the length of  
26 planning periods for teachers in similar grade levels;

27 (2) Consider appropriate uses of any nonscheduled teacher  
28 time which becomes available if the standardization of planning  
29 period length results in planning periods which are less than the  
30 usual class period at a school, including, but not limited to,  
31 mentoring, tutoring, providing additional supervision, meetings  
32 and other noninstructional activities; and

33 (3) Consider adjustments or restructuring of the require-  
34 ments for planning periods that do not result in any additional  
35 cost to the state or counties.

#### **§18A-4-16. Extracurricular assignments.**

1 (1) The assignment of teachers and service personnel to  
2 extracurricular assignments shall be made only by mutual  
3 agreement of the employee and the superintendent, or desig-  
4 nated representative, subject to board approval. Extracurricular  
5 duties shall mean, but not be limited to, any activities that occur  
6 at times other than regularly scheduled working hours, which  
7 include the instructing, coaching, chaperoning, escorting,  
8 providing support services or caring for the needs of students,  
9 and which occur on a regularly scheduled basis: *Provided*, That  
10 all school service personnel assignments shall be considered

11 extracurricular assignments, except such assignments as are  
12 considered either regular positions, as provided by section eight  
13 of this article, or extra-duty assignments, as provided by section  
14 eight-b of this article.

15 (2) The employee and the superintendent, or a designated  
16 representative, subject to board approval, shall mutually agree  
17 upon the maximum number of hours of extracurricular assign-  
18 ment in each school year for each extracurricular assignment.

19 (3) The terms and conditions of the agreement between the  
20 employee and the board shall be in writing and signed by both  
21 parties.

22 (4) An employee's contract of employment shall be separate  
23 from the extracurricular assignment agreement provided for in  
24 this section and shall not be conditioned upon the employee's  
25 acceptance or continuance of any extracurricular assignment  
26 proposed by the superintendent, a designated representative, or  
27 the board.

28 (5) The board shall fill extracurricular school service  
29 personnel assignments and vacancies in accordance with  
30 section eight-b of this article: *Provided*, That an alternative  
31 procedure for making extracurricular school service personnel  
32 assignments within a particular classification category of  
33 employment may be utilized if the alternative procedure is  
34 approved both by the county board and by an affirmative vote  
35 of two thirds of the employees within that classification  
36 category of employment.

37 (6) An employee who was employed in any service  
38 personnel extracurricular assignment during the previous school  
39 year shall have the option of retaining the assignment if it  
40 continues to exist in any succeeding school year. A county  
41 board of education may terminate any school service personnel  
42 extracurricular assignment for lack of need pursuant to section

43 seven, article two of this chapter. If an extracurricular contract  
44 has been terminated and is reestablished in any succeeding  
45 school year, it shall be offered to the employee who held the  
46 assignment at the time of its termination. If the employee  
47 declines the assignment, the extracurricular assignment shall be  
48 posted and filled pursuant to section eight-b of this article.

---

## CHAPTER 106

**(H. B. 4319 — By Fahey, Morgan, Perry, Shelton,  
Paxton, Harrison and Canterbury)**

---

[Passed March 6, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend and reenact sections five-a, twenty-three-a and twenty-six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section five-e; to amend and reenact sections five and nine, article two-e of said chapter; to further amend said article by adding thereto a new section, designated section five-c; to amend and reenact sections one, three and four, article two-i of said chapter; to amend and reenact section eighteen-b, article five of said chapter; to amend article twenty of said chapter by adding thereto a new section, designated section one-d; to amend and reenact section twelve, article two, chapter eighteen-a of said code; to amend and reenact sections one and two-c, article three of said chapter; to amend and reenact sections one, two and two-b, article three-a of said chapter; and to amend and reenact section nine, article three-b, chapter twenty-nine-a of said code, all relating to education generally; the process for improving education; filing copies of proposed state board of education rules



with the legislative oversight commission on education accountability; higher education participation in development of public education assessments; requiring public institutions of higher education to include plans for using data in compacts after a certain date; specifying possible uses of data; improving the quality, coordination and efficiency of professional staff development in the public schools; changing the process, parties and time frame for state board establishment of professional staff development goals and master plan for professional staff development; establishing first priority for goals; adding state institutions of higher education to list of agencies to receive master plan for professional staff development; providing for periodic amendments to plan; establishing legislative intent for regional educational service agencies; definition; refocusing agencies' programs and services using performance based accountability model; setting forth legislative purpose in establishing agencies; establishing priorities for agencies' programs and services; requiring state board to promulgate rules by a certain date for effective administration and operation of agencies; prohibiting delegation of state board's constitutional authority for the general supervision of schools to the agencies; providing for discretion in certain programs; providing for selection of staff; prohibiting certain personnel changes before certain date; providing for appointment of regional councils; requiring state board to establish statewide standards for service delivery by agencies; providing for amendments to standards; providing for establishment of procedures for financial operation of agencies; requiring state board to establish by rule procedures for agencies to acquire and hold real property; providing for establishment of agency service areas and requiring each county to be a member of the agency in its geographical area; removing authority for agency board to implement regional programs and services by a majority vote of its board of directors; clarifying submission of agency reports and evaluations; prohibiting a member of a county board from being an employee of an agency; requiring agency executive director to attend annually at

least one meeting of each member county board within the service area; making certain findings with respect to process for improving education; adding progress to the criteria for school accreditation and school system approval; delineating authority and responsibility of state board and Legislature in process for improving education; further specifying intent; requiring state board to promulgate rules specifying that unified school improvement plans are to contain other required plans to extent permitted by law; eliminating certain performance standards and clarifying or strengthening others; strengthening purposes of system; providing for additional state and regional agencies to be used for early detection and intervention in low performing schools; requiring process for accrediting schools and school systems to focus on measurable criteria related to student performance and progress; specifying recommendations to be made to process for improving education council; expanding purposes of office of education performance audits; requiring development of reporting formats for certain information, specifying their use and providing penalty for intentional or grossly negligent reporting of false information; establishing relationship of audit with other required reviews and inspections and prohibiting duplication and more stringent compliance measures; providing for five school-day notice of on-site review; authorizing unannounced on-site reviews under certain circumstances; authorizing on-site reviews of limited scope; providing for state board designation of certain expert persons to participate in on-site audits, lead teams and complete reports; revising process for appointment of team to assist person or persons designated by state board to participate in on-site review; requiring office of education performance audits to reimburse substitute expense; providing for exit conferences for on-site reviews; specifying time limit for submitting reports of on-site reviews; requiring copies of on-site reports to be provided to process for improving education council; providing for schools and school systems to remain on full accreditation or approval for certain period if certain conditions are met; including

process for improving education council as an appropriate body for receipt of certain reports on capacity building; including principals academy as potential staff development provider to build capacity; authorizing state board to make determinations on continuing school monitor and to intervene in operation of school or school system at any time under certain limited circumstances; specifying certain types of intervention; specifying process for replacing a school principal; limiting actions of county board that would further impair a low performing school; authorizing state board to appoint a monitor for a school after the state board intervention period has been completed; authorizing state board to delegate certain powers and duties to state superintendent; adding an additional condition when state board intervention in operation of school system is authorized; establishing process for improving education council; providing for membership, reimbursement of expenses, and powers of council; designating governor to convene meetings and serve as council chair; requiring state board to notify council members of proposed changes to certain state board rules; providing for certain members of council to request governor to call meetings; requiring state board or its designees to meet and consult with council; authorizing council members and staff to participate as observers in on-site reviews of schools or school systems; exempting approved virtual and distance learning courses of West Virginia virtual school from mandatory use of primary source instructional materials listed on state multiple list subject to certain requirements; making West Virginia professional staff development advisory council an advisory council to the state board; reducing the number of members on the council; revising purpose and functions; providing that members may be reimbursed for expenses by the state board; providing for a council chair; authorizing state board to promulgate a rule adopting the national standards for school counseling programs; requiring county boards to provide training to implement the rule to the extent funding is available; requiring state board to adopt basic

model for individualized education programs for exceptional students not to exceed federal laws, policies, rules and regulations; providing that professional educators may not be required to prepare and/or implement an individualized education program which exceeds requirements of federal and state laws, policies, rules or regulations; allowing less frequent evaluations for certain professional personnel; providing that classroom teachers may request more frequent evaluations; providing that evaluations serve as basis to improve personnel performance; requiring that personnel demonstrate competence on state board adopted technology standards and providing for an improvement plan for those who cannot demonstrate such competence; directing that lesson plans may not be used as a substitute for observations in the performance evaluation process nor for the performance audit documentation; directing that lesson plans may not be required to include certain nonessential items; directing that classroom teachers may not be required to keep records of routine contacts with parents or guardians; replacing outdated references to the college and university system boards and adding chancellor of higher education policy commission; requiring training and professional development through the principals academy to be specifically designed for the principals required to attend; establishing priority order for principals to attend the academy; requiring that training be completed within twelve months, except in the cases of principals whose schools are seriously impaired; requiring center for professional development to provide for all principals to attend the academy at least once every six years subject to available funding; requiring that members of the principals standards advisory council be selected by their relevant constituency organizations; reconstituting the membership on a certain date; requiring the center for professional development to reimburse the expenses of persons attending the academy; removing authorization to pay a stipend to persons who attend the academy outside of their employment term; prohibiting requiring persons to complete training and professional development

through the academy at certain times; requiring the center for professional development to use alternative methods of scheduling and instructional delivery to minimize time principals are away from school duties; expanding general mission of center for professional development to include assistance and support to regional and local education agencies in identifying and providing programs to meet local needs; establishing term limit for certain board members; requiring educators serving on center for professional development board be experienced educators with recognized knowledge, ability and performance in teaching or management; requiring that one of the three citizen members on the board be a representative of public higher education; providing for co-chairs of the center for professional development; making the executive director of center for professional development a will and pleasure employee of center for professional development board; directing executive director to chair the principals standards advisory council; requiring professional development project to cooperate and coordinate with the institutions of higher education to provide programs to aid teachers in meeting the requirements for additional endorsements; providing for the state board to certify certain professional staff development courses provided by center for professional development to meet the requirements if no agreement with higher education is reached; removing authorization for summer institutes in the principals academy and listing priorities for principal training; clarifying procedures for state board to file rules with legislative oversight commission on education accountability; and authorizing legislative oversight commission on education accountability to make recommendations to the state board and the Legislature regarding rules.

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

That sections five-a, twenty-three-a and twenty-six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said

article be further amended by adding thereto a new section, designated section five-e; that sections five and nine, article two-e of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section five-c; that sections one, three and four, article two-i of said chapter be amended and reenacted; that section eighteen-b, article five of said chapter be amended and reenacted; that article twenty of said chapter be further amended by adding thereto a new section, designated section one-d; that section twelve, article two, chapter eighteen-a of said code be amended and reenacted; that sections one and two-c, article three of said chapter be amended and reenacted; that sections one, two and two-b, article three-a of said chapter be amended and reenacted; and that section nine, article three-b, chapter twenty-nine-a of said code be amended and reenacted, all to read as follows:

**Chapter**

- 18. Education.**
- 18A. School Personnel.**
- 29A. State Administrative Procedures Act.**

**CHAPTER 18. EDUCATION.****Article**

- 2. State Board of Education.**
- 2E. High Quality Educational Programs.**
- 2I. Staff Development Councils.**
- 5. County Board of Education.**
- 20. Education of Exceptional Children.**

**ARTICLE 2. STATE BOARD OF EDUCATION.**

- §18-2-5a. Board rules to be filed with Legislature.
- §18-2-5e. Higher education participation in development and use of public education assessments.
- §18-2-23a. Annual professional staff development goals established by state board; coordination of professional development programs; program development, approval and evaluation.
- §18-2-26. Establishment of multicounty regional education service agencies; purpose, authority of state board; governance; annual performance standards.

**§18-2-5a. Board rules to be filed with Legislature.**

1       The state board of education shall file twenty copies of any  
2 rule that it proposes to promulgate, adopt, amend or repeal  
3 under the authority of the constitution or of this code with the  
4 legislative oversight commission on education accountability  
5 pursuant to article three-b, chapter twenty-nine-a of this code.  
6 “Rule,” as used herein, means a regulation, standard, statement  
7 of policy, or interpretation of general application and future  
8 effect.

**§18-2-5e. Higher education participation in development and use of public education assessments.**

1       (a) It is the duty of the state board to consult with the duly  
2 selected representatives of public higher education appointed  
3 pursuant to subsection (b) of this section and to make full use  
4 of their expertise when developing assessment instruments to  
5 be administered in the public schools. Among other things, the  
6 higher education representatives shall assist the state board in  
7 assuring that assessment instruments provide meaningful data  
8 to be used by higher education pursuant to subsection (c) of this  
9 section.

10       (b) The chancellor of the higher education policy commis-  
11 sion shall appoint appropriate representatives from the system  
12 of public higher education to participate in the development of  
13 any assessment instruments required by rules of the state board  
14 to be administered in grades nine through twelve of the public  
15 schools of this state. It is the responsibility of these higher  
16 education representatives to assist the state board in developing  
17 assessments that test the knowledge and skills needed for  
18 success in postsecondary education.

19       (c) Not later than the school year beginning in two thousand  
20 five, the higher education policy commission shall require that

21 each institution's compact, as set forth in section two, article  
22 one-b, chapter eighteen-b of this code, includes provisions for  
23 incorporating the data generated by public education assess-  
24 ments into their decision making processes. The use of the data  
25 may include, but is not limited to, consideration as a factor in  
26 admission to postsecondary education, college placement, or  
27 determinations of necessity for remedial course work.

**§18-2-23a. Annual professional staff development goals estab-  
lished by state board; coordination of professional  
development programs; program development,  
approval and evaluation.**

1 (a) *Legislative intent.* — The intent of this section is to  
2 provide for the coordination of professional development  
3 programs by the state board and to promote high quality  
4 instructional delivery and management practices for a thorough  
5 and efficient system of schools.

6 (b) *Goals.* — The state board annually shall establish goals  
7 for professional staff development in the public schools of the  
8 state. As a first priority, the state board shall require adequate  
9 and appropriate professional staff development to ensure high  
10 quality teaching that will enable students to achieve the content  
11 standards established for the required curriculum in the public  
12 schools.

13 The state board shall submit the goals to the state depart-  
14 ment of education, the center for professional development, the  
15 regional educational service agencies, the higher education  
16 policy commission and the legislative oversight commission on  
17 education accountability on or before the fifteenth day of  
18 January, each year.

19 The goals shall include measures by which the effectiveness  
20 of the professional staff development programs will be evalu-



21 ated. The professional staff development goals may include  
22 separate goals for teachers, principals, paraprofessional service  
23 personnel and classroom aides and others in the public schools.

24 In establishing the goals, the state board shall review  
25 reports that may indicate a need for professional staff develop-  
26 ment including, but not limited to, the report of the center for  
27 professional development created in article three-a, chapter  
28 eighteen-a of this code, student test scores on the statewide  
29 student assessment program, the measures of student and school  
30 performance for accreditation purposes, school and school  
31 district report cards, and its plans for the use of funds in the  
32 strategic staff development fund pursuant to section thirty-two,  
33 article two, chapter eighteen of this code.

34 (c) The center for professional development shall design a  
35 proposed professional staff development program plan to  
36 achieve the goals of the state board and shall submit the  
37 proposed plan to the state board for approval as soon as  
38 possible following receipt of the state board goals each year.

39 The proposed plan shall include a strategy for evaluating  
40 the effectiveness of the professional staff development pro-  
41 grams delivered under the plan and a cost estimate. The state  
42 board shall review the proposed plan and return it to the center  
43 for professional development noting whether the proposed plan  
44 is approved or is not approved, in whole or in part. If a pro-  
45 posed plan is not approved in whole, the state board shall note  
46 its objections to the proposed plan or to the parts of the pro-  
47 posed plan not approved and may suggest improvements or  
48 specific modifications, additions or deletions to address more  
49 fully the goals or eliminate duplication. If the proposed plan is  
50 not wholly approved, the center for professional development  
51 shall revise the plan to satisfy the objections of the state board.  
52 State board approval is required prior to implementation of the  
53 professional staff development plan.

54 (d) The state board approval of the proposed professional  
55 staff development plan shall establish a master plan for profes-  
56 sional staff development which shall be submitted by the state  
57 board to the affected agencies and to the legislative oversight  
58 commission on education accountability. The master plan shall  
59 include the state board approved plans for professional staff  
60 development by the state department of education, the center  
61 for professional development, the state institutions of higher  
62 education and the regional educational service agencies to meet  
63 the professional staff development goals of the state board. The  
64 master plan also shall include a plan for evaluating the effec-  
65 tiveness of the professional staff development delivered through  
66 the programs and a cost estimate.

67 The master plan shall serve as a guide for the delivery of  
68 coordinated professional staff development programs by the  
69 state department of education, the center for professional  
70 development, the state institutions of higher education and the  
71 regional educational service agencies beginning on the first day  
72 of June in the year in which the master plan was approved  
73 through the thirtieth day of May in the following year: *Pro-*  
74 *vided*, That nothing in this section shall prohibit changes in the  
75 master plan, subject to state board approval, to address staff  
76 development needs identified after the master plan was ap-  
77 proved.

**§18-2-26. Establishment of multicounty regional educational  
service agencies; purpose; authority of state  
board; governance; annual performance stan-  
dards.**

1 (a) *Legislative intent.* — The intent of the Legislature in  
2 providing for establishment of regional education service  
3 agencies, hereinafter referred to in this section as agency or  
4 agencies, is to provide for high quality, cost effective education  
5 programs and services to students, schools and school systems.

6        Since the first enactment of this section in one thousand  
7 nine hundred seventy-two, the focus of public education has  
8 shifted from a reliance on input models to determine if educa-  
9 tion programs and services are providing to students a thorough  
10 and efficient education to a performance based accountability  
11 model which relies on the following:

12        (1) Development and implementation of standards which  
13 set forth the things that students should know and be able to do  
14 as the result of a thorough and efficient education including  
15 measurable criteria to evaluate student performance and  
16 progress;

17        (2) Development and implementation of assessments to  
18 measure student performance and progress toward meeting the  
19 standards;

20        (3) Development and implementation of a system for  
21 holding schools and school systems accountable for student  
22 performance and progress toward obtaining a high quality  
23 education which is delivered in an efficient manner; and

24        (4) Development and implementation of a method for  
25 building the capacity and improving the efficiency of schools  
26 and school systems to improve student performance and  
27 progress.

28        (b) *Purpose.* — In establishing the agencies the Legislature  
29 envisions certain areas of service in which the agencies can best  
30 assist the state board in implementing the standards based  
31 accountability model pursuant to subsection (a) of this section  
32 and, thereby, in providing high quality education programs.  
33 These areas of service include the following:

34        (1) Providing technical assistance to low performing  
35 schools and school systems;

36 (2) Providing high quality, targeted staff development  
37 designed to enhance the performance and progress of students  
38 in state public education;

39 (3) Facilitating coordination and cooperation among the  
40 county boards within their respective regions in such areas as  
41 cooperative purchasing; sharing of specialized personnel,  
42 communications and technology; curriculum development; and  
43 operation of specialized programs for exceptional children;

44 (4) Installing, maintaining and/or repairing education  
45 related technology equipment and software with special  
46 attention to the state level basic skills and SUCCESS programs;

47 (5) Receiving and administering grants under the provisions  
48 of federal and/or state law; and

49 (6) Developing and/or implementing any other programs or  
50 services as directed by law or by the state board.

51 (c) *State board rule.* — The state board shall reexamine the  
52 powers and duties of the agencies in light of the changes in state  
53 level education policy that have occurred and shall establish  
54 multicounty regional educational service agencies by rule,  
55 promulgated in accordance with the provisions of article three-  
56 b, chapter twenty-nine-a of this code.

57 The rule shall contain all information necessary for the  
58 effective administration and operation of the agencies. In  
59 developing the rule, the state board may not delegate its  
60 constitutional authority for the general supervision of schools  
61 to the agencies, however, it may allow the agencies greater  
62 latitude in the development and implementation of programs in  
63 the service areas outlined in subsection (b) of this section with  
64 the exceptions of providing technical assistance to low perform-  
65 ing schools and school systems and providing high quality,  
66 targeted staff development designed to enhance the perfor-

67 mance and progress of students in state public education. These  
68 two areas constitute the most important responsibilities for the  
69 agencies.

70 The rule establishing the agencies shall be promulgated  
71 before the first day of November, two thousand two, and shall  
72 be consistent with the provisions of this section. It shall include,  
73 but is not limited to, the following procedures:

74 (1) Providing for a uniform governance structure for the  
75 agencies containing at least these elements:

76 (A) Selection by the state board of an executive director  
77 who shall be responsible for the administration of his or her  
78 respective agency. The rule shall provide for the state board to  
79 consult with the appropriate regional council during the  
80 selection process;

81 (B) Development of a job description and qualifications for  
82 the position of executive director, together with procedures for  
83 informing the public of position openings and for taking and  
84 evaluating applications for these positions;

85 (C) Provisions for the agencies to employ other staff, as  
86 necessary, with the approval of the state board and upon the  
87 recommendation of the executive director: *Provided*, That prior  
88 to the first day of July, two thousand three, no person who is an  
89 employee of an agency on the effective date of this section may  
90 be terminated or have his or her salary and benefit levels  
91 reduced as the sole result of the changes made to this section or  
92 by state board rule;

93 (D) Appointment by the county boards of a regional council  
94 in each agency area consisting of representatives of county  
95 boards and county superintendents from within that area for the  
96 purpose of advising and assisting the executive director in  
97 carrying out his or her duties. The state board may provide for

98 membership on the regional council for representatives from  
99 other agencies and institutions who have interest or expertise in  
100 the development or implementation of regional education  
101 programs; and

102 (E) Selection by the state superintendent of a representative  
103 from the state department of education to serve on each regional  
104 council. These representatives shall meet with their respective  
105 regional councils at least quarterly;

106 (2) Establishing statewide standards by the state board for  
107 service delivery by the agencies. These standards may be  
108 revised annually and shall include, but are not limited to,  
109 programs and services to fulfill the purposes set forth in  
110 subsection (b) of this section;

111 (3) Establishing procedures for developing and adopting an  
112 annual basic operating budget for each agency and for other  
113 budgeting and accounting procedures as the state board may  
114 require;

115 (4) Establishing procedures to clarifying that agencies may  
116 acquire and hold real property;

117 (5) Dividing the state into appropriate, contiguous geo-  
118 graphical areas and designating an agency to serve each area.  
119 The rule shall provide that each of the state's counties is  
120 contained within a single service area and that all counties  
121 located within the boundaries of each agency, as determined by  
122 the state board, shall be members of that agency; and

123 (6) Such other standards or procedures as the state board  
124 finds necessary or convenient.

125 (d) *Regional services.* — In furtherance of the purposes  
126 provided for in this section, the state board and the regional  
127 council of each agency shall continually explore possibilities

128 for the delivery of services on a regional basis which will  
129 facilitate equality in the education offerings among counties in  
130 its service area, permit the delivery of high quality education  
131 programs at a lower per student cost, strengthen the cost  
132 effectiveness of education funding resources, reduce adminis-  
133 trative and/or operational costs, including the consolidation of  
134 administrative, coordinating and other county level functions  
135 into region level functions, and promote the efficient adminis-  
136 tration and operation of the public school systems generally.

137 Technical, operational, programmatic or professional  
138 services are among the types of services appropriate for  
139 delivery on a regional basis.

140 (e) *Virtual education.* — The state board, in conjunction  
141 with the various agencies, shall develop an effective model for  
142 the regional delivery of instruction in subjects where there  
143 exists low student enrollment or a shortage of certified teachers  
144 or where the delivery method substantially improves the quality  
145 of an instructional program. The model shall incorporate an  
146 interactive electronic classroom approach to instruction. To the  
147 extent funds are appropriated or otherwise available, county  
148 boards or regional educational service agencies may adopt and  
149 utilize the model for the delivery of the instruction.

150 (f) *Computer information system.* — Each county board of  
151 education shall use the uniform integrated regional computer  
152 information system recommended by the state board for data  
153 collection and reporting to the state department of education.  
154 County boards of education shall bear the cost of and fully  
155 participate in the implementation of the system by using one of  
156 the following methods:

157 (1) Acquiring necessary, compatible equipment to partici-  
158 pate in the regional computer information system; or

159       (2) Following receipt of a waiver from the state superinten-  
160       dent, operating a comparable management information system  
161       at a lower cost which provides at least all uniform integrated  
162       regional computer information system software modules and  
163       allows on-line, interactive access for schools and the county  
164       board office onto the statewide communications network. All  
165       data formats shall be the same as for the uniform integrated  
166       regional information system and will reside at the regional  
167       computer.

168       Any county granted a waiver shall receive periodic notifica-  
169       tion of any incompatibility or deficiency in its system. No  
170       county shall expand any system either through the purchase of  
171       additional software or hardware that does not advance the goals  
172       and implementation of the uniform integrated regional com-  
173       puter information system as recommended by the state board.

174       (g) *Reports and evaluations.* — Each agency shall submit  
175       to the state superintendent on such date and in such form as  
176       specified in the rules adopted by the state board a report and  
177       evaluation of the technical assistance and other services  
178       provided and utilized by the schools within each respective  
179       region and their effectiveness. Additionally, any school may  
180       submit an evaluation of the services provided by the agency to  
181       the state superintendent at any time. This report shall include an  
182       evaluation of the agency program, suggestions on methods to  
183       improve utilization and suggestions on the development of new  
184       programs and the enhancement of existing programs. The  
185       reports and evaluations submitted pursuant to this subsection  
186       shall be submitted to the state board and shall be made available  
187       upon request to the standing committees on education of the  
188       West Virginia Senate and House of Delegates and to the  
189       secretary of education and the arts.



190 (h) *Funding sources.* — An agency may receive and  
191 disburse funds from the state and federal governments, from  
192 member counties, or from gifts and grants.

193 (i) *Employee expenses.* — Notwithstanding any other  
194 provision of this code to the contrary, employees of agencies  
195 shall be reimbursed for travel, meals and lodging at the same  
196 rate as state employees under the travel management office of  
197 the department of administration.

198 A county board member may not be an employee of an  
199 agency.

200 (j) *Meetings and compensation.* —

201 (1) Agencies shall hold at least one half of their regular  
202 meetings during hours other than those of a regular school day.  
203 The executive director of each agency shall attend at least one  
204 meeting of each of the member county boards of education each  
205 year to explain the agency's services, garner suggestions for  
206 program improvement and provide any other information as  
207 may be requested by the county board.

208 (2) Notwithstanding any other provision of this code to the  
209 contrary, county board members serving on regional councils  
210 may receive compensation at a rate not to exceed one hundred  
211 dollars per meeting attended, not to exceed fifteen meetings per  
212 year. County board members serving on regional councils may  
213 be reimbursed for travel at the same rate as state employees  
214 under the rules of the travel management office of the depart-  
215 ment of administration.

216 (k) *Computer installation, maintenance and repair.* —  
217 Agencies shall serve as the lead agency for computer installa-  
218 tion, maintenance and repair for the basic skills and SUCCESS  
219 computer programs. Each agency shall submit a quarterly status  
220 report on turn around time for computer installation, mainte-

221 nance and repair to the state superintendent of schools who  
 222 shall then submit a report to the legislative oversight commis-  
 223 sion on education accountability. The status report for turn  
 224 around time for computer installation, maintenance and repair  
 225 shall be based on the following suggested time schedules:

- 226       Network File Servers . . . . . forty-eight hours
- 227       Local Area Networks . . . . . forty-eight hours
- 228       West Virginia Education
- 229           Information System . . . . . twenty-four hours
- 230       Computer Workstations . . . . . three to five days
- 231       Printers . . . . . three to five days
- 232       Other Peripherals . . . . . three to five days

233       Agencies also shall submit an audit report to the legislative  
 234 oversight commission on education accountability each year.

235       (1) *Professional development.* — Pursuant to the processes  
 236 and provisions of section twenty-three-a, article two, chapter  
 237 eighteen of this code, each agency shall provide coordinated  
 238 professional development programs within its region to meet  
 239 the professional development goals established by the state  
 240 board.

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

- §18-2E-5.   Process for improving education; education standards and accountabil-  
                   ity measures; office of education performance audits; school  
                   accreditation and school system approval; intervention to correct  
                   impairments.
- §18-2E-5c. Process for improving education council established; membership;  
                   expenses; meetings; powers.
- §18-2E-9.   West Virginia virtual school.

**§18-2E-5. Process for improving education; education standards and accountability measures; office of education performance audits; school accreditation and school system approval; intervention to correct impairments.**

1       (a) *Legislative findings, purpose and intent.* —

2       (1) The Legislature finds that the process for improving  
3 education includes four primary elements, these being:

4       (A) Standards which set forth the things that students  
5 should know and be able to do as the result of a thorough and  
6 efficient education including measurable criteria to evaluate  
7 student performance and progress;

8       (B) Assessments of student performance and progress  
9 toward meeting the standards;

10       (C) A system for holding schools and school systems  
11 accountable for student performance and progress toward  
12 obtaining a high quality education which is delivered in an  
13 efficient manner; and

14       (D) A method for building the capacity and improving the  
15 efficiency of schools and school systems to improve student  
16 performance and progress.

17       (2) The Legislature further finds that as the constitutional  
18 body charged with the general supervision of schools as  
19 provided by general law, the state board has the authority and  
20 the responsibility to establish the standards, assess the perfor-  
21 mance and progress of students against the standards, hold  
22 schools and school systems accountable, and assist schools and  
23 school systems to build capacity and improve efficiency so that  
24 the standards are met, including, when necessary, seeking

25 additional resources in consultation with the Legislature and the  
26 governor.

27 (3) The Legislature also finds that as the constitutional body  
28 charged with providing for a thorough and efficient system of  
29 schools, the Legislature has the authority and the responsibility  
30 to establish and be engaged constructively in the determination  
31 of the things that students should know and be able to do as the  
32 result of a thorough and efficient education. This determination  
33 is made by using the process for improving education to  
34 determine when school improvement is needed, by evaluating  
35 the results and the efficiency of the system of schools, by  
36 ensuring accountability, and by providing for the necessary  
37 capacity and its efficient use.

38 (4) Therefore, the purpose of this section is to establish a  
39 process for improving education that includes the four primary  
40 elements as set forth in subdivision (1) of this subsection to  
41 provide assurances that a thorough and efficient system of  
42 schools is being provided for all West Virginia public school  
43 students on an equal education opportunity basis and that the  
44 high quality standards are, at a minimum, being met.

45 (5) The intent of the Legislature in enacting this section is  
46 to establish a process through which the Legislature, the  
47 governor and the state board can work in the spirit of coopera-  
48 tion and collaboration intended in the process for improving  
49 education to consult and examine, when necessary, the perfor-  
50 mance and progress of students, schools and school systems and  
51 consider alternative measures to ensure that all students  
52 continue to receive the thorough and efficient education to  
53 which they are entitled. However, nothing in this section  
54 requires any specific level of funding by the Legislature.

55 (b) *Unified county and school improvement plans.* — The  
56 state board shall promulgate rules in accordance with article

57 three-b, chapter twenty-nine-a of this code establishing a  
58 unified county improvement plan for each county board and a  
59 unified school improvement plan for each public school in this  
60 state. The rules shall specify that the unified school improve-  
61 ment plan shall include all appropriate plans required by law  
62 including, but not limited to, the following:

63 (1) The report required to be delivered to the county-wide  
64 council on productive and safe schools pursuant to subsection  
65 (f), section two, article five-a of this chapter;

66 (2) Plans or applications required in the area of technology  
67 pursuant to 20 U.S.C. §6845, section seven, article two-e of this  
68 chapter, state board policy or rule or any other county, state or  
69 federal law;

70 (3) The strategic plan to manage the integration of special  
71 needs students as required by section five, article five-a of this  
72 chapter; and

73 (4) The school based improvement plan set forth in the  
74 Elementary and Secondary Education Act pursuant to 29 U.S.C.  
75 §6301, *et seq.*

76 The plans are required to be included only to the extent  
77 permitted by state and federal law.

78 (c) *High quality education standards and efficiency*  
79 *standards.* — In accordance with the provisions of article three-  
80 b, chapter twenty-nine-a of this code, the state board shall adopt  
81 and periodically review and update high quality education  
82 standards for student, school and school system performance  
83 and processes in the following areas:

84 (1) Curriculum;

85 (2) Workplace readiness skills;

- 86 (3) Finance;
- 87 (4) Transportation;
- 88 (5) Special education;
- 89 (6) Facilities;
- 90 (7) Administrative practices;
- 91 (8) Training of county board members and administrators;
- 92 (9) Personnel qualifications;
- 93 (10) Professional development and evaluation;
- 94 (11) Student performance and progress;
- 95 (12) School and school system performance and progress;
- 96 (13) A code of conduct for students and employees;
- 97 (14) Indicators of efficiency; and
- 98 (15) Any other areas determined by the state board.

99 (d) *Performance measures.* — The standards shall assure  
100 that all graduates are prepared for gainful employment or for  
101 continuing post-secondary education and training and that  
102 schools and school systems are making progress in achieving  
103 the education goals of the state.

104 The standards shall include measures of student perfor-  
105 mance and progress and measures of school and school system  
106 performance, progress and processes that enable student  
107 performance. The measures of student performance and  
108 progress and school and school system performance, progress  
109 and processes shall include, but are not limited to, the follow-  
110 ing:

111 (1) The acquisition of student proficiencies as indicated by  
112 student performance and progress by grade level measured,  
113 where possible, by a uniform statewide assessment program;

114 (2) School attendance rates;

115 (3) The student dropout rate;

116 (4) The high school graduation rate;

117 (5) The percentage of graduates who enrolled in college and  
118 the percentage of graduates who enrolled in other post-second-  
119 ary education within one year following high school graduation;

120 (6) The percentage of graduates who received additional  
121 certification of their skills, competence and readiness for  
122 college, other post-secondary education or employment above  
123 the level required for graduation; and

124 (7) The percentage of students who enrolled in and the  
125 percentage of students who successfully completed advanced  
126 placement, dual credit and honors classes, respectively, by  
127 grade level.

128 (e) *Indicators of efficiency.* — In accordance with the  
129 provisions of article three-b, chapter twenty-nine-a of this code,  
130 the state board shall adopt and periodically review and update  
131 indicators of efficiency for student and school system perfor-  
132 mance and processes in the following areas:

133 (1) Curriculum delivery including, but not limited to, the  
134 use of distance learning;

135 (2) Transportation;

136 (3) Facilities;

137 (4) Administrative practices;

138 (5) Personnel;

139 (6) Utilization of regional educational service agency  
140 programs and services, including programs and services that  
141 may be established by their assigned regional educational  
142 service agency, or other regional services that may be initiated  
143 between and among participating county boards; and

144 (7) Any other indicators as determined by the state board.

145 (f) *Assessment and accountability of school and school*  
146 *system performance and processes.* — In accordance with the  
147 provisions of article three-b, chapter twenty-nine-a of this code,  
148 the state board shall establish by rule a system of education  
149 performance audits which measures the quality of education  
150 and the preparation of students based on the standards and  
151 measures of student, school and school system performance,  
152 progress and processes, including, but not limited to, the  
153 standards and measures set forth in subsections (c) and (d) of  
154 this section. The system of education performance audits shall  
155 assist the state board, the Legislature and the governor in  
156 ensuring that the standards and measures established pursuant  
157 to this section are, at a minimum, being met and that a thorough  
158 and efficient system of schools is being provided. The system  
159 of education performance audits shall include: (1) The assess-  
160 ment of student performance and progress, school and school  
161 system performance and progress, and the processes in place in  
162 schools and school systems which enable student performance  
163 and progress; (2) the review of school and school system  
164 unified improvement plans; and (3) the periodic on-site review  
165 of school and school system performance and progress and  
166 compliance with the standards.

167 (g) *Uses of school and school system assessment informa-*  
168 *tion.* — The state board and the process for improving educa-  
169 tion council established pursuant to section five-c of this article



170 shall use information from the system of education performance  
171 audits to assist them in ensuring that a thorough and efficient  
172 system of schools is being provided and to improve student,  
173 school and school system performance and progress. Informa-  
174 tion from the system of education performance audits further  
175 shall be used by the state board for these purposes, including,  
176 but not limited to, the following: (1) Determining school  
177 accreditation and school system approval status; (2) holding  
178 schools and school systems accountable for the efficient use of  
179 existing resources to meet or exceed the standards; and (3)  
180 targeting additional resources when necessary to improve  
181 performance and progress. Primary emphasis in determining  
182 school accreditation and school system approval status is based  
183 on student performance and progress, school and school system  
184 performance and progress and such other measures as selected  
185 by the state board. The state board shall make accreditation  
186 information available to the Legislature, the governor, the  
187 general public and to any individuals who request the informa-  
188 tion, subject to the provisions of any act or rule restricting the  
189 release of information.

190 Based on the assessment of student, school and school  
191 system performance and progress, the state board shall establish  
192 early detection and intervention programs using the available  
193 resources of the department of education, the regional educa-  
194 tional service agencies, the center for professional development  
195 and the principals academy, as appropriate, to assist under-  
196 achieving schools and school systems to improve performance  
197 before conditions become so grave as to warrant more substan-  
198 tive state intervention. Assistance shall include, but is not  
199 limited to, providing additional technical assistance and  
200 programmatic, professional staff development, providing  
201 monetary, staffing and other resources where appropriate, and,  
202 if necessary, making appropriate recommendations to the  
203 process for improving education council.

204 (h) *Office of education performance audits.* —

205 (1) To assist the state board and the process for improving  
206 education council in the operation of a system of education  
207 performance audits that will enable them to evaluate whether a  
208 thorough and efficient education is being provided, and to assist  
209 the state board in making determinations regarding the accredi-  
210 tation status of schools and the approval status of school  
211 systems, the state board shall establish an office of education  
212 performance audits which shall be operated under the direction  
213 of the state board independently of the functions and supervi-  
214 sion of the state department of education and state superinten-  
215 dent. The office of education performance audits shall report  
216 directly to and be responsible to the state board in carrying out  
217 its duties under the provisions of this section.

218 (2) The office shall be headed by a director who shall be  
219 appointed by the state board and who shall serve at the will and  
220 pleasure of the state board. The salary of the director shall not  
221 exceed the salary of the state superintendent of schools.

222 (3) The state board shall organize and sufficiently staff the  
223 office to fulfill the duties assigned to it by law and by the state  
224 board. Employees of the state department of education who are  
225 transferred to the office of education performance audits retain  
226 their benefit and seniority status with the department of  
227 education.

228 (4) Under the direction of the state board, the office of  
229 education performance audits shall receive from the West  
230 Virginia education information system staff research and  
231 analysis data on the performance and progress of students,  
232 schools and school systems, and shall receive assistance, as  
233 determined by the state board, from staff at the state department  
234 of education, the regional education service agencies, the center  
235 for professional development, the principals academy and the

236 state school building authority to carry out the duties assigned  
237 to the office.

238 (5) In addition to other duties which may be assigned to it  
239 by the state board or by statute, the office of education perfor-  
240 mance audits also shall:

241 (A) Assure that all statewide assessments of student  
242 performance are secure as required in section one-a of this  
243 article;

244 (B) Administer all accountability measures as assigned by  
245 the state board, including, but not limited to, the following:

246 (i) Processes for the accreditation of schools and the  
247 approval of school systems. These processes shall focus on  
248 those measurable criteria related to student performance and  
249 progress and to the delivery of instruction which will enable  
250 student performance and progress; and

251 (ii) Recommendations to the state board on appropriate  
252 action, including, but not limited to, accreditation and approval  
253 action;

254 (C) Determine, in conjunction with the assessment and  
255 accountability processes, what capacity may be needed by  
256 schools and school systems to meet the standards established by  
257 the Legislature and the state board, and recommend to the  
258 school, the school system, the state board and the process for  
259 improving education council, plans to establish those needed  
260 capacities;

261 (D) Determine, in conjunction with the assessment and  
262 accountability processes, whether statewide system deficiencies  
263 exist in the capacity to establish and maintain a thorough and  
264 efficient system of schools, including the identification of  
265 trends and the need for continuing improvements in education,

266 and report those deficiencies and trends to the state board and  
267 the process for improving education council;

268 (E) Determine, in conjunction with the assessment and  
269 accountability processes, staff development needs of schools  
270 and school systems to meet the standards established by the  
271 Legislature and the state board, and make recommendations to  
272 the state board, the process for improving education council, the  
273 center for professional development, the regional educational  
274 service agencies, the higher education policy commission, and  
275 the county boards;

276 (F) Identify, in conjunction with the assessment and  
277 accountability processes, exemplary schools and school systems  
278 and best practices that improve student, school and school  
279 system performance, and make recommendations to the state  
280 board and the process for improving education council for  
281 recognizing and rewarding exemplary schools and school  
282 systems and promoting the use of best practices. The state  
283 board shall provide information on best practices to county  
284 school systems and shall use information identified through the  
285 assessment and accountability processes to select schools of  
286 excellence; and

287 (G) Develop reporting formats, such as check lists, which  
288 shall be used by the appropriate administrative personnel in  
289 schools and school systems to document compliance with  
290 various of the applicable laws, policies and process standards  
291 as considered appropriate and approved by the state board,  
292 including, but not limited to, compliance with limitations on the  
293 number of pupils per teacher in a classroom and the number of  
294 split grade classrooms. Information contained in the reporting  
295 formats shall be examined during an on-site review to deter-  
296 mine compliance with laws, policies and standards. Intentional  
297 and grossly negligent reporting of false information is ground  
298 for dismissal.

299 (i) *On-site reviews.* —

300 (1) At the direction of the state board or by weighted  
301 selection by the office of education performance audits, an on-  
302 site review shall be conducted by the office of education  
303 performance audits of any school or school system for pur-  
304 poses, including, but not limited to, the following:

305 (A) Verifying data reported by the school or county board;

306 (B) Documenting compliance with policies and laws;

307 (C) Evaluating the effectiveness and implementation status  
308 of school and school system unified improvement plans;

309 (D) Investigating official complaints submitted to the state  
310 board that allege serious impairments in the quality of educa-  
311 tion in schools or school systems;

312 (E) Investigating official complaints submitted to the state  
313 board that allege that a school or county board is in violation of  
314 policies or laws under which schools and county boards  
315 operate; and

316 (F) Determining and reporting whether required reviews  
317 and inspections have been conducted by the appropriate  
318 agencies, including, but not limited to, the state fire marshal,  
319 the health department, the school building authority and the  
320 responsible divisions within the department of education, and  
321 whether noted deficiencies have been or are in the process of  
322 being corrected. The office of education performance audits  
323 may not conduct a duplicate review or inspection nor mandate  
324 more stringent compliance measures.

325 (2) The selection of schools and school systems for an on-  
326 site review shall use a weighted sample so that those with lower  
327 performance and progress indicators and those that have not

328 had a recent on-site review have a greater likelihood of being  
329 selected. The director of the office of education performance  
330 audits shall notify the county superintendent of schools five  
331 school days prior to commencing an on-site review of the  
332 county school system and shall notify both the county superin-  
333 tendent and the principal five school days prior to commencing  
334 an on-site review of an individual school: *Provided*, That the  
335 state board may direct the office of education performance  
336 audits to conduct an unannounced on-site review of a school or  
337 school system if the state board believes circumstances warrant  
338 an unannounced on-site review.

339 (3) The office of education performance audits may conduct  
340 on-site reviews which are limited in scope to specific areas in  
341 addition to full reviews which cover all areas.

342 (4) An on-site review of a school or school system shall  
343 include a person or persons who has expert knowledge and  
344 experience in the area or areas to be reviewed and who is  
345 designated by the state board from the department of education  
346 and the agencies responsible for assisting the office. If the size  
347 of the school or school system being reviewed necessitates the  
348 use of an on-site review team or teams, the person or persons  
349 designated by the state board shall advise and assist the director  
350 to appoint the team or teams. The person or persons designated  
351 by the state board shall be the team leaders.

352 The persons designated by the state board shall be responsi-  
353 ble for completing the report on the findings and recommenda-  
354 tions of the on-site review in their area of expertise. It is the  
355 intent of the Legislature that the persons designated by the state  
356 board participate in all on-site reviews that involve their area of  
357 expertise to the extent practicable so that the on-site review  
358 process will evaluate compliance with the standards in a  
359 uniform, consistent and expert manner.

360 (5) The office of education performance audits shall  
361 reimburse a county board for the costs of substitutes required to  
362 replace county board employees while they are serving on a  
363 review team.

364 (6) At the conclusion of an on-site review of a school  
365 system, the director and team leaders shall hold an exit confer-  
366 ence with the superintendent and shall provide an opportunity  
367 for principals to be present for at least the portion of the  
368 conference pertaining to their respective schools. In the case of  
369 an on-site review of a school, the exit conference shall be held  
370 with the principal and the superintendent shall be provided the  
371 opportunity to be present.

372 (7) The office of education performance audits shall report  
373 the findings of the on-site reviews to the state board for  
374 inclusion in the evaluation and determination of a school's or  
375 county board's accreditation or approval status as applicable.  
376 The report on the findings of an on-site review shall be submit-  
377 ted to the state board within thirty days following the conclu-  
378 sion of the on-site review and to the county superintendent and  
379 principals of schools within the reviewed school system within  
380 forty-five days following the conclusion of the on-site review.  
381 A copy of the report shall be provided to the process for  
382 improving education council.

383 (j) *School accreditation.* -- The state board annually shall  
384 review the information from the system of education perfor-  
385 mance audits submitted for each school and shall issue to every  
386 school one of the following approval levels: Exemplary  
387 accreditation status, full accreditation status, temporary  
388 accreditation status, conditional accreditation status, or seri-  
389 ously impaired status.

390 (1) Full accreditation status shall be given to a school when  
391 the school's performance and progress on the standards adopted

392 by the state board pursuant to subsections (c) and (d) of this  
393 section are at a level which would be expected when all of the  
394 high quality education standards are being met. A school which  
395 meets or exceeds the measures of student performance and  
396 progress set forth in subsection (d) of this section, and which  
397 does not have any deficiencies which would endanger student  
398 health or safety or other extraordinary circumstances as defined  
399 by the state board, shall remain on full accreditation status for  
400 six months following an on-site review in which other deficien-  
401 cies are noted. The school shall have an opportunity to correct  
402 those deficiencies, notwithstanding other provisions of this  
403 subsection.

404 (2) Temporary accreditation status shall be given to a  
405 school when the measure of the school's performance and  
406 progress is below the level required for full accreditation status.  
407 Whenever a school is given temporary accreditation status, the  
408 county board shall ensure that the school's unified improvement  
409 plan is revised to increase the performance and progress of the  
410 school to a full accreditation status level. The revised unified  
411 school improvement plan shall include objectives, a time line,  
412 a plan for evaluation of the success of the improvements, cost  
413 estimates, and a date certain for achieving full accreditation.  
414 The revised plan shall be submitted to the state board for  
415 approval.

416 (3) Conditional accreditation status shall be given to a  
417 school when the school's performance and progress on the  
418 standards adopted by the state board are below the level  
419 required for full accreditation, but the school's unified improve-  
420 ment plan has been revised to achieve full accreditation status  
421 by a date certain, the plan has been approved by the state board  
422 and the school is meeting the objectives and time line specified  
423 in the revised plan.



424 (4) Exemplary accreditation status shall be given to a  
425 school when the school's performance and progress on the  
426 standards adopted by the state board pursuant to subsections (c)  
427 and (d) of this section substantially exceed the minimal level  
428 which would be expected when all of the high quality education  
429 standards are being met. The state board shall promulgate  
430 legislative rules in accordance with the provisions of article  
431 three-b, chapter twenty-nine-a, designated to establish standards  
432 of performance and progress to identify exemplary schools.

433 (5) The state board shall establish and adopt standards of  
434 performance and progress to identify seriously impaired schools  
435 and the state board may declare a school seriously impaired  
436 whenever extraordinary circumstances exist as defined by the  
437 state board.

438 (A) These circumstances shall include, but are not limited  
439 to, the following:

440 (i) The failure of a school on temporary accreditation status  
441 to obtain approval of its revised unified school improvement  
442 plan within a reasonable time period as defined by the state  
443 board;

444 (ii) The failure of a school on conditional accreditation  
445 status to meet the objectives and time line of its revised unified  
446 school improvement plan; or

447 (iii) The failure of a school to achieve full accreditation by  
448 the date specified in the revised plan.

449 (B) Whenever the state board determines that the quality of  
450 education in a school is seriously impaired, the state board shall  
451 appoint a team of improvement consultants to make recommen-  
452 dations within sixty days of appointment for correction of the  
453 impairment. When the state board approves the recommenda-  
454 tions, they shall be communicated to the county board. If

455 progress in correcting the impairment as determined by the state  
456 board is not made within six months from the time the county  
457 board receives the recommendations, the state board shall place  
458 the county board on temporary approval status and provide  
459 consultation and assistance to the county board to assist it in the  
460 following areas:

461 (i) Improving personnel management;

462 (ii) Establishing more efficient financial management  
463 practices;

464 (iii) Improving instructional programs and rules; or

465 (iv) Making any other improvements that are necessary to  
466 correct the impairment.

467 (C) If the impairment is not corrected by a date certain as  
468 set by the state board:

469 (i) The state board shall appoint a monitor who shall be  
470 paid at county expense to cause improvements to be made at the  
471 school to bring it to full accreditation status within a reasonable  
472 time period as determined by the state board. The monitor's  
473 work location shall be at the school and the monitor shall work  
474 collaboratively with the principal. The monitor shall, at a  
475 minimum, report monthly to the state board on the measures  
476 being taken to improve the school's performance and the  
477 progress being made. The reports may include requests for  
478 additional assistance and recommendations required in the  
479 judgment of the monitor to improve the school's performance,  
480 including, but not limited to, the need for targeting resources  
481 strategically to eliminate deficiencies;

482 (ii) The state board may make a determination, in its sole  
483 judgment, that the improvements necessary to provide a  
484 thorough and efficient education to the students at the school

485 cannot be made without additional targeted resources, in which  
486 case, it shall establish a plan in consultation with the county  
487 board that includes targeted resources from sources under the  
488 control of the state board and the county board to accomplish  
489 the needed improvements. Nothing in this subsection shall be  
490 construed to allow a change in personnel at the school to  
491 improve school performance and progress, except as provided  
492 by law;

493 (iii) If the impairment is not corrected within one year after  
494 the appointment of a monitor, the state board may make a  
495 determination, in its sole judgment, that continuing a monitor  
496 arrangement is not sufficient to correct the impairment and may  
497 intervene in the operation of the school to cause improvements  
498 to be made that will provide assurances that a thorough and  
499 efficient system of schools will be provided. This intervention  
500 may include, but is not limited to, establishing instructional  
501 programs, taking such direct action as may be necessary to  
502 correct the impairments, declaring the position of principal is  
503 vacant and assigning a principal for the school who shall serve  
504 at the will and pleasure of and, under the sole supervision of,  
505 the state board: *Provided*, That prior to declaring that the  
506 position of the principal is vacant, the state board must make a  
507 determination that all other resources needed to correct the  
508 impairment are present at the school. If the principal who was  
509 removed elects not to remain an employee of the county board,  
510 then the principal assigned by the state board shall be paid by  
511 the county board. If the principal who was removed elects to  
512 remain an employee of the county board, then the following  
513 procedure applies:

514 (I) The principal assigned by the state board shall be paid  
515 by the state board until the next school term, at which time the  
516 principal assigned by the state board shall be paid by the county  
517 board;

518 (II) The principal who was removed shall be placed on the  
519 preferred recall list for all positions in the county for which the  
520 principal is certified, as defined in section seven, article four of  
521 this chapter; and

522 (III) The principal who was removed shall be paid by the  
523 county board and may be assigned to administrative duties,  
524 without the county board being required to post that position  
525 until the end of the school term;

526 (6) The county board shall take no action nor refuse any  
527 action if the effect would be to impair further the school in  
528 which the state board has intervened.

529 (7) The state board may appoint a monitor pursuant to the  
530 provisions of this subsection to assist the school principal after  
531 intervention in the operation of a school is completed.

532 (k) *Transfers from seriously impaired schools.* — When-  
533 ever a school is determined to be seriously impaired and fails to  
534 improve its status within one year, any student attending the  
535 school may transfer once to the nearest fully accredited school,  
536 subject to approval of the fully accredited school and at the  
537 expense of the school from which the student transferred.

538 (l) *School system approval.* — The state board annually  
539 shall review the information submitted for each school system  
540 from the system of education performance audits and issue one  
541 of the following approval levels to each county board: Full  
542 approval, temporary approval, conditional approval, or  
543 nonapproval.

544 (1) Full approval shall be given to a county board whose  
545 education system meets or exceeds all of the high quality  
546 standards for student, school and school system performance,  
547 progress and processes adopted by the state board and whose  
548 schools have all been given full, temporary or conditional

549 accreditation status. A school system which meets or exceeds  
550 the measures of student performance and progress set forth in  
551 subsection (d) of this section, and which does not have any  
552 deficiencies which would endanger student health or safety or  
553 other extraordinary circumstances as defined by the state board,  
554 shall remain on full accreditation status for six months follow-  
555 ing an on-site review in which other deficiencies are noted. The  
556 school shall have an opportunity to correct those deficiencies,  
557 notwithstanding other provisions of this subsection.

558 (2) Temporary approval shall be given to a county board  
559 whose education system is below the level required for full  
560 approval. Whenever a county board is given temporary ap-  
561 proval status, the county board shall revise its unified county  
562 improvement plan to increase the performance and progress of  
563 the school system to a full approval status level. The revised  
564 plan shall include objectives, a time line, a plan for evaluation  
565 of the success of the improvements, a cost estimate, and a date  
566 certain for achieving full approval. The revised plan shall be  
567 submitted to the state board for approval.

568 (3) Conditional approval shall be given to a county board  
569 whose education system is below the level required for full  
570 approval, but whose unified county improvement plan meets  
571 the following criteria:

572 (i) The plan has been revised to achieve full approval status  
573 by a date certain;

574 (ii) The plan has been approved by the state board; and

575 (iii) The county board is meeting the objectives and time  
576 line specified in the revised plan.

577 (4) Nonapproval status shall be given to a county board  
578 which fails to submit and gain approval for its unified county  
579 improvement plan or revised unified county improvement plan  
580 within a reasonable time period as defined by the state board or

581 which fails to meet the objectives and time line of its revised  
582 unified county improvement plan or fails to achieve full  
583 approval by the date specified in the revised plan.

584 (A) The state board shall establish and adopt additional  
585 standards to identify school systems in which the program may  
586 be nonapproved and the state board may issue nonapproval  
587 status whenever extraordinary circumstances exist as defined by  
588 the state board.

589 (B) Whenever a county board has more than a casual  
590 deficit, as defined in section one, article one of this chapter, the  
591 county board shall submit a plan to the state board specifying  
592 the county board's strategy for eliminating the casual deficit.  
593 The state board either shall approve or reject the plan. If the  
594 plan is rejected, the state board shall communicate to the county  
595 board the reason or reasons for the rejection of the plan. The  
596 county board may resubmit the plan any number of times.  
597 However, any county board that fails to submit a plan and gain  
598 approval for the plan from the state board before the end of the  
599 fiscal year after a deficit greater than a casual deficit occurred  
600 or any county board which, in the opinion of the state board,  
601 fails to comply with an approved plan may be designated as  
602 having nonapproval status.

603 (C) Whenever nonapproval status is given to a school  
604 system, the state board shall declare a state of emergency in the  
605 school system and shall appoint a team of improvement  
606 consultants to make recommendations within sixty days of  
607 appointment for correcting the emergency. When the state  
608 board approves the recommendations, they shall be communi-  
609 cated to the county board. If progress in correcting the emer-  
610 gency, as determined by the state board, is not made within six  
611 months from the time the county board receives the recommen-  
612 dations, the state board shall intervene in the operation of the  
613 school system to cause improvements to be made that will  
614 provide assurances that a thorough and efficient system of

615 schools will be provided. This intervention may include, but is  
616 not limited to, the following:

617 (i) Limiting the authority of the county superintendent and  
618 county board as to the expenditure of funds, the employment  
619 and dismissal of personnel, the establishment and operation of  
620 the school calendar, the establishment of instructional programs  
621 and rules and any other areas designated by the state board by  
622 rule, which may include delegating decision-making authority  
623 regarding these matters to the state superintendent;

624 (ii) Declaring that the office of the county superintendent  
625 is vacant;

626 (iii) Delegating to the state superintendent both the author-  
627 ity to conduct hearings on personnel matters and school closure  
628 or consolidation matters and, subsequently, to render the  
629 resulting decisions, and the authority to appoint a designee for  
630 the limited purpose of conducting hearings while reserving to  
631 the state superintendent the authority to render the resulting  
632 decisions; and

633 (iv) Taking any direct action necessary to correct the  
634 emergency including, but not limited to, the following:

635 (I) Delegating to the state superintendent the authority to  
636 replace administrators and principals in low performing schools  
637 and to transfer them into alternate professional positions within  
638 the county at his or her discretion; and

639 (II) Delegating to the state superintendent the authority to  
640 fill positions of administrators and principals with individuals  
641 determined by the state superintendent to be the most qualified  
642 for the positions. Any authority related to intervention in the  
643 operation of a county board granted under this paragraph is not  
644 subject to the provisions of article four, chapter eighteen-a of  
645 this code;

646 (m) Notwithstanding any other provision of this section, the  
647 state board may intervene immediately in the operation of the  
648 county school system with all the powers, duties and responsi-  
649 bilities contained in subsection (l) of this section, if the state  
650 board finds the following:

651 (1) That the conditions precedent to intervention exist as  
652 provided in this section; and that delaying intervention for any  
653 period of time would not be in the best interests of the students  
654 of the county school system; or

655 (2) That the conditions precedent to intervention exist as  
656 provided in this section and that the state board had previously  
657 intervened in the operation of the same school system and had  
658 concluded that intervention within the preceding five years.

659 (n) *Capacity.* -- The process for improving education  
660 includes a process for targeting resources strategically to  
661 improve the teaching and learning process. Development of  
662 unified school and school system improvement plans, pursuant  
663 to subsection (b) of this section, is intended, in part, to provide  
664 mechanisms to target resources strategically to the teaching and  
665 learning process to improve student, school and school system  
666 performance. When deficiencies are detected through the  
667 assessment and accountability processes, the revision and  
668 approval of school and school system unified improvement  
669 plans shall ensure that schools and school systems are effi-  
670 ciently using existing resources to correct the deficiencies.  
671 When the state board determines that schools and school  
672 systems do not have the capacity to correct deficiencies, the  
673 state board shall work with the county board to develop or  
674 secure the resources necessary to increase the capacity of  
675 schools and school systems to meet the standards and, when  
676 necessary, seek additional resources in consultation with the  
677 Legislature and the governor.



678       The state board shall recommend to the appropriate body  
679 including, but not limited to, the process for improving educa-  
680 tion council, the Legislature, county boards, schools and  
681 communities methods for targeting resources strategically to  
682 eliminate deficiencies identified in the assessment and account-  
683 ability processes. When making determinations on recommen-  
684 dations, the state board shall include, but is not limited to, the  
685 following methods:

686       (1) Examining reports and unified improvement plans  
687 regarding the performance and progress of students, schools  
688 and school systems relative to the standards and identifying the  
689 areas in which improvement is needed;

690       (2) Determining the areas of weakness and of ineffective-  
691 ness that appear to have contributed to the substandard perfor-  
692 mance and progress of students or the deficiencies of the school  
693 or school system;

694       (3) Determining the areas of strength that appear to have  
695 contributed to exceptional student, school and school system  
696 performance and progress and promoting their emulation  
697 throughout the system;

698       (4) Requesting technical assistance from the school  
699 building authority in assessing or designing comprehensive  
700 educational facilities plans;

701       (5) Recommending priority funding from the school  
702 building authority based on identified needs;

703       (6) Requesting special staff development programs from the  
704 center for professional development, the principals academy,  
705 higher education, regional educational service agencies and  
706 county boards based on identified needs;

707 (7) Submitting requests to the Legislature for appropriations  
708 to meet the identified needs for improving education;

709 (8) Directing county boards to target their funds strategi-  
710 cally toward alleviating deficiencies;

711 (9) Ensuring that the need for facilities in counties with  
712 increased enrollment are appropriately reflected and recom-  
713 mended for funding;

714 (10) Ensuring that the appropriate person or entity is held  
715 accountable for eliminating deficiencies; and

716 (11) Ensuring that the needed capacity is available from the  
717 state and local level to assist the school or school system in  
718 achieving the standards and alleviating the deficiencies.

**§18-2E-5c. Process for improving education council established;  
membership; expenses; meetings; powers.**

1 (a) *Process for improving education council.* — There is  
2 hereby established the process for improving education council  
3 for the purpose of providing opportunities for consultation  
4 among state policy leaders on the process for improving  
5 education, including, but not limited to, determination of the  
6 things that students should know and be able to do as the result  
7 of a thorough and efficient education, the performance and  
8 progress of students toward meeting the high quality standards  
9 established by the state board, and any further improvements  
10 necessary to increase the capacity of schools and school  
11 systems to deliver a thorough and efficient education.

12 (b) *Council membership.* — The legislative oversight  
13 commission on education accountability, together with the  
14 governor, ex officio, or the governor's designee, and the  
15 chancellor of the higher education policy commission, ex  
16 officio, or the chancellor's designee, comprise the process for

17 improving education council. Ex officio members are entitled  
18 to vote. The governor or the governor's designee shall convene  
19 the council, as appropriate, and shall serve as chair. The council  
20 may meet at any time at the call of the governor or the gover-  
21 nor's designee.

22 (c) *Compensation.* — Members of the council shall serve  
23 without compensation, but shall be reimbursed as provided by  
24 law by their respective agencies for all reasonable and neces-  
25 sary expenses actually incurred in the performance of their  
26 official duties under this section upon presentation of an  
27 itemized sworn statement of their expenses.

28 (d) *Powers of the council.* —

29 The council has the following powers:

30 (1) To meet and consult with the state board, or their  
31 designees, and make recommendations on issues related to  
32 student, school and school system performance. The following  
33 steps are part of the consultation process:

34 (A) The state board shall notify each member of the council  
35 whenever the state board proposes to amend its rules on any of  
36 the following issues:

37 (i) High quality education standards and efficiency  
38 standards established pursuant to section five of this article;

39 (ii) Indicators of efficiency established pursuant to section  
40 five of this article; and

41 (iii) Assessment and accountability of school and school  
42 system performance and processes established pursuant to  
43 section five of this article.

44 (B) If the governor, or the governor's designee, believes it  
45 is necessary for the council to meet and consult with the state  
46 board, or its designees, on changes proposed to any of the issues  
47 outlined in subdivision (1) of this subsection, he or she may  
48 convene a meeting of the council.

49 (C) If both the president of the Senate and the speaker of  
50 the House of Delegates believe it is necessary for the council to  
51 meet and consult with the state board, or its designees, they  
52 shall notify the governor who shall convene a meeting of the  
53 council.

54 (D) If the chancellor, or the chancellor's designee, believes  
55 that it is necessary for the council to meet and consult with the  
56 state board, or its designees, he or she may request the governor  
57 to convene a meeting of the council.

58 (2) To require the state board, or its designees, to meet with  
59 the council to consult on issues that lie within the scope of the  
60 council's jurisdiction;

61 (3) To participate as observers in any on-site review of a  
62 school or school system conducted by the office of education  
63 performance audits; and

64 (4) To authorize any employee of the agencies represented  
65 by council members to participate as observers in any on-site  
66 review of a school or school system conducted by the office of  
67 education performance audits.

**§18-2E-9. West Virginia virtual school.**

1 (a) Findings: — The Legislature finds that:

2 (1) West Virginia schools have improved and expanded  
3 internet access which enables schools to offer courses through  
4 the internet and other new and developing technologies;

5       (2) Current technology is available to provide students with  
6 more resources for learning and new and developing technolo-  
7 gies offer even more promise for expanded learning opportuni-  
8 ties;

9       (3) A number of states and other jurisdictions have devel-  
10 oped internet-based instruction which is available currently and  
11 which is being used by schools in this state;

12       (4) To educate better the students of West Virginia, more  
13 course and class offerings can be made available through  
14 technology, especially to students who are geographically  
15 disadvantaged;

16       (5) Virtual learning enables students to learn from remote  
17 sites, learn at times other than the normal school day and learn  
18 at a different pace and gives students access to courses that  
19 would not be available in their area;

20       (6) There is a need to assure that internet-based courses and  
21 courses offered through new and developing technologies are  
22 of high quality; and

23       (7) The state and county school systems can benefit from  
24 the purchasing power the state can offer.

25       (b) The Legislature hereby creates the West Virginia virtual  
26 school. The West Virginia virtual school shall be located within  
27 the office of technology and information systems within the  
28 West Virginia department of education.

29       (c) The state superintendent of schools shall appoint the  
30 director of the West Virginia virtual school with the approval  
31 of the state board.

32       (d) The director of the West Virginia virtual school has the  
33 following powers and duties:

34 (1) To contract with providers for courses and other  
35 services;

36 (2) To review courses and courseware and make determina-  
37 tions and recommendations relative to the cost and quality of  
38 the courses and the alignment with the instructional goals and  
39 objectives of the state board;

40 (3) To develop policy recommendations for consideration  
41 by the state board, which may include, but not be limited to, the  
42 following:

43 (A) Hardware and software considerations for the offering  
44 of courses on the internet or other developing technologies;

45 (B) Standards of teachers and other school employees who  
46 are engaged in the activities surrounding the offering of courses  
47 on the internet or other developing technologies;

48 (C) Sharing of resources with other agencies of govern-  
49 ment, both within and outside West Virginia, to facilitate the  
50 offering of courses on the internet or other developing technolo-  
51 gies;

52 (D) Methods for including courses offered on the internet  
53 or through other developing technologies in alternative educa-  
54 tion programs;

55 (E) Methods for making courses offered on the internet or  
56 through other developing technologies available for students  
57 receiving home instruction;

58 (F) Methods for brokering the courses offered on the  
59 internet or through other developing technologies;

60 (G) Methods for applying for grants;

61 (H) Methods for employing persons who are the most  
62 familiar with the instructional goals and objectives to develop  
63 the courses to be offered on the internet and through other  
64 developing technologies; and

65 (I) Proper funding models that address all areas of funding  
66 including, but not limited to, which county, if any, may include  
67 a student receiving courses on the internet or through other  
68 developing technologies in enrollment and who, if anyone, is  
69 required to pay for the courses offered on the internet or  
70 through other developing technologies; and

71 (4) Any other powers and duties necessary to address the  
72 findings of the Legislature in subsection (a) of this section.

73 (e) Subject to the process outlined in this section, the West  
74 Virginia virtual school's approved virtual and distance learning  
75 courses are exempt from the mandatory use of primary source  
76 instructional materials listed on the state multiple list.

77 (f) The West Virginia department of education shall report  
78 the progress of the West Virginia virtual school to the legisla-  
79 tive oversight commission on education accountability on or  
80 before the first day of September, two thousand.

## **ARTICLE 2I. STAFF DEVELOPMENT COUNCILS.**

§18-2I-1. Legislative purpose.

§18-2I-3. Creation of West Virginia professional staff development advisory council; members; and functions.

§18-2I-4. Functions of the West Virginia professional staff development advisory council.

### **§18-2I-1. Legislative purpose.**

1 The purpose of this article is to create the West Virginia  
2 professional staff development advisory council and eight  
3 regional professional staff development councils to advise and

4 assist the state board with ensuring the coordination and quality  
5 of professional staff development programs that address locally  
6 identified needs for professional staff development and meet  
7 the goals for professional staff development established by the  
8 state board.

**§18-2I-3. Creation of West Virginia professional staff development advisory council; members; and functions.**

1 (a) There shall be a West Virginia professional staff  
2 development advisory council which shall consist of the  
3 following members:

4 (1) The chairpersons of each of the eight regional staff  
5 development councils established in section five of this article;

6 (2) The coordinators of each of the eight regional educa-  
7 tional service agency staff development councils;

8 (3) The assistant superintendent for the division of instruc-  
9 tional and student services of the state department of education;

10 (4) The secretary of education and the arts or his or her  
11 designee, who shall chair the council;

12 (5) The chancellor of the higher education policy commis-  
13 sion or his or her designee;

14 (6) The executive director of the West Virginia center for  
15 professional development;

16 (7) The presidents, or their designees, of each of the two  
17 professional organizations or associations representing teachers  
18 in the state with the greatest number of teacher members.



19 (b) Any member of the advisory council may be reimbursed  
20 by the state board for the cost of reasonable and necessary  
21 expenses actually incurred in the performance of their duties  
22 under this article.

**§18-2I-4. Functions of the West Virginia professional staff development advisory council.**

1 The council shall advise and assist the state board in all  
2 phases of developing or amending the goals for professional  
3 staff development required by subsection (b) of this section.  
4 Advice and assistance shall include, but is not limited to, the  
5 following:

6 (a) Reporting to the state board on the professional staff  
7 development needs identified by the public schools within the  
8 respective regions;

9 (b) Recommending effective professional staff development  
10 programs to meet identified needs;

11 (c) Providing local input on the proposed goals and on the  
12 professional staff development plan proposed by the center for  
13 professional development pursuant to subsection (c) of this  
14 section;

15 (d) Communicating professional staff development infor-  
16 mation and findings to the regional and county staff develop-  
17 ment councils; and

18 (e) Advancing the coordination and quality of professional  
19 staff development programs in the public schools of West  
20 Virginia.

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-18b. School counselors in public schools.**

1 (a) A school counselor means a professional educator who  
2 holds a valid school counselor's certificate in accordance with  
3 article three of this chapter.

4 (b) Each county board shall provide counseling services for  
5 each pupil enrolled in the public schools of the county.

6 (c) The school counselor shall work with individual pupils  
7 and groups of pupils in providing developmental, preventive  
8 and remedial guidance and counseling programs to meet  
9 academic, social, emotional and physical needs; including  
10 programs to identify and address the problem of potential  
11 school dropouts. The school counselor also may provide  
12 consultant services for parents, teachers and administrators and  
13 may use outside referral services, when appropriate, if no  
14 additional cost is incurred by the county board.

15 (d) The state board may adopt rules consistent with the  
16 provisions of this section that define the role of a school  
17 counselor based on the "National Standards for School Coun-  
18 seling Programs" of the American school counselor association.  
19 A school counselor is authorized to perform such services as are  
20 not inconsistent with the provisions of the rule as adopted by  
21 the state board. To the extent that any funds are made available  
22 for this purpose, county boards shall provide training for  
23 counselors and administrators to implement the rule as adopted  
24 by the state board.

25 (e) Each county board shall develop a comprehensive drop-  
26 out prevention program utilizing the expertise of school  
27 counselors and any other appropriate resources available.

28 (f) School counselors shall be full-time professional  
29 personnel, shall spend at least seventy-five percent of work time  
30 in a direct counseling relationship with pupils, and shall devote

31 no more than one fourth of the work day to administrative  
32 activities: *Provided*, That such activities are counselor related.

33 (g) Nothing in this section prohibits a county board from  
34 exceeding the provisions of this section, or requires any specific  
35 level of funding by the Legislature.

**ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

**§18-20-1d. Adoption of a state model for individualized education program.**

1 The state board shall adopt a basic model for individualized  
2 education programs to be used by all special education teachers  
3 throughout the public schools of the state when preparing  
4 individualized education programs for students with exceptional  
5 needs.

6 The model shall comply with, but may not exceed, all state  
7 laws and federal laws, policies, rules, and regulations relating  
8 to providing education services to students with exceptional  
9 needs and shall include instructions for adapting the model to  
10 specific exceptionalities.

11 No professional educator may be required to prepare or  
12 implement an individualized education program which exceeds  
13 the requirements of federal and state laws, policies, rules or  
14 regulations.

**CHAPTER 18A. SCHOOL PERSONNEL.**

**Article**

- 2. School Personnel.
- 3. Training, Certification, Licensing, Professional Development.
- 3A. Center for Professional Development.

**ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.**

1 (a) The state board of education shall adopt a written  
2 system for the evaluation of the employment performance of  
3 personnel, which system shall be applied uniformly by county  
4 boards of education in the evaluation of the employment  
5 performance of personnel employed by the board.

6 (b) The system adopted by the state board of education for  
7 evaluating the employment performance of professional  
8 personnel shall be in accordance with the provisions of this  
9 section.

10 (c) For purposes of this section, “professional personnel”,  
11 “professional” or “professionals”, means professional personnel  
12 as defined in section one, article one of this chapter.

13 (d) In developing the professional personnel performance  
14 evaluation system, and amendments thereto, the state board  
15 shall consult with the professional development project of the  
16 center for professional development created in section three,  
17 article three-a of this chapter. The center shall participate  
18 actively with the state board in developing written standards for  
19 evaluation which clearly specify satisfactory performance and  
20 the criteria to be used to determine whether the performance of  
21 each professional meets such standards.

22 (e) The performance evaluation system shall contain, but  
23 shall not be limited to, the following information:

24 (1) The professional personnel positions to be evaluated,  
25 whether they be teachers, substitute teachers, administrators,  
26 principals, or others;

27 (2) The frequency and duration of the evaluations, which  
28 shall be on a regular basis and of such frequency and duration

29 as to insure the collection of a sufficient amount of data from  
30 which reliable conclusions and findings may be drawn: *Pro-*  
31 *vided*, That for school personnel with five or more years of  
32 experience, who have not received an unsatisfactory rating,  
33 evaluations shall be conducted no more than once every three  
34 years unless the principal determines an evaluation for a  
35 particular school employee is needed more frequently: *Pro-*  
36 *vided, however*, That a classroom teacher may exercise the  
37 option of being evaluated at more frequent intervals;

38 (3) The evaluation shall serve the following purposes:

39 (A) Serve as a basis for the improvement of the perfor-  
40 mance of the personnel in their assigned duties;

41 (B) Provide an indicator of satisfactory performance for  
42 individual professionals;

43 (C) Serve as documentation for a dismissal on the grounds  
44 of unsatisfactory performance; and

45 (D) Serve as a basis for programs to increase the profes-  
46 sional growth and development of professional personnel;

47 (4) The standards for satisfactory performance for profes-  
48 sional personnel and the criteria to be used to determine  
49 whether the performance of each professional meets such  
50 standards and other criteria for evaluation for each professional  
51 position evaluated. Effective the first day of July, two thousand  
52 three and thereafter, professional personnel, as appropriate,  
53 shall demonstrate competency in the knowledge and implemen-  
54 tation of the technology standards adopted by the state board.  
55 If a professional fails to demonstrate competency, in the  
56 knowledge and implementation of these standards, he or she  
57 will be subject to an improvement plan to correct the deficien-  
58 cies; and

59       (5) Provisions for a written improvement plan, which shall  
60 be specific as to what improvements, if any, are needed in the  
61 performance of the professional and shall clearly set forth  
62 recommendations for improvements, including recommenda-  
63 tions for additional education and training during the profes-  
64 sional's recertification process.

65       (f) A professional whose performance is considered to be  
66 unsatisfactory shall be given notice of deficiencies. A  
67 remediation plan to correct deficiencies shall be developed by  
68 the employing county board of education and the professional.  
69 The professional shall be given a reasonable period of time for  
70 remediation of the deficiencies and shall receive a statement of  
71 the resources and assistance available for the purposes of  
72 correcting the deficiencies.

73       (g) No person may evaluate professional personnel for the  
74 purposes of this section unless the person has an administrative  
75 certificate issued by the state superintendent and has success-  
76 fully completed education and training in evaluation skills  
77 through the center for professional development, or equivalent  
78 education training approved by the state board, which will  
79 enable the person to make fair, professional, and credible  
80 evaluations of the personnel whom the person is responsible for  
81 evaluating. After the first day of July, one thousand nine  
82 hundred ninety-four, no person may be issued an administrative  
83 certificate or have an administrative certificate renewed unless  
84 the state board determines that the person has successfully  
85 completed education and training in evaluation skills through  
86 the center for professional development, or equivalent educa-  
87 tion and training approved by the state board.

88       (h) Any professional whose performance evaluation  
89 includes a written improvement plan shall be given an opportu-  
90 nity to improve his or her performance through the implementa-  
91 tion of the plan. If the next performance evaluation shows that

92 the professional is now performing satisfactorily, no further  
93 action may be taken concerning the original performance  
94 evaluation. If the evaluation shows that the professional is still  
95 not performing satisfactorily, the evaluator either shall make  
96 additional recommendations for improvement or may recom-  
97 mend the dismissal of the professional in accordance with the  
98 provisions of section eight of this article.

99 (i) Lesson plans are intended to serve as a daily guide for  
100 teachers and substitutes for the orderly presentation of the  
101 curriculum. Lesson plans may not be used as a substitute for  
102 observations by an administrator in the performance evaluation  
103 process. A classroom teacher, as defined in section one, article  
104 one of this chapter, may not be required to include in his or her  
105 lesson plans any of the following:

106 (1) Teach and reteach strategies;

107 (2) Write to learn activities;

108 (3) Cultural diversity;

109 (4) Color coding; or

110 (5) Any other similar items which are not required to serve  
111 as a guide to the teacher or substitute for daily instruction; and

112 (j) The Legislature finds that classroom teachers must be  
113 free of unnecessary paper work so that they can focus their time  
114 on instruction. Therefore, classroom teachers may not be  
115 required to keep records or logs of routine contacts with parents  
116 or guardians.

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

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

§18A-3-2c. Training through the principals academy.

**§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.**

1 (a) The education of professional educators in the state shall  
2 be under the general direction and control of the state board of  
3 education after consultation with the secretary of education and  
4 the arts and the chancellor of the higher education policy  
5 commission, who shall represent the interests of teacher  
6 preparation programs within the institutions of higher education  
7 in this state as those institutions are defined in section two,  
8 article one, chapter eighteen-b of this code.

9 The education of professional educators in the state  
10 includes all programs leading to certification to teach or serve  
11 in the public schools including: (1) Those programs in all  
12 institutions of higher education, including student teaching in  
13 the public schools; (2) beginning teacher internship programs;  
14 (3) the granting of West Virginia certification to persons who  
15 received their preparation to teach outside the boundaries of this  
16 state; (4) any alternative preparation programs in this state  
17 leading to certification, including programs established pursu-  
18 ant to the provisions of section one-a of this article and pro-  
19 grams which are in effect on the effective date of this section;  
20 and (5) any continuing professional education, professional  
21 development and in-service training programs for professional  
22 educators employed in the public schools in the state.

23 (b) The state board of education, after consultation with the  
24 secretary of education and the arts and the chancellor of the  
25 higher education policy commission, who shall represent the  
26 interests of teacher preparation programs within the institutions  
27 of higher education in this state as those institutions are defined  
28 in section two, article one, chapter eighteen-b of this code, shall



29 adopt standards for the education of professional educators in  
30 the state and for the awarding of certificates valid in the public  
31 schools of this state subject to the following conditions:

32 (1) The standards approved by the board for teacher  
33 preparation shall include a provision for the study of multicul-  
34 tural education. As used in this section, multicultural education  
35 means the study of the pluralistic nature of American society  
36 including its values, institutions, organizations, groups, status  
37 positions and social roles.

38 (2) Effective the first day of January, one thousand nine  
39 hundred ninety-three, the standards approved by the board shall  
40 also include a provision for the study of classroom management  
41 techniques and shall include methods of effective management  
42 of disruptive behavior which shall include societal factors and  
43 their impact on student behavior.

44 (c) To give prospective teachers the teaching experience  
45 needed to demonstrate competence as a prerequisite to certifica-  
46 tion, the state board of education may enter into an agreement  
47 with county boards for the use of the public schools. Such  
48 agreement shall recognize student teaching as a joint responsi-  
49 bility of the teacher preparation institution and the cooperating  
50 public schools and shall include: (1) The minimum qualifica-  
51 tions for the employment of public school teachers selected as  
52 supervising teachers; (2) the remuneration to be paid public  
53 school teachers by the state board, in addition to their contrac-  
54 tual salaries, for supervising student teachers; and (3) minimum  
55 standards to guarantee the adequacy of the facilities and  
56 program of the public school selected for student teaching. The  
57 student teacher, under the direction and supervision of the  
58 supervising teacher, shall exercise the authority of a substitute  
59 teacher.

60 (d) The state superintendent of schools may issue certifi-  
61 cates to graduates of teacher education programs and alternative  
62 teacher education programs approved by the state board of  
63 education and in accordance with rules adopted by the state  
64 board after consultation with the secretary of education and the  
65 arts and the chancellor of the higher education policy commis-  
66 sion. A certificate to teach shall not be granted to any person  
67 who is not a citizen of the United States, is not of good moral  
68 character and physically, mentally and emotionally qualified to  
69 perform the duties of a teacher and who has not attained the age  
70 of eighteen years on or before the first day of October of the  
71 year in which his or her certificate is issued; except that an  
72 exchange teacher from a foreign country, or an alien person  
73 who meets the requirements to teach, may be granted a permit  
74 to teach within the public schools of the state.

75 (e) In consultation with the secretary of education and the  
76 arts and the chancellor of the higher education policy commis-  
77 sion institutions of higher education approved for teacher  
78 preparation may cooperate with each other, with the center for  
79 professional development and with one or more county boards  
80 in the organization and operation of centers to provide selected  
81 phases of the teacher preparation program such as student  
82 teaching, beginning teacher internship programs, instruction in  
83 methodology and seminar programs for college students,  
84 teachers with provisional certification, professional support  
85 team members and supervising teachers.

86 The institutions of higher education, the center for profes-  
87 sional development and county boards may by mutual agree-  
88 ment budget and expend funds for the operation of the centers  
89 through payments to the appropriate fiscal office of the partici-  
90 pating institutions, the center for professional development and  
91 the county boards.

92 (f) The provisions of this section shall not be construed to  
93 require the discontinuation of an existing student teacher  
94 training center or school which meets the standards of the state  
95 board of education.

96 (g) All institutions of higher education approved for teacher  
97 preparation in the school year of one thousand nine hundred  
98 sixty-two—sixty-three shall continue to hold that distinction so  
99 long as they meet the minimum standards for teacher prepara-  
100 tion. Nothing contained herein shall infringe upon the rights  
101 granted to any institution by charter given according to law  
102 previous to the adoption of this code.

**§18A-3-2c. Training through the principals academy.**

1 (a) *Principal training and professional development*  
2 *required.* — After the effective date of this section and subject  
3 to the provisions of subsection (c) of this section, every  
4 principal shall complete training and professional development  
5 through the principals academy as provided in subsection (b) of  
6 this section.

7 (b) *Principal training and professional development*  
8 *through the academy.* — The academy and the persons required  
9 to complete training and professional development through the  
10 academy shall adhere to the following guidelines:

11 (1) All persons assigned as a principal for the first time in  
12 a West Virginia school after the first day of July, two thousand  
13 two, shall complete specialized training and professional  
14 development for newly appointed principals through the  
15 academy within the first twelve months following assignment;

16 (2) All principals of schools which have been designated as  
17 seriously impaired, in accordance with section five, article two-  
18 e, chapter eighteen of this code, shall complete specialized  
19 training and professional development through the academy

20 specifically designed to assist the principal to improve school  
21 performance commencing as soon as practicable following  
22 receipt of the designation;

23 (3) All principals who are subject to an improvement plan,  
24 in accordance with section twelve, article two of this chapter,  
25 shall complete specialized training and professional develop-  
26 ment through the academy specifically designed for principals  
27 subject to an improvement plan. The specialized training and  
28 professional development shall be completed within twelve  
29 months from the date that the principal is first subject to the  
30 improvement plan;

31 (4) All principals who transfer to a school with a signifi-  
32 cantly different grade configuration shall complete specialized  
33 training and professional development for principals in schools  
34 with the grade configuration to which they transferred through  
35 the academy within the first twelve months following transfer;  
36 and

37 (5) All persons serving as school principals shall complete  
38 training and professional development through the academy  
39 designed to build the qualities, proficiencies and skills required  
40 of all principals as determined by the state board.

41 (c) *Academy and requirements to complete training and*  
42 *professional development subject to funding.* — The require-  
43 ment that principals complete training and professional devel-  
44 opment through the academy shall be subject to the availability  
45 of funds for the principals academy from legislative appropria-  
46 tion and from other sources. If these funds are insufficient to  
47 provide for the total cost of the training and professional  
48 development required by subsection (b) of this section, then the  
49 academy shall provide training and professional development  
50 for the persons described in subdivisions (1) through (5), of  
51 subsection (b) according to the priority in which the subdivi-  
52 sions appear in that subsection. If such funds are insufficient to

53 provide for the training and professional development of all the  
54 persons described in one or more of subdivisions (1) through  
55 (5), subsection (b) of this section, the academy is authorized to  
56 determine which persons described within the subdivision or  
57 subdivisions shall be admitted and which shall not be admitted:  
58 *Provided*, That the principals academy shall make every effort  
59 to ensure that all principals receive training and professional  
60 development through the academy at least once every six years  
61 effective the first day of July, two thousand two and thereafter:  
62 *Provided, however*, That nothing in this section shall be  
63 construed to require any specific level of funding by the  
64 Legislature.

65 (d) *Principals standards advisory council*. — To assist the  
66 state board in the performance of the duties described in  
67 subsection (e) of this section, there is hereby created a “Princi-  
68 pals Standards Advisory Council”, which shall consist of nine  
69 persons, as follows: The executive director of the center for  
70 professional development, who shall serve as the ex officio  
71 chair; three principals, one from an elementary school and one  
72 from a middle school or a junior high school selected by the  
73 West Virginia association of elementary and middle school  
74 principals, and one from a high school selected by the West  
75 Virginia association of secondary school principals; one county  
76 school superintendent selected by the West Virginia association  
77 of school administrators; and two representatives from higher  
78 education who teach in principal preparation programs selected  
79 by the teacher education advisory council; and two citizen  
80 representatives who are knowledgeable on issues addressed in  
81 this section, appointed by the governor. Members of the  
82 principals standards advisory council who are public employees  
83 shall be granted release time from their employment for  
84 attending meetings of the council. Members may be reimbursed  
85 for reasonable and necessary expenses actually incurred in the  
86 performance of their official duties by the center for profes-  
87 sional development. The terms of all members appointed to the

88 principals standards advisory council under the prior enactment  
89 of this section shall terminate on the thirty-first day of August,  
90 two thousand two. The principals standards advisory council as  
91 amended on the effective date of this section shall become  
92 effective on the first day of September, two thousand two.

93 (e) *Establishment of standards.* — On or before the first  
94 day of October, one thousand nine hundred ninety-six, the state  
95 board shall approve and promulgate rules regarding the  
96 minimum qualities, proficiencies and skills that will be required  
97 of principals after the first day of January, one thousand nine  
98 hundred ninety-seven. The state board shall promulgate and  
99 may from time to time amend such rules after consultation with  
100 the principals standards advisory council created in subsection  
101 (d) of this section. The rules promulgated by the state board  
102 shall address at least the following:

103 (1) Staff relations, including, but not limited to, the  
104 development and use of skills necessary to make a positive use  
105 of faculty senates, manage faculty and staff with courtesy and  
106 mutual respect, coach and motivate employees, and build  
107 consensus as a means of management;

108 (2) School community leadership qualities, including, but  
109 not limited to, the ability to organize and leverage community  
110 initiative, communicate effectively, work effectively with local  
111 school improvement councils, manage change, resolve conflict  
112 and reflect the highest personal values;

113 (3) Educational proficiencies, including, but not limited to,  
114 knowledge of curriculum, instructional techniques, student  
115 learning styles, student assessment criteria, school personnel  
116 performance, evaluation skills and family issues; and

117       (4) Administrative skills, including, but not limited to,  
118       organizational, fiscal, public policy and total quality manage-  
119       ment skills and techniques.

120       (f) *Waivers.* — Any person desiring to be relieved of the  
121       requirements of all or any part of this section may apply in  
122       writing to the state board for a waiver. Upon a showing of  
123       reasonable cause why relief should be granted, the state board  
124       may grant a waiver, upon such terms and conditions as the state  
125       board shall determine proper, as to all or any part of this  
126       section.

127       (g) *Failure to comply.* — Any person who fails or refuses  
128       to complete training and professional development through the  
129       academy, as required by the provisions of this section, and who  
130       fails to obtain a waiver, as described in subsection (f) of this  
131       section, shall be ineligible to be employed as, or serve in the  
132       capacity of, a principal.

133       (h) *Tracking of requirement.* — On or before the first day  
134       of January, one thousand nine hundred ninety-seven, the state  
135       board shall establish a system to track the progress of each  
136       person required to complete training through the academy and  
137       shall regularly advise such persons of their progress.

138       (i) *Payment of reasonable and necessary expenses and*  
139       *stipends.* — The center for professional development shall  
140       reimburse persons attending the academy for reasonable and  
141       necessary expenses. A person may not be required to complete  
142       training and professional development through the principals  
143       academy before the fifteenth day of September and after the  
144       first day of June of the school year. The center for professional  
145       development shall utilize alternative methods of instructional  
146       delivery and scheduling, including electronic delivery, as  
147       considered appropriate to minimize the amount of time princi-  
148       pals completing training and professional development through

149 the academy are required to be away from their school duties.  
150 Nothing in this section shall be construed to require any specific  
151 level of funding by the Legislature.

**ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.**

§18A-3A-1. Center for professional development established; intent and mission;  
principals academy curriculum and expenses; authorization to  
charge fees.

§18A-3A-2. Professional development project.

§18A-3A-2b. The principals academy.

**§18A-3A-1. Center for professional development established;  
intent and mission; principals academy curricu-  
lum and expenses; authorization to charge fees.**

1 (a) Teaching is a profession that directly correlates to the  
2 social and economic well-being of a society and its citizens.  
3 Superior teaching is essential to a well educated and productive  
4 populace. Strong academic leadership provided by principals  
5 and administrators skilled in modern management principles is  
6 also essential. The intent of this article is to recognize the value  
7 of professional involvement by experienced educators, princi-  
8 pals and administrators in building and maintaining a superior  
9 force of professional educators and to establish avenues for  
10 applying such involvement.

11 (b) The general mission of the center is to advance the  
12 quality of teaching and management in the schools of West  
13 Virginia through: (1) The implementation primarily of state-  
14 wide training, professional staff development and technical  
15 assistance programs and practices as recommended by the state  
16 board to assure the highest quality of teaching and manage-  
17 ment; and (2) the provision of technical and other assistance  
18 and support to regional and local education agencies in identify-  
19 ing and providing high quality professional staff development  
20 and training programs and implementing best practices to meet  
21 their locally identified needs. The center also may implement



22 local programs if the state board, in its master plan for profes-  
23 sional staff development established pursuant to section twenty-  
24 three-a, article two, chapter eighteen of this code, determines  
25 that there is a specific local need for the programs. Addition-  
26 ally, the center shall perform such duties as are assigned to it by  
27 law.

28 Nothing in this article shall be construed to require any  
29 specific level of funding by the Legislature.

30 (c) The center board shall consist of eleven persons as  
31 follows: The secretary of education and the arts, ex officio, and  
32 the state superintendent of schools, ex officio, both of whom  
33 shall be entitled to vote; three members of the state board,  
34 elected by the state board; three experienced educators, of  
35 whom two shall be working classroom teachers, and one of  
36 whom shall be a school or county administrator appointed by  
37 the governor by and with the advice and consent of the Senate,  
38 all of whom shall be experienced educators who have achieved  
39 recognition for their superior knowledge, ability and perfor-  
40 mance in teaching or management, as applicable; and three  
41 citizens of the state, one of whom shall be a representative of  
42 public higher education, and all of who shall be knowledgeable  
43 in matters relevant to the issues addressed by the center,  
44 including, but not limited to, professional development and  
45 management principles, appointed by the governor by and with  
46 the advice and consent of the Senate. Not more than two  
47 appointees shall be residents within the same congressional  
48 district. The center board shall be cochaired by the secretary of  
49 education and the arts and the state superintendent.

50 All successive elections shall be for two-year terms.  
51 Members elected from the state board may serve no more than  
52 two consecutive two-year terms. The state board shall elect  
53 another member to fill the unexpired term of any person so  
54 elected who subsequently vacates state board membership. Of

55 the initial appointed members, three shall be appointed for one-  
56 year terms and three shall be appointed for two-year terms. All  
57 successive appointments shall be for two-year terms. An  
58 experienced educator may serve no more than two consecutive  
59 two-year terms. The governor shall appoint a new member to  
60 fill the unexpired term of any vacancy in the appointed mem-  
61 bership.

62 (d) The center for professional development board shall  
63 meet at least quarterly and the appointed members shall be  
64 reimbursed for reasonable and necessary expenses actually  
65 incurred in the performance of their official duties from funds  
66 appropriated or otherwise made available for such purposes  
67 upon submission of an itemized statement therefor.

68 (e) From appropriations to the center for professional  
69 development, the center board shall employ and fix the com-  
70 pensation of an executive director with knowledge and experi-  
71 ence in professional development and management principles  
72 and such other staff as may be necessary to carry out the  
73 mission and duties of the center. The executive director shall  
74 serve at the will and pleasure of the center board. The executive  
75 director of the center also shall serve as the chair of the princi-  
76 pals standards advisory council created in section two-c, article  
77 three of this chapter, and shall convene regular meetings of this  
78 council to effectuate the purposes of this council.

79 When practicable, personnel employed by state higher  
80 education agencies and state, regional and county public  
81 education agencies shall be made available to the center to  
82 assist in the operation of projects of limited duration.

83 (f) The center shall assist in the delivery of programs and  
84 activities pursuant to this article to meet statewide, and if  
85 needed as determined by the goals and master plan for profes-  
86 sional staff development established by the state board pursuant

87 to section twenty-three-a, article two, chapter eighteen of this  
88 code, the local professional development needs of teachers,  
89 principals and administrators and may contract with existing  
90 agencies or agencies created after the effective date of this  
91 section or others to provide training programs in the most  
92 efficient manner. Existing programs currently based in agencies  
93 of the state shall be continued in the agency of their origin  
94 unless the center establishes a compelling need to transfer or  
95 cancel the existing program. The center shall recommend to the  
96 governor the transfer of funds to the providing agency, if  
97 needed, to provide programs approved by the center.

98 (g) The center for professional development shall imple-  
99 ment training and professional development programs for the  
100 principals academy based upon the minimum qualities,  
101 proficiencies and skills necessary for principals in accordance  
102 with the standards established by the state board pursuant to the  
103 terms of section two-c, article three of this chapter.

104 (h) In accordance with section two-c, article three of this  
105 chapter, the center shall be responsible for paying reasonable  
106 and necessary expenses for persons attending the principals  
107 academy: *Provided*, That nothing in this section shall be  
108 construed to require any specific level of funding by the  
109 Legislature.

110 (i) Persons attending the professional development offer-  
111 ings of the center and such other courses and services as shall  
112 be offered by the center for professional development, except  
113 the principals academy shall be assessed fees which shall be  
114 less than the full cost of attendance. There is hereby created in  
115 the state treasury a special revenue account known as the  
116 "center for professional development fund". All moneys  
117 collected by the center shall be deposited in the fund for  
118 expenditure by the center board for the purposes specified in

119 this section. Moneys remaining in the fund at the end of the  
120 fiscal year are subject to reappropriation by the Legislature.

**§18A-3A-2. Professional development project.**

1 Subject to the provisions of section twenty-three-a, article  
2 two, chapter eighteen of this code, through this project the  
3 center shall:

4 (1) Identify, coordinate, arrange and otherwise assist in the  
5 delivery of professional development programs and activities  
6 that help professional educators acquire the knowledge, skills,  
7 attitudes, practices and other such pertinent complements  
8 deemed essential for an individual to demonstrate appropriate  
9 performance as a professional personnel in the public schools  
10 of West Virginia. The basis for such performance shall be the  
11 laws, policies and regulations adopted for the public schools of  
12 West Virginia, and amendments thereto. The center also may  
13 permit and encourage school personnel such as classroom aides,  
14 higher education teacher education faculty and higher education  
15 faculty in programs such as articulated tech prep associate  
16 degree and other programs to participate in appropriate profes-  
17 sional development programs and activities with public school  
18 professional educators;

19 (2) Identify, coordinate, arrange and otherwise assist in the  
20 delivery of professional development programs and activities  
21 that help principals and administrators acquire knowledge,  
22 skills, attitudes and practices in academic leadership and  
23 management principles for principals and administrators and  
24 such other pertinent complements deemed essential for princi-  
25 pals and administrators to demonstrate appropriate performance  
26 in the public schools of West Virginia. The basis for such  
27 performance shall be the laws, policies and regulations adopted  
28 for the public schools of West Virginia, and amendments  
29 thereto;

30       (3) Serve in a coordinating capacity to assure that the  
31 knowledge, skills, attitude and other pertinent complements of  
32 appropriate professional performance which evolve over time  
33 in the public school environment are appropriately reflected in  
34 the programs approved for the education of professional  
35 personnel, including, but not limited to, advising the teacher  
36 education programs of major statutory and policy changes in  
37 the public schools which affect the job performance require-  
38 ments of professional educators, including principals and  
39 administrators;

40       (4) Provide for the routine updating of professional skills of  
41 professional educators, including principals and administrators,  
42 through in-service and other programs. Such routine updating  
43 may be provided by the center through statewide or regional  
44 institutes which may require a registration fee;

45       (5) Provide consultation and assistance to county staff  
46 development councils established under the provisions of  
47 section eight, article three of this chapter in planning, design-  
48 ing, coordinating, arranging for and delivering professional  
49 development programs to meet the needs of the professional  
50 educators of their district. From legislative appropriations to the  
51 center for professional development, exclusive of such amounts  
52 required for the expenses of the principals academy, the center  
53 shall, unless otherwise directed by the Legislature, provide  
54 assistance in the delivery of programs and activities to meet the  
55 expressed needs of the school districts for professional develop-  
56 ment to help teachers, principals and administrators demon-  
57 strate appropriate performance based on the laws, policies and  
58 regulations adopted for the public schools of West Virginia; and

59       (6) Cooperate and coordinate with the institutions of higher  
60 education to provide professional staff development programs  
61 that satisfy some or all of the criteria necessary for currently  
62 certified professional educators to meet the requirements for an

63 additional endorsement in an area of certification and for  
64 certification to teach in the middle school grades.

65 If the center is not able to reach agreement with the  
66 representatives of the institutions providing teacher education  
67 programs on which courses will be approved for credit toward  
68 additional endorsements, the state board may certify certain  
69 professional staff development courses to meet criteria required  
70 by the state board. This certification shall be done on a course  
71 by course basis.

**§18A-3A-2b. The principals academy.**

1 There is hereby established within the center for profes-  
2 sional development the “Principals Academy”. Training  
3 through the principals academy shall include at least the  
4 following:

5 (a) Training designed to build within principals the mini-  
6 mum qualities, proficiencies and skills that will be required of  
7 all principals pursuant to the rules of the state board;

8 (b) Specialized training and professional development  
9 programs for all principals; and

10 (c) Specialized training and professional development  
11 programs for the following principals:

12 (1) Newly appointed principals;

13 (2) Principals whose schools have been designated as  
14 seriously impaired, which programs shall commence as soon as  
15 practicable following the designation;

16 (3) Principals subject to improvement plans; and

17 (4) Principals of schools with significantly different grade  
18 level configurations.

**CHAPTER 29A. STATE ADMINISTRATIVE  
PROCEDURES ACT.**

**ARTICLE 3B. STATE BOARD OF EDUCATION RULE MAKING.**

**§29A-3B-9. Submission of legislative rules to the legislative oversight commission on education accountability.**

1           (a) When the board proposes a legislative rule, the board  
2 shall submit to the legislative oversight commission on educa-  
3 tion accountability at its offices or at a regular meeting of the  
4 commission twenty copies of: (1) The full text of the legislative  
5 rule as proposed by the board and filed with the office of the  
6 secretary of state, with new language underlined and with  
7 language to be deleted from any existing rule stricken through  
8 but clearly legible; (2) a brief summary of the content of the  
9 legislative rule and a description and a copy of any existing rule  
10 which the agency proposes to amend or repeal; (3) a statement  
11 of the circumstances which require the rule; (4) a fiscal note  
12 containing all information included in a fiscal note for either  
13 house of the Legislature and a statement of the economic  
14 impact of the rule on the state or its residents; and (5) any other  
15 information which the commission may request or which may  
16 be required by law.

17           (b) The commission shall review each proposed legislative  
18 rule and, in its discretion, may hold public hearings thereon.  
19 Such review shall include, but not be limited to, a determination  
20 of:

21           (1) Whether the board has exceeded the scope of its  
22 statutory authority in approving the proposed legislative rule;

23           (2) Whether the proposed legislative rule is in conformity  
24 with the legislative intent of the statute which the rule is  
25 intended to implement, extend, apply, interpret or make  
26 specific;

27 (3) Whether the proposed legislative rule conflicts with any  
28 other provision of this code or with any other rule adopted by  
29 the same or a different agency;

30 (4) Whether the proposed legislative rule is necessary to  
31 fully accomplish the objectives of the statute under which the  
32 proposed rule was promulgated;

33 (5) Whether the proposed legislative rule is reasonable,  
34 especially as it affects the convenience of the general public or  
35 of persons particularly affected by it;

36 (6) Whether the proposed legislative rule could be made  
37 less complex or more readily understandable by the general  
38 public; and

39 (7) Whether the proposed legislative rule was promulgated  
40 in compliance with the requirements of this article and with any  
41 requirements imposed by any other provision of this code.

42 (c) After reviewing the legislative rule, the commission  
43 may recommend to the board any changes needed to comply  
44 with the legislative intent of the statute upon which the rule is  
45 based or otherwise to modify the activity subject to the rule, or  
46 may make any other recommendations to the board as it  
47 considers appropriate.

48 (d) When the board finally adopts a legislative rule, the  
49 board shall submit to the legislative oversight commission on  
50 education accountability at its offices or at a regular meeting of  
51 the commission six copies of the rule as adopted by the board.  
52 After reviewing the legislative rule, the commission may  
53 recommend to the Legislature any statutory changes needed to  
54 clarify the legislative intent of the statute upon which the rule  
55 is based or may make any other recommendations to the  
56 Legislature as it considers appropriate.



---

## CHAPTER 107

(Com. Sub. for H. B. 2374 — By Delegates Staton,  
Manuel, Stemple, Williams, Hubbard and Fleischauer)

---

[Passed March 8, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-f, relating to restricting the use of student social security numbers; providing exceptions; and requiring social security number or alternative for enrollment or attendance in public school.

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

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

### ARTICLE 2. STATE BOARD OF EDUCATION.

#### §18-2-5f. Use of student social security numbers.

- 1       (a) *Restrictions on use of student social security numbers.*—
- 2       No public or private elementary or secondary school or college
- 3       or university shall display any student's social security number
- 4       to identify students for posting or public listing of grades, on
- 5       class rosters or other lists provided to teachers, on student
- 6       identification cards, in student directories or similar listings, or,
- 7       unless specifically authorized or required by law, for any public
- 8       identification purpose: *Provided*, That any student identification
- 9       cards, directories or similar listings produced prior to July 1,
- 10      2002, shall not be subject to the provisions of this section.

11       (b) *Use of social security numbers.* — Nothing in this  
12 section shall be construed as prohibiting the higher education  
13 policy commission, state institutions of higher education, state  
14 board of education, county boards of education or the public or  
15 private schools from using a student's social security number  
16 for internal record keeping purposes or studies.

17       (c) *Social security number or alternative required for*  
18 *enrollment or attendance in public school.* —

19       (1) Effective on the first day of July, two thousand three,  
20 the appropriate county board shall request the parent, guardian,  
21 or other responsible person to furnish the social security  
22 number of each child who is currently enrolled in a public  
23 school under the jurisdiction of the county board.

24       (2) Prior to admitting a child to a public school in this state,  
25 the appropriate county board shall request the parent, guardian,  
26 or other responsible person to furnish the social security  
27 number for each child who is to be enrolled after the first day  
28 of July, two thousand three.

29       (3) The county board shall inform the parent, guardian or  
30 other responsible person that, if he or she declines to provide a  
31 social security number for a child who is currently enrolled or  
32 for a child to be enrolled, the county board shall assign to the  
33 child a nine-digit number as designated by the state board.

34       (4) For any student who is attending a public school and for  
35 whom a social security number has not been provided, the  
36 county board shall make a request annually to the parent,  
37 guardian, or other responsible person to furnish the social  
38 security number.

---

**CHAPTER 108**

**(S. B. 177 — By Senators Bailey, Oliverio, Edgell,  
Anderson, Kessler, Caldwell and Burnette)**

---

[Passed January 29, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-five, relating to providing a procedure for implementing a school dress code requiring student uniforms in public schools.

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

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

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-35. Dress codes requiring school uniforms for students.**

1       (a) The Legislature hereby finds that the clothing and  
 2 footwear worn by students in public schools often preoccupy  
 3 and distract students from their major purpose for being in  
 4 school, which is obtaining an education. The Legislature finds  
 5 that in schools that have adopted a dress code requiring students  
 6 to wear school uniforms, disparities in student socioeconomic  
 7 levels are less obvious and disruptive incidents are less likely  
 8 to occur.

9       (b) The state board shall promulgate rules in accordance  
 10 with article three-b, chapter twenty-nine-a of this code that

11 allow a county board to implement a dress code requiring  
12 students to wear a school uniform. The uniforms may be  
13 required by the county board for either a school district, or for  
14 any certain school within the district. The rules shall provide at  
15 least the following:

16 (1) The county board may create an advisory committee  
17 comprised of parents, school employees and students for the  
18 purpose of considering whether the board should adopt a dress  
19 code requiring school uniforms for students in the district;

20 (2) The county board may create an advisory committee  
21 comprised of parents, school employees and students for the  
22 purpose of considering whether the board should adopt a dress  
23 code requiring school uniforms for students in any certain  
24 school within the district;

25 (3) If the advisory committee recommends to the board that  
26 a dress code requiring school uniforms for students be adopted  
27 either for the district or for any certain school within the  
28 district, the advisory committee also shall make recommenda-  
29 tions on alternative methods of paying for the school uniforms;  
30 and

31 (4) If the advisory committee recommends to the board that  
32 a dress code requiring school uniforms for students be adopted  
33 either for the district or for any certain school within the district  
34 and if the advisory committee reports its recommendations on  
35 alternative methods of paying for the school uniforms to the  
36 board, the board may adopt a dress code requiring school  
37 uniforms for students.

38 (c) Nothing in this section requires a county board to adopt  
39 a dress code requiring school uniforms for students.

40 (d) Nothing in this section requires any level of funding by  
41 the Legislature, boards of education or any other agency of  
42 government.

---

## CHAPTER 109

(H. B. 4022 — By Delegates Mezzatesta and Williams)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-six; and to amend article two, chapter eighteen-a of said code by adding thereto a new section, designated section six-a, all relating to establishing a more formal method to fund programs that strengthen student learning ability; requiring the state board to establish a process with certain elements and promulgate a rule to implement section; and providing released time for certain service personnel.

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

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

**Chapter**

**18. Education.**

**18A. School Personnel.**

### **CHAPTER 18. EDUCATION.**

#### **ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-36. Programs to strengthen student learning ability.**

1 (a) The Legislature finds that schools that have imple-  
2 mented programs to strengthen student learning ability are  
3 reporting statistically significant improvement in the statewide  
4 test scores in reading, language and math of students referred to  
5 the programs. Therefore, it is the intent of the Legislature  
6 through this section to establish a more formal method to fund  
7 programs that strengthen student learning ability.

8 (b) The state board shall establish a program for strengthen-  
9 ing student learning ability that includes the following:

10 (1) A procedure for schools to apply for funds to implement  
11 programs to strengthen student learning ability in accordance  
12 with the provisions of this section;

13 (2) Specific factors for determining the need for each  
14 school applying for funds in accordance with subsection (e) of  
15 this section;

16 (3) A method for judging applications for funds on a  
17 competitive basis; and

18 (4) A determination of the maximum percentage of total  
19 funds appropriated for the purposes of this section which may  
20 be distributed for use in grades six through twelve so that the  
21 priority for program implementation is at the prekindergarten  
22 and elementary levels.

23 (c) Except as provided in subsection (d) of this section, a  
24 school is not eligible to receive an award of funds appropriated  
25 for the purposes of this section unless the proposed program  
26 includes the following:

- 27       (1) Assessment of the cognitive abilities of students;
- 28       (2) Physical screening that identifies barriers to a student's  
29 ability to learn;
- 30       (3) Development of a student-specific program to improve  
31 student learning ability based on the results of the assessment  
32 and physical screening;
- 33       (4) Administration of learning development exercises that  
34 strengthen the ability of students to learn; and
- 35       (5) An evaluation of the program's impact, including  
36 factors such as student test scores and other measures of student  
37 performance, the program's impact on special education  
38 referrals, program cost and other information considered  
39 important for judging the value of the program.
- 40       (d) A school is eligible to receive an award of funds  
41 appropriated for the purposes of this section for the implemen-  
42 tation of an early childhood system to strengthen student  
43 learning abilities that includes cognitive/perceptual exercises  
44 for all children which are clearly based on the same intellectual  
45 premise, and are intended to address for all students the same  
46 developmental needs, as the more individual specific remedies  
47 required for programs under subsection (c) of this section. The  
48 programs shall include a method for evaluating program impact  
49 using appropriate measures of early childhood student develop-  
50 ment and progress.
- 51       (e) All the funds appropriated for the purposes of this  
52 section shall be distributed to schools based upon need as  
53 determined by the state board. In determining need, the state  
54 board may consider such things as the assessment test scores of  
55 the students, percentage of students who are enrolled in special

56 education programs, dropout rates, attendance rates, the number  
57 of at-risk students, monetary and in-kind resources available  
58 from other sources that will be committed to the program and  
59 any other indicators the state board determines appropriate.

60 (f) The state board shall promulgate a rule pursuant to  
61 article three-b, chapter twenty-nine-a of this code to implement  
62 the provisions of this section.

63 (g) Nothing in this section requires any specific level of  
64 funding by the Legislature.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 2. SCHOOL PERSONNEL.

#### §18A-2-6a. Released time for service personnel.

1 In the assignment of position or duties of a service person  
2 under a continuing contract, the board may provide for released  
3 time of a service person for any special professional or govern-  
4 mental assignment without jeopardizing the contractual rights  
5 of such service or any other rights, privileges or benefits under  
6 the provisions of this chapter. Released time shall be provided  
7 for any service person while serving as a member of the  
8 Legislature during any duly constituted session of that body and  
9 its interim and statutory committees and commissions without  
10 jeopardizing his or her contractual rights or any other rights,  
11 privileges, benefits or accrual of experience for placement on  
12 the state minimum salary schedule in the following school year  
13 under the provisions of this chapter, board policy and law. For  
14 the purposes of this section, service person is the singular of  
15 service personnel as defined in section one, article one of this  
16 chapter.



---

## CHAPTER 110

(Com. Sub. for H. B. 4149 — By Delegates Pino, Perry and C. White)

---

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school consolidation and closure; written statement of reasons; public hearings; and requiring promulgation of rules.

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

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

### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

#### **§18-5-13a. School closing or consolidation.**

1       (a) In addition to the provisions of section thirteen of this  
2 article, prior to any final decision of a county board on any  
3 proposal to close or consolidate any school, except in cases in  
4 which a construction bond issue was passed by the voters and  
5 which bond issue included the schools to be closed or consoli-  
6 dated, the county board shall:

7       (1) Prepare and reduce to writing its reasons and supporting  
8 data regarding the school closing or consolidation. The written  
9 reasons shall:

10 (A) Be available for public inspection in the office of the  
11 county school superintendent during the thirty days preceding  
12 the date of the public hearing required by this section;

13 (B) Be delivered in duplicate to the:

14 (i) Principal of a school which is proposed to be closed or  
15 consolidated, and of any school which will receive the students  
16 who are relocated as a result of the closure or consolidation;  
17 and

18 (ii) The chair, if any, of the local school improvement  
19 council representing a school which is proposed to be closed or  
20 consolidated, and any school which will receive the students  
21 who are relocated as a result of the closure or consolidation;  
22 and

23 (C) Comply with the rule promulgated pursuant to subsec-  
24 tion (b) of this section;

25 (2) Provide notice for a public hearing. The notice shall be  
26 advertised through a Class III legal advertisement, pursuant to  
27 the provisions of article three, chapter fifty-nine of this code for  
28 the three weeks prior to the date of the hearing. The notice shall  
29 contain the time and place of the hearing and the proposed  
30 action of the county board. Additionally, the notice shall  
31 contain the statement that the hearing location is subject to  
32 change if at the time the meeting is called to order, it is deter-  
33 mined that the meeting location is of insufficient size. A copy  
34 of the notice shall be posted at any school which is proposed to  
35 be closed or consolidated, and at any school which will receive  
36 the students who are relocated as a result of the closure or  
37 consolidation, in conspicuous working places for all profes-  
38 sional and service personnel to observe. The notice shall be  
39 posted at least thirty days prior to the date of the hearing;

40 (3) Conduct a public hearing which meets the following  
41 criteria:

42 (A) At least a quorum of the county board members and the  
43 county superintendent from the county wherein an affected  
44 school is located shall attend and be present at the public  
45 hearing;

46 (B) Members of the public may be present, submit state-  
47 ments and testimony, and question county school officials at the  
48 public hearing;

49 (C) A separate hearing shall be held for each school closed  
50 or consolidated;

51 (D) More than one hearing may be held during any one day;

52 (E) The hearing shall be held in a facility of sufficient size  
53 to accommodate all those who desire to attend;

54 (F) If, at the time the hearing is called to order, it is  
55 determined by the board that insufficient space is available to  
56 accommodate all those who desire to attend, the hearing shall  
57 be recessed and moved to a new location of sufficient size to  
58 accommodate all those who desire to attend. If the meeting  
59 location is changed due to insufficient capacity, the county  
60 board shall cause the new meeting location to be posted at the  
61 original meeting location; and

62 (G) The hearing is subject to the requirements set forth in  
63 the rule promulgated in accordance with subsection (c) of this  
64 section; and

65 (4) Receive findings and recommendations from any local  
66 school improvement council representing an affected school  
67 relating to the proposed closure or consolidation prior to or at  
68 the public hearing.

69 (b) The state board shall promulgate a rule, in accordance  
70 with the provisions of article three-b, chapter twenty-nine-a of  
71 this code, detailing the type of supporting data a county board  
72 shall include as part of its written statement of reason required  
73 by this section for school closing or consolidation. The rule  
74 shall require at least the following data:

75 (1) The transportation time of the affected students; and

76 (2) Any data required by the state board to amend a  
77 county's comprehensive educational facilities plan.

78 (c) The state board shall promulgate a rule, in accordance  
79 with the provisions of article three-b, chapter twenty-nine-a of  
80 this code, that establishes the procedure to be followed by  
81 county boards when conducting a public hearing on the issues  
82 of school consolidation and closing.

83 (1) The rule shall provide standards for at least the follow-  
84 ing:

85 (A) The appropriate forum and venue for public hearings to  
86 be held;

87 (B) A process for affording interested parties the opportu-  
88 nity for their perspectives to be expressed;

89 (C) Establishing, where necessary, reasonable restrictions  
90 on the amount of time allowed each individual desiring to speak  
91 so that all parties wishing to speak at the hearing are given an  
92 equal amount of time; and

93 (D) Scheduling and organizing public hearings when more  
94 than one school within a county is proposed for consolidation  
95 or closure.

96 (2) It is the purpose of this subsection to provide for  
97 uniformity among the counties in the procedures followed when  
98 scheduling, organizing and conducting public hearings on the  
99 issues of school consolidation and closure.

100 (d) The state board shall promulgate the rules required by  
101 this section by the first day of June, two thousand two.

102 (e) Any document prepared, notice given, hearing con-  
103 ducted or action taken prior to the effective date of the amend-  
104 ments made to this section during the two thousand two regular  
105 session of the Legislature, is considered sufficient if the county  
106 board complied with the terms of this section effective at the  
107 time and the county board violates no other provision of law  
108 which would invalidate the document, notice, hearing or  
109 actions.

---

## CHAPTER 111

**(H. B. 4428 — By Delegates Williams, Hubbard, Paxton, Romine,  
Perry, Dempsey and Morgan)**

---

[Passed March 7, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend and reenact section sixteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county school districts and student attendance; student transfers; legislative findings; appeals process; counting students for purposes of determining net enrollment; and fees for transfer.

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

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

**§18-5-16. Student transfers; legislative findings; appeals; calculating net enrollment; fees for transfer.**

1       (a) *County districts and school attendance.* — The county  
2 board may divide the county into such districts as are necessary  
3 to determine the schools the students of its county shall attend.  
4 Upon the written request of any parent or guardian, or person  
5 legally responsible for any student, or for reasons affecting the  
6 best interests of the schools, the superintendent may transfer  
7 students from one school to another within the county. Any  
8 aggrieved person may appeal the decision of the county  
9 superintendent to the county board, and the decision of the  
10 county board shall be final.

11       (b) *Transfers between counties; legislative findings.* —

12       (1) Transfers of students from one county to another may  
13 be made by the county board of the county in which the student  
14 desiring to be transferred resides. The transfer shall be subject  
15 to the approval of both the board of the county in which the  
16 student resides and the board to which the student wishes to be  
17 transferred.

18       (2) *Legislative findings.* — Over the past several years,  
19 counties have been forced to close a number of schools because  
20 of declining student enrollment. School officials predict that an  
21 additional eighteen percent loss in enrollment may occur  
22 between two thousand two and two thousand twelve. This  
23 continued decrease in the number of students enrolled in the  
24 public schools of the state may result in more instances of  
25 consolidation which will increase the problem of long bus rides  
26 for students if they remain in a school in their county of  
27 residence.

28 Therefore the Legislature makes the following findings:

29 (A) County lines may impede the effective and efficient  
30 delivery of education services;

31 (B) Students often must endure long bus rides to a school  
32 within their county of residence when a school in an adjacent  
33 county is a fraction of the distance away;

34 (C) The wishes of parents or guardians to have their  
35 children transferred to a county other than their county of  
36 residence should be considered by the county boards; and

37 (D) Where counties can not agree, it is necessary to  
38 establish a process to determine when transfers are appropriate.

39 (3) The state board shall establish a process whereby a  
40 parent or guardian of a student may appeal the refusal of a  
41 county board to enter into an agreement to transfer or accept the  
42 transfer of the student.

43 (A) The process shall designate the state superintendent to  
44 hear the appeal. In determining whether to overturn a decision  
45 of a county board, the state superintendent shall consider such  
46 factors as the following:

47 (i) Travel time for the student;

48 (ii) Impact on levies or bonds;

49 (iii) Other financial impact on the county of residence; and

50 (iv) Such other factors as the state superintendent may  
51 determine.

52 (B) If, during the appeal process, the state superintendent  
53 discovers that the education and the welfare of students in the  
54 transferring county could be enhanced, the state superintendent

55 may direct that students may be permitted to attend a school in  
56 another county.

57 (C) If multiple appeals are received from the same geo-  
58 graphical area of a county, the state superintendent may impose  
59 on the receiving county restrictions including, but not limited  
60 to, requiring the receiving county to accept all students in that  
61 geographical area of the sending county who wish to transfer to  
62 the receiving county.

63 (D) If a student is transferred on either a full-time or a part-  
64 time basis without the agreement of both boards by official  
65 action as reflected in the minutes of their respective meetings  
66 and if the student's parent or guardian fails to appeal or loses  
67 the appeal under the process established in subdivision (3) of  
68 this subsection, the student shall be counted only in the net  
69 enrollment of the county in which the student resides.

70 (4) If, after two county boards have agreed to a transfer  
71 arrangement for a student, that student chooses to return to a  
72 school in his or her county of residence after the second month  
73 of any school year, the following shall apply:

74 (A) The county of residence may issue an invoice to the  
75 county from which the student transferred for the amount,  
76 determined on a pro rata basis, that the county of residence  
77 otherwise would have received under the state basic foundation  
78 program established in article nine-a of this chapter; and

79 (B) The county from which the student transferred shall  
80 reimburse the county of residence for the amount of the invoice.

81 (c) *Transfers between high schools.* — In any county where  
82 a high school is maintained, but topography, impassable roads,  
83 long bus rides or other conditions prevent the practicable  
84 transportation of any students to such high school, the board  
85 may transfer them to a high school in an adjoining county. In



86 any such case, the county boards may enter into an agreement  
87 providing for the payment of the cost of transportation, if any,  
88 of the students.

89 (d) *Transfers between states.* — Transfer of students from  
90 this state to another state shall be upon such terms as shall be  
91 mutually agreed upon by the board of the transferring county  
92 and the authorities of the school to which the transfer is made.

93 (e) No parent, guardian or person acting as parent or  
94 guardian shall be required to pay for the transfer of a student or  
95 for the tuition of the student after the transfer when such  
96 transfer is carried out under the terms of this section.

---

## CHAPTER 112

(H. B. 4095 — By Delegates Shaver, Beach, Williams,  
Harrison, Perry, Varner and Mezzatesta)

---

[Passed March 6, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section six, article five-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the meetings of certain school curriculum teams when the counselor is not assigned to the school on at least a one-half time basis.

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

That section six, article five-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 5A. LOCAL SCHOOL INVOLVEMENT.**

**§18-5A-6. Establishment of school curriculum teams.**

1        There shall be established at each school in the state a  
2 school curriculum team composed of the school principal, the  
3 counselor designated to serve that school and no fewer than  
4 three teachers representative of the grades taught at the school  
5 and chosen by the faculty senate: *Provided*, That for a school  
6 curriculum team established at an elementary school or a  
7 combination elementary and middle school, when the counselor  
8 is not assigned to the school on at least a one-half time basis,  
9 the curriculum team may meet on days when the counselor is  
10 not at the school and the principal shall consult with the  
11 counselor on the issues relevant to the meeting agenda.

12        The school curriculum team shall establish the programs  
13 and methods for implementing a curriculum based on  
14 state-approved instructional goals and objectives based on the  
15 needs of the individual school with a focus on reading, compo-  
16 sition, mathematics, science and technology. The curriculum  
17 thus established shall be submitted to the county board for  
18 approval or for return to the school for reconsideration.

19        The school curriculum team may apply through the school's  
20 local school improvement council for a waiver from the  
21 textbook adoption process established in article two-a of this  
22 chapter if, in the judgment of the team, materials necessary for  
23 the implementation of such curriculum are not available  
24 through the normal adoption process.

25        The school team may apply for a grant from the state board  
26 for the development or implementation, or both, of remedial  
27 and accelerated programs to meet the needs of the students at  
28 the individual school.

---

## CHAPTER 113

(Com. Sub. for S. B. 563 — By Senators Redd and Mitchell)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section three, article six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring driver education courses to provide a motorcycle awareness component.

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

That section three, article six, 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 6. DRIVER EDUCATION.

#### **§18-6-3. State board to establish minimum course standards; students with mental or physical defects; minimum standards specified.**

1       (a) The state board of education shall establish minimum  
2 standards for all driver education courses offered and made  
3 available to persons within the state, regardless of whether the  
4 courses are offered by public, private, parochial, denomina-  
5 tional or commercial schools, but no person shall be permitted  
6 to enroll in any driver education course who has a known  
7 mental or physical defect that would prevent the person from  
8 qualifying for an operator's license, unless the mental or  
9 physical defect is controlled or corrected so the person could so  
10 qualify.

11 (b) The minimum standards shall provide at least that:

12 (1) All driver education courses offered within the state are  
13 taught by instructors certified by the state board as qualified for  
14 these purposes; and

15 (2) Each person enrolled in a driver education course shall  
16 receive practice driving and observation in a dual control  
17 automobile and instruction in at least the following:

18 (A) Basic and advanced driving techniques, including  
19 techniques for handling emergencies;

20 (B) Traffic regulations and laws of the road as provided in  
21 chapter seventeen-c of this code and other applicable state and  
22 local laws and ordinances;

23 (C) Critical mechanical parts of vehicles requiring preven-  
24 tive maintenance for safety;

25 (D) The vehicle, highway and community features that aid  
26 the driver in avoiding crashes; protect him or her and his or her  
27 passengers in crashes; and maximize the salvage of the injured;

28 (E) Signs, signals, highway markings and highway design  
29 features which require understanding for safe operation of  
30 motor vehicles;

31 (F) Differences in characteristics of urban and rural driving,  
32 including safe use of modern expressways;

33 (G) Pedestrian safety; and

34 (H) Motorcycle safety awareness in a program which shall  
35 include, but not be limited to, ensuring that the driver has  
36 knowledge and awareness of motorcycles sharing the roads of  
37 this state for the safety of motorcyclists.

38 (c) In addition, in driver education courses, participating  
39 students shall be encouraged to acquire first aid skills.

---

## CHAPTER 114

(Com. Sub. for H. B. 4579 — By Delegates Campbell, J. Smith,  
Keener, Hubbard and Browning)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirteen-a, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying that a retired public school teacher may be employed as a higher education teacher without loss of benefits.

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

That section thirteen-a, 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-13a. Resumption of service by retired teachers.**

1       For the purpose of this section, reemployment of a former  
2       or retired teacher as a teacher shall in no way impair such  
3       teacher's eligibility for a prior service pension, or any other  
4       benefit provided by this article.

5       Retired teachers, who qualified for an annuity because of  
6       age or service, may not receive prior service allowance from the  
7       retirement board when employed as a teacher and when  
8       regularly employed by the state of West Virginia. The payment  
9       of such allowance shall be discontinued on the first day of the  
10      month within which such employment begins, and shall be  
11      resumed on the first day of the month succeeding the month  
12      within which such employment ceases. The annuity paid any

13 such teacher on first retirement resulting from the teachers'  
14 accumulation fund and the employers' accumulation fund shall  
15 continue throughout the governmental service and thereafter  
16 according to the option selected by the teacher upon first  
17 retirement.

18 Retired teachers, who qualified for an annuity because of  
19 disability, shall receive no further retirement payments, if the  
20 retirement board finds that the disability of the teacher no  
21 longer exists; payment shall be discontinued on the first day of  
22 the month within which such finding is made. If such retired  
23 teacher returns to service as a teacher, he shall contribute to the  
24 teachers' accumulation fund as a member of the system. His  
25 prior service eligibility, if any, shall not be impaired because of  
26 his disability retirement. His accumulated contributions and  
27 interest which were transferred to the benefit fund upon his  
28 retirement shall be returned to his individual account in the  
29 teachers' accumulation fund, minus retirement payments  
30 received which were not supported by such contributions and  
31 interest. Upon subsequent retirement, he shall receive credit for  
32 all of his contributory experience, anything to the contrary in  
33 this article notwithstanding.

34 Notwithstanding any provision of this code to the contrary,  
35 a person who retires under the system provided by this article  
36 may subsequently become employed on either a full time, part  
37 time basis or contract basis by any institution of higher educa-  
38 tion without any loss of retirement annuity or retirement  
39 benefits if the person's retirement commences between the  
40 effective date of the enactment of this section in two thousand  
41 two and the thirty-first day of December, two thousand two:  
42 *Provided, That such person shall not be eligible to participate*  
43 *in any other state retirement system provided by this code.*

44 The retirement board is herewith authorized to require of  
45 the retired teachers and their employers such reports as it deems  
46 necessary to effectuate the provisions of this section.

---

## CHAPTER 115

(Com. Sub. for S. B. 423 — By Senators Hunter, Oliverio,  
Edgell, Caldwell, Rowe and Redd)

---

[Passed March 9, 2002; in effect ninety days 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 thirty-eight, relating to providing, for the purpose of receiving retirement benefits, that only the actual number of hours worked by a retirant who is substitute teaching are counted when determining the number of days worked.

*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 thirty-eight, to read as follows:

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-38. Calculating days worked for retirants engaged in substitute teaching.**

- 1 (a) The Legislature finds that:
- 2 (1) The consolidated public retirement board has deter-
- 3 mined that retired substitute teachers should not perform
- 4 substitute teaching without limit;

5 (2) The consolidated public retirement board has estab-  
6 lished, by rule, a maximum number of days in which a retired  
7 teacher may accept employment prior to having his or her  
8 retirement benefit reduced; and

9 (3) There have been inconsistencies in the manner in which  
10 county boards calculate the maximum number of days estab-  
11 lished by rule.

12 (b) For the purpose of calculating whether a retired substi-  
13 tute teacher has exceeded the maximum number of days in  
14 which a substitute teacher may accept employment without  
15 incurring a reduction in his or her retirement benefit, the  
16 number of days worked shall be determined by:

17 (1) Totaling the number of hours worked; and

18 (2) Dividing by the standard number of hours that a full-  
19 time teacher works per day.

---

## CHAPTER 116

(Com. Sub. for S. B. 32 — By Senators Hunter,  
Rowe, Redd, Burnette and Caldwell)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section three, article nine-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to air quality in schools; requiring the school building authority to promulgate rules to establish a process for independent testing, adjusting and balancing heating, ventilation and air conditioning systems; requiring training for the



maintenance and operation of the heating, ventilation and air conditioning systems; requiring report of completed training and plan for continued education; and requiring report of certain indoor air quality problems.

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

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

**ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.**

**§18-9E-3. Air quality in new schools.**

1       (a) In an effort to create well-ventilated school environ-  
2       ments and notwithstanding any other provision of this code to  
3       the contrary, any new school building designed and constructed  
4       in the state by a county board, regardless of the funding source,  
5       shall be designed and constructed in compliance with the  
6       current standards of the American society of heating, refrigerat-  
7       ing and air conditioning engineers handbook (ASHRAE), the  
8       national fire protection association code (NFPA) and the code  
9       of the building officials and code administrators (BOCA).

10       (b) Upon notice from the school building authority that a  
11       new public school building is occupied, the division of health  
12       shall perform radon testing in the school within the first year  
13       after occupancy and at least every five years thereafter. The  
14       county board shall provide any reasonable assistance to the  
15       division of health that is necessary to perform the radon testing.  
16       The radon testing shall include all major student-occupied areas  
17       at or below grade level. If it is determined that radon is present  
18       in amounts greater than the amount determined to be acceptable  
19       by the rules promulgated by the school building authority,  
20       pursuant to subsection (d) of this section, any industry accepted  
21       mitigation technique shall be used to reduce the radon level to

22 the level or below the level determined acceptable by the school  
23 building authority.

24 (c) If the school building authority determines that it is  
25 feasible to test for radon prior to the construction of a school  
26 building, the school building authority may cause preconstruction  
27 site testing for radon to be performed.

28 (d) The school building authority shall promulgate rules  
29 pursuant to article three-a, chapter twenty-nine-a of this code to  
30 ensure that any new school building designed after the effective  
31 date of this article is designed and constructed in accordance  
32 with the current ASHRAE, NFPA and BOCA standards. The  
33 school building authority shall promulgate rules, pursuant to  
34 article three-a, chapter twenty-nine-a of this code, that establish  
35 standards for safe levels of radon for public school buildings.  
36 The rules shall include the requirement that county boards  
37 submit all new school designs to the school building authority  
38 for review and approval for compliance with current education  
39 standards and design efficiencies prior to preparation of final  
40 bid documents.

41 (e) On or before the first day of July, two thousand two, the  
42 school building authority shall promulgate rules to establish a  
43 process for independent testing, adjusting and balancing  
44 (TABS) heating, ventilation and air conditioning (HVAC)  
45 systems in new school buildings or renovated schools when the  
46 HVAC system has been replaced prior to occupancy. The  
47 process shall be consistent with current ASHRAE standards and  
48 shall include, but not be limited to, the following:

49 (1) Requiring HVAC designers to be professional engineers  
50 registered in this state in the specific discipline associated with  
51 the system being designed;

52       (2) Requiring a process to ensure that the HVAC system  
53 has been installed in the prescribed manner and will operate  
54 within the performance guidelines as designed;

55       (3) Requiring participation of the design engineer who  
56 designed the system to verify the intent of the design;

57       (4) Requiring the TAB agent to be qualified to perform the  
58 desired services and perform testing and balancing procedures,  
59 or qualified to perform other school building authority-ap-  
60 proved certification according to the procedures contained in  
61 the associated air balance council (AABC) national standards,  
62 the national environmental balancing bureau (NEBB) proce-  
63 dural standards and the environment engineering consultants  
64 (EEC) standards for testing, adjusting and balancing of environ-  
65 mental systems;

66       (5) Requiring that the independent TAB agent directly  
67 represent the building owner and is under contract with the  
68 building owner and paid from project funds;

69       (6) Requiring that sufficient documentation is provided to  
70 the owner to facilitate control and maintenance of the systems  
71 in accordance with the manufacturer's requirements;

72       (7) Requiring that sufficient training is provided by the  
73 equipment manufacturer or an agent of the manufacturer to  
74 those persons who will operate and maintain the systems prior  
75 to occupation of the facility, including at least one full day  
76 follow-up training between six and eight months after the  
77 facility has been occupied; and

78       (8) Requiring certification upon successful completion of  
79 the TAB process by the independent TAB agent.

80       (f) To ensure proper maintenance and operation of new and  
81 replacement HVAC equipment, the department of education,

82 using existing staff, shall provide county maintenance personnel  
83 additional training on the equipment and its controls at the site  
84 of the installation. The training shall occur within one year after  
85 student occupation of any new school facility or at any existing  
86 school facility where the HVAC system has been replaced or  
87 generally rehabilitated. Additionally, the department of educa-  
88 tion's facility staff shall provide on-site training to the county  
89 maintenance staff on the county's HVAC equipment at any  
90 facility that has been determined to have problematic indoor air  
91 quality as identified through the complaint procedure set forth  
92 in state board policy 6202.

93 (g) Upon completion of the required training, the depart-  
94 ment of education's facility staff shall provide the county board  
95 a report summarizing the training that was completed and a plan  
96 for continuing education of the county's HVAC staff. If  
97 sufficient staff is not available to the county to perform  
98 maintenance on HVAC systems, the department of education's  
99 staff shall assist the county in the development of an immediate  
100 and long range maintenance plan to ensure that HVAC systems  
101 are maintained and operated according to the manufacturer's  
102 recommendations.

103 (h) Beginning the first day of July, two thousand two, and  
104 every three months thereafter, the department of education shall  
105 forward to the school building authority copies of any com-  
106 plaints received by the department of education of indoor air  
107 quality problems which require system repair or replacement  
108 and are identified through the complaint procedure established  
109 in state board policy 6202.

110 (i) The state board shall promulgate rules, pursuant to  
111 article three-b, chapter twenty-nine-a of this code, in consulta-  
112 tion with the division of health, that authorize the use of any  
113 appropriate floor covering in public school buildings, based on  
114 user needs and performance specifications.

---

## CHAPTER 117

(H. B. 4367 — By Delegates Douglas, Kuhn, Butcher,  
Flanigan, Manchin, Prunty and Leggett)

---

[Passed February 27, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section eight, article ten-1, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the Ron Yost personal assistance services program.

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

That section eight, article ten-1, 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 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.**

**§18-10L-8. Continuation of program.**

1       The personal assistance services program shall continue to  
2 exist until the first day of July, two thousand three, pursuant to  
3 the provisions of article ten, chapter four of this code, unless  
4 sooner terminated, continued or reestablished pursuant to that  
5 article.

---

## CHAPTER 118

**(Com. Sub. for S. B. 207 — By Senators Tomblin,  
Mr. President, and Sprouse)  
[By Request of the Executive]**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to repeal articles twenty-two-a and twenty-two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter eighteen-b of said code by adding thereto a new article, designated article eighteen; and to amend article five, chapter eighteen-c of said code by adding thereto a new section, designated section eight, all relating to higher education; creating an eminent scholars endowment trust fund at each state institution of higher education; providing for administration of such funds by the board of governors at each institution; outlining duties of higher education policy commission, including submission of annual report to Legislature; providing for solicitation, acceptance, management and disposition of moneys supporting the fund; allowing salary supplements to certain faculty; providing for development of selection criteria for eminent scholars; providing for transfer of funds in abolished accounts; state-funded student financial aid; legislative findings; coordination and combination of certain financial aid sources; limitations; expanding eligibility for certain recipients; requiring legislative rule; and reports.

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

That articles twenty-two-a and twenty-two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter eighteen-b of said code be

amended by adding thereto a new article, designated article eighteen; and that article five, chapter eighteen-c of said code be amended, by adding thereto a new section, designated section eight, all to read as follows:

**Chapter**

**18B. Higher Education.**

**18C. Student Loans; Scholarships and State Aid.**

**CHAPTER 18B. HIGHER EDUCATION.**

**ARTICLE 18. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.**

§18B-18-1. Legislative findings.

§18B-18-2. Definition.

§18B-18-3. Establishment of funds.

§18B-18-4. Powers and duties of governing boards.

§18B-18-5. Administration of fund.

§18B-18-6. Duties of higher education policy commission.

§18B-18-7. Process for preparation of executive budget.

§18B-18-8. Selection of eminent scholars.

§18B-18-9. Authorization to solicit private moneys; terms of grants; reports; handling of moneys.

§18B-18-10. Other funds.

**§18B-18-1. Legislative findings.**

1 (a) The Legislature hereby finds that the essence of  
2 excellence in education is the attraction and retention of  
3 outstanding faculty; and that, however necessary modern  
4 facilities and efficient and effective administration may be, the  
5 faculty provides the catalyst by which all the elements of higher  
6 education combine to offer a quality education. The Legislature  
7 further finds that the attraction and retention of outstanding  
8 faculty at all state colleges and universities, particularly those  
9 who have attained distinction as scholars, teachers and re-  
10 searchers, requires a long-term and permanent commitment  
11 from both public and private sources. Private support will help  
12 strengthen the commitment of citizens and organizations to the  
13 promotion of excellence in higher education and will provide  
14 moneys for salaries competitive with those paid to faculty of

15 similar eminence working for this country's leading colleges  
16 and universities.

17 (b) The Legislature further finds that the appropriation of  
18 public moneys to attract and retain outstanding faculty and to  
19 encourage the commitment of private moneys with a view  
20 toward the accumulation of moneys in trust funds for these  
21 purposes is a proper annual expense of the state. Therefore, the  
22 establishment of an eminent scholars endowment trust fund at  
23 each state institution of higher education is a proper means of  
24 providing for the advancement of public higher education in  
25 this state.

**§18B-18-2. Definition.**

1 Whenever the following term is used in this article, it has  
2 the meaning described below:

3 "Board of governors" or "board" means the institutional  
4 boards of governors, individually or collectively, created  
5 pursuant to subsection (b), section one, article two-a of this  
6 chapter.

**§18B-18-3. Establishment of funds.**

1 There is hereby established at each state institution of  
2 higher education an eminent scholars endowment trust fund.

**§18B-18-4. Powers and duties of governing boards.**

1 (a) Each board of governors is hereby expressly authorized  
2 to receive private or public grants, gifts or bequests restricted  
3 by the donor to the programs set out in this article. The board  
4 may hold, invest or reinvest such moneys and expend the  
5 income from the moneys as provided in section five of this  
6 article.



7 (b) Each board is exempt from liability for any loss or  
8 decrease in value of the assets or income of the fund, except as  
9 losses or decreases in value are shown to be the result of bad  
10 faith, gross negligence or intentional misconduct.

11 (c) For the purpose of valuing assets, a board may use any  
12 commonly accepted techniques of appraisal or commonly  
13 accepted principles of accounting. No agency of government  
14 nor any person, natural or corporate, may charge or collect any  
15 fee or receive any part of the principal or income from any  
16 appropriation, grant, gift or bequest as a fee for the acquisition  
17 or administration of the appropriation, grant, gift or bequest.

18 (d) A board shall at all times adhere to the terms and  
19 limitations of any appropriation, grant, gift or bequest received.  
20 However, a board may refuse to receive any grant, gift or  
21 bequest which incorporates terms and limitations which it  
22 considers to be unacceptable.

23 (e) A board may, in its sole discretion, borrow money when  
24 necessary in order to avoid the untimely sale of assets. At no  
25 time, however, may the board incur any debt obligation for such  
26 purpose which exceeds twelve months in duration.

**§18B-18-5. Administration of fund.**

1 (a) Each eminent scholars endowment trust fund established  
2 at a state institution of higher education pursuant to section  
3 three of this article is to be administered by the appropriate  
4 board of governors. The fund at each institution shall consist of  
5 new gifts or bequests of private moneys specifically restricted  
6 and designated for the uses set out in this article.

7 (b) Gifts and bequests received after the first day of July,  
8 two thousand two, and restricted by the donor for use consistent  
9 with the purposes of this article constitute the principal in these  
10 accounts. The principal in each account may not be expended

11 for any purpose. Each board of governors shall adopt a spend-  
12 ing policy to protect the principal and the purchasing power of  
13 the original gift.

14 (c) Investment earnings accruing in each account during the  
15 previous fiscal year may be expended for the purposes set out  
16 in this article.

17 (d) The investment earnings accrued and any matching  
18 funds appropriated by the Legislature shall be used solely to  
19 supplement the base salaries of faculty who are appointed as  
20 eminent scholars after the first day of July, two thousand two,  
21 and who are selected as set out in this article.

22 (e) Gifts and bequests constituting the principal in these  
23 accounts may not consist of institutional funds or funds or  
24 assets received from the institution's affiliated foundation.

25 (f) For the purpose of encouraging the donation of private  
26 moneys to the fund, each board may designate specific chairs  
27 or specific areas of academic study or research as subjects of  
28 challenge grants. A specific chair, or a chair in a designated  
29 academic or research area, shall be established whenever the  
30 total amount of principal and accumulated investment earnings  
31 dedicated to it reaches an amount considered sufficient by the  
32 board to support the anticipated salary supplement for the chair.

33 (g) Salary supplements awarded under this article shall be  
34 in addition to the base contract salary of the faculty member.  
35 The base contract salary of the faculty member shall be  
36 consistent with that of other similarly situated faculty at the  
37 institution with the same rank, experience and field of study and  
38 shall be paid from funds other than those constituting the  
39 endowment accounts established pursuant to this article,  
40 investment earnings authorized for expenditure by the institu-

41 tions spending policy, or the state appropriation to match the  
42 eligible investment earnings.

43 (h) Nothing in this article may be construed to require any  
44 specific level of funding by the Legislature.

**§18B-18-6. Duties of higher education policy commission.**

1 The higher education policy commission shall:

2 (a) Establish documentation standards and review proce-  
3 dures to determine the eligibility of donor gifts to participate in  
4 the eminent scholars program when the gift is initially received  
5 or whenever the terms are significantly changed;

6 (b) Require that each participating institution report on total  
7 gifts received, investment earnings realized and anticipated  
8 expenditures in its annual operating budget request;

9 (c) Annually develop and submit a consolidated budget  
10 request for the eminent scholars program to the governor for the  
11 fiscal year beginning on the first day of July, two thousand  
12 three. The budget request shall include a request for an appro-  
13 priation by the Legislature to each institutional account each  
14 fiscal year in an amount equal to the investment earnings in the  
15 previous fiscal year which are intended for use in the fiscal year  
16 to supplement the salaries of eminent scholars;

17 (d) Allocate any funds appropriated by the Legislature  
18 among the participating institutions in equal installments at the  
19 beginning of each quarter; and

20 (e) Submit to the Legislature no later than the first day of  
21 December of each year an annual report on the status of the  
22 programs, the qualifications and accomplishments of the  
23 eminent scholars, the value of endowment holdings, the  
24 investment earnings realized and salary supplements paid.

**§18B-18-7. Process for preparation of executive budget.**

1 (a) The governor shall consider for inclusion in the appro-  
2 priate account the budget request of the policy commission for  
3 the eminent scholars program.

4 (b) Whether or not the governor includes the budget request  
5 of the policy commission as described in subsection (a) of this  
6 section, the Legislature may include an appropriation in the  
7 appropriate account.

8 (c) Nothing in this section shall be construed to require any  
9 specific level of funding by the Legislature.

**§18B-18-8. Selection of eminent scholars.**

1 (a) Each institution shall establish criteria for the selection  
2 of persons to be appointed as eminent scholars pursuant to this  
3 article. The criteria shall include, but not be limited to:

4 (1) The prospective appointees' record of distinguished  
5 academic or professional work in an appropriate field as judged  
6 in national terms and verified by the department or college  
7 benefitting from the salary supplement;

8 (2) The prospective appointees' record of increasing the  
9 quality and reputation of academic programs and economic  
10 development through new research centers; and

11 (3) The relevance of prospective appointees' academic or  
12 professional work to the economic development goals of the  
13 state as defined by the West Virginia council for community  
14 and economic development.

15 (b) Appointees shall submit to peer review at the depart-  
16 ment or college and any other review procedures that are  
17 established by the institution.

**§18B-18-9. Authorization to solicit private moneys; terms of grants; reports; handling of moneys.**

1 Each institution, and each dean and department chair within  
2 each institution, may solicit moneys for the endowment of  
3 eminent scholars pursuant to this article. All persons and  
4 institutions engaged in soliciting moneys shall apprise the board  
5 of their actions and provide periodic reports, at least once each  
6 fiscal year, regarding the amounts secured and, upon receipt of  
7 any moneys, shall forward them immediately to the board for  
8 deposit.

**§18B-18-10. Other funds.**

1 Effective the first day of July, two thousand two, all funds  
2 existing in accounts established in the eminent scholars  
3 endowment trust fund act and the distinguished professors  
4 endowment trust fund act as previously set out in articles  
5 twenty-two-a and twenty-two-e, respectively, of chapter  
6 eighteen of this code are hereby transferred to the institution for  
7 which they were previously designated. Moneys used to fund  
8 chairs or professorships established under these two articles  
9 shall continue to be used for the purposes and in the manner  
10 previously designated. Funds accrued under these two articles  
11 may not be transferred to the trust funds established by this  
12 article.

**CHAPTER 18C. STUDENT LOANS;  
SCHOLARSHIPS AND STATE AID.**

**ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.**

**§18C-5-8. Temporary program coordination.**

1 (a) The Legislature finds that a need exists to expand the  
2 pool of recipients eligible for state-funded financial aid. The  
3 Legislature further finds that in the first year of implementation

4 of the PROMISE scholarship program established in article  
5 seven of this chapter, it is premature to determine the effects of  
6 combining state-funded student financial aid resources for  
7 students eligible for multiple sources.

8 (b) For the fiscal year ending on the thirtieth day of June,  
9 two thousand three only, students with the greatest level of  
10 financial need as defined by this section, are eligible for both a  
11 PROMISE scholarship and a higher education grant award.

12 (c) Under the terms set forth in subsection (b) of this  
13 section, a student is eligible to receive an award for both the  
14 higher education grant program and the PROMISE scholarship  
15 program if he or she meets the following criteria:

16 (1) Expected family contribution requirements provided in  
17 subsection (d) of this section; and

18 (2) Eligibility requirements of both the higher education  
19 grant program and the PROMISE scholarship program.

20 (d) The provisions of subsection (c) of this section are  
21 restricted to the least affluent students in the higher education  
22 grant program recipient pool, as measured by the student's  
23 expected family contribution. A student's expected family  
24 contribution meets the requirement of subdivision (1), subsec-  
25 tion (c) of this section if the contribution expectation is equal to  
26 or less than two thirds of the maximum expected family  
27 contribution level in the recipient pool of the prior fall term.

28 (e) For the fiscal year ending on the thirtieth day of June,  
29 two thousand three only, the policy commission shall make  
30 awards from the higher education grant program based on the  
31 provisions of this subsection as a means of increasing the  
32 number of potential recipients of higher education grant awards.  
33 The academic standard for the grant program shall be modified  
34 to be at least ten percent more accessible, and up to a maximum

35 of twenty percent more accessible if funds are available:  
36 *Provided*, That the recipient's grade point average is at least 2.0  
37 on a 4.0 scale.

38 (f) The policy commission shall report the following data  
39 to the legislative oversight commission on education account-  
40 ability by the first day of December, two thousand two:

41 (1) The number of students receiving a higher education  
42 grant award;

43 (2) The financial resources and academic characteristics of  
44 the recipients;

45 (3) The number of students receiving aid from more than  
46 one state-funded program; and

47 (4) An analysis of any recommendations issued by the West  
48 Virginia financial aid coordinating council established pursuant  
49 to article eight of this chapter, including draft legislation if  
50 necessary, to implement the provisions of the recommenda-  
51 tions.

52 (g) The policy commission shall file a legislative rule  
53 subject to the provisions of article three-a, chapter twenty-nine-  
54 a of this code providing for the following:

55 (1) Implementation of the higher education grant program;

56 (2) A determination of whether to allow a student to receive  
57 financial aid from multiple state-funded sources when the  
58 student is eligible for aid from more than one state-funded  
59 source.

60 The rule shall be filed with the legislative oversight  
61 commission on education accountability on or before the  
62 fifteenth day of December, two thousand two.

---

## CHAPTER 119

(Com. Sub. for H. B. 4322 — By Mr. Speaker, Mr. Kiss, and Delegates Varner, Cann, Kominar, Beach, DeLong and Stalnaker)

---

[Passed March 7, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to repeal article thirty-one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article two-a, chapter eighteen-b of said code; to amend and reenact sections two and four, article twelve of said chapter; and to further amend said article by adding thereto a new section, designated section ten, all relating to higher education; research and development agreements; clarifying that institutions may elect to retain certain institutional trademarks; allowing state institutions of higher education to enter into agreements with certain private corporations to provide funding and real or personal property to those corporations; allowing certain corporations to enter into agreements to provide funding and real or personal property to a person, firm or corporation; providing circumstances under which property reverts to the institution or the corporation; and requiring public notice of transfer.

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

That article thirty-one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four, article two-a, chapter eighteen-b of said code be amended and reenacted; that sections two and four, article twelve of said chapter 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

**2A. Institutional Boards of Governors.****12. Research and Development Agreements for State Institutions of Higher Education.****ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.****§18B-2A-4. Powers and duties of governing boards generally.**

1 Each governing board separately has the following powers  
2 and duties:

3 (a) Determine, control, supervise and manage the financial,  
4 business and education policies and affairs of the state institu-  
5 tions of higher education under its jurisdiction;

6 (b) Develop a master plan for the institutions under its  
7 jurisdiction; except the administratively linked community and  
8 technical colleges shall develop their master plans subject to the  
9 provisions of section one, article six of this chapter. The  
10 ultimate responsibility for developing and updating the master  
11 plans at the institutional level resides with the board of gover-  
12 nors or board of advisors, as applicable, but the ultimate  
13 responsibility for approving the final version of the institutional  
14 master plans, including periodic updates, resides with the  
15 commission. Each master plan shall include, but not be limited  
16 to, the following:

17 (1) A detailed demonstration of how the master plan will be  
18 used to meet the goals and objectives of the institutional  
19 compact;

20 (2) A well-developed set of goals outlining missions,  
21 degree offerings, resource requirements, physical plant needs,  
22 personnel needs, enrollment levels and other planning  
23 determinates and projections necessary in such a plan to assure

24 that the needs of the institution's area of responsibility for a  
25 quality system of higher education are addressed;

26 (3) Documentation of the involvement of the commission,  
27 institutional constituency groups, clientele of the institution and  
28 the general public in the development of all segments of the  
29 institutional master plan.

30 The plan shall be established for periods of not less than  
31 three nor more than six years and shall be revised periodically  
32 as necessary, including the addition or deletion of degree  
33 programs as, in the discretion of the appropriate governing  
34 board, may be necessary.

35 (c) Prescribe for the institutions under its jurisdiction, in  
36 accordance with its master plan and the compact for each  
37 institution, specific functions and responsibilities to meet the  
38 higher education needs of its area of responsibility and to avoid  
39 unnecessary duplication;

40 (d) Direct the preparation of a budget request for the  
41 institutions under its jurisdiction, such request to relate directly  
42 to missions, goals and projections as found in the institutional  
43 master plans and the institutional compacts;

44 (e) Consider, revise and submit to the commission a budget  
45 request on behalf of the institutions under its jurisdiction;

46 (f) Review, at least every five years, all academic programs  
47 offered at the institutions under its jurisdiction. The review  
48 shall address the viability, adequacy and necessity of the  
49 programs in relation to its institutional master plan, the institu-  
50 tional compact and the education and work force needs of its  
51 responsibility district. As a part of the review, each governing

52 board shall require the institutions under its jurisdiction to  
53 conduct periodic studies of its graduates and their employers to  
54 determine placement patterns and the effectiveness of the  
55 education experience. Where appropriate, these studies should  
56 coincide with the studies required of many academic disciplines  
57 by their accrediting bodies;

58 (g) The governing boards shall ensure that the sequence and  
59 availability of academic programs and courses offered by the  
60 institutions under their jurisdiction is such that students have  
61 the maximum opportunity to complete programs in the time  
62 frame normally associated with program completion. Each  
63 governing board is responsible to see that the needs of nontradi-  
64 tional college-age students are appropriately addressed and, to  
65 the extent it is possible for the individual governing board to  
66 control, to assure core coursework completed at institutions  
67 under its jurisdiction is transferable to any other state institution  
68 of higher education for credit with the grade earned;

69 (h) Subject to the provisions of article one-b of this chapter,  
70 the appropriate governing board has the exclusive authority to  
71 approve the teacher education programs offered in the institu-  
72 tion under its control. In order to permit graduates of teacher  
73 education programs to receive a degree from a nationally  
74 accredited program and in order to prevent expensive duplica-  
75 tion of program accreditation, the chancellor may select and  
76 utilize one nationally recognized teacher education program  
77 accreditation standard as the appropriate standard for program  
78 evaluation;

79 (i) Utilize faculty, students and classified employees in  
80 institutional-level planning and decision making when those  
81 groups are affected;

82 (j) Subject to the provisions of federal law and pursuant to  
83 the provisions of article nine of this chapter and to rules

84 adopted by the commission, administer a system for the  
85 management of personnel matters, including, but not limited to,  
86 personnel classification, compensation, and discipline for  
87 employees of the institutions under their jurisdiction;

88 (k) Administer a system for hearing employee grievances  
89 and appeals. Notwithstanding any other provisions of this code  
90 to the contrary, the procedure established in article six-a,  
91 chapter twenty-nine of this code is the exclusive mechanism for  
92 hearing prospective employee grievances and appeals. In  
93 construing the application of article six-a, chapter twenty-nine  
94 to grievances of higher education employees, the following  
95 apply:

96 (1) "Chief administrator" means the president of a state  
97 institution of higher education as to those employees employed  
98 by the institution and the chancellor as to those employees  
99 employed by the commission;

100 (2) The state division of personnel may not be a party to nor  
101 have any authority regarding a grievance initiated by a higher  
102 education employee; and

103 (3) The provisions of this section supersede and replace the  
104 grievance procedure set out in article twenty-nine, chapter  
105 eighteen of this code for any grievance initiated by a higher  
106 education employee after the first day of July, two thousand  
107 one.

108 (l) Solicit and utilize or expend voluntary support, including  
109 financial contributions and support services, for the institutions  
110 under its jurisdiction;

111 (m) Appoint a president or other administrative head for the  
112 institutions under its jurisdiction subject to the provisions of  
113 section six, article one-b of this chapter;

114 (n) Conduct written performance evaluations of each  
115 institution's president pursuant to section six, article one-b of  
116 this chapter;

117 (o) Submit to the commission no later than the first day of  
118 November of each year an annual report of the performance of  
119 the institutions under its jurisdiction during the previous fiscal  
120 year as compared to stated goals in its master plan and institu-  
121 tional compact;

122 (p) Enter into contracts or consortium agreements with the  
123 public schools, private schools or private industry to provide  
124 technical, vocational, college preparatory, remedial and  
125 customized training courses at locations either on campuses of  
126 the public institution of higher education or at off-campus  
127 locations in the institution's responsibility district. To accom-  
128 plish this goal, the boards are permitted to share resources  
129 among the various groups in the community;

130 (q) Provide and transfer funding and property to certain  
131 corporations pursuant to section ten, article twelve of this  
132 chapter;

133 (r) Delegate, with prescribed standards and limitations, the  
134 part of its power and control over the business affairs of a  
135 particular institution under its jurisdiction to the president or  
136 other administrative head of the institution in any case where it  
137 considers the delegation necessary and prudent in order to  
138 enable the institution to function in a proper and expeditious  
139 manner and to meet the requirements of its institutional  
140 compact. If a governing board elects to delegate any of its  
141 power and control under the provisions of this subsection, it  
142 shall notify the chancellor. Any such delegation of power and  
143 control may be rescinded by the appropriate governing board or  
144 the chancellor at any time, in whole or in part;

145 (s) Unless changed by the chancellor, the governing boards  
146 shall continue to abide by existing rules setting forth standards  
147 for acceptance of advanced placement credit for their respective  
148 institutions. Individual departments at institutions of higher  
149 education may, upon approval of the institutional faculty senate,  
150 require higher scores on the advanced placement test than  
151 scores designated by the appropriate governing board when the  
152 credit is to be used toward meeting a requirement of the core  
153 curriculum for a major in that department;

154 (t) Each governing board, or its designee, shall consult,  
155 cooperate and work with the state treasurer and the state auditor  
156 to update as necessary and maintain an efficient and  
157 cost-effective system for the financial management and  
158 expenditure of special revenue and appropriated state funds at  
159 the institutions under its jurisdiction that ensures that properly  
160 submitted requests for payment be paid on or before due date,  
161 but in any event, within fifteen days of receipt in the state  
162 auditor's office;

163 (u) The governing boards in consultation with the chancel-  
164 lor and the secretary of the department of administration shall  
165 develop, update as necessary and maintain a plan to administer  
166 a consistent method of conducting personnel transactions,  
167 including, but not limited to, hiring, dismissal, promotions and  
168 transfers at the institutions under their jurisdiction. Each such  
169 personnel transaction shall be accompanied by the appropriate  
170 standardized system or forms which will be submitted to the  
171 respective governing board and the department of finance and  
172 administration;

173 (v) Notwithstanding any other provision of this code to the  
174 contrary, the governing boards may transfer funds from any  
175 account specifically appropriated for their use to any corre-  
176 sponding line item in a general revenue account at any agency  
177 or institution under their jurisdiction as long as such transferred

178 funds are used for the purposes appropriated. The governing  
179 boards may transfer funds from appropriated special revenue  
180 accounts for capital improvements under their jurisdiction to  
181 special revenue accounts at agencies or institutions under their  
182 jurisdiction as long as such transferred funds are used for the  
183 purposes appropriated; and

184 (w) Notwithstanding any other provision of this code to the  
185 contrary, the governing boards may acquire legal services as are  
186 considered necessary, including representation of the governing  
187 boards, their institutions, employees and officers before any  
188 court or administrative body. The counsel may be employed  
189 either on a salaried basis or on a reasonable fee basis. In  
190 addition, the governing boards may, but are not required to, call  
191 upon the attorney general for legal assistance and representation  
192 as provided by law.

**ARTICLE 12. RESEARCH AND DEVELOPMENT AGREEMENTS FOR  
STATE INSTITUTIONS OF HIGHER EDUCATION.**

§18B-12-2. Legislative findings and purpose.

§18B-12-4. Agreement; required provisions.

§18B-12-10. Assignment or transfer of property to certain corporations.

**§18B-12-2. Legislative findings and purpose.**

1 (a) The Legislature finds and determines that the future  
2 economic development in the state will depend in part upon  
3 research developed at the state institutions of higher education,  
4 and enhanced research opportunities for state institutions of  
5 higher education will promote the general economic welfare of  
6 the citizens of the state. In order to enhance the competitive  
7 position of state institutions of higher education in the current  
8 environment for research and development, expenditures for  
9 equipment and material for research projects must be handled  
10 in an expeditious fashion, and the acquisition and utilization of  
11 research grants can be simplified and expedited through the  
12 utilization of private corporations.

13       (b) The interest of the citizens of the state will be best met  
14 by agreements entered into and carried out by the governing  
15 boards and corporations to provide research assistance for state  
16 institutions of higher education. Therefore, in order to facilitate  
17 research and development grants and opportunities for state  
18 institutions of higher education, it is appropriate to authorize  
19 the governing boards to contract with private corporations  
20 organized for the purpose of providing such services to state  
21 institutions of higher education.

**§18B-12-4. Agreement; required provisions.**

1       (a) Notwithstanding section ten, article three, chapter  
2 twelve of this code or any other provision of law to the con-  
3 trary, each governing board is hereby authorized to enter into an  
4 agreement with a private corporation, which agreement shall be  
5 for the benefit of the state institution of higher education and  
6 contain the following provisions, subject to further specification  
7 as is mutually agreed upon by the governing board and the  
8 corporation:

9       (1) On the effective date of the agreement, the corporation  
10 is charged with the responsibility of serving as fiscal agent for  
11 sponsored projects conducted by the faculty, staff and students  
12 of the state institution of higher education, and grants shall be  
13 accepted by the corporation on behalf of the institution and  
14 assigned to the corporation for fiscal management.

15       (2) The corporation shall provide evaluation, development,  
16 patenting, licensing, management and marketing services for  
17 inventions, processes, trademarks, except institutional trade-  
18 marks an institution's governing board elects to retain, copy-  
19 rights or any other intellectual property developed by faculty,  
20 staff and students of any state institution of higher education.



21 (3) The corporation has the right to determine the applica-  
22 tion of the proceeds from any invention, process, trademark,  
23 except institutional trademarks an institution's governing board  
24 elects to retain, copyright or any other intellectual property  
25 developed by the faculty, staff or students of an institution  
26 among the corporation, the inventor or developer, and the  
27 institution.

28 (4) The corporation has the right to receive, purchase, hold,  
29 lease, use, sell and dispose of real and personal property of all  
30 classes subject to the provisions of section ten of this article.

31 (5) The corporation has such additional responsibilities  
32 related to the administration of research and development at the  
33 institution as are necessary or desirable.

34 (b) Upon termination of the agreement, the funds or grants  
35 paid or held by the corporation, and all other property held by  
36 the corporation, shall be transferred to the institution or its  
37 designee as the governing board directs.

38 (c) A corporation may utilize both corporation employees  
39 and personnel of the institution. The corporation may pay the  
40 costs incurred by the institution including personnel funded on  
41 grants and contracts, fringe benefits of personnel funded on  
42 grants and contracts, administrative support costs and other  
43 costs which may require reimbursement. The corporation may  
44 include as costs any applicable overhead and fringe benefit  
45 assessments necessary to recover the costs expended by the  
46 institution, pursuant to the terms of the agreement, and that a  
47 board may be reimbursed for expenses incurred by it pursuant  
48 to the agreement.

**§18B-12-10. Assignment or transfer of property to certain corporations.**

1 (a) Institutional boards of governors may provide and  
2 transfer funding and property, both real and personal, to  
3 corporations as defined in section one of this article, and with  
4 which the institution under its jurisdiction has contracted  
5 pursuant to the provisions of this article. Any deed that transfers  
6 real property under the provisions of this section to a corpora-  
7 tion, as defined in section one of this article, for either: (i)  
8 Research and development; (ii) economic development projects  
9 resulting in the creation of employment related to the results of  
10 research and development conducted on the property; or (iii)  
11 both; under this section shall include provisions requiring that  
12 the real property revert to the institution under the following  
13 circumstances:

14 (1) For a period of two years, the property is not used for at  
15 least one of the purposes for which it may be conveyed;

16 (2) The corporation to which the real property is transferred  
17 is dissolved; or

18 (3) The corporation files a petition in bankruptcy.

19 (b) Any corporation, as that term is defined in section one  
20 of this article, may provide and transfer funding and property,  
21 both real and personal, to another person, firm or corporation  
22 for: (i) Research and development; (ii) economic development  
23 projects resulting in the creation of employment related to the  
24 results of research and development conducted on the property;  
25 or (iii) both. Any deed that transfers real property to a person,  
26 firm or corporation shall include provisions requiring that the  
27 real property revert to the corporation, as defined in section one  
28 of this article, under the following circumstances:

29 (1) For a period of six months, the property is not used for  
30 at least one of the purposes for which it may be conveyed;

31           (2) The corporation to which the real property is transferred  
32 is dissolved; or

33           (3) The corporation files a petition in bankruptcy.

34           (c) The person, firm or corporation that receives real  
35 property from the corporation, as defined in section one of this  
36 article, may not transfer the property to another party without  
37 the written permission of the corporation, as defined in section  
38 one of this article. The corporation, as defined in section one of  
39 this article, may not grant any such request unless the corpora-  
40 tion determines that covenants in the deed or lease agreement  
41 provide adequate assurance that the terms of subsections (a) and  
42 (b) of this section are preserved.

43           (d) At least twenty days before the transfer of any property  
44 pursuant to the provisions of this section, the institutional board  
45 of governors or the corporation, as defined in section one of this  
46 article, whichever is appropriate, shall give public notice of the  
47 transfer through a Class II legal advertisement in accordance  
48 with the provisions of article three, chapter fifty-nine of this  
49 code.

---

## CHAPTER 120

**(Com. Sub. for S. B. 4 — By Senators Jackson, Minear, Redd,  
Hunter, McKenzie, Edgell, Boley, Bowman, Plymale, Unger,  
Snyder, Kessler, Minard, Oliverio and Caldwell)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section one, article one, chapter  
eighteen-a of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; to amend and reenact section one-a, article five of said chapter; and to amend and reenact section two, article seven, chapter sixty-one of said code, all relating to education; defining terms; expanding defined terms to include definitions for alternative education and dangerous student; sale of narcotics and possession of deadly weapons and controlled substances on educational facility premises, vehicles and at school-sponsored functions; assault and battery committed by pupil; suspension and expulsion, and exceptions; hearing; notice and procedure of hearing; notification by regular mail; postponement of hearing; allowing county boards to determine whether a student is a dangerous student; allowing county boards to refuse to provide alternative education to dangerous students who have been expelled; reexamination of dangerous student status; reporting requirements; authority to request subpoena in certain circumstances; establishing guidelines for permitting a reduction in mandatory twelve-month suspension; removing provisions applying to students with disabilities and maintaining that application to students with disabilities must be consistent with federal law; and expanding and redefining deadly weapon as the phrase applies to schools.

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

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

**Chapter**

**18A. School Personnel.**

**61. Crimes and Their Punishment.**

**CHAPTER 18A. SCHOOL PERSONNEL.**

**Article****1. General Provisions.****5. Authority; Rights; Responsibility.****ARTICLE 1. GENERAL PROVISIONS.****§18A-1-1. Definitions.**

1       The definitions contained in section one, article one,  
2 chapter eighteen of this code apply to this chapter. In addition,  
3 the following words used in this chapter and in any proceedings  
4 pursuant thereto shall, unless the context clearly indicates a  
5 different meaning, be construed as follows:

6       (a) "School personnel" means all personnel employed by a  
7 county board of education whether employed on a regular full-  
8 time basis, an hourly basis or otherwise. School personnel shall  
9 be comprised of two categories: Professional personnel and  
10 service personnel.

11       (b) "Professional personnel" means persons who meet the  
12 certification and/or licensing requirements of the state and  
13 includes the professional educator and other professional  
14 employees.

15       (c) "Professional educator" is synonymous with and has the  
16 same meaning as "teacher" as defined in section one, article  
17 one, chapter eighteen of this code. Professional educators shall  
18 be classified as:

19       (1) "*Classroom teacher*". — The professional educator  
20 who has direct instructional or counseling relationship with  
21 pupils, spending the majority of his or her time in this capacity.

22       (2) "*Principal*". — The professional educator who, as  
23 agent of the board, has responsibility for the supervision,  
24 management and control of a school or schools within the  
25 guidelines established by said board. The major area of such

26 responsibility shall be the general supervision of all the schools  
27 and all school activities involving pupils, teachers and other  
28 school personnel.

29 (3) “*Supervisor*”. — The professional educator who,  
30 whether by this or other appropriate title, is responsible for  
31 working primarily in the field with professional and other  
32 personnel in instructional and other school improvement.

33 (4) “*Central office administrator*”. — The superintendent,  
34 associate superintendent, assistant superintendent and other  
35 professional educators, whether by these or other appropriate  
36 titles, who are charged with the administering and supervising  
37 of the whole or some assigned part of the total program of the  
38 countywide school system.

39 (d) “Other professional employee” means that person from  
40 another profession who is properly licensed and is employed to  
41 serve the public schools and includes a registered professional  
42 nurse, licensed by the West Virginia board of examiners for  
43 registered professional nurses and employed by a county board  
44 of education, who has completed either a two-year (sixty-four  
45 semester hours) or a three-year (ninety-six semester hours)  
46 nursing program.

47 (e) “Service personnel” means those who serve the school  
48 or schools as a whole, in a nonprofessional capacity, including  
49 such areas as secretarial, custodial, maintenance, transportation,  
50 school lunch and as aides.

51 (f) “Principals academy” or “academy” means the academy  
52 created pursuant to section two-b, article three-a of this chapter.

53 (g) “Center for professional development” means the center  
54 created pursuant to section one, article three-a of this chapter.

55 (h) “Job-sharing arrangement” means a formal, written  
56 agreement voluntarily entered into by a county board with two  
57 or more of its professional employees who wish to divide  
58 between them the duties and responsibilities of one authorized  
59 full-time position.

60 (i) “Prospective employable professional personnel” means  
61 certified professional educators who:

62 (1) Have been recruited on a reserve list of a county board;

63 (2) Have been recruited at a job fair or as a result of contact  
64 made at a job fair;

65 (3) Have not obtained regular employee status through the  
66 job posting process provided for in section seven-a, article four  
67 of this chapter; and

68 (4) Have obtained a baccalaureate degree from an accred-  
69 ited institution of higher education within the past year.

70 (j) “Dangerous student” means a pupil who is substantially  
71 likely to cause serious bodily injury to himself, herself or  
72 another individual within that pupil’s educational environment,  
73 which may include any alternative education environment, as  
74 evidenced by a pattern or series of violent behavior exhibited by  
75 the pupil, and documented in writing by the school, with the  
76 documentation provided to the student and parent or guardian  
77 at the time of any offense.

78 (k) “Alternative education” means an authorized departure  
79 from the regular school program designed to provide educa-  
80 tional and social development for students whose disruptive  
81 behavior places them at risk of not succeeding in the traditional  
82 school structures and in adult life without positive interven-  
83 tions.

**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.****§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

1       (a) A principal shall suspend a pupil from school or from  
2 transportation to or from the school on any school bus if the  
3 pupil, in the determination of the principal after an informal  
4 hearing pursuant to subsection (d) of this section, has: (i)  
5 Violated the provisions of subsection (b), section fifteen, article  
6 two, chapter sixty-one of this code; (ii) violated the provisions  
7 of subsection (b), section eleven-a, article seven of said chapter;  
8 or (iii) sold a narcotic drug, as defined in section one hundred  
9 one, article one, chapter sixty-a of this code, on the premises of  
10 an educational facility, at a school-sponsored function or on a  
11 school bus. If a student has been suspended pursuant to this  
12 subsection, the principal shall, within twenty-four hours,  
13 request that the county superintendent recommend to the county  
14 board that the student be expelled. Upon such a request by a  
15 principal, the county superintendent shall recommend to the  
16 county board that the student be expelled. Upon such recom-  
17 mendation, the county board shall conduct a hearing in accor-  
18 dance with subsections (e), (f) and (g) of this section to deter-  
19 mine if the student committed the alleged violation. If the  
20 county board finds that the student did commit the alleged  
21 violation, the county board shall expel the student.

22       (b) A principal shall suspend a pupil from school, or from  
23 transportation to or from the school on any school bus, if the  
24 pupil, in the determination of the principal after an informal



25 hearing pursuant to subsection (d) of this section, has: (i)  
26 Committed an act or engaged in conduct that would constitute  
27 a felony under the laws of this state if committed by an adult;  
28 or (ii) unlawfully possessed on the premises of an educational  
29 facility or at a school-sponsored function a controlled substance  
30 governed by the uniform controlled substances act as described  
31 in chapter sixty-a of this code. If a student has been suspended  
32 pursuant to this subsection, the principal may request that the  
33 superintendent recommend to the county board that the student  
34 be expelled. Upon such recommendation by the county superin-  
35 tendent, the county board may hold a hearing in accordance  
36 with the provisions of subsections (e), (f) and (g) of this section  
37 to determine if the student committed the alleged violation. If  
38 the county board finds that the student did commit the alleged  
39 violation, the county board may expel the student.

40 (c) A principal may suspend a pupil from school, or  
41 transportation to or from the school on any school bus, if the  
42 pupil, in the determination of the principal after an informal  
43 hearing pursuant to subsection (d) of this section: (i) Threatened  
44 to injure, or in any manner injured, a pupil, teacher, administra-  
45 tor or other school personnel; (ii) willfully disobeyed a teacher;  
46 (iii) possessed alcohol in an educational facility, on school  
47 grounds, a school bus or at any school-sponsored function; (iv)  
48 used profane language directed at a school employee or pupil;  
49 (v) intentionally defaced any school property; (vi) participated  
50 in any physical altercation with another person while under the  
51 authority of school personnel; or (vii) habitually violated school  
52 rules or policies. If a student has been suspended pursuant to  
53 this subsection, the principal may request that the superinten-  
54 dent recommend to the county board that the student be  
55 expelled. Upon such recommendation by the county superinten-  
56 dent, the county board may hold a hearing in accordance with  
57 the provisions of subsections (e), (f) and (g) of this section to  
58 determine if the student committed the alleged violation. If the

59 county board finds that the student did commit the alleged  
60 violation, the county board may expel the student.

61 (d) The actions of any pupil which may be grounds for his  
62 or her suspension or expulsion under the provisions of this  
63 section shall be reported immediately to the principal of the  
64 school in which the pupil is enrolled. If the principal determines  
65 that the alleged actions of the pupil would be grounds for  
66 suspension, he or she shall conduct an informal hearing for the  
67 pupil immediately after the alleged actions have occurred. The  
68 hearing shall be held before the pupil is suspended unless the  
69 principal believes that the continued presence of the pupil in the  
70 school poses a continuing danger to persons or property or an  
71 ongoing threat of disrupting the academic process, in which  
72 case the pupil shall be suspended immediately and a hearing  
73 held as soon as practicable after the suspension.

74 The pupil and his or her parent(s), guardian(s) or custo-  
75 dian(s), as the case may be, shall be given telephonic notice, if  
76 possible, of this informal hearing, which notice shall briefly  
77 state the grounds for suspension.

78 At the commencement of the informal hearing, the principal  
79 shall inquire of the pupil as to whether he or she admits or  
80 denies the charges. If the pupil does not admit the charges, he  
81 or she shall be given an explanation of the evidence possessed  
82 by the principal and an opportunity to present his or her version  
83 of the occurrence. At the conclusion of the hearing or upon the  
84 failure of the noticed student to appear, the principal may  
85 suspend the pupil for a maximum of ten school days, including  
86 the time prior to the hearing, if any, for which the pupil has  
87 been excluded from school.

88 The principal shall report any suspension the same day it  
89 has been decided upon, in writing, to the parent(s), guardian(s)  
90 or custodian(s) of the pupil by regular United States mail. The

91 suspension also shall be reported to the county superintendent  
92 and to the faculty senate of the school at the next meeting after  
93 the suspension.

94 (e) Prior to a hearing before the county board, the county  
95 board shall cause a written notice which states the charges and  
96 the recommended disposition to be served upon the pupil and  
97 his or her parent(s), guardian(s) or custodian(s), as the case may  
98 be. The notice shall state clearly whether the board will attempt  
99 at hearing to establish the student as a dangerous student, as  
100 defined by section one, article one of this chapter. The notice  
101 also shall include any evidence upon which the board will rely  
102 in asserting its claim that the student is a dangerous student.  
103 The notice shall set forth a date and time at which the hearing  
104 shall be held, which date shall be within the ten-day period of  
105 suspension imposed by the principal.

106 (f) The county board shall hold the scheduled hearing to  
107 determine if the pupil should be reinstated or should or, under  
108 the provisions of this section, must be expelled from school. If  
109 the county board determines that the student should or must be  
110 expelled from school, it may also determine whether the student  
111 is a dangerous student pursuant to subsection (g) of this section.  
112 At this, or any hearing before a county board conducted  
113 pursuant to this section, the pupil may be represented by  
114 counsel, may call his or her own witnesses to verify his or her  
115 version of the incident and may confront and cross-examine  
116 witnesses supporting the charge against him or her. Such a  
117 hearing shall be recorded by mechanical means unless recorded  
118 by a certified court reporter. Any such hearing may be post-  
119 poned for good cause shown by the pupil but he or she shall  
120 remain under suspension until after the hearing. The state board  
121 may adopt other supplementary rules of procedure to be  
122 followed in these hearings. At the conclusion of the hearing the  
123 county board shall either: (1) Order the pupil reinstated  
124 immediately or at the end of his or her initial suspension; (2)

125 suspend the pupil for a further designated number of days; or  
126 (3) expel the pupil from the public schools of the county.

127 (g) A county board that did not intend prior to a hearing to  
128 assert a dangerous student claim, that did not notify the student  
129 prior to the hearing that such a determination would be consid-  
130 ered and that determines through the course of the hearing that  
131 the student may be a dangerous student shall schedule a second  
132 hearing within ten days to decide the issue. The hearing may be  
133 postponed for good cause shown by the pupil, but he or she  
134 remains under suspension until after the hearing.

135 A county board that expels a student, and finds that the  
136 student is a dangerous student, may refuse to provide alternative  
137 education. However, after a hearing conducted pursuant to this  
138 section for determining whether a student is a dangerous  
139 student, when the student is found to be a dangerous student, is  
140 expelled and is denied alternative education, a hearing shall be  
141 conducted within three months after the refusal by the board to  
142 provide alternative education to reexamine whether or not the  
143 student remains a dangerous student and whether the student  
144 shall be provided alternative education. Thereafter, a hearing  
145 for the purpose of reexamining whether or not the student  
146 remains a dangerous student and whether the student shall be  
147 provided alternative education shall be conducted every three  
148 months for so long as the student remains a dangerous student  
149 and is denied alternative education. During the initial hearing,  
150 or in any subsequent hearing, the board may consider the  
151 history of the pupil's conduct as well as any improvements  
152 made subsequent to the expulsion. If it is determined during any  
153 of the hearings that the student is no longer a dangerous student  
154 or should be provided alternative education, the student shall be  
155 provided alternative education during the remainder of the  
156 expulsion period.

157 (h) The superintendent may apply to a circuit judge or  
158 magistrate for authority to subpoena witnesses and documents,  
159 upon his or her own initiative, in a proceeding related to a  
160 recommended student expulsion or dangerous student determi-  
161 nation, before a county board conducted pursuant to the  
162 provisions of this section. Upon the written request of any other  
163 party, the superintendent shall apply to a circuit judge or  
164 magistrate for the authority to subpoena witnesses, documents  
165 or both on behalf of the other party in a proceeding related to a  
166 recommended student expulsion or dangerous student determi-  
167 nation before a county board. If the authority to subpoena is  
168 granted, the superintendent shall subpoena the witnesses,  
169 documents or both requested by the other party. Furthermore,  
170 if the authority to subpoena is granted, it shall be exercised in  
171 accordance with the provisions of section one, article five,  
172 chapter twenty-nine-a of this code.

173 Any hearing conducted pursuant to this subsection may be  
174 postponed: (1) For good cause shown by the pupil; (2) when  
175 proceedings to compel a subpoenaed witness to appear must be  
176 instituted; or (3) when a delay in service of a subpoena hinders  
177 either party's ability to provide sufficient notice to appear to a  
178 witness. A pupil remains under suspension until after the  
179 hearing in any case where a postponement occurs.

180 The county boards are directed to report the number of  
181 pupils determined to be dangerous students to the state board of  
182 education. The state board will compile the county boards'  
183 statistics and shall report its findings to the legislative oversight  
184 commission on education accountability.

185 (i) Pupils may be expelled pursuant to the provisions of this  
186 section for a period not to exceed one school year, except that  
187 if a pupil is determined to have violated the provisions of  
188 subsection (a) of this section the pupil shall be expelled for a  
189 period of not less than twelve consecutive months: *Provided,*

190 That the county superintendent may lessen the mandatory  
191 period of twelve consecutive months for the expulsion of the  
192 pupil if the circumstances of the pupil's case demonstrably  
193 warrant. Upon the reduction of the period of expulsion, the  
194 county superintendent shall prepare a written statement setting  
195 forth the circumstances of the pupil's case which warrant the  
196 reduction of the period of expulsion. The county superintendent  
197 shall submit the statement to the county board, the principal, the  
198 faculty senate and the local school improvement council for the  
199 school from which the pupil was expelled. The county superin-  
200 tendent may use the following factors as guidelines in determin-  
201 ing whether or not to reduce a mandatory twelve-month  
202 expulsion:

203 (1) The extent of the pupil's malicious intent;

204 (2) The outcome of the pupil's misconduct;

205 (3) The pupil's past behavior history; and

206 (4) The likelihood of the pupil's repeated misconduct.

207 (j) In all hearings under this section, facts shall be found by  
208 a preponderance of the evidence.

209 (k) For purposes of this section, nothing herein may be  
210 construed to be in conflict with the federal provisions of the  
211 Individuals with Disabilities Education Act of 1990 (PL 101-  
212 476).

213 (l) If a pupil transfers to another school in West Virginia,  
214 the principal of the school from which the pupil transfers shall  
215 provide a written record of any disciplinary action taken against  
216 the pupil to the principal of the school to which the pupil  
217 transfers.

218 (m) Principals may exercise any other authority and  
219 perform any other duties to discipline pupils consistent with  
220 state and federal law, including policies of the state board of  
221 education.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 7. DANGEROUS WEAPONS.

#### §61-7-2. Definitions.

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

3 (1) "Blackjack" means a short bludgeon consisting, at the  
4 striking end, of an encased piece of lead or some other heavy  
5 substance and, at the handle end, a strap or springy shaft which  
6 increases the force of impact when a person or object is struck.  
7 The term "blackjack" shall include, but not be limited to, a  
8 billy, billy club, sand club, sandbag or slapjack.

9 (2) "Gravity knife" means any knife that has a blade  
10 released from the handle by the force of gravity or the applica-  
11 tion of centrifugal force and when so released is locked in place  
12 by means of a button, spring, lever or other locking or catching  
13 device.

14 (3) "Knife" means an instrument, intended to be used or  
15 readily adaptable to be used as a weapon, consisting of a sharp-  
16 edged or sharp-pointed blade, usually made of steel, attached to  
17 a handle which is capable of inflicting cutting, stabbing or  
18 tearing wounds. The term "knife" shall include, but not be  
19 limited to, any dagger, dirk, poniard or stiletto, with a blade  
20 over three and one-half inches in length, any switchblade knife  
21 or gravity knife and any other instrument capable of inflicting  
22 cutting, stabbing or tearing wounds. A pocket knife with a blade  
23 three and one-half inches or less in length, a hunting or fishing  
24 knife carried for hunting, fishing, sports or other recreational

25 uses, or a knife designed for use as a tool or household imple-  
26 ment shall not be included within the term “knife” as defined  
27 herein unless such knife is knowingly used or intended to be  
28 used to produce serious bodily injury or death.

29 (4) “Switchblade knife” means any knife having a spring-  
30 operated blade which opens automatically upon pressure being  
31 applied to a button, catch or other releasing device in its handle.

32 (5) “Nunchuka” means a flailing instrument consisting of  
33 two or more rigid parts, connected by a chain, cable, rope or  
34 other nonrigid, flexible or springy material, constructed in such  
35 a manner as to allow the rigid parts to swing freely so that one  
36 rigid part may be used as a handle and the other rigid part may  
37 be used as the striking end.

38 (6) “Metallic or false knuckles” means a set of finger rings  
39 attached to a transverse piece to be worn over the front of the  
40 hand for use as a weapon and constructed in such a manner that,  
41 when striking another person with the fist or closed hand,  
42 considerable physical damage may be inflicted upon the person  
43 struck. The terms “metallic or false knuckles” shall include any  
44 such instrument without reference to the metal or other sub-  
45 stance or substances from which the metallic or false knuckles  
46 are made.

47 (7) “Pistol” means a short firearm having a chamber which  
48 is integral with the barrel, designed to be aimed and fired by the  
49 use of a single hand.

50 (8) “Revolver” means a short firearm having a cylinder of  
51 several chambers that are brought successively into line with  
52 the barrel to be discharged, designed to be aimed and fired by  
53 the use of a single hand.

54 (9) “Deadly weapon” means an instrument which is  
55 designed to be used to produce serious bodily injury or death or  
56 is readily adaptable to such use. The term “deadly weapon”



57 shall include, but not be limited to, the instruments defined in  
58 subdivisions (1) through (8), inclusive, of this section or other  
59 deadly weapons of like kind or character which may be easily  
60 concealed on or about the person. For the purposes of section  
61 one-a, article five, chapter eighteen-a of this code and section  
62 eleven-a, article seven of this chapter, in addition to the  
63 definition of “knife” set forth in subdivision (3) of this section,  
64 the term “deadly weapon” also includes any instrument  
65 included within the definition of “knife” with a blade of three  
66 and one-half inches or less in length. Additionally, for the  
67 purposes of section one-a, article five, chapter eighteen-a of this  
68 code and section eleven-a, article seven of this chapter, the term  
69 “deadly weapon” includes explosive, chemical, biological and  
70 radiological materials. Notwithstanding any other provision of  
71 this section, the term “deadly weapon” does not include any  
72 item or material owned by the school or county board, intended  
73 for curricular use, and used by the student at the time of the  
74 alleged offense solely for curricular purposes.

75 (10) “Concealed” means hidden from ordinary observation  
76 so as to prevent disclosure or recognition. A deadly weapon is  
77 concealed when it is carried on or about the person in such a  
78 manner that another person in the ordinary course of events  
79 would not be placed on notice that the deadly weapon was  
80 being carried.

81 (11) “Firearm” means any weapon which will expel a  
82 projectile by action of an explosion.

83 (12) “Controlled substance” has the same meaning as is  
84 ascribed to that term in subsection (d), section one hundred one,  
85 article one, chapter sixty-a of this code.

86 (13) “Drug” has the same meaning as is ascribed to that  
87 term in subsection (1), section one hundred one, article one,  
88 chapter sixty-a of this code.

---

## CHAPTER 121

(Com. Sub. for H. B. 4054 — By Delegates Mezzatesta,  
Williams and Harrison)

---

[Passed March 9, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend and reenact section three-a, article three, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article four of said chapter by adding thereto a new section, designated section twenty, all relating generally to reimbursement of teachers' expenses; school personnel; definitions; disbursement of funds and limitations thereof; reimbursement of tuition and fees for certain courses completed by teachers; providing moving expenses for teachers who meet certain criteria; and requiring certain reports to be made by state board and county boards of education.

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

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

**Article**

- 3. Training, Certification, Licensing, Professional Development.**
- 4. Salaries, Wages and Other Benefits.**

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

**§18A-3-3a. Payment of tuition, registration and other fees for teachers; maximum payment per teacher.**

1 (a) The West Virginia department of education shall  
2 promulgate rules to administer the reimbursement of tuition,  
3 registration and other required fees for coursework completed  
4 by teachers in accordance with the provisions of this section.  
5 The rules shall provide for reimbursement for courses com-  
6 pleted toward both certification renewal, and additional  
7 endorsement in a shortage area.

8 (b) As used in this section, the following words and phrases  
9 have the meanings ascribed to them:

10 (1) "Teacher" has the meaning provided in section one,  
11 article one, chapter eighteen of this code.

12 (2) "Shortage area" shall be defined by state board policy  
13 to indicate the subject areas for which an insufficient number of  
14 teachers are available.

15 (3) "Certification" and "certificate" mean a valid West  
16 Virginia:

17 (A) Professional teaching, service or administrative  
18 certificate, or its equivalent; or

19 (B) Provisional professional teaching, service or adminis-  
20 trative certificate, or its equivalent.

21 (4) "Requirements for certification renewal" are those  
22 requirements of the state department of education as provided  
23 in section three of this article.

24 (5) "Requirements for additional endorsement" are those  
25 requirements of the state department of education as provided  
26 in section three of this article.

27 (6) "State institution of higher education" has the meaning  
28 provided in section two, article one, chapter eighteen-b of this  
29 code.

30 (c) To the extent of funds appropriated for the purposes  
31 specified in this section, payment shall be made to any teacher  
32 who:

33 (1) Holds either a valid West Virginia:

34 (A) Certificate; or

35 (B) First class permit for full-time employment; and

36 (2) Is seeking:

37 (A) An additional endorsement in a shortage area, and  
38 either resides in the state or is employed regularly for instruc-  
39 tional purposes in a public school in the state; or

40 (B) Certification renewal, and has a continuing contract  
41 with a county board.

42 (d) The payment shall be made as reimbursement for the  
43 tuition, registration and other required fees for any course  
44 completed at:

45 (1) Any college or university within the state; or

46 (2) A college or university outside the state if prior ap-  
47 proval is granted by the department.

48 (e) A course is eligible for reimbursement if it meets the  
49 requirements for:

50 (1) An additional endorsement in a shortage area; or

51 (2) Certification renewal.

52 (f) In the fiscal year beginning the first day of July, two  
53 thousand two, funds appropriated for the purposes specified in  
54 this section shall be disbursed evenly between courses com-  
55 pleted toward certification renewal and courses completed  
56 toward additional endorsement in a shortage area. Thereafter,  
57 funds shall be divided between renewal and endorsement in the  
58 same proportion that the number of applications for each was  
59 made toward the total number of applications received, except  
60 that reimbursement toward either may not exceed seventy-five  
61 percent of total funds appropriated.

62 (g) Payment made for any single fee may not exceed the  
63 amount of the highest corresponding fee charged at a state  
64 institution of higher education.

65 (h) Reimbursement for courses completed toward certifica-  
66 tion renewal is limited to fifteen semester hours of courses for  
67 any teacher.

68 (i) The West Virginia department of education shall seek  
69 funding from sources other than general revenue appropriation,  
70 including, but not limited to, workforce investment funds.

71 (j) No provision of this section may be construed to require  
72 any appropriation or any specific amount of appropriation for  
73 the purposes specified in this section, or to require the depart-  
74 ment to expend funds for those purposes from any other  
75 amounts appropriated for expenditure by the department.

#### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

##### **§18A-4-20. Moving expenses allowed for teachers laid off in counties due to lack of need.**

1 (a) From funds appropriated, the department of education  
2 may pay the moving expenses for a teacher who meets the  
3 following criteria:

4 (1) The teacher's position was eliminated as part of a  
5 reduction in force by a West Virginia county school board;

6 (2) The teacher has secured employment for a West  
7 Virginia county school board in another county;

8 (3) The teacher has moved his or her residence to the West  
9 Virginia county in which he or she has gained employment or  
10 to an adjacent county in West Virginia;

11 (4) The teacher is to be employed in a county where  
12 shortages exist either in numbers of teachers or in subject  
13 matter areas as determined by the state board; and

14 (5) As a result of the new employment, it would be imprac-  
15 tical for the teacher to maintain his or her previous residence.

16 (b) The reimbursement shall be for actual expenses and  
17 shall not exceed two thousand five hundred dollars, subject to  
18 the availability of funds.

19 (c) Each county board of education shall send the state  
20 board by the first day of May, annually, a report that includes:

21 (1) The available teacher positions in the county;

22 (2) Any shortages in subject matter areas in the county; and

23 (3) The name of all teachers reduced in force: *Provided,*  
24 That the teacher has permitted the county board to submit his or  
25 her name.

26 (d) The state board shall compile a report including all  
27 information submitted to the state board based on the reports  
28 provided in subsection (c) of this section. The state board shall  
29 send this report to each county board of education. Addition-  
30 ally, the state board shall send a letter to all teachers reduced in

31 force. This letter shall identify all teacher positions available in  
32 West Virginia and identify those counties where shortages exist  
33 either in numbers of teachers or in subject matter areas.

34 (e) The state board shall promulgate a rule pursuant to the  
35 provisions of article three-b, chapter twenty-nine-a of this code  
36 that implements the provisions of this section. The rule shall  
37 include, but is not limited to:

38 (1) Standards sufficient to define and measure the criteria  
39 set forth in subsection (a) of this section; and

40 (2) A procedure for allocating the funds if the funds  
41 appropriated are insufficient.

42 (f) Nothing in this section shall require any level of  
43 appropriation by the Legislature.

44 (g) The state board shall report to the Legislature by the  
45 first day of January of each year on the number of teachers  
46 being reimbursed.

47 (h) This section shall expire on the first day of July, two  
48 thousand five, unless continued by the Legislature.

---

## CHAPTER 122

**(Com. Sub. for H. B. 4362 — By Delegates Mezzatesta and Williams)**

---

[Passed March 8, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend and reenact section five, article one-a, chapter  
eighteen-b of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; and to amend article two-a of said chapter by adding thereto a new section, designated section five, all relating to higher education; research challenge grants; grants to support research centers, economic projects and work force investment projects; coursework; and credit for certain public service.

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

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

**Article**

- 1A. Compact with Higher Education for the Future of West Virginia.**
- 2A. Institutional Boards of Governors.**

**ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.**

**§18B-1A-5. Financing; institutional operating budgets, additional funding.**

- 1 (a) *Budget request and appropriations.* — The commission
- 2 has the responsibility to develop a budget for the state system
- 3 of higher education and submit a budget request to the governor
- 4 before the first day of September, beginning in two thousand,
- 5 and for each fiscal year thereafter. The budget request specifi-
- 6 cally shall include the amount of the institutional operating
- 7 budgets, as defined in section two, article one of this chapter,
- 8 required for all state institutions of higher education. The
- 9 budget appropriation for the state system of higher education
- 10 under this chapter and other provisions of the law shall consist
- 11 of separate control accounts or institutional control accounts, or
- 12 some combination of such accounts, for appropriation of



13 institutional operating budgets and other funds. The commis-  
14 sion is responsible for allocating state appropriations to  
15 supplement institutional operating budgets in accordance with  
16 this section. In addition to the institutional operating budget and  
17 incentive funding, however, the commission also is responsible  
18 for allocating funds that are appropriated to it for other pur-  
19 poses: *Provided*, That, in order to determine institutional  
20 allocations, it is the responsibility of the institutions and their  
21 respective institutional boards of governors or advisors, as  
22 appropriate, to provide to the commission documentation on  
23 institutional progress toward mission enhancement, preliminary  
24 peer comparison calculations, performance of increased  
25 productivity and academic quality and measurable attainment  
26 in fulfilling state priorities as set forth in this article. The  
27 documentation shall be provided to the commission no later  
28 than the first day of October each year for commission review  
29 and verification.

30 (b) *Legislative funding priorities.* –

31 (1) The Legislature recognizes the current resource alloca-  
32 tion model has not moved all state institutions equitably  
33 towards comparable peer funding levels. This formula has left  
34 West Virginia institutions at a competitive disadvantage to their  
35 national peers.

36 (2) The Legislature acknowledges that the resource  
37 allocation model used to comply with Senate Bill 547, passed  
38 during the legislative session of one thousand nine hundred  
39 ninety-five, alleviated some of the disparity that exists among  
40 state institutions' operating budgets, but left significant  
41 differences between the institutions and their national peers.

42 (3) The Legislature recognizes that a system of independ-  
43 ently-accredited community and technical colleges is essential  
44 to the economic vitality of the state.

45 (4) The Legislature places great importance on achieving  
46 the priority goals outlined in the public policy agenda and  
47 believes the state institutions of higher education should play a  
48 vital role in facilitating the attainment of these goals.

49 (5) The Legislature also believes it is imperative that the  
50 state make progress on narrowing the peer inequity while  
51 balancing the need for sustaining the quality of our institutions.

52 (6) It is the charge of the commission to allocate all funds  
53 appropriated in excess of the fiscal year two thousand one  
54 general revenue appropriations in alignment with the legislative  
55 funding priorities listed below. The commission shall consider  
56 the priorities and assign a percentage of the total appropriation  
57 of new funds to each priority.

58 (A) *Peer equity.* — Funds appropriated for this purpose  
59 increase the level of the institutional operating budget for state  
60 institutions of higher education comparable to their peer  
61 institutions. The allocation shall provide, subject to the avail-  
62 ability of funds and legislative appropriations, for a systematic  
63 adjustment of the institutional operating budgets to move all  
64 institutions' funding in the direction of levels comparable with  
65 their peers. Institutional allocations shall be calculated as  
66 follows:

67 (i) A calculation shall be made of the deficiency in per  
68 student funding of each institution in comparison with the mean  
69 per student funding of the peer institutions as defined by the  
70 commission pursuant to section three of this article;

71 (ii) For all institutions that are deficient in comparison with  
72 peer institutions, the amounts of the deficiencies shall be  
73 totaled;

74 (iii) A ratio of the amount of the deficiency for an institu-  
75 tion divided by the total amounts of deficiency for all West

76 Virginia institutions shall be established for each institution;  
77 and

78 (iv) The allocation to each institution shall be calculated by  
79 multiplying the ratio by the total amount of money in the  
80 account.

81 (B) *Independently accredited community and technical*  
82 *colleges development.* — Funds appropriated for this purpose  
83 will ensure a smooth transition, where required, from “compo-  
84 nent” community and technical colleges to independently  
85 accredited community and technical colleges as defined in  
86 section two, article one of this chapter. Appropriations for this  
87 purpose are only to be allocated to those institutions having  
88 approved compacts with the commission that expressly include  
89 the transition of their component community colleges to  
90 independently accredited status and have demonstrated measur-  
91 able progress towards this goal. By the first day of July, two  
92 thousand seven, or when all required community and technical  
93 colleges are independently accredited, whichever first occurs,  
94 funds for this purpose shall be allocated to the incentives for  
95 institutional contributions to state priorities: *Provided*, That if  
96 the commission determines that payments from the account to  
97 the institutions should continue beyond the first day of July,  
98 two thousand seven, it shall request an extension from the  
99 Legislature;

100 (C) *Research challenge.* — Funds appropriated for this  
101 purpose shall assist public colleges and universities in West  
102 Virginia to compete on a national and international basis by  
103 providing incentives to increase their capacity to compete  
104 successfully for research funding. The Legislature intends for  
105 institutions to collaborate in the development and execution of  
106 research projects to the extent practicable and to target research  
107 to the needs of the state as established in the public policy  
108 agenda and linked to the future competitiveness of this state.

109 (i) The commission shall develop criteria for awarding  
110 grants to institutions under this account, which may include, but  
111 are not limited to, the following:

112 (I) Grants to be used to match externally funded,  
113 peer-reviewed research;

114 (II) Grants to be used to match funds for strategic institu-  
115 tional investments in faculty and other resources to increase  
116 research capacity;

117 (III) Grants to support funding for new research centers and  
118 projects that will foster economic development and work force  
119 investment within the state. These grants shall be limited to  
120 seven years and each research center or project funded shall  
121 receive a decreasing award each year and shall be required to be  
122 supported solely by external funding within seven years;

123 (ii) The commission may establish an advisory council  
124 consisting of nationally prominent researchers and scientists,  
125 including representatives from outside the state, to assist in  
126 developing the criteria for awarding grants under this account.

127 (iii) For the purposes of making the distributions from this  
128 account, the commission shall establish the definition for  
129 research, research funds and any other terms as may be neces-  
130 sary to implement this subdivision; and

131 (D) *Incentives for institutional contributions to state*  
132 *priorities.* — Funds appropriated for this purpose provide  
133 incentives to institutions which demonstrate success toward  
134 advancing the goals of the public policy agenda as set forth in  
135 section one-a, article one of this chapter and to provide incen-  
136 tives for mission enhancement as set forth in section two of this  
137 article.

138       (E) *Sustained quality support.* — The commission shall  
139 provide additional operating funds to institutions with approved  
140 compacts. The commission shall allocate these funds on an  
141 equal percentage basis to all institutions: *Provided*, That the  
142 commission may delay distribution of these funds to any  
143 institution which does not demonstrate measurable progress  
144 towards the goals provided in its compact with the commission.

145       (c) *Allocations to institutional operating budgets.* — For  
146 the purposes of this subsection, the commission shall establish  
147 by rule pursuant to subsection (f), section two of this article the  
148 method for measuring the progress of each institution towards  
149 meeting the benchmarks of its institutional compact.

150       (d) *Allocation of appropriations to the institutions.* —  
151 Appropriations in this section shall be allocated to the state  
152 institutions of higher education in the following manner:

153       (1) For the fiscal year two thousand two, appropriations  
154 above the fiscal year two thousand two institutional operating  
155 budget shall be allocated only to institutions with approved  
156 compacts, pursuant to this article;

157       (2) For the fiscal year two thousand three, and each fiscal  
158 year thereafter, appropriations from the funds shall be allocated  
159 only to institutions with approved compacts, pursuant to section  
160 two of this article and which also have achieved their annual  
161 benchmarks for accomplishing the goals of their compacts, as  
162 approved by the commission: *Provided*, That if an institution  
163 has not achieved all of its annual benchmarks, the commission  
164 may distribute a portion of the funds to the institution based on  
165 its progress as the commission determines appropriate: *Pro-*  
166 *vided, however*, That the commission shall establish by rule  
167 pursuant to subsection (f), section two, of this article the  
168 method for measuring the progress of each institution toward  
169 meeting the benchmarks of its institutional compact;

170 (e) Nothing in this section shall be construed in a manner  
171 that limits the appropriation or collection of fees necessary to  
172 effectuate the operation and purpose of the commission.

**ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

**§18B-2A-5. Public school service program.**

1 Each governing board shall establish and implement a  
2 policy through which college students obtain credit toward  
3 graduation for service performed in the public schools as tutors,  
4 student advisors and mentors to instill in public school students  
5 the benefits of postsecondary education attainment.

---

## CHAPTER 123

(Com. Sub. for S. B. 217 — By Senators Redd, Burnette,  
Caldwell, Hunter, Minard, Rowe, Snyder, Wooton,  
Facemyer, Mitchell, Love, Unger and Edgell)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article fourteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to credit cards for college students; providing definitions; requiring the governing boards of institutions of higher education propose rules to regulate the marketing practices used on campuses by credit card companies; and limiting liability of parents or guardians.

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

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

**ARTICLE 14. MISCELLANEOUS.**

**§18B-14-10. Credit card solicitation on college campuses; regulation of credit card marketing.**

1       (a) *Definitions.* -- For the purposes of this section, the  
2 following terms have the following meanings:

3       (1) "College campus" includes the premises and grounds of  
4 an institution of higher education;

5       (2) "Credit card debt education brochure" means the  
6 information developed by a college or university, by a regis-  
7 tered nonprofit corporation or by other sources as identified and  
8 approved by the institution of higher education, that details the  
9 appropriate use, benefits and risks of incurring debt through the  
10 use of credit cards;

11       (3) "Credit card marketer" includes a person, corporation,  
12 financial institution or business entity that promotes, offers or  
13 accepts applications for a credit card;

14       (4) "Institution of higher education" means any of the  
15 following:

16       (i) A community college or technical college as defined in  
17 subsection (e), section two, article one of this chapter; and

18       (ii) Bluefield state college, Concord college, Glenville state  
19 college, Fairmont state college, Marshall university, West  
20 Virginia northern community college, West Liberty state  
21 college, Potomac state college of West Virginia university,  
22 Shepherd college, West Virginia university institute of technol-

23 ogy, southern West Virginia community institute of technology,  
24 West Virginia university at Parkersburg, West Virginia school  
25 of osteopathic medicine, West Virginia state college, West  
26 Virginia university and all branch campuses of these institu-  
27 tions of higher education; and

28 (5) "Student" means a person who is at least eighteen years  
29 of age and who attends an institution of higher education  
30 whether on a full-time or part-time basis.

31 (b) The governing boards of each institution shall propose  
32 rules in accordance with the rule adopted by the higher educa-  
33 tion policy commission pursuant to the provisions of section  
34 six, article one of this chapter no later than the first day of July,  
35 two thousand three, to regulate the marketing practices used on  
36 campuses by credit card companies. In proposing these rules,  
37 the governing boards shall consider the following requirements:

38 (1) Registering on-campus credit card marketers;

39 (2) Limiting credit card marketers to specific institutional  
40 campus sites designated by the president or administrative head  
41 of the institution or his or her designee;

42 (3) Prohibiting credit card marketers from offering tangible  
43 gifts to students in exchange for completing a credit card  
44 application;

45 (4) Requiring that no application for the extension of debt  
46 through a credit card may be made available to a student unless  
47 the application is accompanied by a credit card debt education  
48 brochure;

49 (5) Whether or not to use or the appropriate use of student  
50 lists for the purpose of soliciting applications for credit cards;  
51 and



52 (6) Developing a credit card debt education presentation to  
53 be incorporated into orientation programs offered to new  
54 students.

55 (c) Unless a student's parent or guardian has agreed in  
56 writing to be liable as a cosigner for credit card debts of the  
57 student, no person may initiate a debt collection action against  
58 the parent or guardian regarding any credit card debt incurred  
59 by the student.

---

## CHAPTER 124

(S. B. 533 — By Senators Jackson, Plymale, Boley,  
Bowman, Caldwell, Edgell, Oliverio and Redd)

---

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section four, article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing rules; the higher education policy commission; higher education report card; and performance indicators.

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

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

### ARTICLE 17. LEGISLATIVE RULES.

#### §18B-17-4. Higher education policy commission.

1 (a) The legislative rule filed in the state register on the  
2 second day of February, two thousand one, and modified and  
3 refiled on the third day of April, two thousand one, relating to  
4 the higher education policy commission (higher education  
5 finance policy), is authorized.

6 (b) The legislative rule filed in the state register on the  
7 twentieth day of November, two thousand one, relating to the  
8 higher education policy commission (higher education report  
9 card rule), is authorized.

10 (c) The legislative rule filed in the state register on the  
11 fourth day of January, two thousand two, relating to the higher  
12 education policy commission (performance indicators rule), is  
13 authorized.

---

## CHAPTER 125

**(S. B. 532 — By Senators Jackson, Plymale, Bowman,  
Caldwell, Edgell, Hunter, Mitchell, Redd and Unger)**

---

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to authorizing rules; the higher education policy commission; and the West Virginia providing real opportunities for maximizing in-state student excellence scholarship program.

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

That article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new section, designated section five, to read as follows:

**ARTICLE 17. LEGISLATIVE RULES.**

**§18B-17-5. Authorizing West Virginia providing real opportunities for maximizing in-state student excellence scholarship program (PROMISE).**

1       The legislative rule filed in the state register on the fourth  
2       day of January, two thousand two, and modified and refiled on  
3       the eighteenth day of January, two thousand two, relating to the  
4       higher education policy commission (West Virginia providing  
5       real opportunities for maximizing in-state student excellence  
6       scholarship program — PROMISE — rule), is authorized.

---

## CHAPTER 126

**(S. B. 534 — By Senators Jackson, Plymale, Boley,  
Bowman, Caldwell, Edgell and Redd)**

---

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to authorizing rules; the higher education policy commission; and higher education adult part-time student grant program.

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

That article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new section, designated section six, to read as follows:

**ARTICLE 17. LEGISLATIVE RULES.**

**§18B-17-6. Authorizing the higher education adult part-time student grant program (HEAPS).**

1       The legislative rule filed in the state register on the twenty-  
2 second day of October, two thousand one, relating to the higher  
3 education policy commission (higher education adult part-time  
4 student grant program — HEAPS — rule), is authorized.

---

## CHAPTER 127

**(H. B. 4661— By Delegates Doyle, Michael, Hall and Ashley)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article one, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto a new section, designated section four, relating to providing for eligibility for state funded higher education financial aid, grants or scholarships to certain students who attended a private high school outside the state.

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

That article one, chapter eighteen-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 four, to read as follows:

**ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.**

**§18C-1-4. Eligibility of commuting students for state financial aid, grants, or scholarships.**

1 (a) Notwithstanding any other provision of this code or rule  
2 of the higher education policy commission to the contrary, a  
3 person who has met all other conditions of eligibility for state  
4 funded financial aid, grants, or scholarships shall not be deemed  
5 ineligible for state funded financial aid, grants, or scholarships  
6 based solely upon his or her attendance at a private high school  
7 outside the state if:

8 (1) During his or her attendance at the school outside the  
9 state, the student was residing with his or her parent or legal  
10 guardian in this state and that parent or legal guardian was a  
11 resident of this state and had been a resident of this state for at  
12 least two years prior to the student's attendance at the school;

13 (2) The student commuted during the school term on a daily  
14 basis from this state to attend the school in another state;

15 (3) The student is a dependent of the parent or legal  
16 guardian upon which eligibility is based and the student has not  
17 established domicile outside the state;

18 (4) The school is fully accredited in the state of its location  
19 to the degree acceptable to the superintendent of schools of this  
20 state in his or her discretion; and

21 (5) The school's curriculum requirements for graduation are  
22 the same as the curriculum requirements for graduation in this  
23 state, or sufficiently similar to those requirements, as deter-  
24 mined by the superintendent of schools of this state in his or her  
25 discretion.

26 (b) Nothing in this section may be construed to alter, amend  
27 or extend any application deadlines or other requirements  
28 established by law or policy.

---

## CHAPTER 128

(S. B. 709 — By Senators Jackson, Plymale, Bailey, Boley,  
Bowman, Caldwell, Edgell, Hunter, Minear, Oliverio and Unger)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section three, article three, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the health sciences scholarship program; providing that persons pursuing a master's degree in nursing are eligible under certain circumstances; and increasing the amount of the scholarships for medical students.

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

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

**ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.**

**§18C-3-3. Health sciences scholarship program; establishment; administration; eligibility.**

- 1 (a) *Legislative findings.* — The Legislature finds that there
- 2 is a critical need for additional practicing health care profes-
- 3 sionals in West Virginia. Therefore, there is hereby created a
- 4 health sciences scholarship program to be administered by the
- 5 vice chancellor for health sciences. The purpose of this program
- 6 is to provide an incentive for health professional students to
- 7 complete their training and provide primary care in underserved
- 8 areas of West Virginia.

9       (b) *Establishment of special account.* — There is hereby  
10 established a special revolving fund account under the higher  
11 education policy commission in the state treasury to be known  
12 as the “Health Sciences Scholarship Fund” that shall be used to  
13 carry out the purposes of this section. The fund shall consist of  
14 one or more of the following: (1) All unexpended health  
15 sciences scholarship funds on deposit in the state treasury on  
16 the effective date of this section; (2) appropriations as may be  
17 provided by the Legislature; (3) repayments, including interest  
18 as set by the vice chancellor for health sciences, collected from  
19 scholarship recipients who fail to practice or teach in West  
20 Virginia under the terms of the scholarship agreement as set  
21 forth under this section; or (4) amounts that may become  
22 available from other sources. Balances remaining in the fund at  
23 the end of the fiscal year shall not expire or revert to the general  
24 revenue. All costs associated with the administration of this  
25 section shall be paid from the health sciences scholarship fund  
26 under the direction of the vice chancellor for health sciences.

27       (c) *Eligibility requirements.* — An individual is eligible for  
28 consideration for a health sciences scholarship if the individual:  
29 (1) Either: (A) Is a fourth-year medical student at the Marshall  
30 university school of medicine, West Virginia school of osteo-  
31 pathic medicine or West Virginia university school of medicine  
32 who has been accepted in a primary care internship/residency  
33 program in West Virginia; or (B) is enrolled or accepted for  
34 enrollment in an approved education program at a West  
35 Virginia institution leading to a degree or certification in the  
36 field of nurse practitioner, nurse midwife, physician assistant or  
37 other disciplines identified as shortage fields by the vice  
38 chancellor for health sciences; and (2) signs an agreement to  
39 practice for at least two years in an underserved area of West  
40 Virginia as determined by the bureau for public health. An  
41 individual also is eligible for consideration for a health sciences  
42 scholarship if the individual is pursuing a master’s degree in  
43 nursing and signs an agreement to teach at least two years for

44 a school of nursing located in West Virginia, as may be  
45 determined by the vice chancellor for health sciences, after  
46 receiving her or his master's degree. Awarding preference will  
47 be given to West Virginia residents.

48 (d) *Scholarship awards.* — Scholarships shall be in the  
49 amount of twenty thousand dollars for medical students and ten  
50 thousand dollars for all others and may be awarded by the vice  
51 chancellor for health sciences, with the advice of an advisory  
52 panel, from the pool of all applicants with a commitment to  
53 practice in an underserved area of West Virginia as determined  
54 by the bureau for public health. Nothing herein shall be  
55 construed as granting or guaranteeing any applicant any right to  
56 such a scholarship.

57 (e) *Repayment provisions.* — A scholarship recipient who  
58 fails to practice in an underserved area of West Virginia within  
59 six months of the completion of his or her training, who fails to  
60 complete his or her training or who fails to complete the  
61 required teaching is in breach of contract and is liable for  
62 repayment of the total scholarship amount received plus  
63 interest. The granting or renewal of a license to practice in West  
64 Virginia or to reciprocal licensure in another state based upon  
65 licensure in West Virginia shall be contingent upon beginning  
66 payment and continuing payment until complete repayment of  
67 the total scholarship amount if the recipient fails to practice in  
68 an underserved area. No license, renewal or reciprocity shall be  
69 granted to persons whose repayments are in arrears. The  
70 appropriate regulatory board shall inform all other states where  
71 a recipient has reciprocated based upon West Virginia licensure  
72 of any refusal to renew licensure in West Virginia as a result of  
73 failure to repay the scholarship amount. This provision shall be  
74 explained in bold type in the scholarship contract. Repayment  
75 terms, not inconsistent with this section, shall be established by  
76 the vice chancellor for health sciences pursuant to rules as  
77 required under subsection (f) of this section.



78 (f) *Promulgation of rules.* — The higher education policy  
79 commission shall promulgate rules pursuant to article three-a,  
80 chapter twenty nine-a of this code necessary for the implemen-  
81 tation and administration of this section.

82 (g) *Definitions.* — For purposes of the repayment provi-  
83 sions of this section, the term “training” means the entire degree  
84 program or certification program for nurse midwives, nurse  
85 practitioners, physician assistants and other disciplines identi-  
86 fied as shortage field by the vice chancellor. The term also  
87 means the completion of a degree program and includes  
88 completion of an approved residency/internship program for  
89 students pursuing a degree in medicine or a degree in osteopa-  
90 thy.

---

## CHAPTER 129

(H. B. 4534 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[By Request of the Executive]

---

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to higher education; student financial aid; creating the West Virginia financial aid coordinating council; membership; responsibility; meetings; recommendations; reports; and termination of council.

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

That chapter eighteen-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 eight, to read as follows:

**ARTICLE 8. WEST VIRGINIA FINANCIAL AID COORDINATING COUNCIL.**

§18C-8-1. West Virginia financial aid coordinating council.

§18C-8-2. Council membership; council chair; compensation of members; establishing quorum.

§18C-8-3. Reports; termination of council.

**§18C-8-1. West Virginia financial aid coordinating council.**

1 (a) The West Virginia financial aid coordinating council is  
2 hereby created. The council is established for the purpose of  
3 examining and recommending strategies for maximizing  
4 coordination among the various sources of student financial aid.

5 (b) The council is responsible for examining financial aid  
6 issues which include at least the following:

7 (1) A manner for administering and maintaining the most  
8 efficient, simplified and coordinated application process. This  
9 includes implementing the optimum use of technology in the  
10 application process.

11 The council shall explore the feasibility of developing a  
12 single form for completing the application process;

13 (2) A strategy for ensuring that a reasonable balance of  
14 need-based, merit-based and self-help financial assistance is  
15 available to West Virginia students;

16 (3) An integrated and well coordinated system for making  
17 financial aid awards on a timely basis;

18       (4) A comprehensive informational and marketing plan that  
19 delivers to middle school through high school students and the  
20 public an awareness of the various financial aid resources;

21       (5) An articulation plan between secondary and  
22 postsecondary education regarding delivery and availability of  
23 student financial aid, including dual credit course offerings for  
24 secondary students free of charge;

25       (6) A strategy for working with and informing high school  
26 guidance counselors in implementing effective strategies for  
27 assisting students in completing the financial aid application  
28 process; and

29       (7) A strategy for implementing a system of student  
30 identification numbers that is both compatible and uniform to  
31 be used by public schools and public institutions of higher  
32 education.

33       (c) The council shall take actions including, but not limited  
34 to, the following:

35       (1) Make recommendations with respect to coordinating the  
36 application for and disbursement of funds from all sources of a  
37 student's financial aid package, and for maximizing the level of  
38 funding derived from federal sources;

39       (2) Identify and examine all sources of student financial  
40 aid, and recommend the most effective manner for coordinating  
41 all financial aid resources. The sources include, but are not  
42 limited to, the following:

43       (A) PROMISE scholarship program;

44       (B) Higher education grant program;

45       (C) Higher education adult part-time student grant program;

- 46 (D) Prepaid tuition trust and savings programs;
- 47 (E) Underwood-Smith teacher scholarship program;
- 48 (F) Health sciences scholarship program;
- 49 (G) West Virginia engineering, science and technology  
50 scholarship program;
- 51 (H) Federal PELL grant program;
- 52 (I) Federal student loans;
- 53 (J) Work/study programs;
- 54 (K) Tuition waivers; and
- 55 (L) Privately funded scholarships;
- 56 (3) In consultation with the higher education policy  
57 commission, recommend funding levels for each state grant and  
58 scholarship program;
- 59 (4) Utilize the resources of national or regional education  
60 organizations such as, but not limited to, the southern regional  
61 education board, education commission of the states and  
62 national association of student financial aid administrators; and
- 63 (5) Meet at any time that the council determines appropri-  
64 ate.

**§18C-8-2. Council membership; council chair; compensation of members; establishing quorum.**

- 1 (a) The council is composed of seventeen members as  
2 follows:
- 3 (1) Chancellor for higher education, or designee;

- 4       (2) State superintendent of schools, or designee;
- 5       (3) Secretary of education and the arts, or designee;
- 6       (4) State treasurer, or designee;
- 7       (5) Vice chancellor for administration for the higher  
8 education policy commission;
- 9       (6) Director for student and educational services for the  
10 higher education policy commission;
- 11       (7) Assistant state superintendent for technical and adult  
12 education services, or designee;
- 13       (8) Executive director of the PROMISE scholarship  
14 program;
- 15       (9) Director of American education services-West Virginia;
- 16       (10) Representative of proprietary institutions selected by  
17 the West Virginia association of independent colleges and  
18 schools;
- 19       (11) Representative of independent institutions selected by  
20 the West Virginia independent colleges and universities, inc.;
- 21       (12) President of the West Virginia association of student  
22 financial aid administrators;
- 23       (13) President of the West Virginia counselors association,  
24 or designee;
- 25       (14) Two representatives of state institutions of higher  
26 education appointed by the policy commission, one of whom  
27 represents community and technical college education; and

28 (15) Two members appointed by the governor who are  
29 knowledgeable about and representative of the interests of  
30 student financial aid applicants.

31 (b) The secretary of education and the arts or his or her  
32 designee is chair of the council.

33 (c) Members serve without compensation, but are reim-  
34 bursed for expenses, including travel expenses, actually  
35 incurred by the member in the official conduct of business at  
36 the same rate as is paid to state employees. Any members  
37 employed by a government agency shall be reimbursed by his  
38 or her employer; all other members shall be reimbursed by the  
39 office of the secretary of education and the arts. A majority of  
40 council members constitutes a quorum for the transaction of  
41 business.

**§18C-8-3. Reports; termination of council.**

1 (a) The council shall make a preliminary report of its  
2 recommendations on or before the first day of December, two  
3 thousand two. If the council is able to finish its work and make  
4 a final report on this date, it shall cease to exist on the first day  
5 of April, two thousand three. If the council finds that it cannot  
6 complete its work on or before the first day of December, two  
7 thousand two, the council may vote to continue its work and  
8 issue a final report on the first day of December, two thousand  
9 three, in which case, the council shall cease to exist on the first  
10 day of April, two thousand four.

11 (b) The council shall provide copies of its reports to the  
12 governor; president of the Senate; speaker of the House of  
13 Delegates; chairs of the Senate and House finance committees;  
14 legislative oversight commission on education accountability;  
15 higher education policy commission; and state board of  
16 education.

---

## CHAPTER 130

**(S. B. 163 — By Senators Wooton, Burnette, Caldwell,  
Fanning, Kessler, Mitchell, Oliverio, Redd, Ross,  
Rowe, Snyder, Deem and McKenzie)**

---

[Passed January 23, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section two-b, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to precinct boundary changes.

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

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

### **ARTICLE 2. APPORTIONMENT OF REPRESENTATION.**

#### **§1-2-2b. Precinct boundary changes.**

1        If an election precinct of this state includes territory  
2 contained in more than one senatorial or delegate district, as  
3 such senatorial districts are established by section one of this  
4 article and as such delegate districts are established by section  
5 two of this article, the county commission of the county in  
6 which the precinct is located shall, prior to the fifteenth day of  
7 March, two thousand two, alter the boundary lines of its  
8 election precincts so that no precinct contains territory included  
9 in more than one senatorial or delegate district.

---

## CHAPTER 131

(Com. Sub. for H. B. 4566 — By Delegates Stalnaker, H. White,  
Michael, Kominar, G. White, Amores and Douglas)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section nine, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring executive committees to file with the secretary of state a current listing of all members and to require vacancies in any executive committee to be filled no later than four months after the vacancy occurs.

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

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

### ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

#### **§3-1-9. Political party committees; how composed; organization.**

1       At the primary election in the year one thousand nine  
2       hundred ninety-four, and in every fourth year thereafter, the  
3       voters of each political party in each senatorial district shall  
4       elect two male and two female members of the state executive  
5       committee of the party. In senatorial districts containing two or  
6       more counties, not more than two such elected committee  
7       members shall be residents of the same county. The committee,  
8       when convened and organized as herein provided, shall appoint  
9       three additional members of the committee from the state at



10 large. When senatorial districts are realigned following a  
11 decennial census, members of the state executive committee  
12 previously elected or appointed shall continue in office until the  
13 expiration of their terms, and appointments made to fill  
14 vacancies on the committee until the next election of executive  
15 committee members shall be selected from the previously  
16 established districts. At the first election of executive commit-  
17 tee members following the realignment of senatorial districts,  
18 members shall be elected from the newly established districts.

19       At such primary election, the voters of each political party  
20 in each county shall elect one male and one female member of  
21 the party's executive committee of the congressional district, of  
22 the senatorial district and of the delegate district in which such  
23 county is situated, if such county be situated in a multi-county  
24 senatorial or delegate district. When districts are realigned  
25 following a decennial census, members of an executive  
26 committee previously elected in a county to represent that  
27 county to a congressional or multi-county senatorial or delegate  
28 district executive committee shall continue to represent that  
29 county in the appropriate newly constituted multi-county  
30 district until the expiration of their terms: *Provided*, That the  
31 county executive committee of the political party shall deter-  
32 mine which previously elected members shall represent the  
33 county if the number of multi-county senatorial or delegate  
34 districts in the county is decreased; and shall appoint members  
35 to complete the remainder of the term if the number of such  
36 districts is increased.

37       At the same time such voters of the county in each magiste-  
38 rial district or executive committee district, as the case may be,  
39 shall elect one male and one female member of the party's  
40 county executive committee, except that in counties having  
41 three executive committee districts there shall be elected two  
42 male and two female members of the party's executive commit-  
43 tee from each magisterial or executive committee district.

44 For the purpose of complying with the provisions of this  
45 section, the county commission shall create such executive  
46 committee districts as they shall determine, which such districts  
47 shall not be fewer than the number of magisterial districts in  
48 such counties, nor shall they exceed in number the following:  
49 Forty for counties having a population of one hundred thousand  
50 persons or more; thirty for counties having a population of fifty  
51 thousand to one hundred thousand; twenty for counties having  
52 a population of twenty thousand to fifty thousand; and such  
53 districts in counties having a population of less than twenty  
54 thousand persons shall be coextensive with the magisterial  
55 districts.

56 The executive committee districts shall be as nearly equal  
57 in population as practicable, and shall each be composed of  
58 compact, contiguous territory. The county commissions shall  
59 change the territorial boundaries of such districts as required by  
60 the increase or decrease in the population of such districts as  
61 determined by a decennial census. Such changes must be made  
62 within two years following such census.

63 All members of executive committees, selected for each  
64 political division as herein provided, shall reside within the  
65 county or district from which chosen. The term of office of all  
66 members of executive committees elected at the primary  
67 election in the year one thousand nine hundred ninety-four shall  
68 begin on the first day of July, following said primary, and shall  
69 continue for four years thereafter and until their successors are  
70 elected and qualified. Vacancies in the state executive commit-  
71 tee shall be filled by the members of the committee for the  
72 unexpired term. Vacancies in the party's executive committee  
73 of a congressional district, senatorial district, delegate district  
74 or county shall be filled by the party's executive committee of  
75 the county in which such vacancy exists, and shall be for the  
76 unexpired term.

77       As soon as possible after the certification of the election of  
78 the new executive committees, as herein provided, they shall  
79 convene an organizational meeting within their respective  
80 political divisions, on the call of the chairman of corresponding  
81 outgoing executive committees, or by any member of the new  
82 executive committee in the event there is no corresponding  
83 outgoing executive committee and proceed to select a chairman,  
84 a treasurer and a secretary, and such other officers as they may  
85 desire, each of which officers shall for their respective commit-  
86 tees perform the duties that usually appertain to such offices.  
87 The organizational meeting may be conducted prior to the  
88 beginning of the term, but no official action other than the  
89 election of officers and the appointment to fill vacancies on the  
90 committee may be made before the first day of July. A current  
91 listing of all executive committees' members shall be filed with  
92 the secretary of state by the end of July of each year. Vacancies  
93 in any executive committee shall be filled no later than four  
94 months after the vacancy occurs and the chairman of each  
95 executive committee shall submit an updated committee list as  
96 changes occur. Executive committee membership lists shall  
97 include at least the member's name, full address, employer,  
98 telephone number and term information. If a vacancy on an  
99 executive committee is not filled within the four-month period  
100 prescribed by the provisions of this section, the chair of the  
101 executive committee shall name someone to fill the vacancy  
102 within ten days of the expiration of the four-month period.

103       Any meeting of any political party executive committee  
104 shall be held only after public notice and notice to each member  
105 is given according to party rules and shall be open to all  
106 members affiliated with such party. Meetings shall be con-  
107 ducted according to party rules, all official actions shall be  
108 made by voice vote, and minutes shall be maintained and shall  
109 be open to inspection by members affiliated with such party.

---

## CHAPTER 132

**(Com. Sub. for S. B. 196 — By Senators Wooton, Burnette, Hunter, Kessler, Oliverio, Redd, Ross, Rowe, Snyder, Facemyer, Deem, McCabe, Mckenzie and Minard)**

---

[Passed February 5, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections twenty-nine, thirty and thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections seven and nineteen, article two of said chapter; to amend and reenact sections two-a, three, four, seven, eight and eleven, article three of said chapter; to amend and reenact sections ten and twenty, article four of said chapter; to amend and reenact sections three, nineteen-a and twenty-one, article four-a of said chapter; to amend and reenact section thirteen, article five of said chapter; to amend and reenact sections two, four-a and six, article six of said chapter; to amend and reenact section six, article seven of said chapter; to amend and reenact section four-a, article eight of said chapter; and to amend and reenact section thirteen, article five, chapter eight of said code, all relating to election laws generally; defining term “election official trainee”; providing for the discretionary appointment of election official trainees; requiring county executive committees to nominate certain number of alternates to serve as election officials; authorizing governing bodies to confirm qualifications of persons nominated to serve as election officials; removing requirement that election officials appointed on election day be from same political party as person originally appointed to serve; prohibiting candidates from assisting persons who are voting; eliminating inconsistencies relating to extended hours of voter registration; establishing

when separate municipal precinct books must be maintained; eliminating prohibition on presence of metal detectors in absentee voting location of courthouse; reducing the time period in which persons may vote a regular absentee ballot; changing the process of delivery and counting of certain absentee ballots; authorizing county clerks to determine whether absentee ballots should be counted at the precincts or the central counting center; requiring election officials to report certain findings to the prosecuting attorney; permitting absentee ballots without proper signatures of election officials to be counted in certain circumstances; providing for the use of electronic voting or direct recording election equipment where available for absentee voting; shortening time period in which county commissions may adopt electronic voting systems; providing for application of amendment; permitting ballots voted on election day without proper signatures of election officials to be counted in certain circumstances; authorizing language on ballot describing fact that no candidates are listed for vacant positions; making certain technical revisions; eliminating filing fee for write-in candidates; providing options for the counting of absentee ballots in paper ballot systems; clarifying certain language pertaining to election contests and confirming applicability of law to municipal elections; authorizing the reopening of political party committees for a limited period of time; and requiring municipalities to maintain permanent registration of voters.

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

That sections twenty-nine, thirty and thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections seven and nineteen, article two of said chapter be amended and reenacted; that sections two-a, three, four, seven, eight and eleven, article three of said chapter be amended and reenacted; that sections ten and twenty, article four of said chapter be amended and reenacted; that sections three, nineteen-a and twenty-one, article four-a of said

chapter be amended and reenacted; that section thirteen, article five of said chapter be amended and reenacted; that sections two, four-a and six, article six of said chapter be amended and reenacted; that section six, article seven of said chapter be amended and reenacted; that section four-a, article eight of said chapter be amended and reenacted; and that section thirteen, article five, chapter eight of said code be amended and reenacted, all to read as follows:

#### Chapter

3. Elections.
8. Municipal Corporations.

### CHAPTER 3. ELECTIONS.

#### Article

1. General Provisions and Definitions.
2. Registration of Voters.
3. Voting by Absentees.
4. Voting Machines.
- 4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.
7. Contested Elections.
8. Regulation and Control of Elections.

#### ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

- §3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.
- §3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.
- §3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

#### **§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.**

- 1 (a) For the purpose of this article:
- 2 (1) The term "standard receiving board" means those
- 3 election officials charged with conducting the process of voting
- 4 within a precinct and consists of five persons, including one
- 5 team of poll clerks, one team of election commissioners for the

6 ballot box and one additional election commissioner: *Provided*,  
7 That if a municipal election is held at a time when there is no  
8 county or state election, then the standard receiving board is to  
9 consist of four persons, including one team of poll clerks and  
10 one team of election commissioners for the ballot box;

11 (2) The term “expanded receiving board” means a standard  
12 receiving board as defined in subdivision (1) of this subsection  
13 and one additional team of poll clerks;

14 (3) The term “counting board” means those election  
15 officials charged with counting the ballots at the precinct in  
16 counties using paper ballots and includes one team of poll  
17 clerks, one team of election commissioners and one additional  
18 commissioner;

19 (4) The term “team of poll clerks” or “team of election  
20 commissioners” means two persons appointed by opposite  
21 political parties to perform the specific functions of the office:  
22 *Provided*, That no team of poll clerks or team of election  
23 commissioners may consist of two persons with the same  
24 registered political party affiliation or two persons registered  
25 with no political party affiliation; and

26 (5) The term “election official trainee” means an individual  
27 who is sixteen or seventeen years of age who meets the require-  
28 ments of subdivisions (2), (3), (4), (5) and (6), subsection (a),  
29 section twenty-eight of this article who serves as a trainee to the  
30 standard receiving board on a volunteer basis by assisting the  
31 standard receiving board in performing its official duties and  
32 who receives credits for an official community service program  
33 as may be required to obtain a high school diploma.

34 (b) The composition of boards of election officials shall be  
35 as follows:

36 (1) In any primary, general or special election other than a  
37 presidential primary or presidential general election, each  
38 election precinct is to have one standard receiving board;

39 (2) In presidential primary and presidential general elec-  
40 tions, each election precinct is to have one receiving board as  
41 follows:

42 (A) For precincts of less than five hundred registered  
43 voters, one standard receiving board;

44 (B) For precincts of five hundred to seven hundred regis-  
45 tered voters, one standard receiving board or, at the discretion  
46 of the county commission, one expanded receiving board; and

47 (C) For precincts of more than seven hundred registered  
48 voters, one expanded receiving board;

49 (3) In any election conducted using paper ballots, counting  
50 boards may be allowed, disallowed or required as follows:

51 (A) For any state, county or municipal special election, no  
52 counting board may be allowed;

53 (B) In a statewide primary or general election, one counting  
54 board is required for any precinct of more than four hundred  
55 registered voters and one counting board may be allowed, at the  
56 discretion of the county commission, for any precinct of at least  
57 two hundred but no more than four hundred registered voters;  
58 and

59 (C) In a municipal primary or general election, one count-  
60 ing board may be allowed, at the discretion of the municipal  
61 governing body, for any precinct of more than two hundred  
62 registered voters.



63 (c) For each primary and general election in the county, the  
64 county commission shall designate the number and type of  
65 election boards for the various precincts according to the  
66 provisions of this section. At least eighty-four days before each  
67 primary and general election the county commission shall  
68 notify the county executive committees of the two major  
69 political parties in writing of the number of nominations which  
70 may be made for poll clerks and election commissioners.

71 (d) For each municipal election, the governing body of the  
72 municipality shall perform the duties of the county commission  
73 as provided in this section.

74 (e) For each primary, general or special election in the  
75 county, the county commission, and for each municipal  
76 election, the governing body of the municipality, may appoint  
77 one or two election official trainees for each precinct.

**§3-1-30. Nomination and appointment of election officials and  
alternates; notice of appointment; appointment to  
fill vacancies in election boards.**

1 (a) For any primary, general or special election held  
2 throughout a county, poll clerks and election commissioners  
3 may be nominated as follows:

4 (1) The county executive committee for each of the two  
5 major political parties may, by a majority vote of the committee  
6 at a duly called meeting, nominate one qualified person for each  
7 team of poll clerks and one qualified person for each team of  
8 election commissioners to be appointed for the election;

9 (2) The appointing body shall select one qualified person as  
10 the additional election commissioner for each board of election  
11 officials;

12       (3) Each county executive committee shall also nominate  
13 qualified persons as alternates for at least ten percent of the poll  
14 clerks and election commissioners to be appointed in the county  
15 and is authorized to nominate as many qualified persons as  
16 alternates as there are precincts in the county to be called upon  
17 to serve in the event any of the persons originally appointed fail  
18 to accept appointment or fail to appear for the required training  
19 or for the preparation or execution of their duties;

20       (4) When an executive committee nominates qualified  
21 persons as poll clerks, election commissioners or alternates, the  
22 committee, or its chairman or secretary on its behalf, shall file  
23 in writing with the appointing body, no later than the fifty-sixth  
24 day before the election, a list of those persons nominated and  
25 the positions for which they are designated.

26       (b) For any municipal primary, general or special election,  
27 the poll clerks and election commissioners may be nominated  
28 as follows:

29       (1) In municipalities which have municipal executive  
30 committees for the two major political parties in the municipal-  
31 ity, each committee may nominate election officials in the  
32 manner provided for the nomination of election officials by  
33 county executive committees in subsection (a) of this section;

34       (2) In municipalities which do not have executive commit-  
35 tees, the governing body shall provide by ordinance for a  
36 method of nominating election officials or shall nominate as  
37 many eligible persons as are required, giving due consideration  
38 to any recommendations made by voters of the municipality or  
39 by candidates on the ballot.

40       (c) The governing body responsible for appointing election  
41 officials is:

42 (1) The county commission for any primary, general or  
43 special election ordered by the county commission and any  
44 joint county and municipal election;

45 (2) The board of education for any special election ordered  
46 by the board of education conducted apart from any other  
47 election;

48 (3) The municipal governing body for any primary, general  
49 or special municipal election ordered by the governing body.

50 (d) The qualifications for persons nominated to serve as  
51 election officials may be confirmed prior to appointment by the  
52 clerk of the county commission for any election ordered by the  
53 county commission or for any joint county and municipal  
54 election and by the official recorder of the municipality for a  
55 municipal election.

56 (e) The appropriate governing body shall appoint the  
57 election officials for each designated election board no later  
58 than the forty-ninth day before the election as follows:

59 (1) Those eligible persons whose nominations for poll clerk  
60 and election commissioner were timely filed by the executive  
61 committees and those additional persons selected to serve as an  
62 election commissioner are to be appointed;

63 (2) The governing body shall fill any positions for which no  
64 nominations were filed.

65 (f) At the same time as the appointment of election officials  
66 or at a subsequent meeting, the governing body shall appoint  
67 persons as alternates: *Provided*, That no alternate may be  
68 eligible for compensation for election training unless the  
69 alternate is subsequently appointed as an election official, or is  
70 instructed to attend and actually attends training as an alternate,

71 and, if called to do so, also serves at the polls on election day.  
72 Alternates shall be appointed and serve as follows:

73 (1) Those alternates nominated by the executive committees  
74 shall be appointed;

75 (2) The governing body may appoint additional alternates  
76 who may be called upon to fill vacancies after all alternates  
77 designated by the executive committees have been assigned,  
78 have declined to serve or have failed to attend training; and

79 (3) The governing body may determine the number of  
80 persons who may be instructed to attend training as alternates.

81 (g) The clerk of the county commission shall appoint  
82 qualified persons to fill all vacancies existing after all previ-  
83 ously appointed alternates have been assigned, have declined to  
84 serve or have failed to attend training.

85 (h) Within seven days following appointment, the clerk of  
86 the county commission shall notify, by first-class mail, all  
87 election commissioners, poll clerks and alternates of the fact of  
88 their appointment and include with the notice a response notice  
89 form for the appointed person to return indicating whether or  
90 not he or she agrees to serve in the specified capacity in the  
91 election.

92 (i) The position of any person notified of appointment who  
93 fails to return the response notice or otherwise confirm to the  
94 clerk of the county commission his or her agreement to serve  
95 within fourteen days following the date of appointment is  
96 considered vacant and the clerk shall proceed to fill the vacan-  
97 cies according to the provisions of this section.

98 (j) If an appointed election official fails to appear at the  
99 polling place by forty-five minutes past five o'clock a.m. on  
100 election day, the election officials present shall contact the

101 office of the clerk of the county commission for assistance in  
102 filling the vacancy and the clerk shall proceed as follows:

103 (1) The clerk may attempt to contact the person originally  
104 appointed, may assign an alternate nominated by the same  
105 political party as the person absent if one is available or, if no  
106 alternate is available, may appoint another eligible person;

107 (2) If the election officials present are unable to contact the  
108 clerk within a reasonable time, they shall diligently attempt to  
109 fill the position with an eligible person of the same political  
110 party as the party that nominated the person absent until a  
111 qualified person has agreed to serve;

112 (3) If two teams of election officials, as defined in section  
113 twenty-nine of this article, are present at the polling place, the  
114 person appointed to fill a vacancy in the position of the addi-  
115 tional commissioner may be of either political party.

116 (k) In a municipal election, the recorder or other official  
117 designated by charter or ordinance to perform election responsi-  
118 bilities shall perform the duties of the clerk of the county  
119 commission as provided in this section.

**§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.**

1 (a) Any person desiring to vote in an election shall, upon  
2 entering the election room, clearly state his or her name and  
3 residence to one of the poll clerks who shall thereupon an-  
4 nounce the same in a clear and distinct tone of voice. If that  
5 person is found to be duly registered as a voter at that precinct,  
6 he or she shall be required to sign his or her name in the space  
7 marked "signature of voter" on the pollbook prescribed and  
8 provided for the precinct. If that person is physically or  
9 otherwise unable to sign his or her name, his or her mark shall  
10 be affixed by one of the poll clerks in the presence of the other

11 and the name of the poll clerk affixing the voter's mark shall be  
12 indicated immediately under the affixation. No ballot may be  
13 given to the person until he or she so signs his or her name on  
14 the pollbook or his or her signature is so affixed thereon.

15 (b) The clerk of the county commission is authorized, upon  
16 verification that the precinct at which a handicapped person is  
17 registered to vote is not handicap accessible, to transfer that  
18 person's registration to the nearest polling place in the county  
19 which is handicap accessible. Requests by these persons for a  
20 transfer of registration shall be received by the county clerk no  
21 later than thirty days prior to the date of the election. Any  
22 handicapped person who has not made a request for a transfer  
23 of registration at least thirty days prior to the date of the  
24 election may vote a challenged ballot at a handicap accessible  
25 polling place in the county of his or her registration and, if  
26 during the canvass the county commission determines that the  
27 person had been registered in a precinct not handicap accessi-  
28 ble, the voted ballot, if otherwise valid, shall be counted. The  
29 handicapped person may vote in the precinct to which the  
30 registration was transferred only as long as the disability exists  
31 or the precinct from which the handicapped person was  
32 transferred remains inaccessible to the handicapped. To ensure  
33 confidentiality of the transferred ballot, the county clerk  
34 processing the ballot shall provide the voter with an unmarked  
35 envelope and an outer envelope designated "challenged  
36 ballot/handicapped voter". After validation of the ballot at the  
37 canvass, the outer envelope shall be destroyed and the handi-  
38 capped voter's ballot shall be placed with other approved  
39 challenged ballots prior to removal of the ballot from the  
40 unmarked envelope.

41 (c) When the voter's signature is properly on the pollbook,  
42 the two poll clerks shall sign their names in the places indicated  
43 on the back of the official ballot and shall deliver the ballot to  
44 the voter to be voted by him or her then without leaving the

45 election room. If he or she returns the ballot spoiled to the  
46 clerks, they shall immediately mark the ballot "spoiled" and it  
47 shall be preserved and placed in a spoiled ballot envelope  
48 together with other spoiled ballots to be delivered to the board  
49 of canvassers and deliver to the voter another official ballot,  
50 signed by the clerks on the reverse side as before done. The  
51 voter shall thereupon retire alone to the booth or compartment  
52 prepared within the election room for voting purposes and there  
53 prepare his or her ballot, using a ballpoint pen of not less than  
54 five inches in length or other indelible marking device of not  
55 less than five inches in length. In voting for candidates in  
56 general and special elections, the voter shall comply with the  
57 rules and procedures prescribed in section five, article six of  
58 this chapter.

59 (d) It is the duty of a poll clerk, in the presence of the other  
60 poll clerk, to indicate by a check mark inserted in the appropri-  
61 ate place on the registration record of each voter the fact that  
62 the voter voted in the election. In primary elections the clerk  
63 shall also insert thereon a distinguishing initial or initials of the  
64 political party for whose candidates the voter voted. If a person  
65 is challenged at the polls, the challenge shall be indicated by the  
66 poll clerks on the registration record together with the name of  
67 the challenger. The subsequent removal of the challenge shall  
68 be recorded on the registration record by the clerk of the county  
69 commission.

70 (e)(1) No voter may receive any assistance in voting unless,  
71 by reason of blindness, disability, advanced age or inability to  
72 read and write, that voter is unable to vote without assistance.  
73 Any voter qualified to receive assistance in voting under the  
74 provisions of this section may:

75 (A) Declare his or her choice of candidates to an election  
76 commissioner of each political party who, in the presence of the  
77 voter and in the presence of each other, shall prepare the ballot

78 for voting in the manner hereinbefore provided and, on request,  
79 shall read over to the voter the names of candidates on the  
80 ballot as so prepared;

81 (B) Require the election commissioners to indicate to him  
82 or her the relative position of the names of the candidates on the  
83 ballot, whereupon the voter shall retire to one of the booths or  
84 compartments to prepare his or her ballot in the manner  
85 hereinbefore provided;

86 (C) Be assisted by any person of the voter's choice, other  
87 than the voter's present or former employer or agent of that  
88 employer, the officer or agent of a labor union of which the  
89 voter is a past or present member, or a candidate on the ballot;  
90 or

91 (D) If he or she is handicapped, vote from an automobile,  
92 outside the polling place or precinct, in the presence of an  
93 election commissioner of each political party if all of the  
94 following conditions are met:

95 (i) The polling place is not handicap accessible; and

96 (ii) No voters are voting or waiting to vote inside the  
97 polling place.

98 (2) Any voter who requests assistance in voting but who is  
99 believed not to be qualified for such assistance under the  
100 provisions of this section shall nevertheless be permitted to vote  
101 a challenged ballot with the assistance of any person herein  
102 authorized to render assistance.

103 (3) Any one or more of the election commissioners or poll  
104 clerks in the precinct may challenge the ballot on the ground  
105 that the voter thereof received assistance in voting it when in  
106 his or their opinion that the person who received assistance in  
107 voting is not so illiterate, blind, disabled or of such advanced  
108 age as to have been unable to vote without assistance. The



109 election commissioner or poll clerk or commissioners or poll  
110 clerks making the challenge shall enter the challenge and reason  
111 therefor on the form and in the manner prescribed or authorized  
112 by article three of this chapter.

113 (4) An election commissioner or other person who assists  
114 a voter in voting:

115 (A) May not in any manner request or seek to persuade or  
116 induce the voter to vote any particular ticket or for any particu-  
117 lar candidate or for or against any public question and must not  
118 keep or make any memorandum or entry of anything occurring  
119 within the voting booth or compartment and must not, directly  
120 or indirectly, reveal to any person the name of any candidate  
121 voted for by the voter or which ticket he or she had voted or  
122 how he or she had voted on any public question or anything  
123 occurring within the voting booth or compartment or voting  
124 machine booth except when required pursuant to law to give  
125 testimony as to the matter in a judicial proceeding; and

126 (B) Shall sign a written oath or affirmation before assisting  
127 the voter on a form prescribed by the secretary of state stating  
128 that he or she will not override the actual preference of the voter  
129 being assisted, attempt to influence the voter's choice or  
130 mislead the voter into voting for someone other than the  
131 candidate of voter's choice. The person assisting the voter shall  
132 also swear or affirm that he or she believes that the voter is  
133 voting free of intimidation or manipulation: *Provided*, That no  
134 person providing assistance to a voter is required to sign an oath  
135 or affirmation where the reason for requesting assistance is the  
136 voter's inability to vote without assistance because of blindness  
137 as defined in section three, article fifteen, chapter five of this  
138 code and the inability to vote without assistance because of  
139 blindness is certified in writing by a physician of the voter's  
140 choice and is on file in the office of the clerk of the county  
141 commission.

142       (5) In accordance with instructions issued by the secretary  
143 of state, the clerk of the county commission shall provide a  
144 form entitled "list of assisted voters", the form of which list  
145 shall likewise be prescribed by the secretary of state. The  
146 commissioners shall enter the name of each voter receiving  
147 assistance in voting the ballot, together with the poll slip  
148 number of that voter and the signature of the person or the  
149 commissioner from each party who assisted the voter. If no  
150 voter has been assisted in voting the ballot as herein provided,  
151 the commissioners shall likewise make and subscribe to an oath  
152 of that fact on the list.

153       (f) After preparing the ballot the voter shall fold the same  
154 so that the face is not exposed and so that the names of the poll  
155 clerks thereon are seen. The voter shall then announce his or her  
156 name and present his or her ballot to one of the commissioners  
157 who shall hand the same to another commissioner, of a different  
158 political party, who shall deposit it in the ballot box if the ballot  
159 is the official one and properly signed. The commissioner of  
160 election may inspect every ballot before it is deposited in the  
161 ballot box to ascertain whether it is single, but without unfold-  
162 ing or unrolling it so as to disclose its content. When the voter  
163 has voted, he or she shall retire immediately from the election  
164 room and beyond the sixty-foot limit thereof and may not return  
165 except by permission of the commissioners.

166       (g) Following the election, the oaths or affirmations  
167 required by this section from those assisting voters, together  
168 with the "list of assisted voters", shall be returned by the  
169 election commissioners to the clerk of the county commission  
170 along with the election supplies, records and returns, who shall  
171 make the oaths, affirmations and list available for public  
172 inspection and who shall preserve these for a period of twenty-  
173 two months or until disposition is authorized or directed by the  
174 secretary of state, or court of record.

175 (h) Any person making an oath or affirmation required  
176 under the provisions of this section who knowingly swears  
177 falsely or any person who counsels, advises, aids or abets  
178 another in the commission of false swearing under this section  
179 is guilty of a misdemeanor and, upon conviction thereof, shall  
180 be fined not more than one thousand dollars or imprisoned in  
181 the county or regional jail for a period of not more than one  
182 year, or both fined and imprisoned.

183 (i) Any election commissioner or poll clerk who authorizes  
184 or provides unchallenged assistance to a voter when the voter  
185 is known to the election commissioner or poll clerk not to  
186 require assistance in voting is guilty of a felony and, upon  
187 conviction thereof, shall be fined not more than five thousand  
188 dollars or imprisoned in a state correctional facility for a period  
189 of not less than one year nor more than five years, or both fined  
190 and imprisoned.

## **ARTICLE 2. REGISTRATION OF VOTERS.**

§3-2-7. Hours and days of registration in the office of the clerk of the county commission; in-person application for voter registration; identification required.

§3-2-19. Maintenance of active and inactive registration files in precinct record books and county alphabetical registration file.

### **§3-2-7. Hours and days of registration in the office of the clerk of the county commission; in-person application for voter registration; identification required.**

1 (a) The clerk of the county commission shall provide voter  
2 registration services at all times when the office of the clerk is  
3 open for regular business. In addition, the office of the clerk  
4 shall remain open for voter registration from 9:00 a.m. until  
5 8:00 p.m. on the two weekdays immediately preceding the close  
6 of registration for statewide primary and general elections,  
7 other than legal holidays, and from 9:00 a.m. until 5:00 p.m. on

8 the Saturday prior to the close of registration for statewide  
9 primary and general elections.

10 (b) Any eligible voter who desires to apply for voter  
11 registration in person at the office of the clerk of the county  
12 commission shall complete a voter registration application on  
13 the prescribed form and shall sign the oath required on that  
14 application in the presence of the clerk of the county commis-  
15 sion or his or her deputy. The applicant shall then present valid  
16 identification and proof of age, except that the clerk may waive  
17 the proof of age requirement if the applicant is clearly over the  
18 age of eighteen.

19 (c) The clerk shall attempt to establish whether the resi-  
20 dence address given is within the boundaries of an incorporated  
21 municipality and, if so, make the proper entry required for  
22 municipal residents to be properly identified for municipal  
23 voter registration purposes.

24 (d) Upon receipt of the completed registration application,  
25 the clerk shall either:

26 (1) Provide a notice of procedure for verification and notice  
27 of disposition of the application and immediately begin the  
28 verification process prescribed by the provisions of section  
29 sixteen of this article; or

30 (2) Upon presentation of a current driver's license or state-  
31 issued identification card containing the residence address as it  
32 appears on the voter registration application, issue the receipt  
33 of registration.

**§3-2-19. Maintenance of active and inactive registration files in  
precinct record books and county alphabetical  
registration file.**

1       (a) Each county shall continue to maintain a record of each  
2 active and inactive voter registration in precinct registration  
3 books until the state uniform data system is adopted pursuant to  
4 the provisions of section twenty of this article, fully imple-  
5 mented and given final approval by the secretary of state. The  
6 precinct registration books shall be maintained as follows:

7       (1) Each active voter registration shall be entered in the  
8 precinct book or books for the county precinct in which the  
9 voter's residence is located and shall be filed alphabetically by  
10 name, alphabetically within categories, or by numerical street  
11 address, as determined by the clerk of the county commission  
12 for the effective administration of registration and elections. No  
13 active voter registration record shall be removed from the  
14 precinct registration books unless the registration is lawfully  
15 transferred or canceled pursuant to the provisions of this article.

16       (2) Each voter registration which is designated "inactive"  
17 pursuant to the procedures prescribed in section twenty-seven  
18 of this article shall be retained in the precinct book for the  
19 county precinct in which the voter's last recorded residence  
20 address is located until the time period expires for which a  
21 record must remain on the inactive files. Every inactive  
22 registration shall be clearly identified by a prominent tag or  
23 notation or arranged in a separate section in the precinct book  
24 clearly denoting the registration status. No inactive voter  
25 registration record shall be removed from the precinct registra-  
26 tion books unless the registration is lawfully transferred or  
27 canceled pursuant to the provisions of this article.

28       (b) For municipal elections, the registration records of  
29 active and inactive voters shall be maintained as follows:

30       (1) County precinct books shall be used in municipal  
31 elections when the county precinct boundaries and the municipi-  
32 pal precinct boundaries are the same and all registrants of the

33 precinct are entitled to vote in state, county and municipal  
34 elections within the precinct or when the registration records of  
35 municipal voters within a county precinct are separated and  
36 maintained in a separate municipal section or book for that  
37 county precinct and can be used either alone or in combination  
38 with other precinct books to make up a complete set of registra-  
39 tion records for the municipal election precinct.

40 (2) Upon request of the municipality, and if the clerk of the  
41 county commission does not object, separate municipal precinct  
42 books shall be maintained in cases where municipal or ward  
43 boundaries divide county precincts and it is impractical to use  
44 county precinct books or separate municipal sections of those  
45 precinct books. If the clerk of the county commission objects to  
46 the request of a municipality for separate municipal precinct  
47 books, the state election commission must determine whether  
48 the separate municipal precinct books should be maintained.

49 (3) No registration record may be removed from a municipi-  
50 pal registration record unless the registration is lawfully  
51 transferred or canceled pursuant to the provisions of this article  
52 in both the county and the municipal registration records.

53 (c) No later than the first day of January, one thousand nine  
54 hundred ninety-five, and within thirty days following the entry  
55 of any annexation order or change in street names or numbers,  
56 the governing body of an incorporated municipality shall file  
57 with the clerk of the county commission a certified current  
58 official municipal boundary map and a list of streets and ranges  
59 of street numbers within the municipality to assist the clerk in  
60 determining whether a voter's address is within the boundaries  
61 of the municipality.

62 (d) Each county, so long as precinct registration books are  
63 maintained, shall maintain a duplicate record of every active  
64 and inactive voter registration in a county alphabetical file. The

65 alphabetical file may be maintained on individual paper forms  
66 or, upon approval of the secretary of state of a qualified data  
67 storage program, may be maintained in digitized format. A  
68 qualified data storage program shall be required to contain the  
69 same information for each voter registration as the precinct  
70 books, shall be subject to proper security from unauthorized  
71 alteration and shall be regularly duplicated to backup data  
72 storage to prevent accidental destruction of the information on  
73 file.

### **ARTICLE 3. VOTING BY ABSENTEES.**

- §3-3-2a. Voting booths within public view to be provided; prohibition against display of campaign material.
- §3-3-3. Voting an absentee ballot in person.
- §3-3-4. Assistance to voter in voting an absent voter's ballot by personal appearance; penalties.
- §3-3-7. Delivery of absentee ballots to polling places.
- §3-3-8. Disposition and counting of absent voters' ballots.
- §3-3-11. Preparation, number and handling of absent voters' ballots.

#### **§3-3-2a. Voting booths within public view to be provided; prohibition against display of campaign material.**

1 Throughout the period of absentee voting in person, the  
2 official designated to supervise and conduct absentee voting  
3 shall make the following provisions for voting:

4 (1) The official shall provide a sufficient number of voting  
5 booths or devices appropriate to the voting system at which  
6 voters may prepare their ballots. The booths or devices are to be  
7 in an area separate from but within clear view of the public  
8 entrance area of the official's office or other area designated by  
9 the county commission for absentee voting and are to be  
10 arranged to ensure the voter complete privacy in casting the  
11 ballot.

12 (2) The official shall make the voting area secure from  
13 interference with the voter and shall ensure that voted and  
14 unvoted ballots are at all times secure from tampering. No  
15 person, other than a person lawfully assisting the voter accord-  
16 ing to the provisions of this chapter, may be permitted to come  
17 within five feet of the voting booth while the voter is voting. No  
18 person, other than the officials or employees of the official  
19 designated to supervise and conduct absentee voting or mem-  
20 bers of the board of ballot commissioners assigned to conduct  
21 absentee voting, may enter the area or room set aside for voting.

22 (3) The official designated to supervise and conduct  
23 absentee voting shall request the county commission designate  
24 another area within the county courthouse or any annex of the  
25 courthouse as a portion of the official's office for the purpose  
26 of absentee voting in the following circumstances:

27 (A) If the voting area is not accessible to voters with  
28 physical disabilities;

29 (B) If the voting area is not within clear view of the public  
30 entrance of the office of the official designated to supervise and  
31 conduct absentee voting; or

32 (C) If there is no suitable area for absentee voting within  
33 the office.

34 Any designated area is subject to the same requirements as  
35 the regular absentee voting area.

36 (4) No person may do any electioneering nor may any  
37 person display or distribute in any manner, or authorize the  
38 display or distribution of, any literature, posters or material of  
39 any kind which tends to influence the voting for or against any  
40 candidate or any public question on the property of the county  
41 courthouse or any annex facilities during the entire period of  
42 regular in-person absentee voting. The official designated to



43 supervise and conduct absentee voting is hereby authorized to  
44 remove the material and to direct the sheriff of the county to  
45 enforce the prohibition.

**§3-3-3. Voting an absentee ballot in person.**

1 (a) Regular absentee voting in person is to be conducted  
2 during regular business hours beginning on the fifteenth day  
3 before the election and continuing through 1:00 p.m. the  
4 Monday before the election for any election held on a Tuesday,  
5 or continuing through 1:00 p.m. the day before the election for  
6 any election held on another day. For any election held on a  
7 Tuesday, regular absentee voting in person is to be available  
8 from 9:00 a.m. to 5:00 p.m. on the Saturday before the election.

9 (b) Special absentee voting in person for persons eligible to  
10 vote an absentee ballot under the provisions of subsection (c),  
11 section one of this article is to be conducted during regular  
12 business hours in the office of the official designated to  
13 supervise and conduct absentee voting beginning on the forty-  
14 second day before the election and continuing until the first day  
15 when regular absentee voting in person begins. Any person  
16 seeking to vote absentee under this subsection is to first give an  
17 affidavit, on a form prescribed by the secretary of state, stating  
18 under oath the specific circumstances which prevent voting  
19 absentee during the period for regular absentee voting in person  
20 or by mail.

21 (c) Upon oral request, the official designated to supervise  
22 and conduct absentee voting shall provide the voter with the  
23 appropriate application for voting absentee in person, as  
24 provided in this article. The voter shall complete and sign the  
25 application in his or her own handwriting or, if the voter is  
26 unable to complete the application because of illiteracy or  
27 physical disability, the person assisting the voter and witnessing

28 the mark of the voter shall sign his or her name in the space  
29 provided.

30 (d) Upon completion, the application is to be immediately  
31 returned to the official designated to supervise and conduct  
32 absentee voting who shall determine:

33 (1) Whether the application has been completed as required  
34 by law;

35 (2) Whether the applicant is duly registered to vote in the  
36 precinct of his or her residence and, in a primary election, is  
37 qualified to vote the ballot of the political party requested; and

38 (3) Whether the applicant is authorized for the reasons  
39 given in the application to vote an absentee ballot by personal  
40 appearance during the special absentee voting period at the time  
41 of the application.

42 (e) If the official designated to supervise and conduct  
43 absentee voting determines the conditions provided in subsection  
44 (d) of this section have not been met, or has evidence that  
45 any of the information contained in the application is not true,  
46 the clerk shall challenge the voter's absentee ballot as provided  
47 in this article.

48 (f) The official designated to supervise and conduct  
49 absentee voting shall provide each person voting an absentee  
50 ballot in person the following items to be printed as prescribed  
51 by the secretary of state:

52 (1) One of each type of official absentee ballot the voter is  
53 eligible to vote, prepared according to law;

54 (2) For all punch card and paper ballot voting and for  
55 optical scan ballots voted after election supplies are delivered  
56 to the election supply commissioner, one envelope, unsealed,

57 which may have no marks except the designation "Absent  
58 Voter's Ballot Envelope No. 1" and printed instructions to the  
59 voter;

60 (3) For all punch card and paper ballot voting and for  
61 optical scan ballots voted after election supplies are delivered  
62 to the election supply commissioner, one envelope, unsealed,  
63 designated "Absent Voter's Ballot Envelope No. 2"; and

64 (4) For optical scan voting systems, ballots, a secrecy  
65 sleeve and access to a ballot box secured by two locks with  
66 keys kept by the president of the county commission and the  
67 county clerk.

68 (g) The voter shall enter the voting booth alone and there  
69 mark the ballot: *Provided*, That the voter may have assistance  
70 in voting according to the provisions of section four of this  
71 article. After the voter has voted the ballot or ballots, the punch  
72 card and paper absentee voter shall: (1) Place the ballot or  
73 ballots in envelope no. 1 and seal that envelope; (2) place the  
74 sealed envelope no. 1 in envelope no. 2 and seal that envelope;  
75 (3) complete and sign the forms on envelope no. 2; and (4)  
76 return that envelope to the official designated to supervise and  
77 conduct the absentee voting.

78 (h) Upon receipt of the sealed envelope, the official  
79 designated to supervise and conduct the absentee voting shall:

80 (1) Enter onto the envelope any other required information;

81 (2) Enter the challenge, if any, to the ballot;

82 (3) Enter the required information into the permanent  
83 record of persons applying for and voting an absentee ballot in  
84 person; and

85 (4) Place the sealed envelope in a secure location in the  
86 official's office, to remain until delivered to the polling place  
87 or, in the case of a challenged ballot, to the board of canvassers.

**§3-3-4. Assistance to voter in voting an absent voter's ballot by  
personal appearance; penalties.**

1 (a) Any registered voter who requires assistance to vote by  
2 reason of blindness, disability, advanced age or inability to read  
3 and write may be given assistance by a person of the voter's  
4 choice: *Provided*, That the assistance may not be given by the  
5 voter's present or former employer or agent of that employer,  
6 by the officer or agent of a labor union of which the voter is a  
7 past or present member or by a candidate on the ballot.

8 (b) Any voter who requests assistance in voting an absent  
9 voter's ballot but who is determined by the official designated  
10 to supervise and conduct absentee voting not to be qualified for  
11 assistance under the provisions of this section and section  
12 thirty-four, article one of this chapter may vote a challenged  
13 absent voter's ballot with the assistance of any person autho-  
14 rized to render assistance pursuant to this section. The official  
15 designated to supervise and conduct absentee voting shall in  
16 this case challenge the absent voter's ballot on the basis of his  
17 or her determination that the voter is not qualified for assis-  
18 tance.

19 (c) Any one or more of the election commissioners or poll  
20 clerks in the precinct to which an absent voter's ballot has been  
21 sent may challenge the ballot on the ground that the voter  
22 received assistance in voting it when in his or their opinion: (1)  
23 The person who received the assistance in voting the absent  
24 voter's ballot did not require assistance; or (2) the person who  
25 provided the assistance in voting did not make an affidavit as  
26 required by this section. The election commissioner or poll  
27 clerk or commissioners or poll clerks making a challenge shall

28 enter the challenge and reason for the challenge on the form and  
29 in the manner prescribed or authorized by this article.

30 (d) Before entering the voting booth or compartment, the  
31 person who intends to provide a voter assistance in voting shall  
32 make an affidavit, the form of which is to be prescribed by the  
33 secretary of state, that he or she will not in any manner request  
34 or seek to persuade or induce the voter to vote any particular  
35 ticket or for any particular candidate or for or against any public  
36 question and that he or she will not keep or make any memoran-  
37 dum or entry of anything occurring within the voting booth or  
38 compartment and that he or she will not, directly or indirectly,  
39 reveal to any person the name of any candidate voted for by the  
40 voter or which ticket he or she had voted or how he or she had  
41 voted on any public question or anything occurring within the  
42 voting booth or compartment or voting machine booth, except  
43 when required pursuant to law to give testimony as to the  
44 matter in a judicial proceeding.

45 (e) In accordance with instructions issued by the secretary  
46 of state, the official designated to supervise and conduct  
47 absentee voting shall provide a form entitled "List of Assisted  
48 Voters", prescribed by the secretary of state, which list is to be  
49 divided into two parts. Part A is to be entitled "Unchallenged  
50 Assisted Voters" and Part B is to be entitled "Challenged  
51 Assisted Voters". Under Part A, the official designated to  
52 supervise and conduct absentee voting shall enter the name of  
53 each voter receiving unchallenged assistance in voting an  
54 absent voter's ballot, the address of the voter assisted, the  
55 nature of the disability which qualified the voter for assistance  
56 in voting an absent voter's ballot, the name of the person  
57 providing the voter with assistance in voting an absent voter's  
58 ballot, the fact that the person rendering the assistance in voting  
59 made and subscribed to the oath required by this section and the  
60 signature of the official designated to supervise and conduct  
61 absentee voting certifying to the fact that he or she had deter-

62 mined that the voter who received assistance in voting an absent  
63 voter's ballot was qualified to receive the assistance under the  
64 provisions of this section. Under Part B, the official designated  
65 to supervise and conduct absentee voting shall enter the name  
66 of each voter receiving challenged assistance in voting, the  
67 address of the voter receiving challenged assistance, the reason  
68 for the challenge and the name of the person providing the  
69 challenged voter with assistance in voting. At the close of the  
70 period provided for voting an absent voter's ballot by personal  
71 appearance, the official designated to supervise and conduct  
72 absentee voting shall make and subscribe to an oath on the list  
73 that the list is correct in all particulars; if no voter has been  
74 assisted in voting an absent voter's ballot as provided in this  
75 section, the official designated to supervise and conduct  
76 absentee voting shall make and subscribe to an oath of that fact  
77 on the list. The "List of Assisted Voters" is to be available for  
78 public inspection in the office of the official designated to  
79 supervise and conduct absentee voting during regular business  
80 hours throughout the period provided for voting an absent  
81 voter's ballot by personal appearance and, unless otherwise  
82 directed by the secretary of state, the official shall transmit the  
83 list, together with the affidavits, applications and absent voters'  
84 ballots, to the precincts on election day.

85 (f) Following the election, the affidavits required by this  
86 section from persons providing assistance in voting, together  
87 with the "List of Assisted Voters", are to be returned by the  
88 election commissioners to the clerk of the county commission,  
89 along with the election supplies, records and returns, who shall  
90 make the oaths and list available for public inspection and who  
91 shall preserve the oaths and list for twenty-two months or, if  
92 under order of the court, until their destruction or other disposi-  
93 tion is authorized or directed by the court.

94 (g) Any person making an affidavit required under the  
95 provisions of this section who knowingly swears falsely in the

96 affidavit or any person who counsels or advises, aids or abets  
97 another in the commission of false swearing under this section  
98 is guilty of a misdemeanor and, upon conviction thereof, shall  
99 be fined not more than one thousand dollars or confined in the  
100 county or regional jail for a period of not more than one year,  
101 or both.

102 (h) Any person who provides a voter assistance in voting an  
103 absent voter's ballot in the office of the official designated to  
104 supervise and conduct absentee voting who is not qualified or  
105 permitted by this section to provide assistance is guilty of a  
106 misdemeanor and, upon conviction thereof, shall be fined not  
107 more than one thousand dollars or imprisoned in the county or  
108 regional jail for a period of not more than one year, or both.

109 (i) Any official designated to supervise and conduct  
110 absentee voting, election commissioner or poll clerk who  
111 authorizes or allows a voter to receive or to have received  
112 unchallenged assistance in voting an absent voter's ballot when  
113 the voter is known to the official designated to supervise and  
114 conduct absentee voting or election commissioner or poll clerk  
115 not to be or have been authorized by the provisions of this  
116 section to receive or to have received assistance in voting is  
117 guilty of a misdemeanor and, upon conviction thereof, shall be  
118 fined not more than one thousand dollars or imprisoned in the  
119 county or regional jail for a period of not more than one year,  
120 or both.

121 (j) The term "physical disability" as used in this section  
122 means blindness or a degree of blindness as will prevent the  
123 voter from seeing the names on the ballot or amputation of both  
124 hands or a disability of both hands that neither can be used to  
125 make cross marks on the absent voter's ballot.

**§3-3-7. Delivery of absentee ballots to polling places.**

1 (a) Except as otherwise provided in this article, in counties  
2 in which the clerk of the county commission has determined  
3 that the absentee ballots should be counted at the precincts in  
4 which the absent voters are registered, the absentee ballots of  
5 each precinct, together with the applications for the absentee  
6 ballots, the affidavits made in connection with assistance in  
7 voting, and any forms, lists and records as may be designated  
8 by the secretary of state, are to be delivered in a sealed carrier  
9 envelope to the election commissioner of the precinct at the  
10 time he or she picks up the official ballots and other election  
11 supplies as provided in section twenty-four, article one of this  
12 chapter.

13 (b) For optical scan voting systems, all ballots voted before  
14 the precinct supplies are delivered to the precinct supply  
15 commissioner are to be deposited in the ballot box. The ballots  
16 deposited in the ballot box shall be counted and merged with  
17 the election day ballots at the counting center on election night.

18 (c) Absentee ballots received after the election commis-  
19 sioner has picked up the official ballots and other election  
20 supplies for the precinct are to be delivered to the election  
21 commissioner of the precinct who has been designated pursuant  
22 to section twenty-four, article one of this chapter, by the official  
23 designated to supervise and conduct absentee voting in person,  
24 or by messenger, before the closing of the polls, provided the  
25 ballots are received by the official in time to make the delivery.  
26 Any ballots received by the official after the time that delivery  
27 may reasonably be made but within the time required as  
28 provided in subsection (g), section five of this article, are to be  
29 delivered to the board of canvassers along with the challenged  
30 ballots.

**§3-3-8. Disposition and counting of absent voters' ballots.**



1 (a) All absentee ballots voted must be deposited in the  
2 absentee ballot box. The ballots deposited in the ballot box  
3 must be counted and merged with the election day ballots at the  
4 counting center on election night or, at the option of the clerk  
5 of the county commission, be delivered for counting at the  
6 precinct in which the absent voter is registered to vote, as  
7 provided in section seven of this article.

8 (b) The county clerk shall appoint at least one team of five  
9 absentee ballot counting commissioners. The composition of  
10 each team shall consist of the same combination of election  
11 officials as provided for a counting board in subdivision (3),  
12 subsection (a), section twenty-nine, article one of this chapter.  
13 The absentee ballot counting commissioners must count the  
14 absentee ballots at the counting center as follows:

15 (1) Immediately after the closing of the polls on election  
16 day the absentee ballot counting commissioners, in the presence  
17 of each other, shall open the ballot box in which are enclosed  
18 the absent voters' ballots.

19 (2) After the ballot box has been opened, each of the  
20 absentee ballot counting commissioners shall examine each of  
21 the mail-in sealed absent voter's ballot envelopes no. 2 con-  
22 tained therein, as well as the information contained thereon, the  
23 application for such ballot, the affidavits, records and lists, if  
24 any, made, prepared or authorized under the provisions of this  
25 article which relate thereto and make a decision as to each  
26 ballot whether a challenge is or is not to be made to such ballot.  
27 The appropriate form indicating the challenge shall be com-  
28 pleted as to each ballot challenged by one or more of the  
29 absentee ballot counting commissioners. Each ballot challenged  
30 shall remain sealed in absent voter's ballot envelope no. 2 and  
31 be deposited in the box or envelope for challenged ballots.

32       (3) The absentee ballot counting commissioners shall next  
33 determine whether any challenge has been made to any absent  
34 voter's ballot by any registered voter in the county under the  
35 provisions of section nine of this article. Each such ballot  
36 challenged shall remain sealed in absent voter's ballot envelope  
37 no. 2 and be deposited in the box or envelope for challenged  
38 ballots.

39       (4) The absentee ballot counting commissioners, in the  
40 presence of each other, shall then open, in a manner as not to  
41 deface or destroy the information thereon, all of the mail-in  
42 absent voter's ballot envelopes no. 2 which contain ballots not  
43 challenged and remove therefrom the absent voter's ballot  
44 envelopes no. 1. These envelopes shall then be shuffled and  
45 intermingled.

46       (5) The absentee ballot counting commissioners, in the  
47 presence of each other, shall next open all of the absent voter's  
48 ballot envelopes no. 1 and remove the ballots therefrom. The  
49 absentee ballot counting commissioners who are poll clerks  
50 shall write their names on the back of each of such ballots in the  
51 same manner as other ballots are required to be endorsed by the  
52 poll clerks at precinct voting. The absentee ballot counting  
53 commissioners who are poll clerks shall then indicate with the  
54 letter "a" in the appropriate place on the registration record the  
55 fact that the voter had voted by absent voter's ballot in that  
56 election and shall enter the absent voter's name on the  
57 pollbook.

58       (6) The absentee ballot counting commissioners shall next  
59 count the mail-in and in-person absentee ballots and enter the  
60 totals onto the precinct election records.

61       (7) The challenged ballots shall be deposited in a chal-  
62 lenged ballot envelope and delivered to the board of canvassers.

63 (c) Any election official who determines a person has voted  
64 an absent voter's ballot and has also voted at the polls on  
65 election day must report the fact to the prosecuting attorney of  
66 the county in which the votes were cast.

**§3-3-11. Preparation, number and handling of absent voters' ballots.**

1 (a) Absent voters' ballots are to be in all respects like other  
2 ballots. Not less than seventy days before the date on which any  
3 primary, general or special election is to be held, unless a lesser  
4 number of days is provided for in any specific election law in  
5 which case the lesser number of days applies, the clerks of the  
6 circuit courts of the several counties shall estimate and deter-  
7 mine the number of absent voters' ballots of all kinds which  
8 will be required in their respective counties for that election.  
9 The ballots for the election of all officers, or the ratification,  
10 acceptance or rejection of any measure, proposition or other  
11 public question to be voted on by the voters, are to be prepared  
12 and printed under the direction of the board of ballot commis-  
13 sioners constituted as provided in article one of this chapter.  
14 The several county boards of ballot commissioners shall  
15 prepare and have printed, in the number they may determine,  
16 absent voters' ballots that are to be printed under their direc-  
17 tions as provided in this chapter and those ballots are to be  
18 delivered to the clerk of the circuit court of the county not less  
19 than forty-two days before the day of the election at which they  
20 are to be used. Before any ballot is mailed or delivered, the  
21 clerk of the circuit court shall affix his or her official seal and  
22 he or she and the other members of the board of ballot commis-  
23 sioners shall place their signatures near the lower left-hand  
24 corner on the back of the ballot. The clerks of the circuit courts  
25 are authorized to have their signatures affixed by a facsimile  
26 printed on the back of absentee ballots, by a facsimile signature  
27 stamp or by signing their original signatures. An absent voter's  
28 ballot not containing the seal and signatures shall be challenged.

29 If an accurate accounting is made for all ballots and applica-  
30 tions in that precinct and no other valid challenge exists against  
31 the voter, the ballot shall be counted at the canvas.

32 (b) The official designated to supervise and conduct  
33 absentee voting shall be primarily responsible for the mailing,  
34 receiving, delivering and otherwise handling of all absent  
35 voters' ballots. He or she shall keep a record, as may be  
36 prescribed by the secretary of state, of all ballots so delivered  
37 for the purpose of absentee voting, as well as all ballots, if any,  
38 marked before him or her and shall deliver to the commissioner  
39 of election a certificate stating the number of ballots delivered  
40 or mailed to absent voters and those marked before him or her,  
41 if any, and the names of the voters to whom those ballots have  
42 been delivered or mailed or by whom they have been marked,  
43 if marked before him or her.

#### **ARTICLE 4. VOTING MACHINES.**

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

§3-4-20. Recording and disposition of absent voters' ballots.

#### **§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.**

1 (a) The ballot commissioners of any county in which voting  
2 machines are to be used in any election shall cause to be printed  
3 for use in the election the ballot labels for the voting machines  
4 and paper ballots for absentee voting, voting by persons unable  
5 to use the voting machine and challenged ballots, or if an  
6 electronic voting system or direct recording election equipment  
7 is to be used in an election, the ballot commissioners shall  
8 comply with requirements of section eleven, article four-a of  
9 this chapter. The labels shall be clearly printed in black ink on  
10 clear white material of such size as will fit the ballot frames.

11 The paper ballots shall be printed in compliance with the  
12 provisions of this chapter governing paper ballots.

13 (b) The heading, the names and arrangement of offices and  
14 the printing and arrangement of names of the candidates for  
15 each office indicated must be placed on the ballot for the  
16 primary election as nearly as possible according to the provi-  
17 sions of sections thirteen and thirteen-a, article five of this  
18 chapter, and for the general election according to the provisions  
19 of section two, article six of this chapter: *Provided*, That the  
20 staggering of the names of candidates in multicandidate races  
21 and the instructions to straight ticket voters prescribed by  
22 section two, article six of this chapter shall appear on paper  
23 ballots but shall not appear on ballot labels for voting machines  
24 which mechanically control crossover voting.

25 (c) Each question to be voted on must be placed at the end  
26 of the ballot and must be printed according to the provisions of  
27 the laws and regulations governing the question.

28 (d) The ballot labels printed must total in number one and  
29 one-half times the total number of corresponding voting  
30 machines to be used in the several precincts of the county in the  
31 election. All the labels must be delivered to the clerk of the  
32 circuit court at least twenty-eight days prior to the day of the  
33 election. The clerk of the circuit court shall determine the  
34 number of paper ballots needed for absentee voting and to  
35 supply the precincts for challenged ballots and ballots to be cast  
36 by persons unable to use the voting machine. All required paper  
37 ballots shall be delivered to the clerk of the circuit court at least  
38 forty-two days prior to the day of the election.

39 (e) When the ballot labels and absentee ballots are deliv-  
40 ered, the clerk of the circuit court shall examine them for  
41 accuracy, assure that the appropriate ballots and ballot labels  
42 are designated for each voting precinct, and deliver the ballot

43 labels to the clerk of the county commission, who shall insert  
44 one set in each machine prior to the inspection of the machines  
45 as prescribed in section twelve of this article. The remainder of  
46 the ballot labels for each machine shall be retained by the clerk  
47 of the county commission for use in an emergency.

48 (f) In addition to all other equipment and supplies required  
49 by the provisions of this article, the ballot commissioners shall  
50 cause to be printed a supply of instruction cards, sample ballots  
51 and facsimile diagrams of the voting machine ballot adequate  
52 for the orderly conduct of the election in each precinct in their  
53 county. In addition, they shall provide appropriate facilities for  
54 the reception and safekeeping of the ballots of absent voters and  
55 of challenged voters and of such "independent" voters who  
56 shall, in primary elections, cast their votes on nonpartisan  
57 candidates and public questions submitted to the voters.

#### **§3-4-20. Recording and disposition of absent voters' ballots.**

1 The recording and disposition of absent voters' ballots shall  
2 be governed by the provisions of article three of this chapter.

#### **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

§3-4A-3. Procedure for adopting electronic voting systems.

§3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the  
counting of votes cast on ballots without signatures.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

#### **§3-4A-3. Procedure for adopting electronic voting systems.**

1 An electronic voting system that has been approved in  
2 accordance with section eight of this article may be adopted for  
3 use in general, primary and special elections in any county by  
4 either of the following procedures and not otherwise:

5 (1) By a majority of the members of the county commission  
6 voting to adopt the same at a special public meeting called for

7 the purpose of said adoption, with due notice thereof published  
8 as a Class II-0 legal advertisement in compliance with the  
9 provisions of article three, chapter fifty-nine of this code and  
10 the publication area for such publication shall be the county  
11 involved: *Provided*, That such meeting shall be held not less  
12 than six months prior to a general election or six months prior  
13 to a primary election. If at such meeting such county commis-  
14 sion shall enter an order of its intention to adopt the use of an  
15 electronic voting system, it shall thereafter forthwith cause to  
16 be published a certified copy of such order as a Class II-0 legal  
17 advertisement in compliance with the provisions of article  
18 three, chapter fifty-nine of this code and the publication area for  
19 such publication shall be the county involved. The first publica-  
20 tion of such order shall not be less than twenty days after the  
21 entry of such order. Such county commission shall not adopt  
22 the use of an electronic voting system until eighty-five days  
23 after the entry of such order of its intention to adopt the same.  
24 Promptly after the expiration of eighty-five days after the entry  
25 of such order of intention to adopt the use of an electronic  
26 voting system, if no petition has theretofore been filed with  
27 such county commission requesting a referendum on the  
28 question of adoption of an electronic voting system as hereinaf-  
29 ter provided, such county commission shall enter a final order  
30 adopting the electronic voting system and the electronic voting  
31 system shall thereby be adopted.

32 If five percent or more of the registered voters of such  
33 county shall sign a petition requesting that an electronic voting  
34 system be not adopted for use in such county and such petition  
35 be filed with the county commission of such county within  
36 eighty-five days after the entry of such order of intention to  
37 adopt the use of an electronic voting system, such county  
38 commission shall submit to the voters of such county at the next  
39 general or primary election, whichever shall first occur, the  
40 question: "Shall an electronic voting system be adopted in  
41 \_\_\_\_\_ County?" If this question be answered in the

42 affirmative by a majority of the voters in such election upon the  
43 question, an electronic voting system shall thereby be adopted.  
44 If such question shall not be answered in the affirmative by  
45 such majority, the use of an electronic voting system shall not  
46 be adopted.

47 (2) By the affirmative vote of a majority of the voters of  
48 such county voting upon the question of the adoption of an  
49 electronic voting system in such county. If five percent or more  
50 of the registered voters of such county shall sign a petition  
51 requesting the adoption of an electronic voting system for use  
52 in such county and such petition be filed with the county  
53 commission of such county, such county commission shall  
54 submit to the voters of such county at the next general or  
55 primary election the question: "Shall an electronic voting  
56 system be adopted in \_\_\_\_\_ County?" If this question be  
57 answered in the affirmative by a majority of the voters of such  
58 county voting upon the question, an electronic voting system  
59 shall thereby be adopted. If such question shall not be answered  
60 in the affirmative by such majority, the use of an electronic  
61 voting system shall not be adopted: *Provided*, That nothing in  
62 this section shall be construed to affect or invalidate the  
63 adoption of any electronic voting system by any county in  
64 accordance with applicable law prior to the effective date of this  
65 section: *Provided, however*, That the amendments to this  
66 section adopted during the regular session of the Legislature in  
67 the year two thousand two apply to any county commission  
68 which is in the process of adopting an electronic voting system  
69 on the effective date of the amendments.

**§3-4A-19a. Form of ballots; requiring the signatures of poll  
clerks; prohibiting the counting of votes cast on  
ballots without signatures.**

1 (a) Where applicable, every ballot utilized during the course  
2 of any electronic voting system election conducted under the



3 provisions of this article is to have two lines for the signatures  
4 of the poll clerks. Both of the signature lines are to be printed  
5 on a portion of the ballot where votes are not recorded by  
6 perforation or marking, but which portion is an actual part of  
7 the ballot deposited in the ballot box after the voter has perfo-  
8 rated or marked his or her ballot and after the ballot stub has  
9 been removed. Each of the two poll clerks shall sign his or her  
10 name on one of the designated lines provided on each ballot  
11 before any ballot is distributed to a voter.

12 (b) After a voter has signed the pollbook, as required in  
13 section nineteen of this article, the two poll clerks shall deliver  
14 a ballot to the voter, which ballot has been signed by each of the  
15 two poll clerks as provided in this section: *Provided, That*  
16 where an electronic voting system that utilizes screens upon  
17 which votes may be recorded by means of a stylus or by means  
18 of touch, an election commissioner shall accompany the voter  
19 to the voting device and shall activate the device for voting.

20 (c) Any ballot which does not contain the proper signatures  
21 shall be challenged. If an accurate accounting is made for all  
22 ballots in the precinct in which the ballot was voted and no  
23 other challenge exists against the voter, the ballot shall be  
24 counted at the canvas.

**§3-4A-21. Absent voter ballots; issuance, processing and tabulation.**

1 (a) Absentee voters shall cast their votes on absent voter  
2 ballots.

3 (b) If absentee voters are deemed eligible to vote in person  
4 at the office of the official designated to supervise and conduct  
5 absentee voting, in accordance with the provisions of article  
6 three of this chapter, the official for each county shall provide  
7 a vote recording device or other means, as may be appropriate  
8 for votes recorded by electronically sensible ink or pencil, or by

9 means of a stylus or by means of touch, for the use of the  
10 absentee voters. Notwithstanding any provision of article three  
11 of this chapter to the contrary, any voter who desires to vote by  
12 absentee ballot in a county using an electronic voting system  
13 with a screen upon which votes are recorded by means of a  
14 stylus or by means of touch shall complete an application  
15 prescribed by the secretary of state which is to be processed in  
16 the manner otherwise prescribed by law, except that the official  
17 designated to supervise and conduct absentee voting shall  
18 deliver a copy of the application to each polling place. No voter  
19 who votes in person by absentee ballot may vote in person on  
20 the date of the election.

21 (c) For all absentee voters considered eligible to vote an  
22 absent voter's ballot by mail, in accordance with the provisions  
23 of article three of this chapter, the official designated to  
24 supervise and conduct absentee voting for each county shall  
25 prepare and issue an absent voter ballot packet consisting of the  
26 following:

27 (1) One official absent voter ballot;

28 (2) One punching tool for perforating or a device for  
29 marking by electronically sensible pen or ink, as may be  
30 appropriate;

31 (3) If a punching tool is to be utilized, one disposable  
32 styrofoam block to be placed behind the ballot card for voting  
33 purposes and to be discarded after use by the voter;

34 (4) One absent voter instruction ballot;

35 (5) One absent voter's ballot envelope no. 1, unsealed,  
36 which may have no writing on it and which is to be identical to  
37 the secrecy envelope used for placement of ballots at the polls;  
38 and

39       (6) One absent voter's ballot envelope no. 2, marked with  
40 the proper precinct number and providing a place on its seal for  
41 the absent voter to affix his or her signature. The envelope is  
42 also to contain the forms and instructions as provided in section  
43 five, article three of this chapter relating to the absentee voting  
44 of proper ballots.

45       (d) Upon receipt of an absent voter's ballot by mail, the  
46 voter shall mark the ballot with the punch tool or marking  
47 device, whichever is appropriate, and the voter may receive  
48 assistance in voting his or her absent voter's ballot in accor-  
49 dance with the provisions of section six, article three of this  
50 chapter.

51       (e) After the voter has voted his or her absent voter's ballot,  
52 he or she shall: (1) Enclose the ballot in absent voter's ballot  
53 envelope no. 1, and seal that envelope; (2) enclose sealed absent  
54 voter's ballot envelope no. 1 in absent voter's ballot envelope  
55 no. 2; (3) complete and sign the forms, if any, on absent voter's  
56 ballot envelope no. 2 according to the instructions on the  
57 envelope; and (4) mail, postage prepaid, sealed absent voter's  
58 ballot envelope no. 2 to the official designated to supervise and  
59 conduct absentee voting for the county in which he or she is  
60 registered to vote, unless the voter has appeared in person, in  
61 which event he or she shall hand deliver the sealed absent  
62 voter's ballot envelope no. 2 to the official.

63       (f) Upon receipt of the sealed envelope, the official  
64 designated to supervise and conduct absentee voting shall: (1)  
65 Enter onto the envelope any information as may be required of  
66 him or her according to the instructions on the envelope; (2)  
67 enter his or her challenge, if any, to the absent voter's ballot;  
68 (3) enter the required information into a record of persons  
69 making application for and voting an absent voter's ballot by  
70 personal appearance or by mail on a form prescribed by the  
71 secretary of state; and (4) place the sealed envelope in a secure

72 location in his or her office, there to remain until after the close  
73 of the polling place on election day in accordance with the  
74 provisions of this article or, in case of a challenged ballot, to the  
75 county commission sitting as a board of canvassers.

76 (g) Notwithstanding any provision of article three of this  
77 chapter to the contrary, no voter who has voted by absentee  
78 ballot in accordance with the provisions of article three of this  
79 chapter, or otherwise as provided by law, in a county using an  
80 electronic voting system with screens upon which votes are  
81 recorded by means of a stylus or by means of touch may vote  
82 in person on the date of the election.

83 (h) The absentee ballot counting commissioners shall, at the  
84 close of the polls, proceed to determine the legality of the  
85 ballots as prescribed in article three of this chapter. The  
86 absentee ballot counting commissioners shall then open all of  
87 the absent voter's ballot envelopes no. 2 which contain ballots  
88 not challenged and remove from the envelopes the absent  
89 voter's ballot envelopes no. 1. These ballot envelopes no. 1 are  
90 then to be shuffled and intermingled. The absentee ballot  
91 counting commissioners, in the presence of each other, shall  
92 next open all of the absent voter's ballot envelopes no. 1 and  
93 remove the ballots from the envelopes. The absentee ballot  
94 counting commissioners who are poll clerks shall then affix  
95 their signatures to the ballots as provided in section nineteen-a  
96 of this article. The commissioners shall then insert each ballot  
97 into a secrecy envelope identical to the secrecy envelopes used  
98 for the placement of ballots of voters who are voting in person  
99 at the polls and shall deposit the ballot in the ballot box. The  
100 requirement that two poll clerks sign a ballot according to this  
101 subsection is a mandatory duty and is not to be construed as  
102 merely directory.

103 (i) In the course of an election contest, if it is established  
104 that a ballot does not contain the two signatures required by this

105 section, the ballot is null, void and of no effect and may not be  
106 counted. The requirement that a ballot not be counted if it does  
107 not meet the requirements of this section is mandatory and not  
108 to be construed as merely directory.

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

**§3-5-13. Form and contents of ballots and ballot labels.**

1 The face of every primary election ballot shall conform as  
2 nearly as practicable to that used at the general election.

3 (a) The heading of every ballot is to be printed in display  
4 type. The heading is to contain a ballot title, the name of the  
5 county, the state, the words "Primary Election" and the month,  
6 day and year of the election. The ballot title of the political  
7 party ballots is to contain the words "Official Ballot of the  
8 (Name) Party" and the official symbol of the political party  
9 may be included in the heading. The ballot title of any separate  
10 paper ballot or portion of any electronic or voting machine  
11 ballot for the board of education is to contain the words  
12 "Nonpartisan Ballot of Election of Members of the  
13 \_\_\_\_\_ County Board of Education". The districts for  
14 which less than two candidates may be elected and the number  
15 of available seats are to be specified and the names of the  
16 candidates are to be printed without reference to political party  
17 affiliation and without designation as to a particular term of  
18 office. Any other ballot or portion of a ballot on a question is to  
19 have a heading which clearly states the purpose of the election  
20 according to the statutory requirements for that question.

21 (b) (1) For paper ballots, the heading of the ballot is to be  
22 separated from the rest of the ballot by heavy lines and the  
23 offices shall be arranged in columns with the following  
24 headings, from left to right across the ballot: "National Ticket",  
25 "State Ticket", "County Ticket" and, in a presidential election  
26 year, "National Convention" or, in a nonpresidential election

27 year, "District Ticket". The columns are to be separated by  
28 heavy lines. Within the columns, the offices are to be arranged  
29 in the order prescribed in section thirteen-a of this article.

30 (2) For voting machines, electronic voting devices and any  
31 ballot tabulated by electronic means, the offices are to appear  
32 in the same sequence as prescribed in section thirteen-a of this  
33 article and under the same headings as prescribed in subsection  
34 (a) of this section. The number of pages, columns or rows,  
35 where applicable, may be modified to meet the limitations of  
36 ballot size and composition requirements subject to approval by  
37 the secretary of state.

38 (3) The title of each office is to be separated from preceding  
39 offices or candidates by a line and is to be printed in bold type  
40 no smaller than eight point. Below the office is to be printed the  
41 number of the district, if any, the number of the division, if any,  
42 and the words "Vote for \_\_\_\_\_" with the number to be  
43 nominated or elected or "Vote For Not More Than \_\_\_\_\_"  
44 in multicandidate elections. For offices in which there are  
45 limitations relating to the number of candidates which may be  
46 nominated, elected or appointed to or hold office at one time  
47 from a political subdivision within the district or county in  
48 which they are elected, there is to be a clear explanation of the  
49 limitation, as prescribed by the secretary of state, printed in  
50 bold type immediately preceding the names of the candidates  
51 for those offices on the ballot in every voting system. For  
52 counties in which the number of county commissioners exceeds  
53 three and the total number of members of the county commis-  
54 sion is equal to the number of magisterial districts within the  
55 county, the office of county commission is to be listed sepa-  
56 rately for each district to be filled with the name of the magiste-  
57 rial district and the words "Vote for One" printed below the  
58 name of the office.

59 (c) The location for indicating the voter's choices on the  
60 ballot is to be clearly shown. For paper ballots, other than those  
61 tabulated electronically, the official primary ballot is to contain  
62 a square formed in dark lines at the left of each name on the  
63 ballot, arranged in a perpendicular column of squares before  
64 each column of names.

65 (d)(1) The name of every candidate certified by the  
66 secretary of state or the board of ballot commissioners is to be  
67 printed in capital letters in no smaller than eight-point type on  
68 the ballot for the appropriate precincts. Subject to the rules  
69 promulgated by the secretary of state, the name of each  
70 candidate is to appear in the form set out by the candidate on  
71 the certificate of announcement, but in no case may the name  
72 misrepresent the identity of the candidate nor may the name  
73 include any title, position, rank, degree or nickname implying  
74 or inferring any status as a member of a class or group or  
75 affiliation with any system of belief.

76 (2) The city of residence of every candidate, the state of  
77 residence of every candidate residing outside the state, the  
78 county of residence of every candidate for an office on the  
79 ballot in more than one county and the magisterial district of  
80 residence of every candidate for an office subject to magisterial  
81 district limitations are to be printed in lower case letters beneath  
82 the names of the candidates.

83 (3) The arrangement of names within each office must be  
84 determined as prescribed in section thirteen-a of this article.

85 (4) If the number of candidates for an office exceeds the  
86 space available on a column or ballot label page and requires  
87 that candidates for a single office be separated, to the extent  
88 possible, the number of candidates for the office on separate  
89 columns or pages are to be nearly equal and clear instructions

90 given the voter that the candidates for the office are continued  
91 on the following column or page.

92 (e) When an insufficient number of candidates has filed for  
93 a party to make the number of nominations allowed for the  
94 office or for the voters to elect sufficient members to the board  
95 of education or to executive committees, the vacant positions on  
96 the ballot shall be filled with the words "No Candidate Filed":  
97 *Provided*, That in paper ballot systems which allow for write-  
98 ins to be made directly on the ballot, a blank line shall be placed  
99 in any vacant position in the office of board of education or for  
100 election to any party executive committee. A line shall separate  
101 each candidate from every other candidate for the same office.  
102 Notwithstanding any other provision of this code, if there are  
103 multiple vacant positions on a ballot for one office, the multiple  
104 vacant positions which would otherwise be filled with the  
105 words "No Candidate Filed" may be replaced with a brief  
106 detailed description, approved by the secretary of state, indicat-  
107 ing that there are no candidates listed for the vacant positions.

108 (f) In presidential election years, the words "For election in  
109 accordance with the plan adopted by the party and filed with the  
110 secretary of state" is to be printed following the names of all  
111 candidates for delegate to national convention.

112 (g) All paper ballots are to be printed in black ink on paper  
113 sufficiently thick so that the printing or marking cannot be  
114 discernible from the back. Ballot cards and paper for printing  
115 ballots using electronically sensible ink are to meet minimum  
116 requirements of the tabulating systems.

117 (h) Electronically tabulated ballots and ballot cards are to  
118 contain perforated tabs at the top of the ballots and are to be  
119 printed with unique sequential numbers from one to the highest  
120 number representing the total number of ballots or ballot cards  
121 printed. On paper ballots, the ballot is to be bordered by a solid



122 line at least one sixteenth of an inch wide, and the ballot is to be  
123 trimmed to within one-half inch of that border.

124 (i) On the back of every official ballot or ballot card the  
125 words "Official Ballot" with the name of the county and the  
126 date of the election are to be printed. Beneath the date of the  
127 election there are to be two blank lines followed by the words  
128 "Poll Clerks".

129 (j) Absent voters' ballots are to be in all respects like other  
130 official ballots except that three blank lines are to be printed on  
131 the back of the ballot or ballot card in the lower left corner with  
132 the words "Ballot Commissioners" printed underneath.

133 (k) The face of sample paper ballots and sample ballot  
134 labels are to be like other official ballots or ballot labels except  
135 that the word "sample" is to be prominently printed across the  
136 front of the ballot in a manner that ensures the names of  
137 candidates are not obscured and the word "sample" may be  
138 printed in red ink. No printing may be placed on the back of the  
139 sample.

#### **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

§3-6-2. Preparation and form of general election ballots.

§3-6-4a. Filing requirements for write-in candidates.

§3-6-6. Ballot counting procedures in paper ballot systems.

#### **§3-6-2. Preparation and form of general election ballots.**

1 (a) All ballots prepared under the provisions of this section  
2 are to contain:

3 (1) The name and ticket of each party which is a political  
4 party under the provisions of section eight, article one of this  
5 chapter;

6       (2) The name chosen as the party name by each group of  
7 citizens which has secured nomination for two or more candi-  
8 dates by petition under the provisions of section twenty-three of  
9 this article;

10       (3) The names of every candidate for any office to be voted  
11 for at the election whose nomination in the primary election,  
12 nomination by petition or nomination by appointment to fill a  
13 vacancy on the ballot has been certified and filed according to  
14 law and no others.

15       (b) The provisions of subdivision (3), subsection (b);  
16 subsection (c); subdivisions (1) and (2), subsection (d); and  
17 subsections (g), (h), (i), (j) and (k), section thirteen of article  
18 five pertaining to the preparation and form of primary election  
19 ballots shall likewise apply to general election ballots.

20       (c) (1) For all ballot systems, the ballot heading is to be in  
21 display type and contain the words "Official Ballot, General  
22 Election" and the name of the county and the month, day and  
23 year of the election.

24       (2) After the heading, each ballot is to contain, laid out in  
25 parallel columns, rows or pages as required by the particular  
26 voting system, the party emblem, the position for straight party  
27 voting for each party and the name of each party as prescribed  
28 in subsection (a) of this section. On paper ballots, the position  
29 for straight party voting is to be a heavy circle, three-fourths  
30 inch in diameter, surrounded by the words "For a straight ticket  
31 mark within this circle" printed in bold six-point type. On all  
32 other ballots or ballot labels, the positions for straight party  
33 voting is to be marked "Straight Party Ticket". For ballots  
34 tabulated electronically, the secretary of state shall prescribe a  
35 uniform number for the straight ticket position for each party.

36       (3) The party whose candidate for president received the  
37 highest number of votes at the last preceding presidential  
38 election is to be placed in the left, or first column, row or page,  
39 as is appropriate to the voting system. The party which received  
40 the second highest vote is to be next and so on. Any groups or  
41 third parties which did not have a candidate for president on the  
42 ballot in the previous presidential election are to be placed in  
43 the sequence in which the final certificates of nomination by  
44 petition were filed.

45       (4) (A) Except for lever machine ballot labels, the follow-  
46 ing general instructions for straight party voters are to be  
47 printed in no smaller than eight-point bold type: **“IF YOU**  
48 **MARKED A STRAIGHT TICKET:** When you mark any  
49 individual candidate in a different party, that vote will override  
50 your straight party vote for that office. When you mark any  
51 individual candidate in a different party for an office where  
52 more than one will be elected, **YOU MUST MARK EACH OF**  
53 **YOUR CHOICES FOR THAT OFFICE** because your straight  
54 ticket vote will not be counted for that office”. The last sentence  
55 of the instructions may not be included on any ballot which  
56 does not contain any office or division where more than one  
57 candidate will be elected.

58       On paper ballots, the general instructions are to be placed  
59 below the party name and across the top of all columns,  
60 followed by a heavy line separating them from the rest of the  
61 ballot. On ballots marked with electronically sensible ink and  
62 on ballot labels for voting devices in punch card systems, the  
63 general instructions are to be placed after the position for  
64 straight voting and before any office.

65       (B) Except for lever machine ballot labels, the following  
66 specific instructions are to be printed on the ballot for any  
67 partisan election for an office or division to which more than  
68 one candidate is to be elected: **“If you marked a straight ticket**

69 and you mark any candidate in a different party for this office,  
70 you must mark all your choices for this office because your  
71 straight ticket vote will not be counted for this office”.

72 On paper ballots, the specific instructions are to be placed  
73 below the office name of any partisan office where more than  
74 one is to be elected and across the top of all columns for that  
75 office before the names of any candidates. On all other ballots  
76 and ballot labels, the specific instructions are to be placed  
77 above or to the side of the names of the candidates as the voting  
78 system requires.

79 (5) For all ballots, any columns, rows or sections in which  
80 the ticket of one party appears are to be clearly separated from  
81 the other columns, rows or sections by a heavy line or other  
82 clear division. For each party, the offices are to be arranged in  
83 the order prescribed in section thirteen-a, article five of this  
84 chapter under the appropriate tickets, which are to be headed  
85 “National Ticket”, “State Ticket” and “County Ticket”. The  
86 number of pages, columns or rows, where applicable, may be  
87 modified to meet the limitations of ballot size and composition  
88 requirements, subject to approval by the secretary of state.

89 (d) The arrangement of names within each office for all  
90 ballot systems is to be as follows:

91 (1) In elections for presidential electors, the names of the  
92 candidates for president and vice president of each party are to  
93 be placed beside a brace with a single voting position, so that a  
94 vote for any presidential candidate is a vote for the electors of  
95 the party for which the candidates were named.

96 (2) The order of names of candidates for any office or  
97 division for which more than one is to be elected is determined  
98 as prescribed in section thirteen-a, article five of this chapter:  
99 *Provided*, That the drawing by lot is to be conducted on the

100 seventieth day next preceding the date of the general election,  
101 beginning at 9:00 a.m.

102 (3) Except in voting machine systems, in any office where  
103 more than one person is to be elected, the names of the candi-  
104 dates for the office are to be staggered so that no two candidates  
105 for that office appear directly opposite any other candidate, as  
106 shown in the example below:

107		
108	For House of Delegates	For House of Delegates
109	First Delegate District	First Delegate District
110	(Vote For Not More Than Two)	(Vote For Not More Than Two)
111		
112	SUSAN B. ANTHONY	
113	City (County)	
114		
115		JOHN ADAMS
116		City (County)
117		
118	ABRAHAM LINCOLN	
119	City (County)	
120		
121		JAMES MONROE
122		City (County)
123		

124 (4) Each voting system is to provide a means for voters to  
125 vote for any person whose name does not appear on the ticket  
126 by writing it with pen or pencil or by using stamps, stickers,  
127 tapes, labels or other means of writing in the name of a candi-  
128 date which does not interfere with the tabulation of the ballot.

129 (A) In paper ballot systems which allow for write-ins to be  
130 made directly on the ballot, a blank square and a blank line

131 equal to the space which would be occupied by the name of the  
132 candidate is to be placed under the proper office for each  
133 vacancy in nomination and for an office for which more than  
134 one is to be elected, any vacancy is to appear after any other  
135 candidates for the office.

136 (B) In machine and electronically tabulated ballot systems  
137 in which write-in votes must be made in a place other than on  
138 the ballot label, if there is a vacancy in nomination leaving  
139 fewer candidates in any party than can be elected to that office,  
140 the words "No Candidate Nominated" is to be printed in the  
141 space that would be occupied by the name of the candidate and  
142 for an office for which more than one is to be elected, any such  
143 vacancy is to appear after any other candidates for the office.  
144 Notwithstanding any other provision of this code, if there are  
145 multiple vacant positions on a ballot for one office, the multiple  
146 vacant positions which would otherwise be filled with the  
147 words "No Candidate Filed" may be replaced with a brief  
148 detailed description, approved by the secretary of state, indicat-  
149 ing that there are no candidates listed for the vacant positions.

150 (5) In a general election in any county in which unexpired  
151 terms of the board of education are to be filled by election, a  
152 separate section or page of the ballot is to be set off by means  
153 clearly separating the nonpartisan ballot from the ballot for the  
154 political party candidates and is to be headed "Nonpartisan  
155 Board of Education".

156 (e) Any constitutional amendment is to be placed following  
157 all offices, followed by any other issue upon which the voters  
158 are to cast a vote. The heading for each amendment or issue is  
159 to be printed in large, bold type according to the requirements  
160 of the resolution authorizing the election.

161 (f) The board of ballot commissioners may not place any  
162 issue on the ballot for election which is not specifically autho-  
163 rized under the West Virginia constitution or statutes or which

164 has not been properly ordered by the appropriate governmental  
165 body charged with calling the election.

**§3-6-4a. Filing requirements for write-in candidates.**

1 Any eligible person who seeks to be elected by write-in  
2 votes to an office, except delegate to national convention,  
3 which is to be filled in a primary, general or special election  
4 held under the provisions of this chapter shall file a write-in  
5 candidate's certificate of announcement as provided in this  
6 section. No certificate of announcement may be accepted and  
7 no person may be certified as a write-in candidate for a political  
8 party nomination for any office or for election as delegate to  
9 national convention.

10 (a) The write-in candidate's certificate of announcement  
11 shall be in a form prescribed by the secretary of state on which  
12 the candidate shall make a sworn statement before a notary  
13 public or other officer authorized to give oaths, containing the  
14 following information:

15 (1) The name of the office sought and the district and  
16 division, if any;

17 (2) The legal name of the candidate and the first and last  
18 name by which the candidate may be identified in seeking the  
19 office;

20 (3) The specific address designating the location at which  
21 the candidate resides at the time of filing, including number and  
22 street or rural route and box number and city, state and zip  
23 code;

24 (4) A statement that the person filing the certificate of  
25 announcement is a candidate for the office in good faith; and

26 (5) The words "subscribed and sworn to before me this  
27 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_" and a space for the  
28 signature of the officer giving the oath.

29 (b) The certificate of announcement shall be filed with the  
30 filing officer for the political division of the office as prescribed  
31 in section seven, article five of this chapter.

32 (c) The certificate of announcement shall be filed with and  
33 received by the proper filing officer as follows:

34 (1) Except as provided in subdivisions (2) and (3) of this  
35 subsection, the certificate of announcement for any office shall  
36 be received no later than the close of business on the fourteenth  
37 day before the election at which the office is to be filled;

38 (2) When a vacancy occurs in the nomination of candidates  
39 for an office on the ballot resulting from the death of the  
40 nominee or from the disqualification or removal of a nominee  
41 from the ballot by a court of competent jurisdiction not earlier  
42 than the twenty-first day nor later than the fifth day before the  
43 general election, the certificate shall be received no later than  
44 the close of business on the fifth day before the election or the  
45 close of business on the day following the occurrence of the  
46 vacancy, whichever is later;

47 (3) When a vacancy occurs in an elective office which  
48 would not otherwise appear on the ballot in the election, but  
49 which creates an unexpired term of one or more years which,  
50 according to the provisions of this chapter, is to be filled by  
51 election in the next ensuing election, and such vacancy occurs  
52 no earlier than the twenty-first day and no later than the fifth  
53 day before the general election, the certificate shall be received  
54 no later than the close of business on the fifth day before the  
55 election or the close of business on the day following the  
56 occurrence of the vacancy, whichever is later.

57 (d) Any eligible person who files a completed write-in  
58 candidate's certificate of announcement with the proper filing  
59 officer within the required time shall be certified by that filing  
60 officer as an official write-in candidate:



61 (1) The secretary of state shall, immediately following the  
62 filing deadline, post the names of all official write-in candidates  
63 for offices on the ballot in more than one county and certify the  
64 name of each official write-in candidate to the clerks of the  
65 circuit court of the appropriate counties.

66 (2) The clerk of the circuit court shall, immediately  
67 following the filing deadline, post the names of all official  
68 write-in candidates for offices on the ballot in one county and  
69 certify and deliver to the election officials of the appropriate  
70 precincts the names of all official write-in candidates and the  
71 office sought by each for statewide, district and county offices  
72 on the ballot in the precinct for which valid write-in votes will  
73 be counted.

**§3-6-6. Ballot counting procedures in paper ballot systems.**

1 When the polls are closed in an election precinct where  
2 only a single election board has served, the receiving board  
3 shall perform all of the duties prescribed in this section. When  
4 the polls are closed in an election precinct where two election  
5 boards have served, both the receiving and counting boards  
6 shall together conclude the counting of the votes cast, the  
7 tabulating and summarizing of the number of the votes cast,  
8 unite in certifying and attesting to the returns of the election and  
9 join in making out the certificates of the result of the election  
10 provided for in this article. They shall not adjourn until the  
11 work is completed.

12 In all election precincts, as soon as the polls are closed and  
13 the last voter has voted, the receiving board shall proceed to  
14 ascertain the result of the election in the following manner:

15 (a) In counties in which the clerk of the county commission  
16 has determined that the absentee ballots should be counted at  
17 the precincts in which the absent voters are registered, the  
18 receiving board must first process the absentee ballots and  
19 deposit the ballots to be counted in the ballot box. The receiving

20 board shall then proceed as provided in subsections (b) and (c)  
21 of this section. In counties in which the absentee ballots are  
22 counted at the central counting center, the receiving board shall  
23 proceed as provided in subsections (b) and (c) of this section.

24 (b) The receiving board shall ascertain from the pollbooks  
25 and record on the proper form the total number of voters who  
26 have voted. The number of ballots challenged shall be counted  
27 and subtracted from the total, which result should equal the  
28 number of ballots deposited in the ballot box. The commission-  
29 ers and clerks shall also report, over their signatures, the  
30 number of ballots spoiled and the number of ballots not voted.

31 (c) The procedure for counting ballots, whether performed  
32 throughout the day by the counting board as provided in section  
33 thirty-three, article one of this chapter or after the close of the  
34 polls by the receiving board or by the two boards together, shall  
35 be as follows:

36 (1) The ballot box shall be opened and all votes shall be  
37 tallied in the presence of the entire election board;

38 (2) One of the commissioners shall take one ballot from the  
39 box at a time and shall determine if the ballot is properly signed  
40 by the two poll clerks of the receiving board. If not properly  
41 signed, the ballot shall be placed in an envelope for the purpose,  
42 without unfolding it. Any ballot which does not contain the  
43 proper signatures shall be challenged. If an accurate accounting  
44 is made for all ballots in the precinct in which the ballot was  
45 voted and no other challenge exists against the voter, the ballot  
46 shall be counted at the canvas. If properly signed, the commis-  
47 sioner shall hand the ballot to a team of commissioners of  
48 opposite politics, who shall together read the votes marked on  
49 the ballot for each office. Write-in votes for election for any  
50 person other than an official write-in candidate shall be  
51 disregarded. When a voter casts a straight ticket vote and also  
52 casts a write-in vote for an office, the straight ticket vote for

53 that office shall be rejected whether or not a vote can be  
54 counted for a write-in candidate;

55 (3) The commissioner responsible for removing the ballots  
56 from the box shall keep a tally of the number of ballots as they  
57 are removed and whenever the number shall equal the number  
58 of voters entered on the pollbook minus the number of chal-  
59 lenged ballots, as determined according to subsection (a) of this  
60 section, any other ballot found in the ballot box shall be placed  
61 in the same envelope with unsigned ballots not counted, without  
62 unfolding the same or allowing anyone to examine or know the  
63 contents thereof, and the number of excess ballots shall be  
64 recorded on the envelope;

65 (4) Each poll clerk shall keep an accurate tally of the votes  
66 cast by marking in ink on tally sheets, which shall be provided  
67 for the purpose, so as to show the number of votes received by  
68 each candidate for each office and for and against each issue on  
69 the ballot; and

70 (5) When the reading of the votes is completed, the ballot  
71 shall be immediately strung on a thread.

#### ARTICLE 7. CONTESTED ELECTIONS.

##### §3-7-6. County and district contests; notices; time.

1 In all cases of contested elections, the county commission  
2 shall be the judge of the election, qualifications and returns of  
3 their own members and of all county and district officers:  
4 *Provided*, That a member of the county commission whose  
5 election is being contested may not participate in judging the  
6 election, qualifications and returns.

7 A person intending to contest the election of another to any  
8 county or district office, including judge of any court or any  
9 office that shall hereafter be created to be filled by the voters of  
10 the county or of any magisterial or other district therein, shall,  
11 within ten days after the result of the election is certified, give

12 the contestee notice in writing of such intention and a list of the  
13 votes he will dispute, with the objections to each, and of the  
14 votes rejected for which he will contend. If the contestant  
15 objects to the legality of the election or the qualification of the  
16 person returned as elected, the notice shall set forth the facts on  
17 which such objection is founded. The person whose election is  
18 so contested shall, within ten days after receiving such notice,  
19 deliver to the contestant a like list of the votes he will dispute,  
20 with the objections to each, and of the rejected votes for which  
21 he will contend; and, if he has any objection to the qualification  
22 of the contestant, he shall specify in writing the facts on which  
23 the objection is founded. Each party shall append to his notice  
24 an affidavit that he verily believes the matters and things set  
25 forth to be true. If new facts be discovered by either party after  
26 he has given notice as aforesaid, he may, within ten days after  
27 such discovery, give an additional notice to his adversary, with  
28 the specifications and affidavit prescribed in this section.

29 The provisions of this section apply to all elections,  
30 including municipal elections, except that the governing body  
31 of the municipality is the judge of any contest of a municipal  
32 election.

#### **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

##### **§3-8-4a. Termination of political committees.**

1 (a) A political committee may terminate by filing a written  
2 request, in accordance with the provisions of section four of this  
3 article, and by stating in the request that it will no longer  
4 receive any contributions or make any disbursements and that  
5 it has no outstanding debts or obligations. At such time, any  
6 excess funds of the committee may be transferred to a political  
7 committee established by the same candidate pursuant to the  
8 provisions of section four or five-e of this article.

9 (b) The provisions of this section may not be construed to  
10 eliminate or limit the authority of the secretary of state, in  
11 consultation with the state election commission, to establish  
12 procedures for: (1) The determination of insolvency with

13 respect to any political committee; (2) the orderly liquidation of  
14 an insolvent political committee and the orderly application of  
15 its assets for the reduction of outstanding debts; and (3) the  
16 termination of an insolvent political committee after such  
17 liquidation and application of assets.

18 (c) Notwithstanding any other provision of this code, any  
19 political committee which has been terminated within three  
20 years prior to the effective date of the reenactment of this  
21 section during the regular session of the Legislature in the year  
22 two thousand two, pursuant to a written request made in  
23 accordance with the provisions of section four of this article,  
24 may file a written request and be authorized by the secretary of  
25 state to reestablish the political committee. Any request to  
26 reestablish a political committee pursuant to the provisions of  
27 this subsection must be filed on or before the first day of July,  
28 two thousand two. The provisions of this subsection may not be  
29 construed to increase the maximum contribution authorized  
30 during an election cycle, as provided in section twelve of this  
31 article.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COM- PENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELEC- TIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.**

#### **PART VII. ELECTIONS AND PETITIONS GENERALLY.**

#### **§8-5-13. Integration of municipal elections with system of perma- nent registration.**

1 Notwithstanding any charter provision to the contrary, it is  
2 the duty of each city by charter provision or each municipality  
3 by ordinance to make provision for integrating the conduct of  
4 all municipal elections with the system of “permanent registra-  
5 tion of voters” as provided in article two, chapter three of this  
6 code.

---

## CHAPTER 133

(Com. Sub. for S. B. 226 — By Senators Hunter, Redd, Fanning,  
Mitchell, Love, Oliverio, Rowe, Burnette and Caldwell)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-c, relating to creating the accessible voting technology act.

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

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

### **ARTICLE 1C. ACCESSIBLE VOTING TECHNOLOGY ACT.**

§3-1C-1. Short title.

§3-1C-2. Findings.

§3-1C-3. Definitions.

§3-1C-4. Requirements for accessible voting technology and systems.

#### **§3-1C-1. Short title.**

- 1 This article may be cited as “The Accessible Voting
- 2 Technology Act”.

#### **§3-1C-2. Findings.**

- 1 The Legislature makes the following findings:

2 (1) Microchip and digital technologies are increasingly  
3 changing the way Americans vote;

4 (2) State and political subdivisions are replacing antiquated  
5 voting methods and machines with computer- and electronic-  
6 based voting systems, but nonvisual access, whether by speech,  
7 Braille or other appropriate means is often overlooked in  
8 certifying and purchasing the latest voting technology;

9 (3) Voting technology and systems which allow the voter  
10 to access and select information solely through visual means are  
11 a barrier to access by individuals who are blind or visually  
12 impaired, thereby discouraging them from exercising the right  
13 to vote, the most fundamental right of citizenship in a free and  
14 democratic society;

15 (4) Software and hardware adaptations have been created  
16 so that voters can interact with voting technology and systems  
17 through both visual and nonvisual means allowing blind and  
18 visually impaired people to cast a secret ballot and independ-  
19 ently verify their vote; and

20 (5) In promoting full participation in the electoral process,  
21 the goals of the state and its political subdivisions must  
22 recognize the right of all citizens regardless of blindness or  
23 visual impairment to vote and to cast and verify their ballots  
24 independently.

**§3-1C-3. Definitions.**

1 As used in this article, unless the context otherwise requires  
2 a different meaning, the term:

3 (1) "Access" means the ability to receive, use, select and  
4 manipulate data and operate controls included in voting  
5 technology and systems;

6 (2) "Nonvisual" means synthesized speech, Braille and  
7 other output methods not requiring sight.

**§3-1C-4. Requirements for accessible voting technology and systems.**

1 (a) If any county upgrades or replaces existing voting  
2 equipment or an existing voting system and the upgraded or  
3 new equipment or system is certified by the secretary of state to  
4 have the capability to provide or the capability to be upgraded  
5 to provide blind and visually impaired individuals with  
6 nonvisual access which is equivalent to that access provided to  
7 individuals who are not blind or visually impaired, then the  
8 county must purchase or lease at least one voting mechanism  
9 which provides such nonvisual access to be used during the  
10 period of voting regular absentee ballots in person. The voting  
11 mechanism must also be used in a precinct, as designated by the  
12 county commission, on election day.

13 (b) The county commission of any county may place voting  
14 mechanisms that provide nonvisual access to blind or visually  
15 impaired persons in as many other precincts of the county as the  
16 county commission determines is feasible for use on election  
17 day, if the type of voting mechanism to be used has been  
18 certified by the secretary of state.

---

## CHAPTER 134

(S. B. 123 — By Senator Snyder)

---

[Passed March 6, 2002; in effect ninety days from passage. Approved by the Governor.]

---



AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-c, relating to certification of electrical inspectors; providing for promulgation of rules; providing definitions; prohibiting certain acts; providing for enforcement of article; providing for suspension or revocation of certification; and providing civil and criminal penalties.

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

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

**ARTICLE 3C. CERTIFICATION OF ELECTRICAL INSPECTORS.**

- §29-3C-1. Purpose.
- §29-3C-2. Definitions.
- §29-3C-3. Certification of electrical inspectors required.
- §29-3C-4. Certification program; duties of the state fire marshal; rulemaking.
- §29-3C-5. Denial of license; suspension and revocation of license.
- §29-3C-6. Suspension or revocation of certification.
- §29-3C-7. Prohibited acts.
- §29-3C-8. Required reporting of violations.
- §29-3C-9. Noncompliance with article; failure to obtain certification; penalty.
- §29-3C-10. Disposition of fees and other receipts.

**§29-3C-1. Purpose.**

- 1 This article is intended to protect the health, safety and
- 2 welfare of the public and to protect public and private property
- 3 by assuring the competence of persons who perform electrical
- 4 inspections of dwellings and other structures through certifica-
- 5 tion by the state fire marshal.

**§29-3C-2. Definitions.**

- 1 (a) As used in this article, the terms:

2 (1) "Certified electrical inspector" means a person who is  
3 certified by the state fire marshal as qualified to perform  
4 electrical inspections. "Electrical inspector" does not include an  
5 inspector employed by the office of miners' health, safety and  
6 training pursuant to the provisions of section eleven, article one,  
7 chapter twenty-two-a of this code.

8 (2) "Electrical inspection" means any inspection required  
9 by this code and any inspection of a building to which electrical  
10 service is connected, wherein the inspector certifies that the  
11 electrical system in the building is in compliance with the  
12 national electrical code, state fire code and the state building  
13 code.

**§29-3C-3. Certification of electrical inspectors required.**

1 After the first day of January, two thousand three, no  
2 electrical inspections may be performed, offered or engaged in  
3 for compensation or hire within the state of West Virginia by  
4 any person who is not certified pursuant to this article: *Pro-*  
5 *vided*, That any person who is employed by this state or any  
6 subdivision of this state and who in the normal course of his or  
7 her business conducts electrical inspections may perform  
8 electrical inspections as within the scope of his or her employ-  
9 ment without certification pursuant to this article.

**§29-3C-4. Certification program; duties of the state fire marshal;  
rulemaking.**

1 (a) The state fire marshal shall propose rules for legislative  
2 approval in accordance with the provisions of article three,  
3 chapter twenty-nine-a of this code to establish a program for the  
4 certification of electrical inspectors. Proposed rules shall  
5 provide: Standards and procedures for certification, including  
6 applications, examinations, fees, qualifications, procedures for  
7 investigating complaints, revoking or suspending certifications

8 and for renewing licenses. The state fire marshal is also  
9 authorized to propose emergency rules to implement the  
10 provisions of this article: *Provided*, That the emergency rules  
11 specify an initial certification fee of fifty dollars.

12 (b) The state fire marshal shall certify an electrical inspec-  
13 tor upon a finding that the applicant possesses the requisite  
14 qualifications.

**§29-3C-5. Denial of license; suspension and revocation of license.**

1 The state fire marshal shall deny certification to any  
2 applicant who:

3 (1) Fails to establish that he or she holds any other required  
4 qualifications for certification established pursuant to rules  
5 promulgated pursuant to section four of this article; or

6 (2) Is not a licensed master electrician in accordance with  
7 rules promulgated pursuant to section four of this article.

**§29-3C-6. Suspension or revocation of certification.**

1 The state fire marshal may, upon complaint, upon a request  
2 or referral, or upon his or her own inquiry suspend or revoke the  
3 certification of any person upon a finding that:

4 (1) The certification was granted upon an application, or  
5 upon documents supporting the application, that materially  
6 misstated the applicant's qualifications or experience;

7 (2) The certified electrical inspector knowingly subscribed  
8 to or vouched for a misstatement by an applicant for certifica-  
9 tion;

10 (3) The certified electrical inspector incompetently per-  
11 formed an electrical inspection;

12 (4) The certified electrical inspector failed to comply with  
13 a provision of this article, or any rule promulgated pursuant to  
14 section four of this article; or

15 (5) The certified electrical inspector failed to comply with  
16 the reporting requirements of section eight of this article.

**§29-3C-7. Prohibited acts.**

1 A certified electrical inspector may not:

2 (1) Approve nor disapprove work of which he or she does  
3 not have personal knowledge;

4 (2) Misrepresent his or her authority or responsibility;

5 (3) Use his or her certification as an electrical inspector to  
6 secure special favors or treatment;

7 (4) Inspect any electrical installation for which he or she  
8 has performed any part of the work; or

9 (5) Perform an electrical inspection of any work furnished  
10 by a private contractor that employs him or her on a full-time,  
11 part-time or incidental basis: *Provided*, That an employee of a  
12 contractor performing electrical installation may inspect  
13 electrical work performed by other employees of the same  
14 employer, as long as the inspection is not intended to be relied  
15 on by any person other than the employer, and the electrical  
16 inspector does not certify to an electric utility or to any person  
17 that the work is in compliance with applicable building codes,  
18 electrical codes or other standards.

**§29-3C-8. Required reporting of violations.**

1 Any certified electrical inspector having knowledge of  
2 violations of this code or rules promulgated pursuant to this

3 code by the fire marshal or the fire commission shall submit the  
4 information, together with available evidence, to the state fire  
5 marshal.

**§29-3C-9. Noncompliance with article; failure to obtain certification; penalty.**

1 (a) Any person performing electrical inspections without  
2 being certified pursuant to this article is guilty of a misde-  
3 meanor and, upon conviction thereof, shall be fined not less  
4 than one hundred fifty nor more than five hundred dollars, or  
5 confined in the county or regional jail for not more than ninety  
6 days, or both; and upon conviction of a second or subsequent  
7 offense, shall be fined not less than five hundred dollars nor  
8 more than one thousand dollars, or confined in the county or  
9 regional jail for not more than ninety days, or both.

10 (b) Any person who conducts an electrical inspection  
11 without the required certification is subject to being issued a  
12 citation or a civil action in the name of the state in the circuit  
13 court of the county where the inspection was or is being  
14 performed for an injunction. A circuit court by mandatory or  
15 prohibitory injunction may compel compliance with the  
16 provisions of this article, with the lawful orders of the state fire  
17 marshal and with any final decision of the state fire marshal or  
18 state fire commission. The state fire marshal shall be repre-  
19 sented in all proceedings instituted pursuant to this subsection  
20 by the attorney general or his or her assistants.

**§29-3C-10. Disposition of fees and other receipts.**

1 All fees or moneys received as a result of actions under this  
2 article shall be deposited in the special account created pursuant  
3 to section twelve-b, article three of this chapter. Expenditures  
4 from the fund shall be for the purposes set forth in this article  
5 and article three of this chapter.

---

## CHAPTER 135

(Com. Sub. for H. B. 4046 — By Delegates Kuhn, Hrutkay, Caputo,  
Martin, Perdue and Butcher)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one, two, five and eight, article three-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to elevator safety; requiring acceptance inspection of newly installed elevators; issuing certificate of acceptance by division of labor.

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

That sections one, two, five and eight, article three-c, 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 3C. ELEVATOR SAFETY.**

§21-3C-1. Definitions.

§21-3C-2. Inspectors; application; examination, certificates of competency; reexamination.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.

§21-3C-8. Certificate of operation; renewal.

#### **§21-3C-1. Definitions.**

- 1 (1) "Certificate of acceptance" means a certificate issued by
- 2 the division of labor certifying that a newly installed elevator
- 3 has been inspected and was found to be installed in compliance
- 4 with the safety standards set forth in the American National

5 Standards Institute (ANSI) Code A17.1-3, "Safety Code for  
6 Elevators."

7 (2) "Certificate of competency" means a certificate issued  
8 by the division of labor certifying that an individual is qualified  
9 to inspect elevators.

10 (3) "Certificate of operation" means a certificate issued by  
11 the division of labor certifying that an elevator has been  
12 inspected and is safe for operation.

13 (4) "Division" means the division of labor.

14 (5) "Elevator" means all the machinery, construction,  
15 apparatus and equipment used in raising and lowering a car,  
16 cage or platform vertically between permanent rails or guides  
17 and includes all elevators, power dumbwaiters, escalators,  
18 gravity elevators and other lifting or lowering apparatus  
19 permanently installed between rails or guides, but does not  
20 include hand operated dumbwaiters, manlifts of the platform  
21 type with a platform area not exceeding nine hundred square  
22 inches, construction hoists or other similar temporary lifting or  
23 lowering apparatus.

24 (6) "Freight elevator" means an elevator used for carrying  
25 freight and on which only the operator, by the permission of the  
26 employer, is allowed to ride.

27 (7) "Inspector" means a person who has successfully  
28 completed the required West Virginia state elevator inspector  
29 examination and has been issued a certificate of competency by  
30 the division.

31 (8) "Passenger elevator" means an elevator that is designed  
32 to carry persons to its contract capacity.

**§21-3C-2. Inspectors; application; examination; certificates of  
competency; reexamination.**

1 (a) No person may serve as an elevator inspector unless he  
2 or she successfully completes the examination required by this  
3 section and holds a certificate of competency for elevator  
4 inspections issued by the division.

5 (b) The application for examination for elevator inspector  
6 shall be in writing, accompanied by a fee of ten dollars, upon a  
7 form furnished by the division. The applicant shall state his or  
8 her social security number, level of education, previous  
9 employers, the period of employment, the position held with  
10 each employer, and other information required by the division.  
11 The applicant shall also submit a letter from one of his or her  
12 previous employers concerning his or her character and  
13 experience.

14 (c) Applications which contain any willfully submitted false  
15 or untrue information shall be rejected.

16 (d) The division shall administer a written examination to  
17 a qualified applicant testing the applicant's knowledge of the  
18 construction, installation, operation, maintenance and repair of  
19 elevators and accessories.

20 (e) The division shall issue a certificate of competency for  
21 elevator inspections to any applicant who successfully com-  
22 pletes the examination and agrees to comply with requirements  
23 established by legislative rules promulgated by the division, as  
24 authorized by this article.

25 (f) An applicant who fails to successfully complete an  
26 initial examination may submit an application for a second  
27 examination ninety days or more after the initial examination  
28 and upon payment of the ten dollar examination fee. Should an  
29 applicant fail to successfully complete the prescribed examina-  
30 tion on the second trial, he or she shall not be permitted to  
31 submit an application for another examination for a period of  
32 one year after the second failure.



33 (g) Any person hired as an elevator inspector by a county  
34 or municipality shall possess a certificate of competency issued  
35 by the division.

36 (h) The division may hire certified inspectors or enter into  
37 a contract to hire inspectors who are certified by the division.  
38 The division shall hire an inspector supervisor who shall  
39 supervise the inspection activities under this article.

**§21-3C-5. Powers and duties of counties and municipalities;  
annual inspections required; acceptance inspection.**

1 (a) A county or municipality may hire its own elevator  
2 inspector or contract with any person who possesses a West  
3 Virginia elevator inspector's certificate of competency issued  
4 by the division.

5 (b) The county or municipality shall ensure that every  
6 elevator which has been in use for five years or more is  
7 inspected annually.

8 (c)(1) Beginning the first day of July, two thousand two, the  
9 county or municipality shall ensure that no newly installed  
10 elevator shall be placed in service prior to being inspected and  
11 a certificate of acceptance issued by the division of labor.

12 (2) A certificate of acceptance shall only be issued if the  
13 elevator was installed in compliance with the safety standards  
14 set forth in the American National Standards Institute (ANSI)  
15 Code A17.1-3, "Safety Code for Elevators."

16 (3) The acceptance inspection shall be subject to the same  
17 procedures and requirements as any other elevator inspection.

**§21-3C-8. Certificate of operation; renewal.**

1 A certificate of operation for any elevator may not be  
2 issued until the elevator has been inspected for safety and the  
3 inspection report filed with the division. With the exception of  
4 the acceptance inspection, only elevators which have been  
5 installed for five years or more shall be required to be in-  
6 spected. The certificate of operation shall list the date of  
7 inspection and shall expire one year after the date of inspection.  
8 The certificate of operation shall be conspicuously posted in the  
9 elevator at all times. An expired certificate of operation shall be  
10 renewed in the manner that the prior certificate was obtained.

---

## CHAPTER 136

**(Com. Sub. for S. B. 435 — By Senators Mitchell, Fanning,  
Kessler, Minard, Oliverio, Rowe, Facemyer and McKenzie)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to local emergency telephone systems; providing for the confidentiality of calls received by a county answering point reporting crimes or possible criminal conduct, fire calls and calls for emergency medical dispatch; providing exceptions thereto; declaring all other calls nonconfidential; requiring promulgation of written policy of compliance; and requiring retention of records of calls.

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

That article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new section, designated section thirteen, to read as follows:

**ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.**

**§24-6-13. Confidentiality of certain calls to county answering points and records; retention of records.**

1 (a) Except as provided by the provisions of this section,  
2 calls for emergency service to a county answering point are not  
3 confidential. All calls for emergency service reporting alleged  
4 criminal conduct which are recorded electronically, in writing  
5 or in any other form are to be kept confidential by the county  
6 answering point receiving the call and may be released only  
7 pursuant to an order entered by a court of competent jurisdic-  
8 tion, a valid subpoena or through the course of discovery in a  
9 criminal action requiring the release of the information:  
10 *Provided*, That nothing contained in this section may be  
11 construed as preventing the county answering point from  
12 releasing information to a responding agency as may be  
13 necessary for that agency's response on a call or the completion  
14 of necessary reports relating to that call.

15 (b) Upon proper request and payment of a reasonable fee  
16 set by the center director to cover the cost of production, a  
17 person or entity may obtain, without court order or a valid  
18 subpoena, a transcription of a call for emergency service  
19 reporting alleged criminal conduct. The answering point shall  
20 exclude from the transcription any information relating to the  
21 identity of the caller including, but not limited to, the caller's  
22 name, address, telephone number or his or her location in  
23 relation to the alleged offense or the alleged perpetrator. If the  
24 transcript of a call is such that it cannot be successfully redacted  
25 so as to protect the identity of the caller, the answering point  
26 may decline to provide the transcript. In that case, the person  
27 requesting the transcription may apply to a court of competent  
28 jurisdiction for a court order releasing the transcript.

29 (c) All calls for emergency service which are recorded  
30 electronically, in writing or in any other form are to be main-

31 tained for a period of at least ninety days or longer if required  
32 by an order entered by a court of competent jurisdiction or a  
33 valid subpoena.

34 (d) A county answering point may release information to  
35 bonafide law-enforcement agencies, the prosecuting attorney of  
36 a county or a United States attorney pursuant to a lawful  
37 criminal investigation. Nothing in this article may be construed  
38 as prohibiting a freedom of information request under chapter  
39 twenty-nine-b of this code for information relating to the  
40 operation of the center or to calls for emergency service which  
41 do not involve reporting of alleged criminal conduct.

42 (e) Nothing in this article requires disclosure of any  
43 information that is specifically exempt from disclosure by  
44 statute. Except as otherwise provided in this article, nothing  
45 prohibits disclosure of information that is not specifically  
46 exempted from disclosure under a provision of this code.

47 (f) Every county answering point shall, within ninety days  
48 of the effective date of this section, promulgate a written policy,  
49 available to the public, reflecting its compliance with the  
50 provisions of this section.

51 (g) No answering point or center personnel shall be civilly  
52 liable for any injury arising from disclosure of information  
53 pursuant to the provisions of this section.

---

## CHAPTER 137

**(H. B. 4504 — By Delegates Kominar, Proudfoot, Boggs,  
Browning, H. White and Stalnaker)**

---

[Passed March 9, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend and reenact section ten, article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permit application fees and annual permit fees; establishing fees for surface coal mining operations; and prohibiting setting fees for surface coal mining operations by rule.

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

That section ten, 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.**

**§22-11-10. Water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules.**

1       (a) The special revenue fund designated the “Water Quality  
2 Management Fund” established in the state treasury on the first  
3 day of July, one thousand nine hundred eighty-nine is hereby  
4 continued.

5       (b) The permit application fees and annual permit fees  
6 established and collected pursuant to this section; any interest  
7 or surcharge assessed and collected by the secretary; interest  
8 accruing on investments and deposits of the fund; and any other  
9 moneys designated by the secretary shall be deposited into the  
10 water quality management fund. The secretary shall expend the  
11 proceeds of the water quality management fund for the review  
12 of initial permit applications, renewal permit applications and  
13 permit issuance activities.

14 (c) The secretary shall propose for promulgation, legislative  
15 rules in accordance with the provisions of chapter twenty-nine-a  
16 of this code, to establish a schedule of application fees for all  
17 applications except for surface coal mining operations as  
18 defined in article three of this chapter. The appropriate fee shall  
19 be submitted by the applicant to the department with the  
20 application filed pursuant to this article for any state water  
21 pollution control permit or national pollutant discharge elimina-  
22 tion system permit. The schedule of application fees shall be  
23 designed to establish reasonable categories of permit applica-  
24 tion fees based upon the complexity of the permit application  
25 review process required by the department pursuant to the  
26 provisions of this article and the rules promulgated under this  
27 article: *Provided*, That no initial application fee may exceed  
28 fifteen thousand dollars for any facility nor may any permit  
29 renewal application fee exceed five thousand dollars. The  
30 department may not process any permit application pursuant to  
31 this article until the required permit application fee has been  
32 received.

33 (d) The secretary shall propose for promulgation legislative  
34 rules in accordance with the provisions of chapter twenty-nine-a  
35 of this code, to establish a schedule of permit fees to be  
36 assessed annually upon each person holding a state water  
37 pollution control permit or national pollutant discharge elimina-  
38 tion system permit issued pursuant to this article except for  
39 permits held by surface coal mining operations as defined in  
40 article three of this chapter. Each person holding a permit shall  
41 pay the prescribed annual permit fee to the department pursuant  
42 to the rules promulgated under this section: *Provided*, That no  
43 person holding a permit for a home aerator of six hundred  
44 gallons and under shall be required to pay an annual permit fee.  
45 The schedule of annual permit fees shall be designed to  
46 establish reasonable categories of annual permit fees based  
47 upon the relative potential of categories or permits to degrade  
48 the waters of the state: *Provided, however*, That no annual  
49 permit fee may exceed five thousand dollars. The secretary may  
50 declare any permit issued pursuant to this article void when the  
51 annual permit fee is more than ninety days past due pursuant to

52 the rules promulgated under this section. Voiding of the permit  
53 will only become effective upon the date the secretary mails, by  
54 certified mail, written notice to the permittee's last known  
55 address notifying the permittee that the permit has been voided.

56 (e) The secretary shall file a quarterly report with the joint  
57 committee on government and finance setting forth the fees  
58 established and collected pursuant to this section.

59 (f) On the first day of July, two thousand two, and each year  
60 thereafter, a one thousand dollar fee shall be assessed for permit  
61 applications and renewals submitted pursuant to this article for  
62 surface coal mining operations, as defined in article three of this  
63 chapter. On the first day of July, two thousand two, and each  
64 year thereafter, a five hundred dollar fee shall be assessed for  
65 application for permit modifications submitted pursuant to this  
66 article for surface coal mining operations, as defined in article  
67 three of this chapter. Beginning the first day of July, two  
68 thousand two and every year thereafter, an annual permit fee  
69 shall be assessed on the issuance anniversary dates of all  
70 permits issued pursuant to this article for surface coal mining  
71 operations as defined in article three of this chapter. The annual  
72 permit fee shall be collected as follows: Five hundred dollars  
73 for the fiscal year beginning on the first day of July, two  
74 thousand two and one thousand dollars for each fiscal year  
75 thereafter.

---

## CHAPTER 138

**(Com. Sub. for H. B. 4449 — By Delegates Fleischauer, Mahan,  
Compton, Manuel, Amores, Perdue and Webster)**

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor. ]

---

AN ACT to amend article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-nine, relating to authorizing the department of environmental protection to collect costs incurred for emergency response to accidental discharge or spill of pollution that may enter into state waters or to prevent spills; authorizing the department to collect cleanup costs for authorized third parties; and providing for civil actions.

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

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

**ARTICLE 11. WATER POLLUTION CONTROL ACT.**

**§22-11-29. Reimbursement of response costs.**

1 (a) The secretary may recover through civil action or  
2 cooperative agreements with responsible persons, the actual,  
3 reasonable and necessary amounts expended by the department  
4 for the purpose of responding to, evaluating or overseeing a  
5 response to a spill or accidental discharge of any pollutant that  
6 enters the waters of the state, or taking measures required to  
7 prevent a spill or accidental discharge of any pollutant from  
8 entering the waters of the state. The department shall provide  
9 the responsible party an itemized invoice of the expenditures  
10 that the department seeks to recover.

11 (b) All moneys recovered by the secretary shall be depos-  
12 ited into the water quality management fund created in section  
13 ten of this article and shall be used for future responses to,  
14 evaluation or oversight of a response to a spill or accidental  
15 discharge of any pollutant that enters the waters of the state, or  
16 measures required to be taken to prevent a spill or accidental  
17 discharge of any pollutant from entering the waters of the state.

18 (c) The amounts that may be collected by the secretary  
19 pursuant to subsection (a) of this section may include any



20 reasonable and necessary costs incurred by a third party who is  
21 not a responsible party and who, with the prior authorization of  
22 the secretary or the chief inspector, responds to a spill or  
23 accidental discharge that enters or threatens to enter the waters  
24 of the state. The department is not responsible for or may not be  
25 held liable for costs incurred by the third party responder.

26 (d) Any civil action instituted pursuant to this section may  
27 be brought in the county in which the spill or accidental  
28 discharge occurred or the county in which the response oc-  
29 curred.

---

## CHAPTER 139

(S. B. 609 — By Senators Snyder, Oliverio, Wooton, Kessler,  
Redd, Burnette, Mitchell and Rowe)

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section fifteen, article fifteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to violations and penalties under the solid waste management act; inserting penalties previously incorporated by reference; creating civil and criminal penalties for certain illegal waste tire piles; and removing antiquated language.

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

That section fifteen, article fifteen, 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 15. SOLID WASTE MANAGEMENT ACT.**

**§22-15-15. Orders, inspections and enforcement; civil and criminal penalties.**

1 (a) If the secretary, upon inspection or investigation by duly  
2 authorized representatives or through other means observes,  
3 discovers or learns of a violation of this article, its rules, article  
4 eleven of this chapter or its rules, or any permit or order issued  
5 under this article, he or she shall:

6 (1) Issue an order stating with reasonable specificity the  
7 nature of the alleged violation and requiring compliance  
8 immediately or within a specified time. An order under this  
9 section includes, but is not limited to, any or all of the follow-  
10 ing: Orders suspending, revoking or modifying permits, orders  
11 requiring a person to take remedial action or cease and desist  
12 orders;

13 (2) Seek an injunction in accordance with subsection (e) of  
14 this section;

15 (3) Institute a civil action in accordance with subsection (e)  
16 of this section; or

17 (4) Request the attorney general, or the prosecuting attorney  
18 of the county wherein the alleged violation occurred, to bring  
19 an appropriate action, either civil or criminal in accordance  
20 with subsection (b) of this section.

21 (b) Any person who violates this article, or permits issued  
22 pursuant to this article or rules or orders issued by the secretary  
23 or board is subject to administrative, civil and criminal sanc-  
24 tions as follows:

25 (1) Any person who fails or refuses to discharge any duty  
26 imposed upon him or her by this article or by any rule of the  
27 secretary promulgated pursuant to the provisions and intent of  
28 this article or by an order of the secretary or board, or who fails

29 or refuses to apply for and obtain a permit as required by the  
30 provisions of this article, or who fails or refuses to comply with  
31 any term or condition of the permit, is guilty of a misdemeanor  
32 and, upon conviction thereof, shall be fined not less than one  
33 hundred dollars nor more than one thousand dollars, or impris-  
34 oned in the county or regional jail not more than six months, or  
35 both fined and imprisoned.

36 (2) Any person who intentionally misrepresents any  
37 material fact in an application, record, report, plan or other  
38 document filed or required to be maintained under the provi-  
39 sions of this article or any rules promulgated by the secretary  
40 thereunder is guilty of a misdemeanor and, upon conviction  
41 thereof, shall be fined not less than one thousand dollars nor  
42 more than ten thousand dollars, or imprisoned in a county or  
43 regional jail not more than six months, or both fined and  
44 imprisoned.

45 (3) Any person who willfully or negligently violates any  
46 provision of any permit issued under or subject to the provi-  
47 sions of this article or who willfully or negligently violates any  
48 provision of this article or any rule of the secretary or any order  
49 of the secretary or board is guilty of a misdemeanor and, upon  
50 conviction thereof, shall be fined not less than two thousand  
51 five hundred dollars nor more than twenty-five thousand dollars  
52 per day of violation, or imprisoned in a county or regional jail  
53 not more than one year, or both fined and imprisoned.

54 (4) Any person convicted of a second offense or subsequent  
55 willful violation of subdivision (2) or (3) of this subsection or  
56 knowingly and willfully violating any provision of any permit,  
57 rule or order issued under or subject to the provisions of this  
58 article or knowingly and willfully violating any provision of  
59 this article, is guilty of a felony and, upon conviction thereof,  
60 shall be imprisoned in a state correctional facility not less than  
61 one nor more than three years, or fined not more than fifty

62 thousand dollars for each day of violation, or both fined and  
63 imprisoned.

64 (5) Any person convicted of accumulating or disposing of  
65 one thousand or more tires in violation of this article is guilty  
66 of a felony and, upon conviction thereof, shall be imprisoned in  
67 a state correctional facility for not less than one nor more than  
68 five years and shall be required to clean up and properly  
69 dispose of the waste tires or reimburse the state agency or  
70 agencies for costs incurred in cleaning up the waste tires. In  
71 addition, any person so convicted may be fined not more than  
72 fifty thousand dollars for each day of the continued violation.

73 (6) A person may be prosecuted and convicted under the  
74 provisions of this section, notwithstanding that the administra-  
75 tive remedies provided in this article have not been pursued or  
76 invoked against the person and notwithstanding that civil action  
77 for the imposition and collection of a civil penalty or an  
78 application for an injunction under the provisions of this article  
79 has not been filed against the person.

80 (7) Where a person holding a permit is carrying out a  
81 program of pollution abatement or remedial action in compli-  
82 ance with the conditions and terms of the permit, that person is  
83 not subject to criminal prosecution for pollution recognized and  
84 authorized by the permit.

85 (c) Any person who violates any provision of this article,  
86 any permit or any rule or order issued pursuant to this article is  
87 subject to a civil administrative penalty, to be levied by the  
88 secretary, of not more than five thousand dollars for each day  
89 of the violation, not to exceed a maximum of twenty thousand  
90 dollars:

91 (1) In assessing a penalty, the secretary shall take into  
92 account the seriousness of the violation and any good faith  
93 efforts to comply with the applicable requirements as well as

94 any other appropriate factors as may be established by the  
95 secretary by rules promulgated pursuant to this article and  
96 article three, chapter twenty-nine-a of this code. No assessment  
97 shall be levied pursuant to this subsection until after the alleged  
98 violator has been notified by certified mail or personal service.  
99 The notice shall include a reference to the section of the statute,  
100 rule, order or statement of permit conditions that was allegedly  
101 violated, a concise statement of the facts alleged to constitute  
102 the violation, a statement of the amount of the administrative  
103 penalty to be imposed and a statement of the alleged violator's  
104 right to an informal hearing. The alleged violator has twenty  
105 calendar days from receipt of the notice within which to deliver  
106 to the secretary a written request for an informal hearing. If no  
107 hearing is requested, the notice becomes a final order after the  
108 expiration of the twenty-day period. If a hearing is requested,  
109 the secretary shall inform the alleged violator of the time and  
110 place of the hearing. The secretary may appoint an assessment  
111 officer to conduct the informal hearing and then make a written  
112 recommendation to the secretary concerning the assessment of  
113 a civil administrative penalty. Within thirty days following the  
114 informal hearing, the secretary shall issue and furnish to the  
115 alleged violator a written decision, and the reasons therefor,  
116 concerning the assessment of a civil administrative penalty.  
117 Within thirty days after notification of the secretary's decision,  
118 the alleged violator may request a formal hearing before the  
119 environmental quality board in accordance with the provisions  
120 of section sixteen of this article. The authority to levy a civil  
121 administrative penalty is in addition to all other enforcement  
122 provisions of this article and the payment of any assessment  
123 does not affect the availability of any other enforcement  
124 provision in connection with the violation for which the  
125 assessment is levied: *Provided*, That no combination of  
126 assessments against a violator under this section shall exceed  
127 twenty-five thousand dollars for each day of a violation:  
128 *Provided, however*, That any violation for which the violator  
129 has paid a civil administrative penalty assessed under this

130 section shall not be the subject of a separate civil penalty action  
131 under this article to the extent of the amount of the civil  
132 administrative penalty paid. All administrative penalties shall  
133 be levied in accordance with rules issued pursuant to subsection  
134 (a), section five of this article. The net proceeds of assessments  
135 collected pursuant to this subsection shall be deposited in the  
136 solid waste reclamation and environmental response fund  
137 established in subdivision (3), subsection (h), section eleven of  
138 this article;

139 (2) No assessment levied pursuant to subdivision (1) of this  
140 subsection becomes due and payable until the procedures for  
141 review of the assessment as set out in said subsection have been  
142 completed.

143 (d) Any person who violates any provision of this article,  
144 any permit or any rule or order issued pursuant to this article is  
145 subject to a civil penalty not to exceed twenty-five thousand  
146 dollars for each day of the violation, which penalty shall be  
147 recovered in a civil action either in the circuit court wherein the  
148 violation occurs or in the circuit court of Kanawha County.

149 (e) The secretary may seek an injunction, or may institute  
150 a civil action against any person in violation of any provisions  
151 of this article or any permit, rule or order issued pursuant to this  
152 article. In seeking an injunction, it is not necessary for the  
153 secretary to post bond nor to allege or prove at any stage of the  
154 proceeding that irreparable damage will occur if the injunction  
155 is not issued or that the remedy at law is inadequate. An  
156 application for injunctive relief or a civil penalty action under  
157 this section may be filed and relief granted notwithstanding the  
158 fact that all administrative remedies provided for in this article  
159 have not been exhausted or invoked against the person or  
160 persons against whom relief is sought.

161 (f) Upon request of the secretary, the attorney general or the  
162 prosecuting attorney of the county in which the violation occurs  
163 shall assist the secretary in any civil action under this section.

164 (g) In any civil action brought pursuant to the provisions of  
165 this section, the state, or any agency of the state which prevails  
166 may be awarded costs and reasonable attorney's fees.

167 (h) In addition to all other grounds for revocation, the  
168 secretary shall revoke a permit for any of the following reasons:

169 (1) Fraud, deceit or misrepresentation in securing the  
170 permit, or in the conduct of the permitted activity;

171 (2) Offering, conferring or agreeing to confer any benefit to  
172 induce any other person to violate the provisions of this chapter,  
173 or of any other law relating to the collection, transportation,  
174 treatment, storage or disposal of solid waste, or of any rule  
175 adopted pursuant thereto;

176 (3) Coercing a customer by violence or economic reprisal  
177 or the threat thereof to utilize the services of any permittee; or

178 (4) Preventing, without authorization of the secretary, any  
179 permittee from disposing of solid waste at a licensed treatment,  
180 storage or disposal facility.

---

## CHAPTER 140

**(H. B. 4551 — By Mr. Speaker, Mr. Kiss, and  
Delegates Amores and Michael)**

---

[Passed March 6, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article fifteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to beneficial use of sludge and requiring promulgation of emergency and legislative rules.

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

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

**ARTICLE 15. SOLID WASTE MANAGEMENT ACT.**

**§22-15-22. Sludge management.**

1       (a) Any sludge or other material determined by the secre-  
2 tary to have beneficial properties similar to sewage sludge may  
3 be beneficially used in accordance with the applicable require-  
4 ments governing sewage sludge, and any other requirements  
5 determined to be necessary by the secretary to protect human  
6 health and the environment. Persons seeking to beneficially use  
7 sludge must meet the requirements of this article and the rules  
8 promulgated thereunder.

9       (b) In order to enhance the resource recovery and recycling  
10 goals of this act and to encourage the beneficial use of sludge  
11 or other materials, the secretary shall propose for promulgation  
12 in accordance with the provisions of article three, chapter  
13 twenty-nine-a of this code, emergency and legislative rules to  
14 effectuate the purposes of this section. The secretary shall at a  
15 minimum include the following in the proposed rules:

16       (1) A mechanism to determine beneficial use characteris-  
17 tics;



- 18       (2) A method to determine pollutant content of the material  
19 proposed for beneficial use;
- 20       (3) A method to determine that the beneficial properties of  
21 the material are derived from the raw material rather than  
22 additives;
- 23       (4) Buffer zones or other criteria necessary to adequately  
24 protect ground and surface water;
- 25       (5) Necessary restrictions of pollutant levels in the material;
- 26       (6) Analytical methods, loading rates and storage require-  
27 ments for the material;
- 28       (7) Permit requirements; and
- 29       (8) Appropriate fees.

---

## CHAPTER 141

**(Com. Sub. for H. B. 4450 — By Delegates Fleischauer, Mahan,  
Compton, Manuel, Perdue and Webster)**

---

[Passed March 6, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section twenty-two, article eighteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certification fee for hazardous waste generators; authorizing the fee to be set by legislative rule; setting forth fee requirements and limitations; establishing special revenue account; and authorizing first-year expenditures.

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

That section twenty-two, article eighteen, 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 18. HAZARDOUS WASTE MANAGEMENT ACT.**

**§22-18-22. Appropriation of funds; hazardous waste management fund.**

1           (a) The net proceeds of all fines, penalties and forfeitures  
2 collected under this article shall be appropriated as directed by  
3 article XII, section 5 of the constitution of West Virginia. For  
4 the purposes of this section, the net proceeds of the fines,  
5 penalties and forfeitures shall be considered the proceeds  
6 remaining after deducting therefrom those sums appropriated  
7 by the Legislature for defraying the cost of administering this  
8 article. All permit application fees collected under this article  
9 shall be paid into the state treasury into a special fund desig-  
10 nated "The Hazardous Waste Management Fund." In making  
11 the appropriation for defraying the cost of administering this  
12 article, the Legislature shall first take into account the sums  
13 included in that special fund prior to deducting additional sums  
14 as may be needed from the fines, penalties and forfeitures  
15 collected pursuant to this article.

16           (b) Effective on the first day of July, two thousand three,  
17 and each year after, there is imposed an annual certification fee  
18 for facilities that manage hazardous waste, as defined by the  
19 federal Resource Conservation and Recovery Act, as amended.  
20 The fee will be set by rule promulgated by the secretary in  
21 accordance with the provisions of article three, chapter twenty-  
22 nine-a of this code. The rule shall be a product of a negotiated  
23 rule-making process with the facilities subject to the rule. The  
24 rule shall, at a minimum, establish different fee rates for  
25 facilities based on criteria established in the rule. The total  
26 amount of fees generated shall raise no more funds than are  
27 necessary and adequate to meet the matching requirements for

28 all federal grants which support the hazardous waste manage-  
29 ment program, but shall not exceed seven hundred thousand  
30 dollars per year.

31 (c) The revenues collected from the annual certification fee  
32 shall be deposited in the state treasury to the credit of the  
33 "Hazardous Waste Management Fee Fund," which is hereby  
34 established. Moneys of the fund, together with any interest or  
35 other return earned thereon, shall be expended to meet the  
36 matching requirements of federal grant programs which support  
37 the hazardous waste management program. Expenditures from  
38 the fund shall be for the purposes set forth in this article and are  
39 not authorized from collections, but are to be made only in  
40 accordance with appropriation by the Legislature and in  
41 accordance with the provisions of article three, chapter twelve  
42 of this code and upon the fulfillment of the provisions set forth  
43 in article two, chapter five-a of this code: *Provided*, That for the  
44 fiscal year ending the thirtieth day of June, two thousand four,  
45 expenditures are authorized from collections rather than  
46 pursuant to an appropriation by the Legislature. Amounts  
47 collected which are found from time to time to exceed the funds  
48 needed for purposes set forth in this article may be transferred  
49 to other accounts by appropriation of the Legislature.

---

## CHAPTER 142

(Com. Sub. for S. B. 474 — By Senators Mitchell, Fanning, Kessler,  
Minard, Oliverio, Rowe, Facemyer and McKenzie)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to repeal section thirteen-a, article one, chapter forty-four of  
the code of West Virginia, one thousand nine hundred thirty-one,  
as amended; to amend and reenact section fourteen of said article;

to further amend said article by adding thereto a new section, designated section fourteen-a; to amend and reenact section one, article two of said chapter; and to amend and reenact section twelve, article four of said chapter, all relating to the administration of estates; eliminating certain requirements that county clerks publish and that personal representatives mail notices; eliminating the requirement that county clerks mail appraisement and questionnaires to heirs and beneficiaries; requiring county clerks to publish a notice regarding estates; requiring county clerks to notify the personal representative that no appraisement has been filed; establishing time limits for the filing of objections; requiring personal representatives to send notice to certain individuals; providing for a fee for publication; limiting the liability of the personal representative in certain circumstances; defining terms; providing that the allowable expense of a fiduciary for payment to a surety may be based on the rates set by the insurance commissioner; and providing that nonprobate inventory form shall be confidential tax information.

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

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

**Article**

- 1. Personal Representatives.**
- 2. Proof and Allowance of Claims Against Estates of Decedents.**
- 4. Accounting by Fiduciaries.**

**ARTICLE 1. PERSONAL REPRESENTATIVES.**

- §44-1-14. Appraisement of real estate and probate personal property of decedents; disposition; and hiring of experts.
- §44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

**\*§44-1-14. Appraisal of real estate and probate personal property of decedents; disposition; and hiring of experts.**

1 (a) The personal representative of an estate of a deceased  
2 person shall appraise the deceased's real estate and personal  
3 probate property, or any real estate or personal probate property  
4 in which the deceased person had an interest at the time of his  
5 or her death, as provided in this section.

6 (b) After having taken the appropriate oath, the personal  
7 representative shall, on the appraisal form prescribed by the  
8 tax commissioner, list the following items owned by the  
9 decedent or in which the decedent had an interest and the fair  
10 market value of the items at the date of the decedent's death:

11 (1) All probate and nonprobate real estate including, but not  
12 limited to, real estate owned by the decedent, as a joint tenant  
13 with right of survivorship with one or more parties, as a life  
14 estate, subject to a power of appointment of the decedent, or in  
15 which any beneficial interest passes by trust or otherwise to  
16 another person by reason of the death of the decedent; and

17 (2) All probate personal property, whether tangible or  
18 intangible, including, but not limited to, stocks and bonds, bank  
19 accounts, mortgages, notes, cash, life insurance payable to the  
20 executor or administrator of the decedent's estate and all other  
21 items of probate personal property.

22 (c) Any real estate or interest in real estate so appraised  
23 must be identified with particularity and description. The  
24 personal representative shall identify the source of title in the  
25 decedent and the location of the realty for purposes of real  
26 property ad valorem taxation.

27 (d) For purposes of this section, the term "probate personal  
28 property" means all property which passes by or under the  
29 decedent's will or by the laws of intestate descent and distribu-  
30 tion or is otherwise subject to administration in a decedent's  
31 estate under common law.

---

\* **CLERK'S NOTE:** This section was also amended by SB 661 (Chapter 305), which passed prior to this act.

32 (e) The personal representative shall complete, under oath,  
33 a questionnaire included in the appraisement form designed by  
34 the tax commissioner for the purpose of reporting to the tax  
35 commissioner whether the estate of the decedent is subject to  
36 estate tax as provided in article eleven, chapter eleven of this  
37 code and whether the decedent owned or had an interest in any  
38 nonprobate personal property: *Provided*, That the tax commis-  
39 sioner shall design a questionnaire that is as much as possible  
40 phrased in understandable English.

41 (f) The appraisement form must be executed and signed by  
42 the personal representative. The original appraisement form and  
43 two copies thereof, together with the completed and notarized  
44 nonprobate inventory form required by section seven, article  
45 eleven, chapter eleven of this code, shall be returned to the  
46 clerk of the county commission by whom the personal represen-  
47 tative was appointed or to the fiduciary supervisor within ninety  
48 days of the date of qualification of the personal representative.  
49 The clerk or supervisor shall inspect the appraisement form to  
50 determine whether it is in proper form. If the appraisement form  
51 is returned to a fiduciary supervisor, within ten days after being  
52 received and approved, the supervisor shall deliver the docu-  
53 ments to the clerk of the county commission. Upon receipt of  
54 the appraisement form, the clerk of the county commission  
55 shall record it with the certificate of approval of the supervisor  
56 and mail a certified copy of the appraisement form, together  
57 with the unrecorded nonprobate inventory form, to the tax  
58 commissioner. The date of return of an appraisement form must  
59 be entered by the clerk of the county commission in his or her  
60 record of fiduciaries. The nonprobate inventory form shall be  
61 considered confidential tax return information subject to the  
62 provisions of section five-d, article ten, chapter eleven of this  
63 code and may not be disclosed by the clerk of the county  
64 commission and his or her officers and employees or former  
65 officers and employees, except to the tax commissioner as  
66 provided in this section. Nothing in this section shall be  
67 construed to hinder, abrogate, or prevent disclosure of informa-  
68 tion as authorized in section thirty-five, article eleven of said  
69 chapter.

70 (g) An executed and signed appraisal form is prima  
71 facie evidence:

72 (1) Of the value of the property listed;

73 (2) That the property is subject to administration; and

74 (3) That the property was received by the personal repre-  
75 sentative.

76 (h) Any personal representative who refuses or declines,  
77 without reasonable cause, to comply with the provisions of this  
78 section is guilty of a misdemeanor and, upon conviction  
79 thereof, shall be fined not less than twenty-five dollars nor more  
80 than five hundred dollars.

81 (i) Every personal representative has authority to retain the  
82 services of an expert as may be appropriate to assist and advise  
83 him or her concerning his or her duties in appraising any asset  
84 or property pursuant to the provisions of this section. An expert  
85 so retained shall be compensated a reasonable sum by the  
86 personal representative from the assets of the estate. The  
87 compensation and its reasonableness is subject to review and  
88 approval by the county commission, upon recommendation of  
89 the fiduciary supervisor.

90 (j) Except as specifically provided in subdivision (1),  
91 subsection (b) of this section and in section seven, article  
92 eleven, chapter eleven of this code, the personal representative  
93 is not required to list and appraise nonprobate real estate or  
94 nonprobate personal property of the decedent on the forms  
95 required in this section or section seven of said article.

**§44-1-14a. Notice of administration of estate; time limits for filing  
of objections; liability of personal representative.**

1 (a) Within thirty days of the filing of the appraisal of  
2 any estate as required in section fourteen of this article, the  
3 clerk of the county commission shall publish, once a week for  
4 two successive weeks, in a newspaper of general circulation  
5 within the county of the administration of the estate, a notice,  
6 which is to include:

7           (1) The name of the decedent;

8           (2) The name and address of the county commission before  
9 whom the proceedings are pending;

10          (3) The name and address of the personal representative;

11          (4) The name and address of any attorney representing the  
12 personal representative;

13          (5) The name and address of the fiduciary commissioner, if  
14 any;

15          (6) The date of first publication;

16          (7) A statement that claims against the estate must be filed  
17 in accordance with the provisions of article two or article three-  
18 a of this chapter;

19          (8) A statement that any person seeking to impeach or  
20 establish a will must make a complaint in accordance with the  
21 provisions of section eleven, twelve or thirteen, article five,  
22 chapter forty-one of this code;

23          (9) A statement that an interested person objecting to the  
24 qualifications of the personal representative or the venue or  
25 jurisdiction of the court must be filed with the county commis-  
26 sion within three months after the date of first publication or  
27 thirty days of service of the notice, whichever is later; and

28          (10) If the appraisalment of the assets of the estate shows the  
29 value to be one hundred thousand dollars or less, exclusive of  
30 real estate specifically devised and nonprobate assets, or, if it  
31 appears to the clerk that there is only one beneficiary of the  
32 probate estate and that the beneficiary is competent at law, a  
33 statement substantially as follows: "Settlement of the estate of  
34 the following named decedents will proceed without reference  
35 to a fiduciary commissioner unless within ninety days from the  
36 first publication of this notice a reference is requested by a  
37 party in interest or an unpaid creditor files a claim and good  
38 cause is shown to support reference to a fiduciary commis-  
39 sioner".



40 (b) If no appraisal is filed within the time period  
41 established pursuant to section fourteen of this article, the  
42 county clerk shall send a notice to the personal representative  
43 by first class mail, postage prepaid, indicating that the appraise-  
44 ment has not been filed. Notwithstanding any other provision of  
45 this code to the contrary, the county clerk shall publish the  
46 notice required in subsection (a) of this section within six  
47 months of the qualification of the personal representative.

48 (c) The personal representative shall promptly make a  
49 diligent search to determine the names and addresses of  
50 creditors of the decedent who are reasonably ascertainable.

51 (d) The personal representative shall, within ninety days  
52 after the date of first publication, serve a copy of the notice,  
53 published pursuant to subsection (a) of this section, by first  
54 class mail, postage prepaid, or by personal service on the  
55 following persons:

56 (1) If the personal representative is not the decedent's  
57 surviving spouse and not the sole beneficiary or sole heir, the  
58 decedent's surviving spouse, if any;

59 (2) If there is a will and the personal representative is not  
60 the sole beneficiary, any beneficiaries;

61 (3) If there is not a will and the personal representative is  
62 not the sole heir, any heirs;

63 (4) The trustee of any trust in which the decedent was a  
64 grantor, if any; and

65 (5) All creditors identified under subsection (c) of this  
66 section, other than a creditor who filed a claim as provided in  
67 article two of this chapter or a creditor whose claim has been  
68 paid in full.

69 (e) Any person interested in the estate who objects to the  
70 qualifications of the personal representative or the venue or  
71 jurisdiction of the court, shall file notice of an objection with  
72 the county commission within ninety days after the date of the  
73 first publication as required in subsection (a) of this section or  
74 within thirty days after service of the notice as required by

75 subsection (d) of this section, whichever is later. If an objection  
76 is not timely filed, the objection is forever barred.

77 (f) A personal representative acting in good faith is not  
78 personally liable for serving notice under this section, notwith-  
79 standing a determination that notice was not required by this  
80 section. A personal representative acting in good faith who fails  
81 to serve the notice required by this section is not personally  
82 liable. The service of the notice in accordance with this  
83 subsection may not be construed to admit the validity or  
84 enforceability of a claim.

85 (g) The clerk of the county commission shall collect a fee  
86 of twenty dollars for the publication of the notice required in  
87 this section.

88 (h) For purposes of this section, the term beneficiary means  
89 a person designated in a will to receive real or personal prop-  
90 erty.

## ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

### §44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisal by the personal  
2 representative to the county clerk, the estate of his or her  
3 decedent, by order of the county commission, must be referred  
4 to a fiduciary commissioner for proof and determination of  
5 debts and claims, establishment of their priority, determination  
6 of the amount of the respective shares of the legatees and  
7 distributees, and any other matter necessary for the settlement  
8 of the estate: *Provided*, That in counties where there are two or  
9 more commissioners, the estates of decedents must be referred  
10 to the commissioners in rotation, so there may be an equal  
11 division of the work. Notwithstanding any other provision of  
12 this code to the contrary, a fiduciary commissioner may not  
13 charge to the estate a fee greater than three hundred dollars and  
14 expenses for the settlement of an estate, except upon: (i)  
15 Approval of the personal representative; or (ii) a determination  
16 by the county commission after a hearing that complicating

17 issues or problems attendant to the settlement substantiate the  
18 allowance of a greater fee.

19 (b) If the personal representative delivers to the clerk an  
20 appraisal of the assets of the estate showing their value to  
21 be one hundred thousand dollars or less, exclusive of real estate  
22 specifically devised and nonprobate assets, or, if it appears to  
23 the clerk that there is only one beneficiary of the probate estate  
24 and that the beneficiary is competent at law, the clerk shall  
25 record the appraisal. If an unpaid creditor files a claim  
26 against the estate, the personal representative has twenty days  
27 after the date of the filing of a claim against the estate of the  
28 decedent to approve or reject the claim before the estate is  
29 referred to a fiduciary commissioner. If the personal representa-  
30 tive approves all claims as filed, then no reference may be  
31 made.

32 The personal representative shall, within a reasonable time  
33 after the date of recordation of the appraisal: (i) File a  
34 waiver of final settlement in accordance with the provisions of  
35 section twenty-nine of this article; or (ii) make a report to the  
36 clerk of his or her receipts, disbursements and distribution and  
37 submit an affidavit stating that all claims against the estate for  
38 expenses of administration, taxes and debts of the decedent  
39 have been paid in full. Upon receipt of the waiver of final  
40 settlement or report, the clerk shall record the waiver or report  
41 and mail copies to each beneficiary and creditor by first-class  
42 mail, postage prepaid. The clerk shall retain the report for ten  
43 days to allow any beneficiary or creditor to appear before the  
44 county commission to request reference to a fiduciary commis-  
45 sioner. The clerk shall collect a fee of ten dollars for recording  
46 and mailing the waiver of final settlement or report.

47 If no request or objection is made to the clerk or to the  
48 county commission, the county commission may confirm the  
49 report of the personal representative, the personal representative  
50 and his or her surety shall be discharged; but if an objection or  
51 request is made, the county commission may confirm and  
52 record the accounting or may refer the estate to its fiduciary  
53 commissioners: *Provided*, That the personal representative has  
54 twenty days after the date of the filing of a claim against the

55 estate of the decedent to approve or reject the claim before the  
56 estate is referred to a fiduciary commissioner and if all claims  
57 are approved as filed, then no reference may be made.

58 (c) For purposes of this section, the term beneficiary means  
59 a person designated in a will to receive real or personal prop-  
60 erty.

#### ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

##### §44-4-12. Compensation and expenses of fiduciaries.

1 The fiduciary commissioner in stating and settling the  
2 account shall allow the fiduciary any reasonable expenses  
3 incurred by him as such; and also, except in cases in which it is  
4 otherwise provided, a reasonable compensation in the form of  
5 a commission on receipts or otherwise. Any executor, adminis-  
6 trator, guardian, committee, assignee, receiver, special fiduciary  
7 commissioner, or other fiduciary, required by law or by the  
8 order of any court or judge to give a bond or obligation as such,  
9 may include, as a part of the lawful expense of executing his  
10 duties, such reasonable sum paid a company, authorized under  
11 the laws of this state so to do, for becoming his surety on such  
12 bond or obligation, as may be allowed by the court in which, or  
13 the fiduciary commissioner before whom, he is required to  
14 account, or a judge of such court, not exceeding, however, the  
15 amount authorized by the insurance commissioner pursuant to  
16 the provisions of article twenty, chapter thirty-three of this code  
17 and the legislative rules promulgated thereunder.

---

## CHAPTER 143

(Com. Sub. for S. B. 104 — By Senators Hunter,  
Bowman, Ross, Minear and Helmick)

---

[Passed February 15, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-jj; and to amend article twelve, chapter eight of said code by adding thereto a new section, designated section five-c, all relating to authorizing counties and municipalities to enact ordinances restricting the location of businesses offering exotic entertainment; defining terms; describing circumstances under which a county ordinance does not apply to a municipality; clarifying circumstances under which a loss of a structure used for an exotic entertainment business may be repaired or replaced; and permitting direct judicial review.

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

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

**Chapter**

**7. County Commissions and Officers.**

**8. Municipal Corporations.**

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3jj. Authority of counties to enact ordinances restricting the location of businesses offering exotic entertainment.**

1 (a) For the purposes of this section:

2 (1) "Exotic entertainment" means live entertainment,  
3 dancing or other services conducted by persons while nude or  
4 seminude in a commercial setting or for profit.

5 (2) "Seminude" means the appearance of:

6 (A) The female breast below a horizontal line across the top  
7 of the areola at its highest point, including the entire lower  
8 portion of the human female breast, but does not include any  
9 portion of the cleavage of the human female breast exhibited by  
10 a dress, blouse, skirt, leotard, bathing suit or other wearing  
11 apparel provided the areola is not exposed, in whole or in part;

12 (B) A human bare buttock, anus, anal cleft or cleavage,  
13 pubic area, male genitals, female genitals or vulva, with less  
14 than a fully opaque covering; or

15 (C) A human male genital in a discernibly turgid state even  
16 if completely and opaquely covered.

17 (b) In the event a county has not created or designated a  
18 planning commission pursuant to the provisions of article  
19 twenty-four, chapter eight of this code, a county commission  
20 may, by order entered of record, adopt an ordinance that limits  
21 the areas of the county in which a business may offer "exotic  
22 entertainment" as that term is defined in subsection (a) of this  
23 section. Any such ordinance shall be subject to the provisions  
24 of section fifty, article twenty-four, chapter eight of this code:  
25 *Provided*, That in the event of the partial or total loss of any  
26 existing business structure due to fire, flood, accident or any  
27 other unforeseen act, that business structure may be repaired or  
28 replaced and the business use of that structure may continue  
29 notwithstanding the existence of any ordinance authorized by  
30 this section. Any such repair or replacement will be limited to  
31 restoring or replacing the damaged or lost structure with one  
32 reasonably similar, or smaller, in size as measured in square  
33 footage, and any enlargement of the business structure will  
34 subject the structure to any existing ordinance authorized by  
35 this section. Notwithstanding any other provision of this code  
36 to the contrary, no ordinance enacted pursuant to the provisions

37 of this section may apply to or affect any municipal corporation  
38 that either: (1) Has adopted and has in effect an ordinance  
39 restricting the location of exotic entertainment or substantially  
40 similar businesses pursuant to the authority granted in articles  
41 twelve or twenty-four, chapter eight of this code; or (2) adopts  
42 an ordinance to exempt itself from any county ordinance  
43 enacted pursuant to this section.

44 (c) Any person adversely affected by an ordinance enacted  
45 pursuant to the authority granted in subsection (b) of this  
46 section is entitled to seek direct judicial review with regard to  
47 whether the ordinance impermissibly burdens his or her right to  
48 establish a business offering exotic entertainment.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOY- EES; SUITS AGAINST MUNICIPALITIES.**

#### **§8-12-5c. Authority to enact ordinance restricting the location of businesses offering exotic entertainment.**

1 (a) For the purposes of this section, the term “exotic  
2 entertainment” has the same meaning ascribed to it in section  
3 three-jj, article one, chapter seven of this code.

4 (b) In the event a municipality has not created or designated  
5 a planning commission in accordance with the provisions of  
6 article twenty-four of this chapter, every municipality and the  
7 governing body of the municipality may, in addition to all other  
8 powers of municipalities, adopt an ordinance that limits the  
9 areas of the municipality in which businesses may offer exotic  
10 entertainment. Any such ordinance shall be subject to the  
11 provisions of section fifty, article twenty-four of this chapter:  
12 *Provided*, That in the event of the partial or total loss of any  
13 existing business structure due to fire, flood, accident or any

14 other unforeseen act, that business structure may be repaired or  
15 replaced and the business use of that structure may continue  
16 notwithstanding the existence of any ordinance authorized by  
17 this section. Any such repair or replacement will be limited to  
18 restoring or replacing the damaged or lost structure with one  
19 reasonably similar, or smaller, in size as measured in square  
20 footage, and any enlargement of the business structure will  
21 subject the structure to any existing ordinance authorized by  
22 this section.

23 (c) Any person adversely affected by an ordinance enacted  
24 pursuant to the authority granted in subsection (b) of this  
25 section is entitled to seek direct judicial review with regard to  
26 whether the ordinance impermissibly burdens his or her right to  
27 establish a business offering exotic entertainment.

---

## CHAPTER 144

(H. B. 4315 — By Delegates Varner, Stemple, Michael, Shaver,  
Kominar, Coleman and Faircloth)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

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 six-a, relating to permitting persons licensed to carry a concealed handgun to carry the weapon while hunting or engaged in other activities while afield in circumstances where possession of a firearm might otherwise be prohibited.

*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 six-a, to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-6a. Carrying a concealed handgun.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, a person licensed to carry a concealed weapon  
3 pursuant to the provisions of section four, article seven, chapter  
4 sixty-one of this code who is not prohibited at the time from  
5 possessing a firearm pursuant to the provisions of section seven,  
6 article seven, chapter sixty-one of this code or by any applica-  
7 ble federal law may carry a handgun in a concealed manner for  
8 self defense purposes while afield hunting, hiking, camping or  
9 in or on a motor vehicle.

10 (b) The provisions of this section shall not exempt any  
11 person from obtaining any hunting or fishing license or stamp  
12 required by the division of natural resources.

---

## CHAPTER 145

(Com. Sub. for S. B. 180 — By Senator Rowe)

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section three-d, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing volunteer fire companies or paid fire departments to charge property owners and other persons for services rendered in connection with cleanup,

preventing and extinguishing fires and other emergencies; establishing maximum fee for each incident; providing exception to maximum fee; and requiring itemized bill.

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

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

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3d. Levy for, establishment and operation of fire prevention units; financial aid.**

1       The county commission in any county may levy for and  
2 may erect, maintain and operate fire stations and fire prevention  
3 units and equipment therefor in the county: *Provided*, That if a  
4 county commission establishes a separate fire protection unit in  
5 any city in West Virginia that is now operating under the  
6 provisions of the state civil service act for paid fire depart-  
7 ments, then the new unit shall be operated in accordance with  
8 the provisions of the civil service act. Any county commission  
9 may render financial aid to any one or more public fire protec-  
10 tion facilities in operation in the county for the general benefit  
11 of the public in the prevention of fires. Any county commission  
12 may also authorize volunteer fire companies or paid fire  
13 departments to charge reasonable reimbursement fees for  
14 personnel and equipment used in performing fire-fighting  
15 services, victim rescue or cleanup of debris or hazardous  
16 materials by department personnel. The rate for any such fees  
17 to be charged to property owners or other persons responsible  
18 or liable for payment for such services must be approved by the  
19 county commission and must be reasonable: *Provided, however*,  
20 That no fee for any single incident or accident shall exceed five  
21 hundred dollars, except an incident or accident involving  
22 hazardous materials. The county commission shall require that  
23 any fees charged pursuant to the authority conferred by this  
24 section must be in writing and be itemized by specific services  
25 rendered and the rate for each service.

---

## CHAPTER 146

**(H. B. 2986 — By Delegates R. M. Thompson, Ennis, Varner,  
Caputo, Swartzmiller, Pethel and Stemple)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-c, relating to limiting the civil liability of persons, companies or other organizations who donate fire control or rescue equipment to volunteer fire departments; providing for immunity from liability for personal injury, property damages or death resulting from a defect in the equipment; setting forth exceptions; defining terms; requiring recertification of any breathing apparatus prior to donation; and prohibiting insurers from asserting immunity unless agreed to in writing by the insured.

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

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

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS;  
CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-8c. Donation of equipment.**

- 1       (a) Effective the first day of July, two thousand two, no
- 2       person, company or other organization who donates fire control
- 3       or rescue equipment, including federal excess or surplus

4 property, to a volunteer fire department is subject to civil  
5 liability for any personal injury, property damages or death  
6 resulting from any defect in the equipment unless the person,  
7 company or organization acted with malice, gross negligence,  
8 recklessness or intentional misconduct which proximately  
9 caused the personal injury, property damages or death.

10 (b) For purposes of this section, "fire control or rescue  
11 equipment" means a vehicle, fire fighting tool, protective gear,  
12 breathing apparatus or other supply or tool used in fire fighting  
13 or fire rescue. No breathing apparatus may be donated unless,  
14 prior to the donation, it has been recertified to the manufac-  
15 turer's specifications by a technician approved by the manufac-  
16 turer.

17 (c) Any insurance policy providing coverage for liability  
18 sold, issued or delivered in this state to any person, company or  
19 other organization who donates fire control or rescue equipment  
20 shall provide that the insurer be barred and estopped from  
21 relying upon the immunity granted in this section against claims  
22 or suits covered by the terms of the policy within the policy  
23 limits, unless the provision or endorsement is rejected in  
24 writing by the insured.

25 The limitation on civil liability set forth in the provisions of  
26 this section applies only to policies of insurance issued or  
27 renewed on or after July 1, 2001.

---

## CHAPTER 147

**(H. B. 4490 — By Delegates Douglas, Kuhn, Butcher,  
Perdue, Yeager, DeLong and Ennis)**

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to repeal article twenty-nine-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article fifteen, chapter eight of said code; and to amend said chapter by adding thereto a new article, designated article fifteen-a, all relating to professional firefighters; defining terms; appointments to paid fire departments; creating professional firefighters certification board of apprenticeship and training; composition of board; requirements for meetings; requirements for quorum; duties of the board; certification requirements; review of certification; and responsibility for compliance with article.

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

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

**Article**

- 15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.**
- 15A. Standards for Professional Firefighters Training; Registered Apprenticeship and Certification.**

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS;  
CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-22. Vacancies filled by promotions; eligibility for promotion.**

1 Vacancies in positions in a paid fire department shall be  
2 filled, so far as practicable, by promotions from among individ-  
3 uals holding positions in the next lower grade in the depart-  
4 ment. Promotions shall be based upon experience and by  
5 competitive written examinations to be provided by the fire-  
6 men's civil service commission: *Provided*, That no individual

7 shall be eligible for promotion from the lower grade to the next  
8 higher grade until such individual shall have completed at least  
9 two years of continuous service in the next lower grade in the  
10 department immediately prior to said examination and has  
11 completed the registered apprenticeship and certification  
12 program under article fifteen-a, chapter eight of this code:  
13 *Provided, however,* That completion of the registered appren-  
14 ticeship and certification program as a requirement for promo-  
15 tion shall apply only to those firefighters employed since the  
16 twelfth day of June, one thousand nine hundred eighty-seven.  
17 The commission shall have the power to determine in each  
18 instance whether an increase in salary constitutes a promotion.

**ARTICLE 15A. STANDARDS FOR PROFESSIONAL FIREFIGHTERS  
TRAINING; REGISTERED APPRENTICESHIP AND  
CERTIFICATION.**

§8-15A-1. Definitions.

§8-15A-2. Original appointments.

§8-15A-3. Professional firefighters certification board of apprenticeship and training.

§8-15A-4. Duties of the professional firefighters certification board of apprenticeship and training.

§8-15A-5. Certification requirements.

§8-15A-6. Review of certification.

§8-15A-7. Compliance.

**§8-15A-1. Definitions.**

1 For the purposes of this article, unless a different meaning  
2 clearly appears in the context:

3 (a) "Bureau of apprenticeship and training" means the  
4 bureau of apprenticeship and training of the United States  
5 department of labor;

6 (b) "Certificate of certification" means a certificate issued  
7 by the bureau of apprenticeship and training stating that a  
8 person has complied with the standards set forth in this article;

9 (c) "Local training board" means the board of the local paid  
10 fire department required to be established by the standards set  
11 forth in section two of this article;

12 (d) "Municipality" means any incorporated town or city  
13 whose boundaries lie within the geographic boundaries of the  
14 state;

15 (e) "Paid fire department" means those paid fire depart-  
16 ments established under the provisions of section nine, article  
17 fifteen, chapter eight of this code;

18 (f) "Professional firefighter" means those persons who are  
19 employed by a municipality in the state that has a paid fire  
20 department;

21 (g) "State" means the state of West Virginia;

22 (h) "State board" means the professional firefighters  
23 certification board of apprenticeship and training as established  
24 in section three of this article;

25 (i) "West Virginia professional fire chiefs association"  
26 means the association representing paid fire chiefs in the state  
27 of West Virginia; and

28 (j) "Professional firefighters of West Virginia" means the  
29 association representing paid firefighters in the state of West  
30 Virginia.

#### **§8-15A-2. Original appointments.**

1 All original appointments in a paid fire department subject  
2 to the civil service provisions of section sixteen, article fifteen,

3 chapter eight of this code, made after the twelfth day of June,  
4 one thousand nine hundred eighty-seven, shall enroll and  
5 complete the requirements as registered with the bureau of  
6 apprenticeship and training of the United States department of  
7 labor, for the craft of fire fighting.

**§8-15A-3. Professional firefighters certification board of apprenticeship and training.**

1 (a) A professional firefighters certification board of  
2 apprenticeship and training is hereby created and assigned  
3 responsibility for review of programs and standards, for training  
4 of apprenticeship and certification of professional firefighters  
5 in the state. The state board shall be comprised of five members  
6 including two representatives appointed by each of the follow-  
7 ing: The professional firefighters of West Virginia; the West  
8 Virginia professional fire chiefs association, and one represen-  
9 tative from the bureau of apprenticeship and training of the  
10 United States department of labor.

11 (b) The state board shall elect a chairperson. Meetings may  
12 be held upon the call of the chairperson. A majority of the  
13 members of the state board constitutes a quorum.

**§8-15A-4. Duties of the professional firefighters certification board of apprenticeship and training.**

1 The professional firefighters certification board of appren-  
2 ticeship and training shall, by or pursuant to rule or regulation:

3 (a) Establish standards governing the quality of training of  
4 paid fire departments in the state pursuant to section two of this  
5 article.

6 (b) Establish the level of skill required for certification.



7 (c) Adopt procedures for the local training board to follow  
8 in securing certification of a paid firefighter by the bureau of  
9 apprenticeship and training of the United States department of  
10 labor.

11 (d) Certify the paid firefighter as provided in section five of  
12 this article and request a certificate of certification from the  
13 bureau of apprenticeship and training of the United States  
14 department of labor to the person that has qualified.

#### **§8-15A-5. Certification requirements.**

1 Standards for certification must meet or exceed those of the  
2 National Fire Protection Association Standards No. 1001 as  
3 amended and updated from year to year.

#### **§8-15A-6. Review of certification.**

1 The state board shall annually review the training curricu-  
2 lum of local training boards offered pursuant to the provisions  
3 of this article, and shall make recommendations to improve the  
4 quality and sufficiency of training to secure certification of paid  
5 firefighters.

#### **§8-15A-7. Compliance.**

1 The state board shall ensure employer and employee  
2 compliance with this article. The chief of the paid fire depart-  
3 ment and the local training board shall see and assure compli-  
4 ance with all established criteria.

5 The provisions of this article shall be liberally construed to  
6 accomplish its objectives and purposes.

---

## CHAPTER 148

(Com. Sub. for H. B. 4310 — By Delegates Mahan and Campbell)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section six, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the penalties for discarding lighted material or for failing to totally extinguish a fire built in or adjacent to a field, a public or private road or forest land, and allowing the state fire marshal to enforce this section.

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

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

### ARTICLE 3. FORESTS AND WILDLIFE AREAS.

#### **§20-3-6. Failure of person to extinguish fire started or used by him or her; throwing lighted material on forest land; enforcement by state fire marshal; penalties.**

- 1 (a) Any person who, by himself or herself, or by his or her
- 2 employees, agents or guides, or as an employee, agent or guide
- 3 of any other person, shall at any time build or use any fire in
- 4 any field, in any public or private road, or in any area adjacent
- 5 to or in any forest land in this state, shall, before leaving the fire
- 6 for any period of time, totally extinguish the same.

7 (b) A person shall not at any time throw or place any  
8 lighted match, cigar, cigarette, firecracker or lighted material on  
9 any forest land, private road, public highway or railroad right-  
10 of-way within this state.

11 (c) In addition to any other law-enforcement agencies that  
12 have jurisdiction over criminal violations, the state fire marshal  
13 shall enforce this section as provided in section twelve, article  
14 three, chapter twenty-nine of this code.

15 (d) Any person who violates any provision of this section  
16 shall be guilty of a misdemeanor and, upon conviction thereof,  
17 shall be subject to one or more of the following penalties: (1)  
18 Fined not less than one hundred dollars nor more than two  
19 thousand dollars; (2) confined in the county or regional jail not  
20 less than ten days nor more than two hundred days; or (3)  
21 sentenced to perform community service by cleaning up litter  
22 from any public highway, road, street, alley or any other public  
23 park or public property or waters of the state, as designated by  
24 the court, for not less than thirty-two hours nor more than sixty-  
25 four hours.

## CHAPTER 149

**(S. B. 488 — By Senators Wooton, Burnette, Fanning,  
Hunter, Kessler, Minard, Mitchell, Oliverio, Redd, Ross,  
Rowe, Snyder, Deem and Facemyer)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections twelve, twelve-b and sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to

fire prevention and control; clarifying the powers and duties of state fire marshal, deputies or assistants and certain other persons deputized by state fire marshal; providing for confiscation of contraband; authorizing state fire marshal, deputies or assistants and certain other persons deputized by state fire marshal to assist other law-enforcement agencies when requested; clarifying inspection powers of state fire marshal; providing for entry upon property or into structures; authorizing state fire marshal to investigate explosions or attempts to cause explosions; authorizing certain persons deputized by state fire marshal to arrest and to apply for and execute arrest and search warrants; expanding state fire marshal's authority to issue permits, documents and licenses; authorizing state fire marshal to require persons who apply for permits to use explosives to be fingerprinted and to consent to state and national criminal records checks; requiring certain persons deputized by state fire marshal to submit citations to state fire marshal on a monthly basis; increasing criminal penalties for violation of the fire and life safety code; establishing one-year permit for explosives; authorizing state fire marshal to set fees by legislative rule; and correcting and updating reference to the national fire protection standards.

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

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

**ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

- §29-3-12. Powers and duties of state fire marshal.
- §29-3-12b. Fees.
- §29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units; penalty.

**§29-3-12. Powers and duties of state fire marshal.**

- 1 (a) *Enforcement of laws.* — The state fire marshal and any
- 2 other person authorized to enforce the provisions of this article
- 3 under the supervision and direction of the state fire marshal has
- 4 the authority to enforce all laws of the state having to do with:

5 (1) Prevention of fire;

6 (2) The storage, sale and use of any explosive, combustible  
7 or other dangerous article or articles in solid, flammable liquid  
8 or gas form;

9 (3) The installation and maintenance of equipment of all  
10 sorts intended to extinguish, detect and control fires;

11 (4) The means and adequacy of exit, in case of fire, from  
12 buildings and all other places in which persons work, live or  
13 congregate, from time to time, for any purpose, except build-  
14 ings used wholly as dwelling houses for no more than two  
15 families;

16 (5) The suppression of arson; and

17 (6) Any other thing necessary to carry into effect the  
18 provisions of this article including, but not limited to, confiscat-  
19 ing any materials, chemicals, items, or personal property  
20 owned, possessed or used in direct violation of the state fire  
21 code.

22 (b) *Assistance upon request.* — Upon request, the state fire  
23 marshal shall assist any chief of any recognized fire company  
24 or department. Upon the request of any federal law-enforce-  
25 ment officer, state police officer, conservation officer or any  
26 county or municipal law-enforcement officer, the state fire  
27 marshal, any deputy state fire marshal or assistant state fire  
28 marshal employed pursuant to section eleven of this article and  
29 any person deputized pursuant to subsection (j) of this section  
30 may assist in the lawful execution of the requesting officer's  
31 official duties: *Provided*, That the state fire marshal or other  
32 person authorized to act under this subsection shall at all times  
33 work under the direct supervision of the requesting officer.

34 (c) *Enforcement of rules.* — The state fire marshal shall  
35 enforce the rules promulgated by the state fire commission as  
36 authorized by this article.

37       (d) *Inspections generally.* — The state fire marshal shall  
38 inspect all structures and facilities, other than one- and two-  
39 family dwelling houses, subject to the state fire code and this  
40 article, including, but not limited to, state, county and municipi-  
41 pally owned institutions, all public and private schools, health  
42 care facilities, theaters, churches and other places of public  
43 assembly to determine whether the structures or facilities are in  
44 compliance with the state fire code.

45       (e) *Right of entry.* — The state fire marshal may, at all  
46 reasonable hours, enter any building or premises, other than  
47 dwelling houses, for the purpose of making an inspection which  
48 he or she may consider necessary under the provisions of this  
49 article. The state fire marshal and any deputy state fire marshal  
50 or assistant state fire marshal approved by the state fire marshal  
51 may enter upon any property, or enter any building, structure or  
52 premises, including dwelling houses during construction and  
53 prior to occupancy, for the purpose of ascertaining compliance  
54 with the conditions set forth in any permit or license issued by  
55 the office of the state fire marshal pursuant to subdivision (1),  
56 subsection (a), section twelve-b of this article or of article three-  
57 b of this chapter.

58       (f) *Investigations.* — The state fire marshal may, at any  
59 time, investigate as to the origin or circumstances of any fire or  
60 explosion or attempt to cause fire or explosion occurring in the  
61 state. The state fire marshal has the authority at all times of the  
62 day or night, in performance of the duties imposed by the  
63 provisions of this article, to investigate where any fires or  
64 explosions or attempt to cause fires or explosions may have  
65 occurred, or which at the time may be burning. Notwithstanding  
66 the above provisions of this subsection, prior to entering any  
67 building or premises for the purposes of such investigation, the  
68 state fire marshal shall obtain a proper search warrant: *Pro-*  
69 *vided,* That a search warrant is not necessary where there is  
70 permissive waiver or the state fire marshal is an invitee of the  
71 individual having legal custody and control of the property,  
72 building or premises to be searched.

73 (g) *Testimony.* — The state fire marshal, in making an  
74 inspection or investigation when in his or her judgment such  
75 proceedings are necessary, may take the statements or testi-  
76 mony under oath of all persons who may be cognizant of any  
77 facts or have any knowledge about the matter to be examined  
78 and inquired into and may have the statements or testimony  
79 reduced to writing; and shall transmit a copy of such statements  
80 or testimony so taken to the prosecuting attorney for the county  
81 wherein the fire or explosion or attempt to cause a fire or  
82 explosion occurred. Notwithstanding the above, no person may  
83 be compelled to testify or give any such statement under this  
84 subsection.

85 (h) *Arrests; warrants.* — The state fire marshal, any full-  
86 time deputy fire marshal or any full-time assistant fire marshal  
87 employed by the state fire marshal pursuant to section eleven of  
88 this article is hereby authorized and empowered and any person  
89 deputized pursuant to subsection (j) of this section may be  
90 authorized and empowered by the state fire marshal:

91 (1) To arrest any person anywhere within the confines of  
92 the state of West Virginia, or have him or her arrested, for any  
93 violation of the arson-related offenses of article three, chapter  
94 sixty-one of this code or of the explosives-related offenses of  
95 article three-e of said chapter: *Provided,* That any and all  
96 persons so arrested shall be forthwith brought before the  
97 magistrate or circuit court.

98 (2) To make complaint in writing before any court or  
99 officer having jurisdiction and obtain, serve and execute an  
100 arrest warrant when knowing or having reason to believe that  
101 anyone has committed an offense under any provision of this  
102 article, of the arson-related offenses of article three, chapter  
103 sixty-one of this code or of the explosives-related offenses of  
104 article three-e of said chapter. Proper return shall be made on  
105 all arrest warrants before the tribunal having jurisdiction over  
106 such violation.

107 (3) To make complaint in writing before any court or  
108 officer having jurisdiction and obtain, serve and execute a

109 warrant for the search of any premises that may possess  
110 evidence or unlawful contraband relating to violations of this  
111 article, of the arson-related offenses of article three, chapter  
112 sixty-one of this code or of the explosives-related offenses of  
113 article three-e of said chapter. Proper return shall be made on  
114 all search warrants before the tribunal having jurisdiction over  
115 such violation.

116 (i) *Witnesses and oaths.* — The state fire marshal is  
117 empowered and authorized to issue subpoenas and subpoenas  
118 duces tecum to compel the attendance of persons before him to  
119 testify in relation to any matter which is, by the provision of  
120 this article, a subject of inquiry and investigation by the state  
121 fire marshal and cause to be produced before him or her such  
122 papers as he or she may require in making such examination.  
123 The state fire marshal is hereby authorized to administer oaths  
124 and affirmations to persons appearing as witnesses before him  
125 or her. False swearing in any matter or proceeding aforesaid  
126 shall be considered perjury and shall be punishable as such.

127 (j) *Deputizing members of fire departments in this state.* —  
128 The state fire marshal may deputize a member of any fire  
129 department, duly organized and operating in this state, who is  
130 approved by the chief of his or her department and who is  
131 properly qualified to act as his or her assistant for the purpose  
132 of making inspections with the consent of the property owner  
133 or the person in control of the property and such investigations  
134 as may be directed by the state fire marshal, and the carrying  
135 out of such orders as may be prescribed by him or her, to  
136 enforce and make effective the provisions of this article and any  
137 and all rules promulgated by the state fire commission under  
138 authority of this article: *Provided*, That in the case of a volun-  
139 teer fire department, only the chief thereof or his or her single  
140 designated assistant may be so deputized.

141 (k) *Written report of examinations.* — The state fire  
142 marshal shall, at the request of the county commission of any  
143 county or the municipal authorities of any incorporated municipi-  
144 tality in this state, make to them a written report of the exami-



145 nation made by him or her regarding any fire happening within  
146 their respective jurisdictions.

147 (l) *Report of losses by insurance companies.* — It is the  
148 duty of each fire insurance company or association doing  
149 business in this state, within ten days after the adjustment of  
150 any loss sustained by it that exceeds fifteen hundred dollars, to  
151 report to the state fire marshal information regarding the  
152 amount of insurance, the value of the property insured and the  
153 amount of claim as adjusted. This report is in addition to any  
154 such information required by the state insurance commissioner.  
155 Upon the request of the owner or insurer of any property  
156 destroyed or injured by fire or explosion, or in which an attempt  
157 to cause a fire or explosion may have occurred, the state fire  
158 marshal shall report in writing to the owner or insurer the result  
159 of the examination regarding the property.

160 (m) *Issuance of permits and licenses.* — The state fire  
161 marshal is authorized to issue permits, documents and licenses  
162 in accordance with the provisions of this article or of article  
163 three-b of this chapter. The state fire marshal may require any  
164 person who applies for a permit to use explosives, other than an  
165 applicant for a license to be a pyrotechnic operator under  
166 section twenty-four of this article, to be fingerprinted and to  
167 authorize the state fire marshal to conduct a criminal records  
168 check through the criminal identification bureau of the West  
169 Virginia state police and a national criminal history check  
170 through the federal bureau of investigation. The results of any  
171 criminal records or criminal history check shall be sent to the  
172 state fire marshal.

173 (n) *Issuance of citations for fire and life safety violations.*  
174 — The state fire marshal, any deputy fire marshal and any  
175 assistant fire marshal employed pursuant to section eleven of  
176 this article are hereby authorized, and any person deputized  
177 pursuant to subsection (j) of this section may be authorized by  
178 the state fire marshal to issue citations, in his or her jurisdiction,  
179 for fire and life safety violations of the state fire code and as  
180 provided for by the rules promulgated by the state fire commis-  
181 sion in accordance with article three, chapter twenty-nine-a of

182 this code: *Provided*, That a summary report of all citations  
183 issued pursuant to this section by persons deputized under  
184 subsection (j) of this section shall be forwarded monthly to the  
185 state fire marshal in such form and containing information as he  
186 or she may by rule require, including the violation for which the  
187 citation was issued, the date of issuance, the name of the person  
188 issuing the citation and the person to whom the citation was  
189 issued. The state fire marshal may at any time revoke the  
190 authorization of a person deputized pursuant to subsection (j) of  
191 this section to issue citations, if in the opinion of the state fire  
192 marshal, the exercise of authority by the person is inappropri-  
193 ate.

194 Violations for which citations may be issued include, but  
195 are not limited to:

196 (1) Overcrowding places of public assembly;

197 (2) Locked or blocked exits in public areas;

198 (3) Failure to abate a fire hazard;

199 (4) Blocking of fire lanes or fire department connections;  
200 and

201 (5) Tampering with, or rendering inoperable except during  
202 necessary maintenance or repairs, on-premise firefighting  
203 equipment, fire detection equipment and fire alarm systems.

204 (o) *Required training; liability coverage.* No person  
205 deputized pursuant to subsection (j) of this section may be  
206 authorized to issue a citation unless that person has satisfacto-  
207 rily completed a law-enforcement officer training course  
208 designed specifically for fire marshals. The course shall be  
209 approved by the law-enforcement training subcommittee of the  
210 governor's committee on criminal justice and highway safety  
211 and the state fire commission. In addition, no person deputized  
212 pursuant to subsection (j) of this section may be authorized to  
213 issue a citation until evidence of liability coverage of such  
214 person has been provided, in the case of a paid municipal fire

215 department by the municipality wherein the fire department is  
216 located, or in the case of a volunteer fire department, by the  
217 county commission of the county wherein the fire department  
218 is located or by the municipality served by the volunteer fire  
219 department and that evidence of liability coverage has been  
220 filed with the state fire marshal.

221 (p) *Penalties for violations.* — Any person who violates  
222 any fire and life safety rule of the state fire code is guilty of a  
223 misdemeanor and, upon conviction thereof, shall be fined not  
224 less than one hundred dollars nor more than one thousand  
225 dollars or imprisoned in the county or regional jail not more  
226 than ninety days, or both fined and imprisoned.

227 Each and every day during which any violation of the  
228 provisions of this article continues after knowledge or official  
229 notice that same is illegal is a separate offense.

### §29-3-12b. Fees.

1 (a) The state fire marshal may establish fees in accordance  
2 with the following:

3 (1) *For blasting.* — Any person storing, selling or using  
4 explosives shall first obtain a permit from the state fire marshal.  
5 The permit shall be valid for one year. The state fire marshal  
6 may charge a fee for the permit.

7 (2) *For inspections of schools or day care facilities.* — The  
8 state fire marshal may charge a fee of up to twenty-five dollars  
9 per annual inspection for inspection of schools or day care  
10 facilities: *Provided,* That only one such fee may be charged per  
11 year for any building in which a school and a day care facility  
12 are co-located: *Provided, however,* That any school or day care  
13 facility may not be charged for an inspection more than one  
14 time per twelve-month period.

15 (3) *For inspections of hospitals or nursing homes.* — The  
16 state fire marshal may charge an inspection fee of up to one  
17 hundred dollars per annual inspection of hospitals or nursing

18 homes: *Provided*, That any hospital or nursing home may not  
19 be charged for an inspection more than one time per  
20 twelve-month period.

21 (4) *For inspections of personal care homes or board and*  
22 *care facilities.* — The state fire marshal may charge an inspec-  
23 tion fee of up to fifty dollars per annual inspection for inspec-  
24 tions of personal care homes or board and care facilities:  
25 *Provided*, That any personal care home or board and care  
26 facility may not be charged for an inspection more than one  
27 time per twelve-month period.

28 (5) *For inspections of residential occupancies.* — The state  
29 fire marshal may charge an inspection fee of up to one hundred  
30 dollars for each inspection of a residential occupancy. For  
31 purposes of this subdivision, “residential occupancies” are those  
32 buildings in which sleeping accommodations are provided for  
33 normal residential purposes.

34 (6) *For inspections of mercantile occupancies.* — The state  
35 fire marshal may charge an inspection fee of up to one hundred  
36 dollars for inspections of mercantile occupancies: *Provided*,  
37 That if the inspection is in response to a complaint made by a  
38 member of the public, the state fire marshal shall obtain from  
39 the complainant an advance inspection fee of twenty-five  
40 dollars. This fee shall be returned to the complainant if, after  
41 the state fire marshal has made the inspection, he or she finds  
42 that the complaint was accurate and justified, and he or she  
43 shall thereafter collect an inspection fee of up to one hundred  
44 dollars from the mercantile occupancy. If, after the inspection  
45 has been performed, it appears to the state fire marshal that the  
46 complaint was not accurate or justified, the state fire marshal  
47 shall keep the twenty-five dollar advance inspection fee  
48 obtained from the complainant and may not collect any fees  
49 from the mercantile occupant. For purposes of this section,  
50 “mercantile occupancy” includes stores, markets and other  
51 rooms, buildings or structures for the display and sale of  
52 merchandise.

53       (7) *For business occupancies.* — The state fire marshal may  
54 charge an inspection fee of up to one hundred dollars for  
55 inspections of business occupancies: *Provided*, That the  
56 provisions in subdivision (6) of this section shall apply regard-  
57 ing complaints by members of the public. For purposes of this  
58 section, “business occupancies” are those buildings used for the  
59 transaction of business, other than mercantile occupancies, for  
60 the keeping of accounts and records and similar purposes.

61       (8) *For inspections of assembly occupancies.* — The state  
62 fire marshal may charge an inspection fee not more than one  
63 time per twelve-month period for the inspection of assembly  
64 occupancies. The inspection fee shall be assessed as follows:  
65 For Class C assembly facilities, an inspection fee not to exceed  
66 fifty dollars; for Class B assembly facilities, an inspection fee  
67 not to exceed seventy-five dollars; and for Class A facilities, an  
68 inspection fee not to exceed one hundred dollars.

69       For purposes of this subdivision, an “assembly occupancy”  
70 includes, but is not limited to, all buildings or portions of  
71 buildings used for gathering together fifty or more persons for  
72 such purposes as deliberation, worship, entertainment, eating,  
73 drinking, amusement or awaiting transportation. For purposes  
74 of this section, a “Class C assembly facility” is one that  
75 accommodates fifty to three hundred persons; a “Class B  
76 facility” is one which accommodates more than three hundred  
77 persons but less than one thousand persons; and a “Class A  
78 facility” is one which accommodates more than one thousand  
79 persons.

80       (b) The state fire marshal may collect fees for the fire safety  
81 review of plans and specifications for new and existing con-  
82 struction. Fees shall be paid by the party or parties receiving the  
83 review.

84       (1) *Structural barriers and fire safety plans review.* — The  
85 fee is one dollar for each one thousand dollars of construction  
86 cost up to the first one million dollars. Thereafter, the fee is  
87 forty cents for each one thousand dollars of construction cost.

88       (2) *Sprinkler system review.* — The fee charged for the  
89 review of an individual sprinkler system is as follows: Number  
90 of heads: One to two hundred — eighty-five dollars; two  
91 hundred one to three hundred — one hundred dollars; three  
92 hundred one to seven hundred fifty — one hundred twenty  
93 dollars; over seven hundred fifty — one hundred twenty dollars  
94 plus ten cents per head over seven hundred fifty.

95       (3) *Fire alarm systems review.* — The fee charged for the  
96 review of a fire alarm system is fifty dollars for each ten  
97 thousand square feet of space with a fifty dollar minimum  
98 charge.

99       (4) *Range hood extinguishment system review.* — The fee  
100 is twenty-five dollars per individual system reviewed.

101       (5) *Carpet specifications.* — The fee for carpet review and  
102 approval is twenty dollars per installation.

103       (c) All fees authorized and collected pursuant to this article  
104 and article three-b of this chapter shall be paid to the state fire  
105 marshal and thereafter deposited into a special account to be  
106 appropriated by the Legislature for the operation of the state  
107 fire commission in administering this article and article three-b  
108 of this chapter. Beginning on the first day of July, one thousand  
109 nine hundred ninety-two, and every fiscal year thereafter, at the  
110 end of each fiscal year there shall be transferred from the  
111 special account, to the general revenue fund of the state, ten  
112 percent of all money collected by the fire marshal during the  
113 year: *Provided*, That any balance remaining in the special  
114 account at the end of any fiscal year, after the transfer of the ten  
115 percent, shall be reappropriated to the next fiscal year: *Pro-*  
116 *vided, however*, That in addition to said ten percent, amounts  
117 collected which are found from time to time to exceed the funds  
118 needed for purposes for which the fees are collected may be  
119 transferred to other accounts or redesignated for other purposes  
120 by appropriation of the Legislature.

121       (d) If the owner or occupant of any occupancy arranges a  
122 time and place for an inspection with the state fire marshal and

123 is not ready for the occupancy to be inspected at the appointed  
124 time and place, the owner or occupant thereof shall be charged  
125 the inspection fee provided in this section unless at least forty-  
126 eight hours prior to the scheduled inspection the owner or  
127 occupant requests the state fire marshal to reschedule the  
128 inspection. In the event a second inspection is required by the  
129 state fire marshal as a result of the owner or occupant failing to  
130 be ready for the inspection when the state fire marshal arrives,  
131 the state fire marshal shall charge the owner or occupant of the  
132 occupancy the inspection fees set forth above for each inspec-  
133 tion trip required.

134 (e) The fees provided for in this section shall remain in  
135 effect until such time as the Legislature has approved rules  
136 promulgated by the state fire marshal, in accordance with the  
137 provisions of article three, chapter twenty-nine-a of this code,  
138 establishing a schedule of fees for services.

**§29-3-16a. Smoke detectors in one- and two-family dwellings;  
carbon monoxide detectors in residential units;  
penalty.**

1 (a) On or before the first day of July, one thousand nine  
2 hundred ninety-one, an operational smoke detector shall be  
3 installed in the immediate vicinity of each sleeping area within  
4 all one- and two-family dwellings, including any “manufactured  
5 home” as that term is defined in subsection (j), section two,  
6 article nine, chapter twenty-one of this code. The smoke  
7 detector shall be capable of sensing visible or invisible particles  
8 of combustion and shall meet the specifications and be installed  
9 as provided in the national fire protection association standard  
10 72, “Standard for the Installation, Maintenance and Use of  
11 Household Fire Warning Equipment”, 1996 edition, and in the  
12 manufacturer’s specifications. When activated, the smoke  
13 detector shall provide an alarm suitable to warn the occupants  
14 of the danger of fire.

15 (b) The owner of each dwelling described in subsection (a)  
16 of this section shall provide, install and replace the operational  
17 smoke detectors required by this section. So as to assure that the

18 smoke detector continues to be operational, in each dwelling  
19 described in subsection (a) of this section which is not occupied  
20 by the owner thereof, the tenant in any dwelling shall perform  
21 routine maintenance on the smoke detectors within the dwell-  
22 ing.

23 (c) Where a dwelling is not occupied by the owner and is  
24 occupied by an individual who is deaf or hearing impaired, the  
25 owner shall, upon written request by or on behalf of the  
26 individual, provide and install a smoke detector with a light  
27 signal sufficient to warn the deaf or hearing-impaired individual  
28 of the danger of fire.

29 (d) An automatic fire sprinkler system installed in accor-  
30 dance with the national fire protection association standard  
31 13D, "Standard for the Installation of Sprinkler Systems in  
32 Residential Occupancies", 1989 edition, may be provided in  
33 lieu of smoke detectors.

34 (e) After investigating a fire in any dwelling described in  
35 subsection (a) of this section, the local investigating authority  
36 shall issue to the owner a smoke detector installation order in  
37 the absence of the required smoke detectors.

38 (f) After the first day of July, one thousand nine hundred  
39 ninety-eight, an operational carbon monoxide detector with a  
40 suitable alarm shall be installed in accordance with the manu-  
41 facturer's direction:

42 (1) In any newly constructed residential unit which has a  
43 fuel-burning heating or cooking source including, but not  
44 limited to, an oil or gas furnace or stove; and

45 (2) In any residential unit which is connected to a newly  
46 constructed building, including, but not limited to, a garage,  
47 storage shed or bar, which has a fuel-burning heating or  
48 cooking source, including, but not limited to, an oil or gas  
49 furnace or stove.



50 (g) Any person installing a carbon monoxide detector in a  
51 residential unit shall inform the owner, lessor or the occupant  
52 or occupants of the residential unit of the dangers of carbon  
53 monoxide poisoning and instructions on the operation of the  
54 carbon monoxide detector installed.

55 (h) When repair or maintenance work is undertaken on a  
56 fuel-burning heating or cooking source or a venting system in  
57 an existing residential unit, the person making the repair or  
58 performing the maintenance shall inform the owner, lessor or  
59 the occupant or occupants of the unit being served by the fuel-  
60 burning heating or cooking source or venting system of the  
61 dangers of carbon monoxide poisoning and recommend the  
62 installation of a carbon monoxide detector.

63 (i) Any person who violates any provision of this section is  
64 guilty of a misdemeanor and, upon conviction thereof, shall be  
65 fined not less than fifty dollars nor more than one hundred  
66 dollars.

67 (j) A violation of this section may not be considered by  
68 virtue of the violation to constitute evidence of negligence or  
69 contributory negligence or comparative negligence in any civil  
70 action or proceeding for damages.

71 (k) A violation of this section may not constitute a defense  
72 in any civil action or proceeding involving any insurance  
73 policy.

74 (l) Nothing in this section shall be construed to limit the  
75 rights of any political subdivision in this state to enact laws  
76 imposing upon owners of any dwelling or other building  
77 described in subsection (a) or (f) of this section a greater duty  
78 with regard to the installation, repair and replacement of the  
79 smoke detectors or carbon monoxide detectors than is required  
80 by this section.

---

## CHAPTER 150

(S. B. 742 — By Senators Wooton, Burnette, Caldwell, Hunter,  
Kessler, Mitchell, Redd, Ross, Rowe and Snyder)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article twelve, chapter sixty-one of said code, all relating to recodifying and restating the law relating to embalmers, funeral directors and crematories; creating the misdemeanor offense of failing to cremate pursuant to the terms of a cremation contract or pursuant to the order of a court of competent jurisdiction and establishing the penalties therefor; and creating the misdemeanor offense of failing to deliver the cremated remains of a deceased person pursuant to the terms of a cremation contract or pursuant to the order of a court of competent jurisdiction and establishing the penalties therefor.

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

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

**Chapter**

**30. Professions and Occupations.**

**61. Crimes and Their Punishment.**

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

**ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.**

§30-6-1. License required to practice.

§30-6-2. Short title.

§30-6-3. Definitions.

- §30-6-4. Board of funeral service examiners.
- §30-6-5. Powers of the board.
- §30-6-6. Rule-making authority.
- §30-6-7. Fees; special revenue account; administrative fines.
- §30-6-8. Embalmer license requirements.
- §30-6-9. Funeral director license requirements.
- §30-6-10. Funeral service license requirements.
- §30-6-11. Crematory operator certificate requirements.
- §30-6-12. Licenses or equivalent from another state; license or certificate to practice in this state.
- §30-6-13. Courtesy cards.
- §30-6-14. License and certificate renewal; conditions of renewal.
- §30-6-15. Continuing education.
- §30-6-16. Inspector and inspection requirements.
- §30-6-17. Apprenticeship.
- §30-6-18. Funeral establishment license requirements.
- §30-6-19. Funeral establishment to be managed by a licensee in charge; license displayed.
- §30-6-20. Crematory license requirements.
- §30-6-21. Requirements for cremating.
- §30-6-22. Disposition of body of deceased person; penalty.
- §30-6-23. Refusal to issue or renew, suspension or revocation of license; disciplinary action.
- §30-6-24. Complaints; investigations.
- §30-6-25. Hearing and judicial review.
- §30-6-26. Reinstatement.
- §30-6-27. Unlawful acts.
- §30-6-28. Injunctions.
- §30-6-29. Criminal proceedings; penalties.
- §30-6-30. Single act evidence of practice.
- §30-6-31. Inapplicability of article.
- §30-6-32. Termination date.

### **§30-6-1. License required to practice.**

1       The practice of preparing dead human bodies for burial or  
2       cremation and the subsequent burial or cremation thereof has  
3       serious public health and safety considerations and should only  
4       be practiced by a person who has specific training in those  
5       fields.

6       Therefore, the Legislature hereby finds that to protect the  
7       public interest a person must have a license, as provided in this  
8       article, to practice embalming, funeral directing and cremation  
9       and to operate a funeral establishment and crematory in the  
10      state of West Virginia.

**§30-6-2. Short title.**

1 This article shall be known and may be cited as the “West  
2 Virginia Funeral Service Examiners Act”.

**§30-6-3. Definitions.**

1 As used in this article, the following words and terms have  
2 the following meanings, unless the context clearly indicates  
3 otherwise:

4 (a) “Apprentice” means a person who is preparing to  
5 become a licensed funeral director and embalmer and is  
6 learning the practice of embalming, funeral directing or  
7 cremation under the direct supervision and personal instruction  
8 of a duly licensed embalmer or funeral director.

9 (b) “Authorized representative” means a person legally  
10 authorized or entitled to order the cremation of the deceased, as  
11 established by rule. An authorized representative may include  
12 the following:

13 (1) The deceased;

14 (2) The deceased’s next of kin;

15 (3) A court order;

16 (4) A public official who is charged with arranging the final  
17 disposition of an indigent deceased; or

18 (5) A representative of an institution who is charged with  
19 arranging the final disposition of a deceased who donated his or  
20 her body to science.

21 (c) “Board” means the West Virginia board of funeral  
22 service examiners.

23 (d) “Certificate” means a certification by the board to be a  
24 crematory operator.

25 (e) “Courtesy card holder” means a person who only  
26 practices funeral directing periodically in West Virginia and is

27 a licensed embalmer and funeral director in a state which  
28 borders West Virginia.

29 (f) "Cremated remains" or "cremains" means all human  
30 remains, including foreign matter cremated with the human,  
31 recovered after the completion of cremation.

32 (g) "Cremation" means the mechanical or thermal process  
33 whereby a dead human body is reduced to ashes and bone  
34 fragments and then further reduced by additional pulverization,  
35 burning or re-cremating when necessary.

36 (h) "Crematory" means a licensed place of business where  
37 a deceased human body is reduced to ashes and bone fragments  
38 and includes a crematory that stands alone or is part of or  
39 associated with a funeral establishment.

40 (i) "Crematory operator" means a person certified by the  
41 board to operate a crematory.

42 (j) "Crematory operator in charge" means a certified  
43 crematory operator who accepts responsibility for the operation  
44 of a crematory.

45 (k) "Deceased" means a dead human being for which a  
46 death certificate is required.

47 (l) "Embalmer" means a person licensed to practice  
48 embalming.

49 (m) "Embalming" means the practice of introducing  
50 chemical substances, fluids or gases used for the purpose of  
51 preservation or disinfection into the vascular system or hollow  
52 organs of a dead human body by arterial or hypodermic  
53 injection for the restoration of the physical appearance of a  
54 deceased.

55 (n) "Funeral" means a service, ceremony or rites performed  
56 for the deceased with a body present.

57 (o) "Funeral directing" means the business of engaging in  
58 the following:

- 59           (1) The shelter, custody or care of a deceased;
- 60           (2) The preparation of a deceased for burial or other  
61 disposition;
- 62           (3) The arranging or supervising of a funeral or memorial  
63 service for a deceased; and
- 64           (4) The maintenance of a funeral establishment for the  
65 preparation, care or disposition of a deceased.
- 66           (p) "Funeral director" means a person licensed to practice  
67 funeral directing.
- 68           (q) "Funeral establishment" means a licensed place of  
69 business devoted to: The care, preparation and arrangements for  
70 the transporting, embalming, funeral, burial or other disposition  
71 of a deceased. A funeral establishment can include a licensed  
72 crematory.
- 73           (r) "Funeral service licensee" means a person licensed after  
74 the first day of July, two thousand three, to practice embalming  
75 and funeral directing.
- 76           (s) "License" means a license, which is not transferable or  
77 assignable, to:
- 78           (1) Practice embalming and funeral directing;
- 79           (2) Operate a crematory or a funeral establishment.
- 80           (t) "Licensee" means a person holding a license issued  
81 under the provisions of this article.
- 82           (u) "Licensee in charge" means a licensed embalmer and  
83 funeral director who accepts responsibility for the operation of  
84 a funeral establishment.
- 85           (v) "Memorial service" means a service, ceremony or rites  
86 performed for the deceased without a body present.
- 87           (w) "Mortuary" means a licensed place of business devoted  
88 solely to the shelter, care and embalming of the deceased.

89 (x) "Person" means an individual, partnership, association,  
90 corporation, not-for-profit organization or any other organiza-  
91 tion.

92 (y) "Registration" means a registration issued by the board  
93 to be an apprentice to learn the practice of embalming, funeral  
94 directing or cremation.

95 (z) "State" means the state of West Virginia.

**§30-6-4. Board of funeral service examiners.**

1 (a) The "West Virginia Board of Embalmers and Funeral  
2 Directors" is hereby continued and shall, after the thirtieth day  
3 of June, two thousand two, be known as the "West Virginia  
4 Board of Funeral Service Examiners". The members of the  
5 board in office on the first day of July, two thousand two shall,  
6 unless sooner removed, continue to serve until their respective  
7 terms expire and until their successors have been appointed and  
8 qualified.

9 (b) Commencing with the board terms beginning the first  
10 day of July, two thousand two, the board shall consist of seven  
11 members appointed for terms of four years by the governor, by  
12 and with the advice and consent of the Senate. Five members  
13 must be licensed embalmers and funeral directors, and one  
14 member must be a citizen member who is not licensed, certified  
15 or registered under the provisions of this article and who is not  
16 a person who performs any services related to the practice of  
17 embalming or funeral directing. Commencing with the board  
18 terms beginning the first day of July, two thousand two, the  
19 governor shall appoint, by and with the advice and consent of  
20 the Senate, one person who operates a crematory in West  
21 Virginia which person shall replace the current board member  
22 whose term ended on the thirtieth day of June, two thousand  
23 two. The crematory operator who is appointed for the term  
24 commencing the first day of July, two thousand two, shall  
25 register and be certified, pursuant to the provisions of this

26 article. Any crematory operator appointed thereafter shall be  
27 certified, pursuant to the provisions of this article.

28 (c) Each licensed member of the board, at the time of his or  
29 her appointment, must have held a license in this state for a  
30 period of not less than five years immediately preceding the  
31 appointment and each member must be a resident of this state  
32 during the appointment term. Each certified member must abide  
33 by the provisions of subsection (b) of this section. Board  
34 members must represent at least four different geographic  
35 regions of the state.

36 (d) No member may serve more than two consecutive full  
37 terms and any member having served two full terms may not be  
38 appointed for one year after completion of his or her second full  
39 term. A member shall continue to serve until his or her succes-  
40 sor has been appointed and qualified.

41 (e) The governor may remove any member from the board  
42 for neglect of duty, incompetency or official misconduct.

43 (f) Any member of the board immediately and automati-  
44 cally forfeits his or her membership if he or she has his or her  
45 license or certificate to practice suspended or revoked by the  
46 board, is convicted of a felony under the laws of any state or the  
47 United States or becomes a nonresident of this state.

48 (g) The board shall annually elect one of its members as  
49 president and one of its members as secretary.

50 (h) Each member of the board shall receive compensation  
51 and expense reimbursement in accordance with section eleven,  
52 article one of this chapter.

### **§30-6-5. Powers of the board.**

1 The board has all the powers set forth in article one of this  
2 chapter and in addition may:

3 (1) Sue and be sued in its official name as an agency of this  
4 state;



5       (2) Hire, fix the compensation of and discharge an execu-  
6       tive director;

7       (3) Hire, fix the compensation of and discharge the employ-  
8       ees necessary to enforce the provisions of this article;

9       (4) Set the requirements to be an inspector;

10      (5) Examine and determine the qualifications of any  
11      applicant for a license;

12      (6) Determine the qualifications of any applicant for a  
13      certificate;

14      (7) Set cremation procedures and requirements;

15      (8) Set the fees charged under the provisions of this article;

16      (9) Set the fines assessed under the provisions of this  
17      article;

18      (10) Issue, renew, deny, suspend, revoke or reinstate  
19      licenses and certificates and discipline licensees and certificate  
20      holders;

21      (11) Set the continuing education requirements for licensees  
22      and certificate holders;

23      (12) Investigate alleged violations of the provisions of this  
24      article and the rules promulgated hereunder, and orders and  
25      final decisions of the board;

26      (13) Conduct hearings upon charges calling for discipline  
27      of a licensee or revocation or suspension of a license;

28      (14) Propose rules in accordance with the provisions of  
29      article three, chapter twenty-nine-a of this code to implement  
30      the provisions of this article; and

31      (15) Take all other actions necessary and proper to effectuate  
32      the purposes of this article.

**§30-6-6. Rule-making authority.**

1 (a) The board shall propose rules for legislative approval in  
2 accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code to implement the provisions of this  
4 article including, but not limited to, the following:

5 (1) The general practice of embalming, funeral directing  
6 and cremating, and operating a funeral establishment and  
7 crematory: *Provided*, That the board cannot require that an  
8 applicant for a license to operate a funeral establishment or  
9 crematory have either an embalmer's or funeral director's  
10 license, or a certificate to operate a crematory.

11 (2) The examinations administered under this article;

12 (3) The issuing and renewing of licenses, certificates and  
13 courtesy cards, including establishing a staggered biennial  
14 renewal schedule;

15 (4) The requirements for inactive licensees;

16 (5) The registration and regulation of apprentices;

17 (6) Establish a cremation procedure and crematory require-  
18 ments;

19 (7) Establish inspection requirements for funeral establish-  
20 ments and crematories, including an inspection of a new facility  
21 and annual inspections of existing facilities;

22 (8) Establish inspector and investigator requirements;

23 (9) Setting the fees charged under the provisions of this  
24 article;

25 (10) Setting the fines assessed under the provisions of this  
26 article;

27 (11) Implementing requirements for continuing education  
28 for licensees;

29 (12) Denying, suspending, revoking, reinstating or limiting  
30 the practice of a licensee or certificate of qualification;

31 (13) The investigation and resolution of complaints against  
32 persons licensed, certified or registered under this article;

33 (14) Establish advertising standards; and

34 (15) Propose any other rules necessary to effectuate the  
35 provisions of this article.

36 (b) All rules in effect on the effective date of this article  
37 shall remain in effect until they are withdrawn, revoked or  
38 amended.

**§30-6-7. Fees; special revenue account; administrative fines.**

1 (a) All fees and other moneys, except administrative fines,  
2 received by the board shall be deposited in a separate special  
3 revenue fund in the state treasury and be used for the adminis-  
4 tration of this article. Except as may be provided in section  
5 eleven, article one of this chapter, the board shall retain the  
6 amounts in the special revenue account from year to year. No  
7 compensation or expense incurred under this article is a charge  
8 against the general revenue fund.

9 (b) Any amounts received as administrative fines imposed  
10 pursuant to this article shall be deposited into the general  
11 revenue fund of the state treasury.

**§30-6-8. Embalmer license requirements.**

1 (a) The board shall issue a license to practice embalming to  
2 an applicant who meets the following requirements:

3 (1) Is of good moral character;

4 (2) Is eighteen years of age or over;

5 (3) Is a citizen of the United States or is eligible for  
6 employment in the United States;

7 (4) Holds a high school diploma or its equivalent;

8 (5) Has completed one of the following education require-  
9 ments:

10 (A) Holds an associate degree from an accredited college or  
11 university or has successfully completed not less than sixty  
12 semester hours or ninety quarter hours of academic work in an  
13 accredited college or university toward a baccalaureate degree  
14 with a declared major field of study, as evidenced by a tran-  
15 script submitted for evaluation prior to beginning a one-year  
16 course of apprenticeship and prior to obtaining a diploma of  
17 graduation from a school of mortuary science; has completed a  
18 one-year course of apprenticeship under the supervision of a  
19 licensed embalmer and funeral director actively and lawfully  
20 engaged in the practice of embalming and funeral directing in  
21 this state, such apprenticeship to consist of diligent attention to  
22 the work in the course of regular and steady employment and  
23 not as a side issue to another employment, and under which the  
24 apprentice shall have taken an active part in the operation of  
25 embalming not less than thirty-five dead human bodies and an  
26 active part in conducting not less than thirty-five funeral  
27 services; and possesses a diploma of graduation from a school  
28 of mortuary science which requires as a prerequisite to gradua-  
29 tion the completion of a course of study not less than twelve  
30 months' duration, and which said school of mortuary science  
31 must be one accredited by the American board of funeral  
32 service education, inc., and duly approved by the board; or

33 (B) Holds a bachelor degree in mortuary science from an  
34 accredited college or university as evidenced by a transcript  
35 submitted for evaluation prior to beginning a one-year course  
36 of apprenticeship; and has completed a one-year course of  
37 apprenticeship under the supervision of a licensed embalmer  
38 and funeral director actively and lawfully engaged in the  
39 practice of embalming and funeral directing in this state, such  
40 apprenticeship to consist of diligent attention to the work in the  
41 course of regular and steady employment and not as a side issue  
42 to another employment, and under which the apprentice shall  
43 have taken an active part in the operation of embalming not less

44 than thirty-five dead human bodies and an active part in  
45 conducting not less than thirty-five funeral services;

46 (6) Passes with an average score of not less than seventy-  
47 five percent the national conference of funeral services exami-  
48 nation at a testing site provided by the national conference,  
49 passes with a score of not less than seventy-five percent the  
50 state law examination administered by the board and passes  
51 such further examination as the board may deem necessary to  
52 ascertain qualification and ability to engage in the practice of  
53 embalming. Successfully passing the national conference of  
54 funeral services examination is a condition precedent to taking  
55 the state law examination administered by the board. The board  
56 shall offer the state law examination at least twice each year;  
57 and

58 (7) Has paid all the appropriate fees.

59 (b) A license to practice embalming issued by the board  
60 prior to the first day of July, two thousand two, shall for all  
61 purposes be considered a license issued under this section:  
62 *Provided*, That a person holding a license issued prior to the  
63 first day of July, two thousand two, must renew the license  
64 pursuant to the provisions of this article.

### §30-6-9. Funeral director license requirements.

1 (a) The board shall issue a license to practice funeral  
2 directing to an applicant who meets the following requirements:

3 (1) Holds an embalmer's license issued by the board; and

4 (2) Has paid all the appropriate fees.

5 (b) A license to practice funeral directing issued by the  
6 board prior to the first day of July, two thousand two, shall for  
7 all purposes be considered a license issued under this section:  
8 *Provided*, That a person holding a license issued prior to the  
9 first day of July, two thousand two, must renew the license  
10 pursuant to the provisions of this article.

**§30-6-10. Funeral service license requirements.**

1 (a) Commencing the first day of July, two thousand three,  
2 the board shall issue a license to practice embalming and  
3 funeral directing, which license shall be known as a funeral  
4 service license, to an applicant who meets the following  
5 requirements:

6 (1) Is of good moral character;

7 (2) Is eighteen years of age or over;

8 (3) Is a citizen of the United States or is eligible for  
9 employment in the United States;

10 (4) Holds a high school diploma or its equivalent;

11 (5) Has completed one of the education requirements for an  
12 embalmer's license, set out in subdivision (5), subsection (a),  
13 section eight of this article; and

14 (6) Has paid all the appropriate fees.

15 (b) A license to practice embalming and funeral directing  
16 issued by the board prior to the first day of July, two thousand  
17 three, shall for all purposes be considered a license issued under  
18 this section.

19 (c) A person holding a license to practice embalming and  
20 funeral directing issued prior to the first day of July, two  
21 thousand three, must after the first day of July, two thousand  
22 three, renew his or her license pursuant to the provisions of this  
23 section.

24 (d) After the first day of July, two thousand three, where  
25 ever the terms "license to practice embalming and funeral  
26 directing" or "embalming and funeral directing license" are  
27 used in the code, the term "funeral service license" shall apply.

**§30-6-11. Crematory operator certificate requirements.**

1 (a) All crematory operators shall be certified by the board.  
2 The board shall issue a certificate to be a crematory operator to  
3 an applicant who meets the following requirements:

4 (1) Has completed a class, authorized by the board, on  
5 cremation and operating a crematory;

6 (2) Has paid all the appropriate fees; and

7 (3) Has completed such other requirements as prescribed by  
8 the board.

9 (b) All persons currently operating crematories shall by the  
10 first day of January, two thousand three, register with the board.  
11 By the first day of July, two thousand three, all persons  
12 currently operating crematories shall obtain a certificate to  
13 operate a crematory, pursuant to the provisions of this section.

14 (c) All certificates must be renewed biennially upon or  
15 before the first day of July.

16 (d) After the first day of July, two thousand three, all  
17 licensed crematories must have a certified crematory operator  
18 in charge.

**§30-6-12. Licenses or equivalent from another state; license or  
certificate to practice in this state.**

1 The board may issue a license to practice embalming and  
2 funeral directing or a certificate to be a crematory operator to  
3 an applicant of good moral character who holds a valid license  
4 or its equivalent to practice from another state if the applicant  
5 demonstrates that:

6 (1) He or she holds a license or its equivalent to practice in  
7 another state which was granted after completion of educational  
8 requirements substantially equivalent to those required in this  
9 state;

10 (2) He or she holds a license or its equivalent to practice in  
11 another state which was granted after passing, in that or another

12 state, an examination that is substantially equivalent to the  
13 examination required in this state;

14 (3) Reciprocal rights are provided by such other state to  
15 holders of funeral director's or embalmer's licenses granted in  
16 this state. Such reciprocal licenses may be renewed biennially  
17 upon payment of the renewal license fee;

18 (4) He or she is not currently being investigated by a  
19 disciplinary authority of another state, does not have charges  
20 pending against his or her license or something equivalent to  
21 practice and has never had a license or something equivalent to  
22 practice revoked;

23 (5) He or she has not previously failed an examination for  
24 licensure as an embalmer or funeral director in this state;

25 (6) He or she has paid the application fee specified by rule;  
26 and

27 (7) Has completed such other action as required by the  
28 board.

**§30-6-13. Courtesy cards.**

1 (a) The board may issue biennial courtesy cards, on the first  
2 day of July, to licensed funeral directors and licensed embalm-  
3 ers in the states bordering on West Virginia, after the:

4 (1) Application for a courtesy card is made on a form  
5 prescribed by the board;

6 (2) Payment of a fee; and

7 (3) Adherence to such other requirements as specified by  
8 the board.

9 (b) A courtesy card may be issued under the following  
10 conditions:



11 (1) Holders of courtesy cards shall not be permitted to open  
12 or operate a place of business for the purpose of conducting  
13 funerals, embalming bodies or cremating in the state of West  
14 Virginia; and

15 (2) Holders of courtesy cards shall not be permitted to  
16 maintain an office or agency in this state for the purpose of  
17 conducting funerals, embalming bodies or cremating in the state  
18 of West Virginia.

19 (c) A violation of this section shall be sufficient cause for  
20 the board to immediately revoke or cancel the courtesy card of  
21 the violator.

**§30-6-14. License and certificate renewal; conditions of renewal.**

1 (a) The board shall biennially on the first day of July, and  
2 pursuant to a staggered schedule, renew a license to practice  
3 embalming and funeral directing or a certificate to be a crema-  
4 tory operator to every licensee or certificate holder desiring to  
5 continue in active practice or service.

6 (b) The board shall charge a fee for each renewal and a late  
7 fee for nonrenewal of a license or certificate.

8 (c) The board shall require as a condition for the renewal of  
9 a license to practice embalming and funeral directing or a  
10 certificate to be a crematory operator that each licensee  
11 participate in continuing education: *Provided*, That any licensed  
12 embalmer or funeral director sixty-five years or older with at  
13 least ten years experience as a licensed embalmer or licensed  
14 funeral director, is entitled to be issued, after payment of a fee,  
15 a license as an embalmer emeritus or funeral director emeritus  
16 and is exempt from all continuing education requirements. The  
17 emeritus license shall entitle the holder to all the rights and  
18 privileges of the license previously held by the licensee.

19 (d) Any person licensed to practice embalming and funeral  
20 directing or certified to be a crematory operator who does not  
21 desire to continue in active practice shall notify the board, in a

22 manner specified by the board, and pay a fee, and shall, during  
23 such period, be listed by the board as being inactive. At such  
24 time a person desires to return to active practice, he or she must  
25 notify the board, in a manner specified by the board, and  
26 complete all the continuing education requirements.

**§30-6-15. Continuing education.**

1 (a) The board shall conduct annually a school of instruction  
2 to apprise funeral directors and embalmers of the most recent  
3 scientific knowledge and developments affecting their profes-  
4 sion. This school shall qualify as continuing education and shall  
5 fulfill as many continuing education required hours as the board  
6 specifies. Qualified lecturers and demonstrators may be  
7 employed by the board for this purpose. The board shall give  
8 notice of the time and place at which the school will be held for  
9 all licensed funeral directors and embalmers: *Provided*, That the  
10 location of any school of continuing education shall accommo-  
11 date the geographic diversity of the embalmers and funeral  
12 directors of this state.

13 (b) Hours of continuing education may be obtained by  
14 attending and participating in board-approved programs,  
15 meetings, seminars or activities. It is the responsibility of each  
16 licensee to finance his or her costs of continuing education.

17 (c) Compliance with the requirements of continuing  
18 education, as specified by the board, is a prerequisite for license  
19 renewal.

**§30-6-16. Inspector and inspection requirements.**

1 (a) All inspectors employed by the board to inspect funeral  
2 establishments and crematories, pursuant to the provisions of  
3 this article, shall have a West Virginia embalmer's license and  
4 a West Virginia funeral director's license.

5 (b) Each inspector shall inspect a specific region, as  
6 designated by the board. Any person being employed as an  
7 inspector is prohibited from inspecting in the region in which

8 he or she practices. If there is only one inspector, a board  
9 member, who is not from the region where the inspector  
10 practices, is authorized to inspect the facilities in the region  
11 where the inspector practices.

12 (c) All inspections shall be conducted in a manner so as not  
13 to interfere with the conduct of business within the funeral  
14 establishment or crematory. The board has the authority to  
15 enter, at all reasonable hours, for the purpose of inspecting the  
16 premises in which the business of embalming, funeral directing  
17 or cremating is conducted.

18 (d) All of an inspector's expenses, per diem and compensa-  
19 tion shall be paid out of the receipts of the board, but the  
20 allowances shall at no time exceed the receipts of the board.

21 (e) The board is authorized to set fees for inspections:  
22 *Provided*, That there shall be no fee for an annual inspection.

#### **§30-6-17. Apprenticeship.**

1 (a) After the first day of January, two thousand three, the  
2 board shall issue a registration to be an apprentice funeral  
3 director or apprentice embalmer to an applicant who meets the  
4 following requirements:

5 (1) Is of good moral character and temperate habits;

6 (2) Is eighteen years of age or over;

7 (3) A citizen of the United States or be eligible for employ-  
8 ment in the United States;

9 (4) Has a high school diploma or its equivalent;

10 (5) Has completed one of the education requirements for an  
11 embalmer's license, as set out in subdivision (5), subsection (a),  
12 section eight of this article;

13 (6) Is not attending school and will not be attending school  
14 during the apprenticeship period; and

15 (7) Has paid the appropriate fees.

16 (b) Any person that commences an apprenticeship prior to  
17 the first day of January, two thousand three, may continue to  
18 serve such apprenticeship and is not subject to the requirements  
19 set forth in this section, but is subject to board approval.

20 (c) The board may set the requirements for an apprentice-  
21 ship, including the manner in which it shall be served and the  
22 length of time, which shall not be more than one year.

23 (d) No licensed funeral director or licensed embalmer shall  
24 be permitted to register or have registered more than five  
25 apprentices under his or her license at the same time.

**§30-6-18. Funeral establishment license requirements.**

1 (a) Every funeral establishment in West Virginia shall be  
2 licensed prior to opening a funeral establishment for business  
3 to the public. The board shall issue a license to operate a funeral  
4 establishment to an applicant who meets the following require-  
5 ments:

6 (1) The place of business has been approved by the board  
7 as having met all the requirements and qualifications to be a  
8 funeral establishment as are required by this article;

9 (2) Notify the board, in writing, at least thirty days before  
10 the proposed opening date, so there can be an inspection of the  
11 funeral establishment;

12 (3) Show proof that the funeral establishment passed the  
13 inspection;

14 (4) Show that the funeral establishment has employed a  
15 licensee in charge;

16 (5) Show that the licensee in charge is a licensed funeral  
17 director;

18       (6) Show that the licensee in charge will manage the funeral  
19 establishment and be responsible for all business conducted and  
20 services performed therein;

21       (7) Pay all the appropriate fees; and

22       (8) Complete such other requirements as specified by the  
23 board.

24       (b) All funeral establishment licenses must be renewed  
25 biennially, by a staggered schedule, upon or before the first day  
26 of July and pay a renewal fee.

27       (c) Each funeral establishment license shall be valid for  
28 only one funeral establishment to be located at a specific street  
29 address. There shall be a separate license issued and a separate  
30 fee assessed to operate additional funeral establishments by the  
31 same applicant.

32       (d) A holder of a funeral establishment license that fails to  
33 pay fees for either the principal establishment or additional  
34 establishments by the first day of July of the renewal year is  
35 subject to a penalty, a reinstatement fee for each establishment  
36 and the required renewal fee.

37       (e) The holder of a funeral establishment license who  
38 ceases to operate the funeral establishment at the location  
39 specified in the application shall, within twenty days thereafter,  
40 surrender the funeral establishment license to the board and the  
41 license shall be canceled by the board. In the event of the death  
42 of an individual who was the holder of a funeral establishment  
43 license, it shall be the duty of the holder's personal representa-  
44 tive to surrender the funeral establishment license within one  
45 hundred twenty days of qualifying as the personal representa-  
46 tive.

47       (f) If a licensee in charge ceases to be employed by a  
48 funeral establishment, then the holder of the funeral establish-  
49 ment license shall notify the board within thirty days of the  
50 cessation. Within thirty days after such notification, the holder

51 of a funeral establishment license shall execute a new applica-  
52 tion for a funeral establishment license specifying the name of  
53 the new licensee in charge. A funeral establishment is prohib-  
54 ited from operating more than thirty days without a licensee in  
55 charge.

56 (g) A licensee whose embalmer's or funeral director's  
57 license has been revoked or a holder of a license to operate a  
58 funeral establishment whose license to operate has been  
59 revoked shall not operate, either directly or indirectly, or hold  
60 any interest in any funeral establishment or crematory: *Pro-*  
61 *vided*, That a holder of a license to operate a funeral establish-  
62 ment whose license to operate has been revoked is not prohib-  
63 ited from leasing any property owned by him or her for use as  
64 a funeral establishment, so long as the property owner does not  
65 participate in the control or profit of the funeral establishment  
66 except as lessor of the premises for a fixed rental not dependent  
67 upon earnings.

68 (h) Failure to comply with any of these provisions shall be  
69 grounds for revocation of a funeral establishment license.

70 (i) A license to operate a funeral establishment issued by  
71 the board prior to the first day of July, two thousand two, shall  
72 for all purposes be considered a license issued under this  
73 section: *Provided*, That a funeral establishment holding a  
74 license issued prior to the first day of July, two thousand two,  
75 must renew the license pursuant to this section.

**§30-6-19. Funeral establishment to be managed by a licensee in  
charge; license displayed.**

1 (a) Every separate funeral establishment in this state  
2 offering the services set forth in this article shall be operated  
3 under the supervision and management of a licensee in charge  
4 who is licensed as a funeral director in this state.

5 (b) Each separate funeral establishment in this state offering  
6 the services set forth in this article shall have its own license,

7 which license shall be prominently displayed within the funeral  
8 establishment.

9 (c) All funeral establishments shall display in all advertis-  
10 ing the name of the licensee in charge of the establishment.

11 (d) All funeral establishments shall prominently display  
12 within the funeral establishment the license of the licensee in  
13 charge.

14 (e) A licensee in charge shall supervise each separate  
15 establishment.

**§30-6-20. Crematory license requirements.**

1 (a) Every crematory shall be licensed in West Virginia. The  
2 board shall issue a crematory license to an applicant who meets  
3 the following requirements:

4 (1) The place of business has been approved by the board  
5 as having met all the requirements and qualifications to be a  
6 crematory as are required by this article;

7 (2) The crematory conforms with all local building codes;

8 (3) The crematory meets all applicable environmental  
9 standards;

10 (4) Notify the board, in writing, at least thirty days before  
11 the proposed opening date so there can be an inspection of the  
12 crematory;

13 (5) Show proof that the crematory passed the inspection;

14 (6) Have a certified crematory operator in charge;

15 (7) Pay all the appropriate fees; and

16 (8) Complete such other requirements as specified by the  
17 board.

18 (b) All crematory licenses must be renewed biennially, by  
19 a staggered schedule, upon or before the first day of July and  
20 pay a renewal fee.

21 (c) Each crematory license shall be valid for only one  
22 crematory to be located at a specific street address. There shall  
23 be a separate license issued and a separate fee assessed to  
24 operate additional crematories by the same applicant.

25 (d) A holder of a crematory license that fails to pay fees for  
26 either the principal crematory or additional crematories by the  
27 first day of July of the renewal year is subject to a penalty, a  
28 reinstatement fee for each crematory and the required renewal  
29 fee.

30 (e) The holder of a crematory license who ceases to operate  
31 the crematory at the location specified in the application shall,  
32 within twenty days thereafter, surrender the crematory license  
33 to the board and the license shall be canceled by the board. In  
34 the event of the death of an individual who was the holder of a  
35 crematory license, it shall be the duty of the holder's personal  
36 representative to surrender the crematory license within one  
37 hundred twenty days of qualifying as the personal representa-  
38 tive.

39 (f) A holder of a certificate to operate a crematory whose  
40 certificate to operate has been revoked or a holder of a crema-  
41 tory license whose license has been revoked shall not operate,  
42 either directly or indirectly, or hold any interest in any crema-  
43 tory or funeral establishment: *Provided*, That a holder of a  
44 crematory license whose license has been revoked is not  
45 prohibited from leasing any property owned by him or her for  
46 use as a crematory, so long as the property owner does not  
47 participate in the control or profit of the crematory except as  
48 lessor of the premises for a fixed rental not dependent upon  
49 earnings.

50 (g) Failure to comply with any of these provisions shall be  
51 grounds for revocation of a crematory license.



52 (h) All persons that operate crematories shall by the first  
53 day of January, two thousand three, register with the board. By  
54 the first day of July, two thousand three, all persons that operate  
55 crematories shall obtain a crematory license, pursuant to the  
56 provisions of this section.

57 (i) All crematory licenses must be renewed biennially upon  
58 or before the first day of July.

59 (j) After the first day of July, two thousand three, all  
60 licensed crematories must have a certified crematory operator  
61 in charge.

62 (k) If a certified crematory operator in charge ceases to be  
63 employed by a crematory, then the holder of the crematory  
64 license shall notify the board within thirty days of the cessation.  
65 Within thirty days after such notification, the holder of a  
66 crematory license shall execute a new application for a crema-  
67 tory license specifying the name of the new certified crematory  
68 operator in charge. A crematory is prohibited from operating  
69 more than thirty days without a certified crematory operator in  
70 charge.

### **§30-6-21. Requirements for cremating.**

1 (a) A crematory shall obtain written permission prior to  
2 cremating a dead human body. The written permission shall be  
3 obtained from persons authorized by the board as specified in  
4 rules.

5 (b) The written permission shall be on a standard form,  
6 prescribed by the board, and shall contain the following  
7 information:

8 (1) The identity of the deceased;

9 (2) The name of the person authorizing the cremation and  
10 the relationship, if any, to the deceased;

11 (3) Permission for the crematory to perform the cremation;

12 (4) The name of the person who will claim the cremains  
13 from the crematory; and

14 (5) Any other information required by the board.

15 (c) A crematory shall obtain a permit or authorization for  
16 cremation from the county medical examiner, the assistant  
17 county medical examiner or the county coroner of the county  
18 wherein the death occurred and do such other acts as required  
19 by section nine, article twelve, chapter sixty-one of this code:  
20 *Provided*, That a crematory may obtain a permit or authoriza-  
21 tion for cremation from the chief medical examiner if:

22 (1) The crematory is unable to obtain a permit from the  
23 county medical examiner, the assistant county medical exam-  
24 iner or the county coroner of the county wherein the death  
25 occurred; or

26 (2) The crematory has concerns following authorization by  
27 county personnel regarding the identity or cause of death of the  
28 deceased.

29 (d) The permit or authorization for cremation shall be on  
30 forms prescribed by the chief medical examiner. A permit or  
31 authorization for cremation may be done by facsimile.

32 (e) All crematories shall implement a cremation procedure.  
33 The board, by rules, shall establish the cremation procedure  
34 which shall include:

35 (1) An identification process for bodies;

36 (2) A tracking process for bodies from the time a body is  
37 delivered to a crematory through the time the cremains are  
38 claimed by the authorized person;

39 (3) Obtaining all the required signatures, as specified by the  
40 board, on the written permission for cremation;

41 (4) Only cremating one human body at a time and prohibit-  
42 ing co-mingling of cremains;

43 (5) The specified time period a crematory is required to  
44 keep unclaimed cremains;

45 (6) How to dispose of unclaimed cremains;

46 (7) A record-keeping process for cremations; and

47 (8) Any other requirements necessary to effectuate the  
48 provisions of this article.

49 (f) The board shall establish requirements for:

50 (1) The equipment needed to complete the cremation  
51 process; and

52 (2) The containers needed to store the cremains.

**§30-6-22. Disposition of body of deceased person; penalty.**

1 (a) No public officer, employee, physician or surgeon, or  
2 any other person having a professional relationship with the  
3 deceased, shall send, or cause to be sent, to any embalmer,  
4 funeral director or crematory operator the body of any deceased  
5 without first inquiring the desires of the next of kin, or any  
6 persons who may be chargeable with the funeral expenses of  
7 the deceased. If any next of kin or person can be found, his or  
8 her authority and direction shall be used as to the disposal of the  
9 body of the deceased.

10 (b) Any person who violates the provisions of this section  
11 is guilty of a misdemeanor and, upon conviction thereof, shall  
12 be fined not less than five hundred dollars, nor more than one  
13 thousand dollars, or imprisoned not less than ten days nor more  
14 than ninety days, or both.

**§30-6-23. Refusal to issue or renew, suspension or revocation of  
license; disciplinary action.**

1 (a) The board may refuse to renew, suspend, revoke or limit  
2 any license, certificate or registration or practice privilege of a  
3 licensee, or certificate or registration holder and may take

4 disciplinary action against a licensee, or certificate or registra-  
5 tion holder after a hearing. The board may refuse to issue,  
6 refuse to renew, suspend, revoke or limit any license, certificate  
7 or registration or practice privilege of a licensee, or certificate  
8 or registration holder for any of the following reasons:

9 (1) Fraud or deceit in obtaining or maintaining a license;

10 (2) Failure by any licensee, or certificate or registration  
11 holder to maintain compliance with requirements for issuance  
12 or renewal of a license, certificate or registration or to timely  
13 notify the board as required in this article;

14 (3) Dishonesty, fraud, professional negligence in the  
15 performance of services, or a willful departure from accepted  
16 standards and professional conduct;

17 (4) Violation of any provision of this article or any rule,  
18 including the violation of any professional standard or rule of  
19 professional conduct, or public health laws;

20 (5) Conviction of a felony or any crime of which dishonesty  
21 or fraud under the laws of the United States or this state, or  
22 conviction of any similar crime under the laws of any other  
23 state if the underlying act or omission involved would have  
24 constituted a crime under the laws of this state;

25 (6) Any conduct adversely affecting upon the licensee's, or  
26 certificate or registration holder's fitness to perform profes-  
27 sional services;

28 (7) The use of false, misleading or unethical advertising by  
29 any licensee, or certificate or registration holder, or applicant  
30 for a license or certificate of registration;

31 (8) Upon satisfactory proof that a licensed embalmer, a  
32 licensed funeral director, or a certified crematory operator has  
33 taken undue advantage of his or her patrons or has committed  
34 a fraudulent act in the conduct of business;

35 (9) Solicitation of business by the licensee, or certificate or  
36 registration holder, or any agents, assistants or employees,  
37 whether such solicitation occurs after death or while death is  
38 impending, as specified by the board: *Provided*, That this  
39 subdivision does not prohibit proper advertising;

40 (10) If a licensee, or certificate or registration holder,  
41 knowingly permits a person not licensed, not certified, or not  
42 registered to engage in the profession of embalming, funeral  
43 directing or cremation;

44 (11) If a licensee, or certificate or registration holder,  
45 knowingly permits a person not licensed, not certified, or not  
46 registered to use his or her license number or numbers for the  
47 purpose of practicing, or discharging any of the duties of, the  
48 professions of embalming, funeral directing or cremation;

49 (12) Employment by the licensee of persons as “cappers”,  
50 “steerers” or “solicitors”, or other such persons to obtain  
51 funeral or cremation business;

52 (13) Employment, directly or indirectly, of any apprentice,  
53 agent, assistant, embalmer, employee or other person, on part  
54 or full time, or on commission, for the purpose of calling upon  
55 individuals or institutions by whose influence dead human  
56 bodies may be turned over to a particular funeral director,  
57 funeral establishment or crematory;

58 (14) The buying of business by the licensee, or certificate  
59 or registration holder, or any agents, assistants or employees, or  
60 the direct or indirect payment or offer of payment of a commis-  
61 sion by the licensee, or certificate or registration holder, or any  
62 agent, assistants or employees, for the purpose of securing  
63 business;

64 (15) Gross immorality; and

65 (16) Chronic or persistent inebriety or addiction to alcohol,  
66 narcotics or other substance.

67 (b) If the board suspends, revokes, refuses to renew or  
68 limits any license, certificate or registration or practice privi-  
69 lege, the board shall give written notice of the action, including  
70 a statement of charges setting forth the reasons for the action,  
71 and notice of the date, time and place for a hearing. The hearing  
72 shall be held in accordance with the provisions of this article.

73 (c) Disciplinary action includes, but is not limited to, a  
74 reprimand, censure, probation, suspension of license, adminis-  
75 trative fine not to exceed one thousand dollars per day per  
76 violation and mandatory attendance at continuing education  
77 seminars.

#### **§30-6-24. Complaints; investigations.**

1 (a) Upon receipt of a written complaint filed against any  
2 licensee, or certificate or registration holder, the board shall  
3 provide a copy of the complaint to the licensee, or certificate or  
4 registration holder.

5 (b) The board may investigate the complaint. If the board  
6 finds upon investigation that probable cause exists that the  
7 licensee, or certificate or registration holder, has violated any  
8 provision of this article or the rules promulgated hereunder,  
9 then the board shall serve the licensee, or certificate or registra-  
10 tion holder, with a written statement of charges and a notice  
11 specifying the date, time and place of the hearing. The hearing  
12 shall be held in accordance with the provisions of this article.

13 (c) In addition to other sanctions imposed, the board may  
14 require a licensee, or certificate or registration holder to pay the  
15 costs of the proceeding if the licensee, or certificate or registra-  
16 tion holder is in violation of any provision of this article or the  
17 rules promulgated hereunder.

#### **§30-6-25. Hearing and judicial review.**

1 (a) A hearing on a statement of charges shall be held in  
2 accordance with the provisions for hearing set forth in section

3 eight, article one of this chapter and procedures specified by  
4 rule by the board.

5 (b) Any licensee, or certificate or registration holder,  
6 adversely affected by any decision of the board entered after a  
7 hearing, may obtain judicial review of the decision in accor-  
8 dance with section four, article five, chapter twenty-nine-a of  
9 this code and may appeal any ruling resulting from judicial  
10 review in accordance with said article.

**§30-6-26. Reinstatement.**

1 If the board has suspended, revoked or refused to renew a  
2 license, certificate or registration, the licensee, or certificate or  
3 registration holder, shall be afforded an opportunity to demon-  
4 strate the qualifications to resume practice. The application for  
5 reinstatement shall be in writing and subject to the procedures  
6 specified by the board.

**§30-6-27. Unlawful acts.**

1 It is unlawful for any person not licensed or certified under  
2 the provisions of this article to practice or offer to practice  
3 embalming, funeral directing or cremation, or to operate a  
4 funeral establishment or crematory in this state.

**§30-6-28. Injunctions.**

1 When, as a result of an investigation under this article or  
2 otherwise, the board or any other interested person believes that  
3 any person: (1) Has engaged, is engaging or is about to engage  
4 in the practice of embalming, funeral directing or cremating  
5 without a license or certificate; (2) has operated, is operating or  
6 is about to operate a funeral establishment or crematory; or (3)  
7 is in violation of any of the provisions of this article, the board  
8 or any other interested person may make application to any  
9 court of competent jurisdiction for an order enjoining the acts  
10 or practices and upon a showing that the person has engaged or  
11 is about to engage in any act or practice, an injunction, restrain-

12 ing order or another appropriate order may be granted by the  
13 court without bond.

**§30-6-29. Criminal proceedings; penalties.**

1 (a) When, as a result of an investigation under this article  
2 or otherwise, the board has reason to believe that a person has  
3 knowingly violated the provisions of this article, the board may  
4 bring its information to the attention of the attorney general or  
5 other appropriate law-enforcement officer who may cause  
6 appropriate criminal proceedings to be brought.

7 (b) Any person who knowingly violates any provision of  
8 this article is guilty of a misdemeanor and, upon conviction  
9 thereof, shall be fined not more than two thousand five hundred  
10 dollars or confined in the county or regional jail not more than  
11 one year, or both fined and imprisoned.

**§30-6-30. Single act evidence of practice.**

1 In any action brought or any proceeding initiated under this  
2 article, evidence of the commission of a single act prohibited by  
3 this article is sufficient to justify a penalty, injunction, restrain-  
4 ing order or conviction without evidence of a general course of  
5 conduct.

**§30-6-31. Inapplicability of article.**

1 The provisions of this article do not apply to or interfere  
2 with:

3 (1) The duties of an officer of any local or state board of  
4 health who, in compliance with local or state board of health  
5 rules, may be charged with the duty of preparation for burial of  
6 a human body when death was caused by a virulent, communi-  
7 cable disease;

8 (2) The duties of an officer of a medical college, county  
9 medical society, anatomical association or other recognized  
10 person carrying out his or her responsibilities of dealing with



11 indigent dead human bodies who are held subject for anatomi-  
12 cal study; or

13 (3) The customs or rites of any religious sect in the burial  
14 of its dead: *Provided*, That embalming shall only be performed  
15 by a licensed embalmer.

### **§30-6-32. Termination date.**

1 The board shall terminate on the first day of July, two  
2 thousand seven, pursuant to the provisions of article ten,  
3 chapter four of this code.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

#### **§61-12-9. Permits required for cremation; fee.**

1 (a) It is the duty of any person cremating, or causing or  
2 requesting the cremation of, the body of any dead person who  
3 died in this state, to secure a permit for the cremation from the  
4 chief medical examiner, the county medical examiner or county  
5 coroner of the county wherein the death occurred. Any person  
6 who willfully fails to secure a permit for a cremation, is guilty  
7 of a misdemeanor and, upon conviction thereof, shall be fined  
8 not less than two hundred dollars. A permit for cremation shall  
9 be acted upon by the chief medical examiner, the county  
10 medical examiner or the county coroner after review of the  
11 circumstances surrounding the death, as indicated by the death  
12 certificate. The person requesting issuance of a permit for  
13 cremation shall pay a reasonable fee, as determined by the chief  
14 medical examiner, to the county medical examiner or coroner  
15 or to the office of the chief medical examiner, as appropriate,  
16 for issuance of the permit.

17 (b) Any person operating a crematory who does not  
18 perform a cremation pursuant to the terms of a cremation  
19 contract, or pursuant to the order of a court of competent  
20 jurisdiction, within the time contractually agreed upon, or, if the

21 cremation contract does not specify a time period, within  
22 twenty-one days of receipt of the deceased person's remains by  
23 the crematory, whichever time is less, is guilty of a misde-  
24 meanor.

25 (c) Any person operating a crematory who fails to deliver  
26 the cremated remains of a deceased person, pursuant to the  
27 terms of a cremation contract, or pursuant to the order of a court  
28 of competent jurisdiction, within the time contractually agreed  
29 upon, or, if the cremation contract does not specify a time  
30 period, within thirty-five days of receipt of the deceased  
31 person's remains by the crematory, whichever time is less, is  
32 guilty of a misdemeanor.

33 (d) Any person convicted of a violation of the provisions of  
34 subsection (b) or (c) of this section shall be fined not less than  
35 one thousand dollars nor more than five thousand dollars or  
36 confined in the county or regional jail for a period not to exceed  
37 six months, or both.

38 (e) In any criminal proceeding alleging that a person  
39 violated the time requirements of this section, it is a defense to  
40 the charge that a delay beyond the time periods provided for in  
41 this section were caused by circumstances wholly outside the  
42 control of the defendant.

43 (f) For purposes of this section, "cremation contract" means  
44 an agreement to perform a cremation, as a "cremation" is  
45 defined in subsection (g), section three, article six, chapter  
46 thirty of this code. A cremation contract is an agreement  
47 between a crematory and any authorized person or entity,  
48 including, but not limited to:

49 (1) The deceased person, prior to his or her death;

50 (2) The deceased person's next of kin;

51 (3) A public official charged with arranging the final  
52 disposition of an indigent deceased person or an unclaimed  
53 corpse;

54 (4) A representative of an institution who is charged with  
55 arranging the final disposition of a deceased who donated his or  
56 her body to science;

57 (5) A public officer required by statute to arrange the final  
58 disposition of a deceased person;

59 (6) Another funeral establishment; or

60 (7) An executor, administrator or other personal representa-  
61 tive of the deceased.

---

## CHAPTER 151

(S. B. 550 — By Senator Bowman)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section one, article twenty-four, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including live dog racing in the interstate compact on licensure of participants in live horse racing with pari-mutuel wagering.

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

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

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

**§19-24-1. Interstate compact on licensure of participants in live racing with pari-mutuel wagering; form of compact.**

1       The interstate compact on licensure of participants in live  
2 racing with pari-mutuel wagering is enacted into law and  
3 entered into with all other jurisdictions legally joining in the  
4 compact in the form substantially as follows:

#### ARTICLE I. PURPOSES.

##### §1. Purposes.

1       The purposes of this compact are to:

2       1. Establish uniform requirements among the party states  
3 for the licensing of participants in live racing with pari-mutuel  
4 wagering and ensure that all the participants who are licensed  
5 pursuant to this compact meet a uniform minimum standard of  
6 honesty and integrity.

7       2. Facilitate the growth of the racing industry in each party  
8 state and nationwide by simplifying the process for licensing  
9 participants in live racing and reduce the duplicative and costly  
10 process of separate licensing by the regulatory agency in each  
11 state that conducts live racing with pari-mutuel wagering.

12       3. Authorize the West Virginia racing commission to  
13 participate in this compact.

14       4. Provide for participation in this compact by officials of  
15 the party states and permit those officials, through the compact  
16 committee established by this compact, to enter into contracts  
17 with governmental agencies and nongovernmental persons to  
18 carry out the purposes of this compact.

19       5. Establish the compact committee created by this compact  
20 as an interstate governmental entity duly authorized to request  
21 and receive criminal history record information from the federal  
22 bureau of investigation and other state and local law-enforce-  
23 ment agencies.

#### ARTICLE II. DEFINITIONS.

##### §2. Definitions.

1       “Compact committee” means the organization of officials  
2 from the party states that is authorized and empowered by this  
3 compact to carry out the purposes of this compact.

4       “Official” means the appointed, elected, designated or  
5 otherwise duly selected member of a racing commission or the  
6 equivalent of a racing commission in a party state who repre-  
7 sents that party state as a member of the compact committee.

8       “Participants in live racing” means participants in live  
9 racing with pari-mutuel wagering in the party states.

10       “Party state” means each state that has enacted this com-  
11 pact.

12       “State” means each of the several states of the United  
13 States, the District of Columbia, the Commonwealth of Puerto  
14 Rico and each territory or possession of the United States.

#### **ARTICLE III. ENTRY INTO FORCE, ELIGIBLE PARTIES AND WITH- DRAWAL.**

##### **§3. Entry into force.**

1       This compact shall come into force when enacted by any  
2 four states. Thereafter, this compact shall become effective as  
3 to any other state upon: (i) That state’s enactment of this  
4 compact; and (ii) the affirmative vote of a majority of the  
5 officials on the compact committee as provided in section eight.

##### **§4. States eligible to join compact.**

1       Any state that has adopted or authorized racing with  
2 pari-mutuel wagering is eligible to become party to this  
3 compact.

##### **§5. Withdrawal from compact and impact thereof on force and effect of compact.**

1 Any party state may withdraw from this compact by  
2 enacting a statute repealing this compact, but the withdrawal  
3 does not become effective until the head of the executive  
4 branch of the withdrawing state has given notice in writing of  
5 the withdrawal to the head of the executive branch of all other  
6 party states. If as a result of withdrawals participation in this  
7 compact decreases to less than three party states, this compact  
8 is no longer in force and effect unless and until there are at least  
9 three or more party states again participating in this compact.

#### ARTICLE IV. COMPACT COMMITTEE.

##### **§6. Compact committee established.**

1 There is hereby created an interstate governmental entity to  
2 be known as the "compact committee", which shall be com-  
3 prised of one official from the racing commission or its  
4 equivalent in each party state who shall be appointed, serve and  
5 is subject to removal in accordance with the laws of the party  
6 state he or she represents. Pursuant to the laws of his or her  
7 party state, each official shall have the assistance of his or her  
8 state's racing commission or the equivalent of a racing commis-  
9 sion in considering issues related to licensing of participants in  
10 live racing and in fulfilling his or her responsibilities as the  
11 representative from his or her state to the compact committee.  
12 If an official is unable to perform any duty in connection with  
13 the powers and duties of the compact committee, the racing  
14 commission or equivalent from his or her state shall designate  
15 another of its members as an alternate who shall serve in his or  
16 her place and represent the party state as its official on the  
17 compact committee until that racing commission or equivalent  
18 determines that the original representative official is able once  
19 again to perform his or her duties as that party state's represen-  
20 tative official on the compact committee. The designation of an  
21 alternate shall be communicated by the affected state's racing  
22 commission or equivalent to the compact committee as the  
23 committee's bylaws may provide.

**§7. Powers and duties of compact committee.**

1 In order to carry out the purposes of this compact, the  
2 compact committee is hereby granted the power and duty to:

3 1. Determine which categories of participants in live horse  
4 racing, including, but not limited to, owners, trainers, jockeys,  
5 grooms, mutuel clerks, racing officials, veterinarians and  
6 farriers, and determine which comparable categories of partici-  
7 pants in live dog racing and other forms of live racing with pari-  
8 mutuel wagering in two (2) or more of the party states, should  
9 be licensed by the committee, and establish the requirements  
10 for the initial licensure of applicants in each such category, the  
11 term of the license for each category and the requirements for  
12 renewal of licenses in each category: *Provided*, That with  
13 regard to requests for criminal history record information on  
14 each applicant for a license and with regard to the effect of a  
15 criminal record on the issuance or renewal of a license, the  
16 compact committee shall determine for each category of  
17 participants in live racing which licensure requirements for that  
18 category are, in its judgment, the most restrictive licensure  
19 requirements of any party state for that category and shall adopt  
20 licensure requirements for that category that are, in its judg-  
21 ment, comparable to those most restrictive requirements.

22 2. Investigate applicants for a license from the compact  
23 committee and, as permitted by federal and state law, gather  
24 information on the applicants, including criminal history record  
25 information from the federal bureau of investigation and  
26 relevant state and local law-enforcement agencies and, where  
27 appropriate, from the royal Canadian mounted police and law-  
28 enforcement agencies of other countries, necessary to determine  
29 whether a license should be issued under the licensure require-  
30 ments established by the committee as provided in paragraph  
31 one above. Only officials on, and employees of, the compact  
32 committee may receive and review the criminal history record  
33 information and those officials and employees may use that

34 information only for the purposes of this compact. No such  
35 official or employee may disclose or disseminate the informa-  
36 tion to any person or entity other than another official on or  
37 employee of the compact committee. The fingerprints of each  
38 applicant for a license from the compact committee shall be  
39 taken by the compact committee, its employees or its designee  
40 and, pursuant to Public Law 92-544 or Public Law 100-413,  
41 shall be forwarded to a state identification bureau, or to the  
42 association of racing commissioners, international, an associa-  
43 tion of state officials regulating pari-mutuel wagering desig-  
44 nated by the attorney general of the United States, for submis-  
45 sion to the federal bureau of investigation for a criminal history  
46 record check. The fingerprints may be submitted on a finger-  
47 print card or by electronic or other means authorized by the  
48 federal bureau of investigation or other receiving law-enforce-  
49 ment agency.

50       3. Issue licenses to, and renew the licenses of, participants  
51 in live racing listed in paragraph one of this section who are  
52 found by the committee to have met the licensure and renewal  
53 requirements established by the committee. The compact  
54 committee does not have the power or authority to deny a  
55 license. If it determines that an applicant will not be eligible for  
56 the issuance or renewal of a compact committee license, the  
57 compact committee shall notify the applicant that it will not be  
58 able to process his or her application further. The notification  
59 does not constitute and shall not be considered to be the denial  
60 of a license. Any such applicant has the right to present  
61 additional evidence to, and to be heard by, the compact commit-  
62 tee, but the final decision on issuance or renewal of the license  
63 shall be made by the compact committee using the requirements  
64 established pursuant to paragraph one of this section.

65       4. Enter into contracts or agreements with governmental  
66 agencies and with nongovernmental persons to provide personal  
67 services for its activities and other services as may be necessary  
68 to effectuate the purposes of this compact.

69       5. Create, appoint and abolish those offices, employments  
70 and positions, including an executive director, as it considers



71 necessary for the purposes of this compact, prescribe their  
72 powers, duties and qualifications, hire persons to fill those  
73 offices, employments and positions and provide for the re-  
74 moval, term, tenure, compensation, fringe benefits, retirement  
75 benefits and other conditions of employment of its officers,  
76 employees and other positions.

77       6. Borrow, accept or contract for the services of personnel  
78 from any state, the United States, any other governmental  
79 agency or from any person, firm, association, corporation or  
80 other entity.

81       7. Acquire, hold and dispose of real and personal property  
82 by gift, purchase, lease, license or in other similar manner, in  
83 furtherance of the purposes of this compact.

84       8. Charge a fee to each applicant for an initial license or  
85 renewal of a license.

86       9. Receive other funds through gifts, grants and appropria-  
87 tions.

#### **§8. Voting requirements.**

1       A. Each official shall be entitled to one vote on the compact  
2 committee.

3       B. All action taken by the compact committee with regard  
4 to the addition of party states as provided in section three, the  
5 licensure of participants in live racing, and the receipt and  
6 disbursement of funds requires a majority vote of the total  
7 number of officials, or their alternates, on the committee. All  
8 other action by the compact committee requires a majority vote  
9 of those officials, or their alternates, present and voting.

10       C. No action of the compact committee may be taken unless  
11 a quorum is present. A majority of the officials, or their  
12 alternates, on the compact committee constitutes a quorum.

#### **§9. Administration and management.**

1       A. The compact committee shall elect annually from among  
2 its members a chairman, a vice chairman and a secre-  
3 tary/treasurer.

4       B. The compact committee shall adopt bylaws for the  
5 conduct of its business by a two-thirds vote of the total number  
6 of officials, or their alternates, on the committee at that time  
7 and shall have the power by the same vote to amend and rescind  
8 these bylaws. The committee shall publish its bylaws in  
9 convenient form and shall file a copy of the bylaws and a copy  
10 of any amendments to the bylaws with the secretary of state or  
11 equivalent agency of each of the party states.

12       C. The compact committee may delegate the day-to-day  
13 management and administration of its duties and responsibili-  
14 ties to an executive director and his or her support staff.

15       D. Employees of the compact committee shall be consid-  
16 ered governmental employees.

**§10. Immunity from liability for performance of official responsi-  
bilities and duties.**

1       No official of a party state or employee of the compact  
2 committee may be held personally liable for any good faith act  
3 or omission that occurs during the performance and within the  
4 scope of his or her responsibilities and duties under this  
5 compact.

**ARTICLE V. RIGHTS AND RESPONSIBILITIES OF EACH PARTY STATE.**

**§11. Rights and responsibilities of each party state.**

1       A. By enacting this compact, each party state:

2       1. Agrees: (i) To accept the decisions of the compact  
3 committee regarding the issuance of compact committee  
4 licenses to participants in live racing pursuant to the commit-  
5 tee's licensure requirements; and (ii) to reimburse or otherwise  
6 pay the expenses of its official representative on the compact  
7 committee or his or her alternate.

8           2. Agrees not to treat a notification to an applicant by the  
9 compact committee under paragraph three of section seven that  
10 the compact committee will not be able to process his or her  
11 application further as the denial of a license, or to penalize such  
12 an applicant in any other way based solely on such a decision  
13 by the compact committee.

14           3. Reserves the right: (i) To charge a fee for the use of a  
15 compact committee license in that state; (ii) to apply its own  
16 standards in determining whether, on the facts of a particular  
17 case, a compact committee license should be suspended or  
18 revoked; (iii) to apply its own standards in determining  
19 licensure eligibility, under the laws of that party state, for  
20 categories of participants in live racing that the compact  
21 committee determines not to license and for individual partici-  
22 pants in live racing who do not meet the licensure requirements  
23 of the compact committee; and (iv) to establish its own  
24 licensure standards for the licensure of nonracing employees at  
25 horse and dog racetracks and employees at separate satellite  
26 wagering facilities. Any party state that suspends or revokes a  
27 compact committee license shall, through its racing commission  
28 or the equivalent thereof or otherwise, promptly notify the  
29 compact committee of that suspension or revocation.

30           B. No party state may be held liable for the debts or other  
31 financial obligations incurred by the compact committee.

#### ARTICLE VI. CONSTRUCTION AND SEVERABILITY.

##### **§12. Construction and severability.**

1           This compact shall be liberally construed so as to effectuate  
2 its purposes. The provisions of this compact shall be severable  
3 and, if any phrase, clause, sentence or provision of this compact  
4 is declared to be contrary to the constitution of the United  
5 States or of any party state, or the applicability of this compact  
6 to any government, agency, person or circumstance is held  
7 invalid, the validity of the remainder of this compact and the  
8 applicability thereof to any government, agency, person or  
9 circumstance shall not be affected thereby. If all or some

10 portion of this compact is held to be contrary to the constitution  
11 of any party state, the compact shall remain in full force and  
12 effect as to the remaining party states and in full force and  
13 effect as to the state affected as to all severable matters.

---

## CHAPTER 152

(Com. Sub. for S. B. 649 — By Senators Sharpe, Edgell,  
Minard, Ross, Anderson, Bowman and Kessler)

---

[Passed March 9, 2002; in effect July 1, 2002. Approved by the Governor.]

---

AN ACT to amend and reenact section ten, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing licensed lottery sales agent commissions to seven percent of gross sales.

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

That section ten, 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.**

**§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.**

1 (a) The commission shall propose rules for legislative  
2 approval in accordance with the provisions of article three,  
3 chapter twenty-nine-a of this code for the licensing of lottery  
4 sales agents for the sale and dispensing of lottery tickets,  
5 materials and lottery games, and the operations of electronic  
6 computer terminals therefor, subject to the following:

7 (1) The commission shall issue its annual license to the  
8 lottery sales agents for each lottery outlet and for a fee estab-  
9 lished by the commission to cover its costs, but not to exceed  
10 one thousand dollars. Application for licensing as a lottery sales  
11 agent shall be on forms prescribed and furnished by the  
12 director;

13 (2) No licensee may engage in business exclusively as a  
14 lottery sales agent;

15 (3) The commission shall ensure geographic distribution of  
16 lottery sales agents throughout the state;

17 (4) Before issuance of a license to an applicant, the com-  
18 mission shall consider factors such as the financial responsibil-  
19 ity, security, background, accessibility of the place of business  
20 or activity to the public, public convenience and the volume of  
21 expected sales;

22 (5) No person under the age of twenty-one may be licensed  
23 as an agent. No licensed agent may employ any person under  
24 the age of eighteen for sales or dispensing of lottery tickets or  
25 materials or operation of a lottery terminal;

26 (6) A license is valid only for the premises stated on the  
27 license;

28 (7) The director may issue a temporary license when  
29 determined necessary;

30 (8) A license is not assignable or transferable;

31 (9) Before a license is issued, an agent shall be bonded for  
32 an amount and in the form and manner determined by the  
33 director, or shall provide other security, in an amount, form and  
34 manner determined by the director, that will ensure the perfor-  
35 mance of the agent's duties and responsibilities as a licensed  
36 lottery agent or the indemnification of the commission;

37 (10) The commission may issue licenses to any legitimate  
38 business, organization, person or entity, including, but not  
39 limited to, civic or fraternal organizations; parks and recreation  
40 commissions or similar authorities; senior citizen centers, state-  
41 owned stores, persons lawfully engaged in nongovernmental  
42 business on state property, persons lawfully engaged in the sale  
43 of alcoholic beverages; political subdivisions or their agencies  
44 or departments, state agencies, commission-operated agencies;  
45 persons licensed under the provisions of article twenty-three,  
46 chapter nineteen of this code; and religious, charitable or  
47 seasonal businesses;

48 (11) Licensed lottery sales agents shall receive seven  
49 percent of gross sales as commission for the performance of  
50 their duties: *Provided*, That a portion of the commission not to  
51 exceed one and one quarter percent of gross sales may be paid  
52 from unclaimed prize moneys accumulated under section  
53 sixteen of this article. In addition, the commission may promul-  
54 gate a bonus-incentive plan as additional compensation not to  
55 exceed one percent of annual gross sales. The method and time  
56 of payment shall be determined by the commission;

57 (12) Licensed lottery sales agents shall prominently display  
58 the license on the premises where lottery sales are made; and

59 (13) No person or entity or subsidiary, agent or subcontrac-  
60 tor of that person or entity may receive or hold more than  
61 twenty-five percent of the licenses to act as licensed lottery  
62 sales agent in any one county or municipality nor more than  
63 five percent of the licenses issued throughout this state:  
64 *Provided*, That the limitations of twenty-five percent and five

65 percent in this subdivision do not apply if it is determined by  
66 the commission that there are not a sufficient number of  
67 qualified applicants for licenses to comply with these require-  
68 ments.

69 (b) The commission shall propose rules for legislative  
70 approval in accordance with the provisions of article three,  
71 chapter twenty-nine-a of this code specifying the terms and  
72 conditions for contracting with lottery retailers for sale of  
73 preprinted instant type lottery tickets and may provide for the  
74 dispensing of the tickets through machines and devices. Tickets  
75 may be sold or dispensed in any public or private store,  
76 operation or organization, without limitation. The commission  
77 may establish an annual fee not to exceed fifty dollars for those  
78 persons, per location or site, and shall issue a certificate of  
79 authority to act as a lottery retailer to them. The commission  
80 shall establish procedures to ensure the security, honesty and  
81 integrity of the lottery and distribution system. The commission  
82 shall establish the method of payment, commission structure,  
83 methods of payment of winners, including payment in merchan-  
84 dise and tickets, and may require prepayment by lottery  
85 retailers, require bond or security for payment and require  
86 deposit of receipts in accounts established therefor. Retailers  
87 shall prominently display the certificate of authority issued by  
88 the commission on the premises where lottery sales are made.

---

## CHAPTER 153

**(S. B. 568 — By Senators Ross, Rowe, Sharpe and Hunter)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section nine-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to authorizing bureau for public health to require public water system evaluations; and providing for a public water system to report corrective actions within a specified time period.

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

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

**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

**§16-1-9a. Public water system and community water system defined; regulation of maximum contaminant levels in water systems; authorization of inspections; violations; criminal, civil and administrative penalties; safe drinking water penalty fund.**

1 (a) A public water system is any water supply or system  
2 that regularly supplies or offers to supply water for human  
3 consumption through pipes or other constructed conveyances,  
4 if serving at least an average of twenty-five individuals per day  
5 for at least sixty days per year, or which has at least fifteen  
6 service connections, and shall include: (1) Any collection,  
7 treatment, storage and distribution facilities under the control  
8 of the owner or operator of such system and used primarily in  
9 connection with such system; and (2) any collection or pretreat-  
10 ment storage facilities not under such control which are used  
11 primarily in connection with such system. A public water  
12 system does not include a system that meets all of the following  
13 conditions: (1) Consists only of distribution and storage  
14 facilities (and does not have any collection and treatment  
15 facilities); (2) obtains all of its water from, but is not owned or  
16 operated by, a public water system that otherwise meets the  
17 definition; (3) does not sell water to any person; and (4) is not  
18 a carrier conveying passengers in interstate commerce.



19       (b)(1) The secretary shall prescribe by legislative rule the  
20 maximum contaminant levels to which all public water systems  
21 shall conform in order to prevent adverse effects on the health  
22 of individuals and, if the secretary considers appropriate,  
23 treatment techniques that reduce the contaminant or contami-  
24 nants to a level which will not adversely affect the health of the  
25 consumer. The rule shall contain provisions to protect and  
26 prevent contamination of wellheads and well fields used by  
27 public water supplies so that contaminants do not reach a level  
28 that would adversely affect the health of the consumer.

29       (2) The secretary shall further prescribe by legislative rule  
30 minimum requirements for: Sampling and testing; system  
31 operation; public notification by a public water system on being  
32 granted a variance or exemption or upon failure to comply with  
33 specific requirements of this section and regulations promul-  
34 gated under this section; recordkeeping; laboratory certifica-  
35 tion; as well as procedures and conditions for granting vari-  
36 ances and exemptions to public water systems from state public  
37 water systems regulations.

38       (3) In addition, the secretary shall establish by legislative  
39 rule, in accordance with article three, chapter twenty-nine-a of  
40 this code, requirements covering the production and distribution  
41 of bottled drinking water and may by legislative rule, in  
42 accordance with article three, chapter twenty-nine-a of this  
43 code, establish requirements governing the taste, odor, appear-  
44 ance and other consumer acceptability parameters of drinking  
45 water.

46       (c) Authorized representatives of the bureau have right of  
47 entry to any part of a public water system, whether or not the  
48 system is in violation of a legal requirement, for the purpose of  
49 inspecting, sampling or testing and shall be furnished records  
50 or information reasonably required for a complete inspection.  
51 The right of entry includes the right for a bureau representative

52 or a designee of a bureau representative to conduct an evalua-  
53 tion necessary to assure the public water system meets federal  
54 safe drinking water requirements. The public water system shall  
55 provide a written response to the bureau within forty-five days  
56 of receipt of the evaluation by the public water system, address-  
57 ing corrective actions to be taken as a result of the evaluation.

58 (d) (1) Any individual, partnership, association, syndicate,  
59 company, firm, trust, corporation, government corporation,  
60 institution, department, division, bureau, agency, federal agency  
61 or any entity recognized by law who violates any provision of  
62 this section, or any of the rules or orders issued pursuant to this  
63 section, is guilty of a misdemeanor and, upon conviction  
64 thereof, shall be fined not less than fifty dollars nor more than  
65 five hundred dollars and each day's violation shall constitute a  
66 separate offense. The commissioner or his or her authorized  
67 representative may also seek injunctive relief in the circuit court  
68 of the county in which all or part of the public water system is  
69 situated for threatened or continuing violations.

70 (2) For a willful violation of a provision of this section, or  
71 of any of the rules or orders issued under this section for which  
72 a penalty is not otherwise provided under subdivision (3) of this  
73 subsection, an individual, partnership, association, syndicate,  
74 company, firm, trust, corporation, government corporation,  
75 institution, department, division, bureau, agency, federal agency  
76 or entity recognized by law, upon a finding of a willful viola-  
77 tion by the circuit court of the county in which the violation  
78 occurs, shall be subject to a civil penalty of not more than five  
79 thousand dollars and each day's violation shall be grounds for  
80 a separate penalty.

81 (3) The commissioner or his or her authorized representa-  
82 tive shall have authority to assess administrative penalties and  
83 initiate any proceedings necessary for the enforcement of  
84 drinking water rules. The administrative penalty for a violation

85 of any drinking water rule is a minimum of one thousand  
86 dollars per day per violation and a maximum of two thousand  
87 five hundred dollars per day per violation for systems serving  
88 more than ten thousand persons, a minimum of two hundred  
89 fifty dollars per day per violation and a maximum of five  
90 hundred dollars per day per violation for systems serving over  
91 three thousand three hundred persons up to and including ten  
92 thousand persons, a minimum of one hundred dollars per day  
93 per violation and a maximum of two hundred dollars per day  
94 per violation for systems serving three thousand three hundred  
95 or fewer persons and each day's violation shall be grounds for  
96 a separate penalty. Penalties are payable to the commissioner.  
97 All moneys collected under this section shall be deposited into  
98 a restricted account known as the safe drinking water penalty  
99 fund previously created in the office of the state treasurer. All  
100 money deposited into the fund shall be used by the commis-  
101 sioner to provide technical assistance to public water systems.

---

## CHAPTER 154

**(H. B. 4509— By Delegates Douglas, Kuhn, Perdue,  
Marshall, Ennis, Flanigan and Ellem)**

---

[Passed March 8, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections two and three, article one-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to uniform credentialing of health care practitioners; requiring certain health care practitioners to use uniform application forms; continuing the advisory committee; setting terms for members of the advisory committee; requiring the advisory committee to meet annually; and providing

that uniform forms and lists of practitioners required to use uniform forms may be set forth in procedural rule.

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

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

**ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.**

§16-1A-2. Development of uniform credentialing application forms.

§16-1A-3. Advisory committee.

**§16-1A-2. Development of uniform credentialing application forms.**

1 Notwithstanding any provision of this code to the contrary,  
2 the secretary of the department of health and human resources  
3 and the insurance commissioner, on or before the first day of  
4 June, two thousand two, shall jointly propose rules for legisla-  
5 tive approval in accordance with the provisions of article three,  
6 chapter twenty-nine-a of this code which set forth uniform  
7 application forms for credentialing, recredentialing or updating  
8 information and to specify the health care practitioners who  
9 shall utilize the forms.

**§16-1A-3. Advisory committee.**

1 (a) The secretary of the department of health and human  
2 resources and the insurance commissioner shall jointly establish  
3 an advisory committee to assist them in the development and  
4 implementation of the uniform credentialing process in this  
5 state. The advisory committee shall consist of eleven appointed  
6 members. Six members shall be appointed by the secretary of  
7 the department of health and human resources: One member  
8 shall represent a hospital with one hundred beds or less; one  
9 member shall represent a hospital with more than one hundred

10 beds; one member shall represent another type of health care  
11 facility requiring credentialing; one member shall be a person  
12 currently credentialing on behalf of health care practitioners;  
13 and two of the members shall represent the health care practi-  
14 tioners subject to credentialing. Five members shall be repre-  
15 sentative of the entities regulated by the insurance commis-  
16 sioner that require credentialing and shall be appointed by the  
17 insurance commissioner: One member shall represent an  
18 indemnity health care insurer; one member shall represent a  
19 preferred provider organization; one member shall represent a  
20 third party administrator; one member shall represent a health  
21 maintenance organization accredited by American accreditation  
22 health care commission; and one member shall represent a  
23 health maintenance organization accredited by the national  
24 committee on quality assurance. The secretary of the depart-  
25 ment of health and human resources and the insurance commis-  
26 sioner, or the designee of either or both, shall be nonvoting ex  
27 officio members.

28 (b) Of the members of the advisory committee first ap-  
29 pointed, four shall be appointed for a term of one year, four  
30 shall be appointed for a term of two years, and three shall be  
31 appointed for a term of three years. At the expiration of the  
32 initial terms, successors will be appointed to terms of three  
33 years. Members may serve an unlimited number of terms.  
34 When a vacancy occurs as a result of the expiration of a term or  
35 otherwise, a successor of like qualifications shall be appointed.

36 (c) The advisory committee shall meet at least annually to  
37 review the status of uniform credentialing in this state, and may  
38 make further recommendations to the secretary of the depart-  
39 ment of health and human resources and the insurance commis-  
40 sioner as are necessary to carry out the purposes of this article.  
41 Any uniform forms and the list of health care practitioners  
42 required to use the uniform forms as set forth in legislative rule  
43 proposed pursuant to section two of this article may be  
44 amended as needed by procedural rule.

---

## CHAPTER 155

(Com. Sub. for H. B. 4123 — By Delegates Compton, Leach,  
Hubbard, Staton, Hatfield, Susman and Douglas)

---

[Passed February 25, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section seven, article five-1, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the education and training requirements for a regional long-term care ombudsman.

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

That section seven, article five-1, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5L. LONG-TERM CARE OMBUDSMAN PROGRAM.**

**§16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.**

1       (a) Each regional long-term care ombudsman program shall  
2 employ one or more regional long-term care ombudsmen to  
3 effect the purposes of this article. The regional long-term care  
4 ombudsman shall have either: (1) At least a bachelor's degree  
5 in gerontology, social work, health, or a related field and  
6 demonstrated experience in one of the following areas: (A) The  
7 field of aging; (B) health care or social service programs; (C)  
8 community programs; or (D) long-term care issues; or (2) at  
9 least a bachelor's degree in any field and at least three years of  
10 experience in gerontology, social work, health or a related field.

11 Experience in gerontology, social work, health or a related field  
12 may be substituted for up to two years (sixty hours) of college  
13 on a year-for-year basis. The supervising ombudsman must  
14 have at least a bachelor's degree in gerontology, social work,  
15 health or a related field and demonstrated experience in one of  
16 the following areas: (A) The field of aging; (B) health care or  
17 social service programs; (C) community programs; and (D)  
18 long-term care issues. Persons employed in a designated  
19 regional long-term care ombudsman program on the date of  
20 enactment of this article may be given a waiver from these  
21 requirements provided that within one year from the date of  
22 enactment of this article they enter into a program leading to a  
23 degree in gerontology, social work, health or a related field or  
24 complete fifty hours of continuing education units in gerontol-  
25 ogy, social work, health or a related field every two calendar  
26 year periods. The regional long-term care ombudsman shall  
27 participate in ongoing training programs related to his or her  
28 duties or responsibilities. The regional long-term care ombuds-  
29 man may not have been employed within the past two years  
30 prior to the date of his or her employment under this section by  
31 any association of long-term care facilities. If a regional  
32 long-term care ombudsman has been employed within the past  
33 two years prior to the date of his or her employment under this  
34 section by a long-term care facility, or by any organization or  
35 corporation that directly or indirectly regulates, owns or  
36 operates a long-term care facility, that ombudsman may not act  
37 with the authority of a regional long-term care ombudsman in  
38 the facility of prior employment or in any other facility regu-  
39 lated, owned or operated by the same ownership as the facility  
40 of prior employment.

41 (b) Neither the regional long-term care ombudsman nor any  
42 member of his or her immediate family may have, or have had  
43 within the two years preceding his or her employment under  
44 this section, any pecuniary interest in the provision of long-term  
45 care. For the purposes of this section, the term "immediate

46 family” shall mean the spouse, children, natural mother, natural  
47 father, natural brothers or natural sisters of the regional long-  
48 term care ombudsman.

49 (c) The duties of the regional long-term care ombudsman  
50 shall include, but are not limited to, the following:

51 (1) Regularly monitoring long-term care facilities and  
52 investigating complaints filed on behalf of a resident, or filed  
53 on the regional long-term care ombudsman’s own initiative,  
54 relating to the health, safety, welfare and rights of such resi-  
55 dents, in accordance with complaint investigation procedures  
56 developed by the state long-term ombudsman care program:  
57 *Provided*, That nothing in this section shall be construed as to  
58 grant a regional long-term care ombudsman the right of entry  
59 to a long-term care facility’s drug rooms or to treatment rooms  
60 occupied by a resident unless prior consent has been obtained  
61 from the resident;

62 (2) Monitoring the development and implementation of  
63 federal, state and local laws, regulations and policies with  
64 respect to long-term care facilities;

65 (3) Training certified volunteers in accordance with the  
66 training and certification program developed by the state long-  
67 term care ombudsman program;

68 (4) Encouraging, cooperating with, and assisting the  
69 development and operation of referral services which can  
70 provide current, valid and reliable information on long-term  
71 care facilities and alternatives to institutionalization to persons  
72 in need of these services and the general public;

73 (5) Submitting reports as required by the state long-term  
74 care ombudsman program; and



75 (6) Other duties as mandated by the Older Americans Act  
76 of 1965, as amended.

77 (d) The state long-term care ombudsman shall develop and  
78 implement procedures for training and certification of regional  
79 long-term care ombudsmen. Regional long-term care ombuds-  
80 men who satisfactorily complete the training requirements shall  
81 be certified by the state commission on aging and shall be given  
82 identification cards which shall be presented to employees of a  
83 long-term care facility upon request. No regional long-term care  
84 ombudsman may investigate any complaint filed with the West  
85 Virginia long-term care ombudsman program unless the person  
86 has been certified by the state commission on aging. Consistent  
87 with the provisions of this article and any rules promulgated  
88 pursuant to section twenty-one, certified regional long-term  
89 ombudsmen shall be representatives of the state long-term care  
90 ombudsman program.

---

## CHAPTER 156

**(S. B. 727 — By Senators Craigo, Jackson, Chafin, Prezioso,  
Love, Helmick, Bowman, Anderson, Edgell, Unger,  
Boley, Minear and Sprouse)**

---

[Passed March 6, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article five-k, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to creating a fund within the state treasury to be known as the “West Virginia Birth-to-Three Fund”.

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

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

**ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.**

**§16-5K-6. West Virginia Birth-to-Three Fund.**

1 (a) There is hereby created in the state treasury a fund to be  
2 known as the "West Virginia Birth-to-Three Fund" that shall be  
3 an interest-bearing account established and maintained to pay  
4 costs, fees and expenses incurred, or to be incurred, for early  
5 intervention services for children who are developmentally  
6 delayed.

7 (b) Funds deposited into this account shall be derived from  
8 the following sources:

9 (1) Any appropriations by the Legislature;

10 (2) Fund transfers from any fund of the divisions of the  
11 department of health and human resources that, in whole or in  
12 part, supports early intervention services;

13 (3) All public funds transferred by any public agency as  
14 permitted by applicable law;

15 (4) Any private funds contributed, donated or bequeathed  
16 by corporations, individuals or other entities; and

17 (5) All interest or return on investments accruing to the  
18 fund.

19 (c) Moneys deposited in this fund shall be used exclusively  
20 to provide early intervention services to accomplish the  
21 purposes of this article. Expenditures of moneys deposited in

22 this fund are to be made in accordance with appropriation by  
23 the Legislature and in accordance with article three, chapter  
24 twelve of this code and upon the fulfillment of the provisions of  
25 article two, chapter five-a of this code: *Provided*, That for the  
26 fiscal year ending the thirtieth day of June, two thousand three,  
27 expenditures are authorized from deposits rather than pursuant  
28 to appropriation by the Legislature.

29 (d) Any balance remaining in this fund at the end of any  
30 state fiscal year shall not revert to the state treasury but shall  
31 remain in this fund and shall be used only in a manner consis-  
32 tent with this article.

---

## CHAPTER 157

**(S. B. 723 — By Senators Prezioso, Plymale, Redd, Ross,  
McCabe, Sharpe, Boley and Sprouse)**

---

[Passed March 5, 2002; in effect 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 twenty-nine-f, relating to authorizing pilot program for assisting uninsured and underinsured persons in obtaining health care coverage.

*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 twenty-nine-f, to read as follows:

**ARTICLE 29F. UNINSURED AND UNDERINSURED PILOT PROGRAMS.****§16-29F-1. Uninsured and underinsured health coverage assistance; pilot program.**

1 (a) The U.S. department of health and human services has  
2 established a federal grant program to encourage innovative  
3 integrated health care delivery systems to serve uninsured and  
4 underinsured persons with greater efficiency and improved  
5 quality of care and to further maximize reimbursements to  
6 health care providers which provide these services. The  
7 "Community Access Program" (CAP) grants as authorized in  
8 the federal register: February 4, 2000 (volume 65, number 24),  
9 allow for the establishment of local programs to reorganize and  
10 reintegrate local health care delivery systems. This section  
11 authorizes, on a trial basis, the establishment of pilot programs  
12 in the state which receive a grant under CAP to coordinate  
13 health care provider reimbursements, to allow an opportunity  
14 for innovations in payment for health care services to be tested  
15 and, if successful, to be permanently implemented.

16 (b) An entity receiving a CAP grant may initiate a program  
17 that comports to the federal grant requirements and meets the  
18 requirements of this section. The pilot program may enroll  
19 persons to participate in this pilot program who currently do not  
20 have insurance and whose income does not exceed two hundred  
21 and fifty percent of the federal poverty level. The pilot program  
22 may coordinate payments from enrollees and businesses  
23 employing enrollees to be utilized to capture available federal  
24 moneys to assist in providing reimbursements to enrollee's  
25 health care providers. The pilot program is to coordinate  
26 reimbursements limited to areas not covered by other federal  
27 reimbursement programs such as the children's health insurance  
28 agency within the department of administration and the federal  
29 medicaid program. In no instance may the pilot program allow  
30 health care reimbursements to enrollees and to health care

31 providers that limit or otherwise impede the eligibility of the  
32 enrollee or the health care provider to be eligible for these or  
33 other federal health care cost reimbursement programs.

34 (c) Notwithstanding the provisions of chapter thirty-three  
35 of this code, any grant program created and authorized pursuant  
36 to this section is not to be deemed as providing insurance or as  
37 offering insurance services. CAP pilot programs are specifically  
38 excluded from the definitions of “insurance” pursuant to section  
39 one, article one, chapter thirty-three of this code and of the  
40 definition of “insurer” as defined in section two of said article  
41 are not subject to regulation by the insurance commissioner and  
42 are not to be deemed as unauthorized insurers pursuant to  
43 section four, article forty-four of said chapter.

44 (d) The CAP pilot program is authorized to enter into  
45 agreements with health care providers to coordinate and  
46 otherwise provide services to enrollees. These agreements must  
47 be contingent on the health care provider agreeing to provide  
48 payment by the CAP pilot program based on available funding  
49 to the program for the health care services being provided. If  
50 the health care provider decides to no longer accept the pilot  
51 program’s enrollee’s reimbursement, the health care provider  
52 must provide, at a minimum, thirty days’ notice of discontinu-  
53 ance of providing services and further acceptance of enrollee’s  
54 payments.

55 (e) The pilot program must provide enrollees and his or her  
56 employer with a minimum of thirty days’ notice of discontinu-  
57 ance or reduction of enrollee benefits.

58 (f) The pilot program must submit quarterly reports to the  
59 legislative oversight commission of health and human resources  
60 accountability as established in article twenty-nine-e of this  
61 chapter. The report shall include at a minimum, analysis of  
62 financial status, numbers of health care provider reimburse-

63 ments, enrollee services utilized and other information as  
64 requested by the commission.

65 (g) The authorization for the creation and existence of a  
66 pilot program as established pursuant to this section shall expire  
67 on the thirtieth day of June, two thousand four.

---

## CHAPTER 158

**(S. B. 658 — By Senators Wooton, Caldwell, Hunter, Kessler,  
Minard, Mitchell, Oliverio, Ross, Rowe, Deem and Facemyer)**

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections three, four, five, six, seven, eight, ten, thirteen and twenty-two, article thirty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-five; and to amend and reenact sections three, five, six, seven, eleven and thirteen, article thirty-c of said chapter, all relating to end of life care; providing for a standardized physician orders for scope of treatment form; establishing the information required by the form; setting forth procedures for the issuance, use and transfer of the form; amending the qualifications for advanced nurse practitioners who determine the need for and select a surrogate decisionmaker; providing civil and criminal immunity from liability for good faith compliance with do-not-resuscitate orders; allowing person executing medical power of attorney to specify on medical power of attorney form his or her wishes regarding funeral arrangements, autopsy and organ donation; precluding a medical power of attorney representative or surrogate from cancelling preneed

funeral contract executed by deceased incapacitated person before onset of incapacity and paid in full before death; eliminating the language requirements for do-not-resuscitate identification; updating definitions and terms; and establishing effective dates.

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

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

#### **Article**

#### **30. West Virginia Health Care Decisions Act.**

#### **30C. Do-Not-Resuscitate Act.**

#### **ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.**

§16-30-3. Definitions.

§16-30-4. Executing a living will or medical power of attorney.

§16-30-5. Applicability and resolving actual conflict between advance directives.

§16-30-6. Private decision-making process; authority of living will, medical power of attorney representative and surrogate.

§16-30-7. Determination of incapacity.

§16-30-8. Selection of a surrogate.

§16-30-10. Reliance on authority of living will, physician orders for scope of treatment form, medical power of attorney representative or surrogate decisionmaker and protection of health care providers.

§16-30-13. Interinstitutional transfers.

§16-30-22. Liability for failure to act in accordance with the directives of a living will or medical power of attorney or the directions of a medical power of attorney representative or health care surrogate.

§16-30-25. Physician orders for scope of treatment form.

#### **§16-30-3. Definitions.**

1 For the purposes of this article:

2 (a) "Actual knowledge" means the possession of informa-  
3 tion of the person's wishes communicated to the health care  
4 provider orally or in writing by the person, the person's medical  
5 power of attorney representative, the person's health care  
6 surrogate or other individuals resulting in the health care  
7 provider's personal cognizance of these wishes. Constructive  
8 notice and other forms of imputed knowledge are not actual  
9 knowledge.

10 (b) "Adult" means a person who is eighteen years of age or  
11 older, an emancipated minor who has been established as such  
12 pursuant to the provisions of section twenty-seven, article  
13 seven, chapter forty-nine of this code or a mature minor.

14 (c) "Advanced nurse practitioner" means a registered nurse  
15 with substantial theoretical knowledge in a specialized area of  
16 nursing practice and proficient clinical utilization of the  
17 knowledge in implementing the nursing process, and who has  
18 met the further requirements of title 19, legislative rules for  
19 West Virginia board of examiners for registered professional  
20 nurses, series 7, who has a mutually agreed upon association in  
21 writing with a physician and has been selected by or assigned  
22 to the person and has primary responsibility for treatment and  
23 care of the person.

24 (d) "Attending physician" means the physician selected by  
25 or assigned to the person who has primary responsibility for  
26 treatment and care of the person and who is a licensed physi-  
27 cian. If more than one physician shares that responsibility, any  
28 of those physicians may act as the attending physician under  
29 this article.

30 (e) "Capable adult" means an adult who is physically and  
31 mentally capable of making health care decisions and who is



32 not considered a protected person pursuant to the provisions of  
33 chapter forty-four-a of this code.

34 (f) "Close friend" means any adult who has exhibited  
35 significant care and concern for an incapacitated person who is  
36 willing and able to become involved in the incapacitated  
37 person's health care and who has maintained regular contact  
38 with the incapacitated person so as to be familiar with his or her  
39 activities, health and religious and moral beliefs.

40 (g) "Death" means a finding made in accordance with  
41 accepted medical standards of either: (1) The irreversible  
42 cessation of circulatory and respiratory functions; or (2) the  
43 irreversible cessation of all functions of the entire brain,  
44 including the brain stem.

45 (h) "Guardian" means a person appointed by a court  
46 pursuant to the provisions of chapter forty-four-a of this code  
47 who is responsible for the personal affairs of a protected person  
48 and includes a limited guardian or a temporary guardian.

49 (i) "Health care decision" means a decision to give,  
50 withhold or withdraw informed consent to any type of health  
51 care, including, but not limited to, medical and surgical  
52 treatments, including life-prolonging interventions, psychiatric  
53 treatment, nursing care, hospitalization, treatment in a nursing  
54 home or other facility, home health care and organ or tissue  
55 donation.

56 (j) "Health care facility" means a facility commonly known  
57 by a wide variety of titles, including, but not limited to,  
58 hospital, psychiatric hospital, medical center, ambulatory health  
59 care facility, physicians' office and clinic, extended care facility  
60 operated in connection with a hospital, nursing home, a hospital  
61 extended care facility operated in connection with a rehabilita-  
62 tion center, hospice, home health care and other facility

63 established to administer health care in its ordinary course of  
64 business or practice.

65 (k) "Health care provider" means any licensed physician,  
66 dentist, nurse, physician's assistant, paramedic, psychologist or  
67 other person providing medical, dental, nursing, psychological  
68 or other health care services of any kind.

69 (l) "Incapacity" means the inability because of physical or  
70 mental impairment to appreciate the nature and implications of  
71 a health care decision, to make an informed choice regarding  
72 the alternatives presented and to communicate that choice in an  
73 unambiguous manner.

74 (m) "Life-prolonging intervention" means any medical  
75 procedure or intervention that, when applied to a person, would  
76 serve to artificially prolong the dying process or to maintain the  
77 person in a persistent vegetative state. Life-prolonging interven-  
78 tion includes, among other things, nutrition and hydration  
79 administered intravenously or through a feeding tube. The term  
80 "life-prolonging intervention" does not include the administra-  
81 tion of medication or the performance of any other medical  
82 procedure considered necessary to provide comfort or to  
83 alleviate pain.

84 (n) "Living will" means a written, witnessed advance  
85 directive governing the withholding or withdrawing of  
86 life-prolonging intervention, voluntarily executed by a person  
87 in accordance with the requirements of section four of this  
88 article.

89 (o) "Mature minor" means a person less than eighteen years  
90 of age who has been determined by a qualified physician, a  
91 qualified psychologist or an advanced nurse practitioner to have  
92 the capacity to make health care decisions.

93 (p) “Medical information” or “medical records” means and  
94 includes without restriction any information recorded in any  
95 form of medium that is created or received by a health care  
96 provider, health care facility, health plan, public health author-  
97 ity, employer, life insurer, school or university or health care  
98 clearinghouse that relates to the past, present or future physical  
99 or mental health of the person, the provision of health care to  
100 the person, or the past, present or future payment for the  
101 provision of health care to the person.

102 (q) “Medical power of attorney representative” or “repre-  
103 sentative” means a person eighteen years of age or older  
104 appointed by another person to make health care decisions  
105 pursuant to the provisions of section six of this article or similar  
106 act of another state and recognized as valid under the laws of  
107 this state.

108 (r) “Parent” means a person who is another person’s natural  
109 or adoptive mother or father or who has been granted parental  
110 rights by valid court order and whose parental rights have not  
111 been terminated by a court of law.

112 (s) “Persistent vegetative state” means an irreversible state  
113 as diagnosed by the attending physician or a qualified physician  
114 in which the person has intact brain stem function but no higher  
115 cortical function and has neither self-awareness or awareness of  
116 the surroundings in a learned manner.

117 (t) “Person” means an individual, a corporation, a business  
118 trust, a trust, a partnership, an association, a government, a  
119 governmental subdivision or agency or any other legal entity.

120 (u) “Physician orders for scope of treatment (POST) form”  
121 means a standardized form containing orders by a qualified  
122 physician that details a person’s life-sustaining wishes as  
123 provided by section twenty-five of this article.

124 (v) "Principal" means a person who has executed a living  
125 will or medical power of attorney.

126 (w) "Protected person" means an adult who, pursuant to the  
127 provisions of chapter forty-four-a of this code, has been found  
128 by a court, because of mental impairment, to be unable to  
129 receive and evaluate information effectively or to respond to  
130 people, events and environments to an extent that the individual  
131 lacks the capacity to: (1) Meet the essential requirements for his  
132 or her health, care, safety, habilitation or therapeutic needs  
133 without the assistance or protection of a guardian; or (2)  
134 manage property or financial affairs to provide for his or her  
135 support or for the support of legal dependents without the  
136 assistance or protection of a conservator.

137 (x) "Qualified physician" means a physician licensed to  
138 practice medicine who has personally examined the person.

139 (y) "Qualified psychologist" means a psychologist licensed  
140 to practice psychology who has personally examined the  
141 person.

142 (z) "Surrogate decisionmaker" or "surrogate" means an  
143 individual eighteen years of age or older who is reasonably  
144 available, is willing to make health care decisions on behalf of  
145 an incapacitated person, possesses the capacity to make health  
146 care decisions and is identified or selected by the attending  
147 physician or advanced nurse practitioner in accordance with the  
148 provisions of this article as the person who is to make those  
149 decisions in accordance with the provisions of this article.

150 (aa) "Terminal condition" means an incurable or irrevers-  
151 ible condition as diagnosed by the attending physician or a  
152 qualified physician for which the administration of  
153 life-prolonging intervention will serve only to prolong the dying  
154 process.

**§16-30-4. Executing a living will or medical power of attorney.**

1 (a) Any competent adult may execute at any time a living  
2 will or medical power of attorney. A living will or medical  
3 power of attorney made pursuant to this article shall be: (1) In  
4 writing; (2) executed by the principal or by another person in  
5 the principal's presence at the principal's express direction if  
6 the principal is physically unable to do so; (3) dated; (4) signed  
7 in the presence of two or more witnesses at least eighteen years  
8 of age; and (5) signed and attested by such witnesses whose  
9 signatures and attestations shall be acknowledged before a  
10 notary public as provided in subsection (d) of this section.

11 (b) In addition, a witness may not be:

12 (1) The person who signed the living will or medical power  
13 of attorney on behalf of and at the direction of the principal;

14 (2) Related to the principal by blood or marriage;

15 (3) Entitled to any portion of the estate of the principal  
16 under any will of the principal or codicil thereto: *Provided,*  
17 That the validity of the living will or medical power of attorney  
18 shall not be affected when a witness at the time of witnessing  
19 such living will or medical power of attorney was unaware of  
20 being a named beneficiary of the principal's will;

21 (4) Directly financially responsible for principal's medical  
22 care;

23 (5) The attending physician; or

24 (6) The principal's medical power of attorney representa-  
25 tive or successor medical power of attorney representative.

26 (c) The following persons may not serve as a medical  
27 power of attorney representative or successor medical power of

28 attorney representative: (1) A treating health care provider of  
29 the principal; (2) an employee of a treating health care provider  
30 not related to the principal; (3) an operator of a health care  
31 facility serving the principal; or (4) any person who is an  
32 employee of an operator of a health care facility serving the  
33 principal and who is not related to the principal.

34 (d) It shall be the responsibility of the principal or his or her  
35 representative to provide for notification to his or her attending  
36 physician and other health care providers of the existence of the  
37 living will or medical power of attorney or a revocation of the  
38 living will or medical power of attorney. An attending physi-  
39 cian or other health care provider, when presented with the  
40 living will or medical power of attorney, or the revocation of a  
41 living will or medical power of attorney, shall make the living  
42 will, medical power of attorney or a copy of either or a revoca-  
43 tion of either a part of the principal's medical records.

44 (e) At the time of admission to any health care facility, each  
45 person shall be advised of the existence and availability of  
46 living will and medical power of attorney forms and shall be  
47 given assistance in completing such forms if the person desires:  
48 *Provided*, That under no circumstances may admission to a  
49 health care facility be predicated upon a person having com-  
50 pleted either a medical power of attorney or living will.

51 (f) The provision of living will or medical power of  
52 attorney forms substantially in compliance with this article by  
53 health care providers, medical practitioners, social workers,  
54 social service agencies, senior citizens centers, hospitals,  
55 nursing homes, personal care homes, community care facilities  
56 or any other similar person or group, without separate compen-  
57 sation, does not constitute the unauthorized practice of law.

58 (g) The living will may, but need not, be in the following  
59 form and may include other specific directions not inconsistent

60 with other provisions of this article. Should any of the other  
61 specific directions be held to be invalid, such invalidity shall  
62 not affect other directions of the living will which can be given  
63 effect without the invalid direction and to this end the directions  
64 in the living will are severable.

65 **STATE OF WEST VIRGINIA**  
66 **LIVING WILL**

**The Kind of Medical Treatment I Want and Don't Want  
If I Have a Terminal Condition or  
Am In a Persistent Vegetative State**

67 Living will made this \_\_\_\_\_  
68 day of \_\_\_\_\_ (month, year).

69 I, \_\_\_\_\_,  
70 being of sound mind, willfully and voluntarily declare that I  
71 want my wishes to be respected if I am very sick and not able  
72 to communicate my wishes for myself. In the absence of my  
73 ability to give directions regarding the use of life-prolonging  
74 medical intervention, it is my desire that my dying shall not be  
75 prolonged under the following circumstances:

76 If I am very sick and not able to communicate my wishes  
77 for myself and I am certified by one physician, who has  
78 personally examined me, to have a terminal condition or to be  
79 in a persistent vegetative state (I am unconscious and am  
80 neither aware of my environment nor able to interact with  
81 others), I direct that life-prolonging medical intervention that  
82 would serve solely to prolong the dying process or maintain me  
83 in a persistent vegetative state be withheld or withdrawn. I want  
84 to be allowed to die naturally and only be given medications or  
85 other medical procedures necessary to keep me comfortable. I

86 want to receive as much medication as is necessary to alleviate  
87 my pain.

88 I give the following SPECIAL DIRECTIVES OR LIMITA-  
89 TIONS: (Comments about tube feedings, breathing machines,  
90 cardiopulmonary resuscitation, dialysis and mental health  
91 treatment may be placed here. My failure to provide special  
92 directives or limitations does not mean that I want or refuse  
93 certain treatments.)

94 \_\_\_\_\_

95 \_\_\_\_\_

96 \_\_\_\_\_

97 It is my intention that this living will be honored as the final  
98 expression of my legal right to refuse medical or surgical  
99 treatment and accept the consequences resulting from such  
100 refusal.

101 I understand the full import of this living will.

102 \_\_\_\_\_

103 Signed

104 \_\_\_\_\_

105 \_\_\_\_\_

106 Address

107 I did not sign the principal's signature above for or at the  
108 direction of the principal. I am at least eighteen years of age and  
109 am not related to the principal by blood or marriage, entitled to  
110 any portion of the estate of the principal to the best of my  
111 knowledge under any will of principal or codicil thereto, or  
112 directly financially responsible for principal's medical care. I  
113 am not the principal's attending physician or the principal's  
114 medical power of attorney representative or successor medical



115 power of attorney representative under a medical power of  
116 attorney.

117 \_\_\_\_\_  
118 Witness DATE

119 \_\_\_\_\_  
120 Witness DATE

121 \_\_\_\_\_  
122 STATE OF

123 \_\_\_\_\_  
124 COUNTY OF

125 I, \_\_\_\_\_, a Notary Public of said  
126 County, do certify that \_\_\_\_\_, as  
127 principal, and \_\_\_\_\_ and  
128 \_\_\_\_\_, as witnesses, whose names are signed  
129 to the writing above bearing date on the \_\_\_\_\_ day  
130 of \_\_\_\_\_, 20\_\_\_\_, have this day acknowledged the same  
131 before me.

132 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

133 My commission expires: \_\_\_\_\_

134 \_\_\_\_\_  
135 Notary Public

136 (h) A medical power of attorney may, but need not, be in  
137 the following form, and may include other specific directions  
138 not inconsistent with other provisions of this article. Should any  
139 of the other specific directions be held to be invalid, such  
140 invalidity shall not affect other directions of the medical power  
141 of attorney which can be given effect without invalid direction

142 and to this end the directions in the medical power of attorney  
143 are severable.

144 STATE OF WEST VIRGINIA  
145 MEDICAL POWER OF ATTORNEY

**The Person I Want to Make Health Care Decisions  
For Me When I Can't Make Them for Myself**

146 Dated: \_\_\_\_\_, 20\_\_\_\_

147 I, \_\_\_\_\_, hereby

148 (Insert your name and address)

149 appoint my representative to act on my behalf to give, withhold  
150 or withdraw informed consent to health care decisions in the  
151 event that I am not able to do so myself.

152 **The person I choose as my representative is:**

153 \_\_\_\_\_  
154 *(Insert the name, address, area code and telephone number of*  
155 *the person you wish to designate as your representative)*

156 **The person I choose as my successor representative is:**

157 If my representative is unable, unwilling or disqualified to serve,  
158 then I appoint:

159 \_\_\_\_\_  
160 *(Insert the name, address, area code and telephone number of*  
161 *the person you wish to designate as your successor represen-*  
162 *tative)*

163 This appointment shall extend to, but not be limited to,  
164 health care decisions relating to medical treatment, surgical  
165 treatment, nursing care, medication, hospitalization, care and  
166 treatment in a nursing home or other facility, and home health

167 care. The representative appointed by this document is specifi-  
168 cally authorized to be granted access to my medical records and  
169 other health information and to act on my behalf to consent to,  
170 refuse or withdraw any and all medical treatment or diagnostic  
171 procedures, or autopsy if my representative determines that I,  
172 if able to do so, would consent to, refuse or withdraw such  
173 treatment or procedures. Such authority shall include, but not be  
174 limited to, decisions regarding the withholding or withdrawal  
175 of life-prolonging interventions.

176 I appoint this representative because I believe this person  
177 understands my wishes and values and will act to carry into  
178 effect the health care decisions that I would make if I were able  
179 to do so and because I also believe that this person will act in  
180 my best interest when my wishes are unknown. It is my intent  
181 that my family, my physician and all legal authorities be bound  
182 by the decisions that are made by the representative appointed  
183 by this document and it is my intent that these decisions should  
184 not be the subject of review by any health care provider or  
185 administrative or judicial agency.

186 It is my intent that this document be legally binding and  
187 effective and that this document be taken as a formal statement  
188 of my desire concerning the method by which any health care  
189 decisions should be made on my behalf during any period when  
190 I am unable to make such decisions.

191 In exercising the authority under this medical power of  
192 attorney, my representative shall act consistently with my  
193 special directives or limitations as stated below.

194 I am giving the following SPECIAL DIRECTIVES OR  
195 LIMITATIONS ON THIS POWER: (Comments about tube  
196 feedings, breathing machines, cardiopulmonary resuscitation,  
197 dialysis, funeral arrangements, autopsy and organ donation may  
198 be placed here. My failure to provide special directives or

199 limitations does not mean that I want or refuse certain treat-  
200 ments)

201 \_\_\_\_\_  
202 \_\_\_\_\_

203 THIS MEDICAL POWER OF ATTORNEY SHALL  
204 BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO  
205 GIVE, WITHHOLD OR WITHDRAW INFORMED CON-  
206 SENT TO MY OWN MEDICAL CARE.

207 \_\_\_\_\_  
208 Signature of the Principal

209 I did not sign the principal's signature above. I am at least  
210 eighteen years of age and am not related to the principal by  
211 blood or marriage. I am not entitled to any portion of the estate  
212 of the principal or to the best of my knowledge under any will  
213 of the principal or codicil thereto, or legally responsible for the  
214 costs of the principal's medical or other care. I am not the  
215 principal's attending physician, nor am I the representative or  
216 successor representative of the principal.

217 \_\_\_\_\_  
218 Witness DATE

219 \_\_\_\_\_  
220 Witness DATE

221 \_\_\_\_\_  
222 STATE OF

223 \_\_\_\_\_  
224 COUNTY OF

225 I, \_\_\_\_\_, a Notary Public of said  
226 County, do certify that \_\_\_\_\_, as  
227 principal, and \_\_\_\_\_ and \_\_\_\_\_, as  
228 witnesses, whose names are signed to the writing above bearing

229 date on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
230 have this day acknowledged the same before me.

231 Given under my hand this \_\_\_\_\_ day of  
232 \_\_\_\_\_, 20\_\_\_\_.

233 My commission expires: \_\_\_\_\_

234 \_\_\_\_\_

235 Notary Public

**§16-30-5. Applicability and resolving actual conflict between  
advance directives.**

1 (a) The provisions of this article which directly conflict  
2 with the written directives contained in a living will or medical  
3 power of attorney executed prior to the effective date of this  
4 statute shall not apply. An expressed directive contained in a  
5 living will or medical power of attorney or by any other means  
6 the health care provider determines to be reliable shall be  
7 followed.

8 (b) If there is a conflict between the person's expressed  
9 directives, the physician orders for scope of treatment form and  
10 the decisions of the medical power of attorney representative or  
11 surrogate, the person's expressed directives shall be followed.

12 (c) In the event there is a conflict between two advance  
13 directives executed by the person, the one most recently  
14 completed takes precedence only to the extent needed to resolve  
15 the inconsistency.

16 (d) If there is a conflict between the decisions of the  
17 medical power of attorney representative or surrogate and the  
18 person's best interests as determined by the attending physician  
19 when the person's wishes are unknown, the attending physician  
20 shall attempt to resolve the conflict by consultation with a  
21 qualified physician, an ethics committee or by some other  
22 means. If the attending physician cannot resolve the conflict  
23 with the medical power of attorney representative, the attending

24 physician may transfer the care of the person pursuant to  
25 subsection (b), section twelve of this article.

**§16-30-6. Private decision-making process; authority of living will, medical power of attorney representative and surrogate.**

1 (a) Any capable adult may make his or her own health care  
2 decisions without regard to guidelines contained in this article.

3 (b) Health care providers and health care facilities may rely  
4 upon health care decisions made on behalf of an incapacitated  
5 person without resort to the courts or legal process, if the  
6 decisions are made in accordance with the provisions of this  
7 article.

8 (c) The medical power of attorney representative or  
9 surrogate shall have the authority to release or authorize the  
10 release of an incapacitated person's medical records to third  
11 parties and make any and all health care decisions on behalf of  
12 an incapacitated person, except to the extent that a medical  
13 power of attorney representative's authority is clearly limited  
14 in the medical power of attorney.

15 (d) The medical power of attorney representative or  
16 surrogate's authority shall commence upon a determination,  
17 made pursuant to section seven of this article, of the incapacity  
18 of the adult. In the event the person no longer is incapacitated  
19 or the medical power of attorney representative or surrogate is  
20 unwilling or unable to serve, the medical power of attorney  
21 representative or surrogate's authority shall cease. However, the  
22 authority of the medical power of attorney representative or  
23 surrogate may recommence if the person subsequently becomes  
24 incapacitated as determined pursuant to section seven of this  
25 article unless during the intervening period of capacity the  
26 person executes an advance directive which makes a surrogate  
27 unnecessary or expressly rejects the previously appointed  
28 surrogate as his or her surrogate. A medical power of attorney

29 representative or surrogate's authority terminates upon the  
30 death of the incapacitated person except with respect to  
31 decisions regarding autopsy, funeral arrangements or cremation  
32 and organ and tissue donation: *Provided*, That the medical  
33 power of attorney representative or surrogate has no authority  
34 after the death of the incapacitated person to invalidate or  
35 revoke a preneed funeral contract executed by the incapacitated  
36 person in accordance with the provisions of article fourteen,  
37 chapter forty-seven of this code prior to the onset of the  
38 incapacity and either paid in full before the death of the  
39 incapacitated person or collectible from the proceeds of a life  
40 insurance policy specifically designated for that purpose.

41 (e) The medical power of attorney representative or  
42 surrogate shall seek medical information necessary to make  
43 health care decisions for an incapacitated person. For the sole  
44 purpose of making health care decisions for the incapacitated  
45 person, the medical power of attorney representative or  
46 surrogate shall have the same right of access to the incapacitated  
47 person's medical information and the same right to  
48 discuss that information with the incapacitated person's health  
49 care providers that the incapacitated person would have if he or  
50 she was not incapacitated.

51 (f) If an incapacitated person previously expressed his or  
52 her wishes regarding autopsy, funeral arrangements or crema-  
53 tion, organ or tissue donation or the desire to make an anatomi-  
54 cal gift by a written directive such as a living will, medical  
55 power of attorney, donor card, driver's license or other means,  
56 the medical power of attorney representative or surrogate shall  
57 follow the person's expressed wishes regarding autopsy, funeral  
58 arrangements or cremation, organ and tissue donation or  
59 anatomical gift. In the absence of any written directives, any  
60 decision regarding anatomical gifts shall be made pursuant to  
61 the provisions of article nineteen of this chapter.

62 (g) If a person is incapacitated at the time of the decision to  
63 withhold or withdraw life-prolonging intervention, the person's  
64 living will or medical power of attorney executed in accordance  
65 with section four of this article is presumed to be valid. For the  
66 purposes of this article, a physician or health facility may  
67 presume in the absence of actual notice to the contrary that a  
68 person who executed a living will or medical power of attorney  
69 was a competent adult when it was executed. The fact that a  
70 person executed a living will or medical power of attorney is  
71 not an indication of the person's mental incapacity.

**§16-30-7. Determination of incapacity.**

1 (a) For the purposes of this article, a person may not be  
2 presumed to be incapacitated merely by reason of advanced age  
3 or disability. With respect to a person who has a diagnosis of  
4 mental illness or mental retardation, such a diagnosis is not a  
5 presumption that the person is incapacitated. A determination  
6 that a person is incapacitated shall be made by the attending  
7 physician, a qualified physician, a qualified psychologist or an  
8 advanced nurse practitioner who has personally examined the  
9 person.

10 (b) The determination of incapacity shall be recorded  
11 contemporaneously in the person's medical record by the  
12 attending physician, a qualified physician, advanced nurse  
13 practitioner or a qualified psychologist. The recording shall  
14 state the basis for the determination of incapacity, including the  
15 cause, nature and expected duration of the person's incapacity,  
16 if these are known.

17 (c) If the person is conscious, the attending physician shall  
18 inform the person that he or she has been determined to be  
19 incapacitated and that a medical power of attorney representa-  
20 tive or surrogate decisionmaker may be making decisions  
21 regarding life-prolonging intervention or mental health treat-  
22 ment for the person.



**§16-30-8. Selection of a surrogate.**

1       (a) When a person is or becomes incapacitated, the attend-  
2 ing physician or the advanced nurse practitioner with the  
3 assistance of other health care providers as necessary, shall  
4 select, in writing, a surrogate. The attending physician or  
5 advanced nurse practitioner shall reasonably attempt to deter-  
6 mine whether the incapacitated person has appointed a repre-  
7 sentative under a medical power of attorney, in accordance with  
8 the provisions of section four of this article, or if the incapaciti-  
9 cated person has a court-appointed guardian in accordance with  
10 the provisions of article one, chapter forty-four-a of this code.  
11 If no representative or court-appointed guardian is authorized  
12 or capable and willing to serve, the attending physician or  
13 advanced nurse practitioner is authorized to select a health care  
14 surrogate. In selecting a surrogate, the attending physician or  
15 advanced nurse practitioner must make a reasonable inquiry as  
16 to the existence and availability of a surrogate from the follow-  
17 ing persons:

18       (1) The person's spouse;

19       (2) The person's adult children;

20       (3) The person's parents;

21       (4) The person's adult siblings;

22       (5) The person's adult grandchildren;

23       (6) The person's close friends;

24       (7) Any other person or entity, including, but not limited to,  
25 public agencies, public guardians, public officials, public and  
26 private corporations and other persons or entities which the  
27 department of health and human resources may from time to  
28 time designate in rules promulgated pursuant to chapter twenty-  
29 nine-a of this code.

30 (b) After inquiring about the existence and availability of  
31 a medical power of attorney representative or a guardian as  
32 required by subsection (a) of this section and determining that  
33 such persons either do not exist or are unavailable, incapable or  
34 unwilling to serve as a surrogate, the attending physician or an  
35 advanced nurse practitioner shall select and rely upon a  
36 surrogate in the order of priority set forth in subsection (a) of  
37 this section, subject to the following conditions:

38 (1) Where there are multiple possible surrogate  
39 decisionmakers at the same priority level, the attending  
40 physician or the advanced nurse practitioner shall, after  
41 reasonable inquiry, select as the surrogate the person who  
42 reasonably appears to be best qualified. The following criteria  
43 shall be considered in the determination of the person or entity  
44 best qualified to serve as the surrogate:

45 (A) Whether the proposed surrogate reasonably appears to  
46 be better able to make decisions either in accordance with the  
47 known wishes of the person or in accordance with the person's  
48 best interests;

49 (B) The proposed surrogate's regular contact with the  
50 person prior to and during the incapacitating illness;

51 (C) The proposed surrogate's demonstrated care and  
52 concern;

53 (D) The proposed surrogate's availability to visit the  
54 incapacitated person during his or her illness; and

55 (E) The proposed surrogate's availability to engage in  
56 face-to-face contact with health care providers for the purpose  
57 of fully participating in the decision-making process;

58 (2) The attending physician or the advanced nurse practitio-  
59 ner may select a proposed surrogate who is ranked lower in  
60 priority if, in his or her judgment, that individual is best  
61 qualified, as described in this section, to serve as the incapaci-

62 tated person's surrogate. The attending physician or the  
63 advanced nurse practitioner shall document in the incapacitated  
64 person's medical records his or her reasons for selecting a  
65 surrogate in exception to the priority order provided in subsec-  
66 tion (a) of this section.

67 (c) The surrogate is authorized to make health care deci-  
68 sions on behalf of the incapacitated person without a court order  
69 or judicial involvement.

70 (d) A health care provider or health care facility may rely  
71 upon the decisions of the selected surrogate if the provider  
72 believes, after reasonable inquiry, that:

73 (1) A guardian or representative under a valid, applicable  
74 medical power of attorney is unavailable, incapable or unwill-  
75 ing to serve;

76 (2) There is no other applicable advance directive;

77 (3) There is no reason to believe that such health care  
78 decisions are contrary to the incapacitated person's religious  
79 beliefs; and

80 (4) The attending physician or advanced nurse practitioner  
81 has not received actual notice of opposition to any health care  
82 decisions made pursuant to the provisions of this section.

83 (e) If a person who is ranked as a possible surrogate  
84 pursuant to subsection (a) of this section wishes to challenge the  
85 selection of a surrogate or the health care decision of the  
86 selected surrogate, he or she may seek injunctive relief or may  
87 file a petition for review of the selection of, or decision of, the  
88 selected surrogate with the circuit court of the county in which  
89 the incapacitated person resides or the supreme court of  
90 appeals. There shall be a rebuttable presumption that the  
91 selection of the surrogate was valid and the person who is  
92 challenging the selection shall have the burden of proving the  
93 invalidity of that selection. The challenging party shall be

94 responsible for all court costs and other costs related to the  
95 proceeding, except attorneys' fees, unless the court finds that  
96 the attending physician or advanced nurse practitioner acted in  
97 bad faith, in which case the person so acting shall be responsi-  
98 ble for all costs. Each party shall be responsible for his or her  
99 own attorneys' fees.

100 (f) If the attending physician or advanced nurse practitioner  
101 is advised that a person who is ranked as a possible surrogate  
102 pursuant to the provisions of subsection (a) of this section has  
103 an objection to a health care decision to withhold or withdraw  
104 a life-prolonging intervention which has been made by the  
105 selected surrogate, the attending physician or advanced nurse  
106 practitioner shall document the objection in the medical records  
107 of the patient. Once notice of an objection or challenge is  
108 documented, the attending physician or advanced nurse  
109 practitioner shall notify the challenging party that the decision  
110 shall be implemented in seventy-two hours unless the attending  
111 physician receives a court order prohibiting or enjoining the  
112 implementation of the decision as provided in subsection (e) of  
113 this section. In the event that the incapacitated person has been  
114 determined to have undergone brain death and the selected  
115 surrogate has authorized organ or tissue donation, the decision  
116 shall be implemented in twenty-four hours unless the attending  
117 physician receives a court order prohibiting or enjoining the  
118 implementation of the decision as provided in said subsection.

119 (g) If the surrogate becomes unavailable for any reason, the  
120 surrogate may be replaced by applying the provisions of this  
121 section.

122 (h) If a person who ranks higher in priority relative to a  
123 selected surrogate becomes available and willing to be the  
124 surrogate, the person with higher priority may be substituted for  
125 the identified surrogate unless the attending physician deter-  
126 mines that the lower-ranked person is best qualified to serve as  
127 the surrogate.

128       (i) The following persons may not serve as a surrogate: (1)  
129 A treating health care provider of the person who is incapaci-  
130 tated; (2) an employee of a treating health care provider not  
131 related to the person who is incapacitated; (3) an owner,  
132 operator or administrator of a health care facility serving the  
133 person who is incapacitated; or (4) any person who is an  
134 employee of an owner, operator or administrator of a health  
135 care facility serving the person who is incapacitated and who is  
136 not related to that person.

**§16-30-10. Reliance on authority of living will, physician orders  
for scope of treatment form, medical power of  
attorney representative or surrogate  
decisionmaker and protection of health care  
providers.**

1       (a) A physician, licensed health care professional, health  
2 care facility or employee thereof shall not be subject to criminal  
3 or civil liability for good-faith compliance with or reliance upon  
4 the directions of the medical power of attorney representative  
5 in accordance with this article.

6       (b) A health care provider shall not be subject to civil or  
7 criminal liability for surrogate selection or good faith compli-  
8 ance and reliance upon the directions of the surrogate in  
9 accordance with the provisions of this article.

10       (c) A health care provider, health care facility or employee  
11 thereof shall not be subject to criminal or civil liability for  
12 good-faith compliance with or reliance upon the orders in a  
13 physician orders for scope of treatment form.

14       (d) No health care provider or employee thereof who in  
15 good faith and pursuant to reasonable medical standards causes  
16 or participates in the withholding or withdrawing of life-  
17 prolonging intervention from a person pursuant to a living will  
18 made in accordance with this article shall, as a result thereof, be  
19 subject to criminal or civil liability.

20 (e) An attending physician who cannot comply with the  
21 living will or medical power of attorney of a principal pursuant  
22 to this article shall, in conjunction with the medical power of  
23 attorney representative, health care surrogate or other responsi-  
24 ble person, effect the transfer of the principal to another  
25 physician who will honor the living will or medical power of  
26 attorney of the principal. Transfer under these circumstances  
27 does not constitute abandonment.

**§16-30-13. Interinstitutional transfers.**

1 (a) In the event that a person admitted to any health care  
2 facility in this state has been determined to lack capacity and  
3 that person's medical power of attorney has been declared to be  
4 in effect or a surrogate decisionmaker has been selected for that  
5 person all in accordance with the requirements of this article  
6 and that person is subsequently transferred from one health care  
7 facility to another, the receiving health care facility may rely  
8 upon the prior determination of incapacity and the activation of  
9 the medical power of attorney or selection of a surrogate  
10 decisionmaker as valid and continuing until such time as an  
11 attending physician, a qualified physician, a qualified psycholo-  
12 gist or advanced nurse practitioner in the receiving facility  
13 assesses the person's capacity. Should the reassessment by the  
14 attending physician, a qualified physician, a qualified psycholo-  
15 gist or an advanced nurse practitioner at the receiving facility  
16 result in a determination of continued incapacity, the receiving  
17 facility may rely upon the medical power of attorney represen-  
18 tative or surrogate decisionmaker who provided health care  
19 decisions at the transferring facility to continue to make all  
20 health care decisions at the receiving facility until such time as  
21 the person regains capacity.

22 (b) If a person admitted to any health care facility in this  
23 state has been determined to lack capacity and the person's  
24 medical power of attorney has been declared to be in effect or  
25 a surrogate decisionmaker has been selected for that person all

26 in accordance with the requirements of this article and that  
27 person is subsequently discharged home in the care of a home  
28 health care agency or hospice, the home health care agency or  
29 hospice may rely upon the prior determination of incapacity.  
30 The home health care agency or hospice may rely upon the  
31 medical power of attorney representative or health care surro-  
32 gate who provided health care decisions at the transferring  
33 facility to continue to make all health care decisions until such  
34 time as the person regains capacity.

35 (c) If a person with an order to withhold or withdraw  
36 life-prolonging intervention is transferred from one health care  
37 facility to another, the existence of such order shall be commu-  
38 nicated to the receiving facility prior to the transfer and the  
39 written order shall accompany the person to the receiving  
40 facility and shall remain effective until a physician at the  
41 receiving facility issues admission orders.

42 (d) If a person with a physician orders for scope of treat-  
43 ment form is transferred from one health care facility to  
44 another, the health care facility initiating the transfer shall  
45 communicate the existence of the physician orders for scope of  
46 treatment form to the receiving facility prior to the transfer. The  
47 physician orders for scope of treatment form shall accompany  
48 the person to the receiving facility and shall remain in effect.  
49 The form shall be kept at the beginning of the patient's transfer  
50 records unless otherwise specified in the health care facility's  
51 policy and procedures. After admission, the physician orders for  
52 scope of treatment form shall be reviewed by the attending  
53 physician and one of three actions shall be taken:

54 (1) The physician orders for scope of treatment form shall  
55 be continued without change;

56 (2) The physician orders for scope of treatment form shall  
57 be voided and a new form issued; or

58 (3) The physician orders for scope of treatment form shall  
59 be voided without a new form being issued.

**§16-30-22. Liability for failure to act in accordance with the directives of a living will or medical power of attorney or the directions of a medical power of attorney representative or health care surrogate.**

1 (a) A health care provider or health care facility without  
2 actual knowledge of a living will or medical power of attorney  
3 completed by a person is not civilly or criminally liable for  
4 failing to act in accordance with the directives of a principal's  
5 living will or medical power of attorney.

6 (b) A health care provider or a health care facility is subject  
7 to review and disciplinary action by the appropriate licensing  
8 board for failing to act in accordance with a principal's direc-  
9 tives in a living will or medical power of attorney, or the  
10 decisions of a medical power of attorney representative or  
11 health care surrogate: *Provided*, That the provider or facility  
12 had actual knowledge of the directives or decisions.

13 (c) Once a principal has been determined to be incapacitated  
14 in accordance with the provisions of this article and his or  
15 her living will or medical power of attorney has become  
16 effective, any health care provider or health care facility which  
17 refuses to follow the principal's directives in a living will or  
18 medical power of attorney or the decisions of a medical power  
19 of attorney representative or health care surrogate, because the  
20 principal has asked the health care provider or health care  
21 facility not to follow such directions or decisions, shall have  
22 two physicians, one of whom may be the attending physician,  
23 or one physician and a qualified psychologist, or one physician  
24 and an advanced nurse practitioner, certify that the principal has  
25 regained capacity to make the request. If such certification  
26 occurs, the provisions of the applicable living will or medical  
27 power of attorney, or the statute creating the authority of the



28 health care surrogate shall not apply because the principal has  
29 regained decision-making capacity.

**§16-30-25. Physician orders for scope of treatment form.**

1 (a) No later than the first day of July, two thousand three,  
2 the secretary of the department of health and human resources  
3 shall implement the statewide distribution of standardized  
4 physician orders for scope of treatment (POST) forms.

5 (b) Physician orders for scope of treatment forms shall be  
6 standardized forms used to reflect orders by a qualified physi-  
7 cian for medical treatment of a person in accordance with that  
8 person's wishes or, if that person's wishes are not reasonably  
9 known and cannot with reasonable diligence be ascertained, in  
10 accordance with that person's best interest. The form shall be  
11 bright pink in color to facilitate recognition by emergency  
12 medical services personnel and other health care providers and  
13 shall be designed to provide for information regarding the care  
14 of the patient, including, but not limited to, the following:

15 (1) The orders of a qualified physician regarding  
16 cardiopulmonary resuscitation, level of medical intervention in  
17 the event of a medical emergency, use of antibiotics and use of  
18 medically administered fluids and nutrition and the basis for the  
19 orders;

20 (2) The signature of the qualified physician;

21 (3) Whether the person has completed an advance directive  
22 or had a guardian, medical power of attorney representative or  
23 surrogate appointed;

24 (4) The signature of the person or his or her guardian,  
25 medical power of attorney representative, or surrogate acknowl-  
26 edging agreement with the orders of the qualified physician;  
27 and

28 (5) The date, location and outcome of any review of the  
29 physician orders for scope of treatment form.

30 (c) The physician orders for scope of treatment form shall  
31 be kept as the first page in a person's medical record in a health  
32 care facility unless otherwise specified in the health care  
33 facility's policies and procedures and shall be transferred with  
34 the person from one health care facility to another.

**ARTICLE 30C. DO-NOT-RESUSCITATE ACT.**

§16-30C-3. Definitions.

§16-30C-5. Presumed consent to cardiopulmonary resuscitation; health care facilities not required to expand to provide cardiopulmonary resuscitation.

§16-30C-6. Issuance of a do-not-resuscitate order; order to be written by a physician.

§16-30C-7. Compliance with a do-not-resuscitate order.

§16-30C-11. Interinstitutional transfers.

§16-30C-13. Do-not-resuscitate order form; do-not-resuscitate identification; public education.

**§16-30C-3. Definitions.**

1 As used in this article, unless the context clearly requires  
2 otherwise, the following definitions apply:

3 (a) "Attending physician" means the physician selected by  
4 or assigned to the person who has primary responsibility for  
5 treatment or care of the person and who is a licensed physician.  
6 If more than one physician shares that responsibility, any of  
7 those physicians may act as the attending physician under the  
8 provisions of this article.

9 (b) "Cardiopulmonary resuscitation" means those measures  
10 used to restore or support cardiac or respiratory function in the  
11 event of a cardiac or respiratory arrest.

12 (c) "Do-not-resuscitate identification" means a standardized  
13 identification necklace, bracelet, card or physician orders for  
14 scope of treatment form as set forth in this article that signifies  
15 that a do-not-resuscitate order has been issued for the possessor.

16 (d) "Do-not-resuscitate order" means an order issued by a  
17 licensed physician that cardiopulmonary resuscitation should  
18 not be administered to a particular person.

19 (e) "Emergency medical services personnel" means paid or  
20 volunteer firefighters, law-enforcement officers, emergency  
21 medical technicians, paramedics or other emergency services  
22 personnel, providers or entities acting within the usual course  
23 of their professions.

24 (f) "Health care decision" means a decision to give,  
25 withhold or withdraw informed consent to any type of health  
26 care, including, but not limited to, medical and surgical  
27 treatments, including life-prolonging interventions, nursing  
28 care, hospitalization, treatment in a nursing home or other  
29 extended care facility, home health care and the gift or donation  
30 of a body organ or tissue.

31 (g) "Health care facility" means a facility established to  
32 administer and provide health care services and which is  
33 commonly known by a wide variety of titles, including, but not  
34 limited to, hospitals, medical centers, ambulatory health care  
35 facilities, physicians' offices and clinics, extended care facili-  
36 ties operated in connection with hospitals, nursing homes and  
37 extended care facilities operated in connection with rehabilita-  
38 tion centers.

39 (h) "Health care provider" means any physician, dentist,  
40 nurse, paramedic, psychologist or other person providing  
41 medical, dental, nursing, psychological or other health care  
42 services of any kind.

43 (i) "Home" means any place of residence other than a  
44 health care facility and includes residential board and care  
45 homes and personal care homes.

46 (j) "Incapacity" or words of like import means the inability  
47 because of physical or mental impairment, to appreciate the  
48 nature and implications of a health care decision, to make an

49 informed choice regarding the alternatives presented and to  
50 communicate that choice in an unambiguous manner.

51 (k) “Physician orders for scope of treatment (POST) form”  
52 means a standardized form containing orders by a qualified  
53 physician that details a person’s life-sustaining wishes as  
54 provided by section twenty-five, article thirty of this chapter.

55 (l) “Qualified physician” means a physician licensed to  
56 practice medicine who has personally examined the person.

57 (m) “Representative” means a person designated by a  
58 principal to make health care decisions in accordance with  
59 article thirty-a of this chapter.

60 (n) “Surrogate decision maker” or “surrogate” means an  
61 individual eighteen years of age or older who is reasonably  
62 available, is willing to make health care decisions on behalf of  
63 an incapacitated person, possesses the capacity to make health  
64 care decisions and is identified or selected by the attending  
65 physician or advanced nurse practitioner in accordance with  
66 applicable provisions of article thirty of this chapter as the  
67 person or persons who is to make decisions pursuant to this  
68 article: *Provided*, That a representative named in the incapacitated  
69 person’s medical power of attorney, if such document has  
70 been completed, shall have priority over a surrogate decision  
71 maker.

72 (o) “Trauma” means blunt or penetrating bodily injuries  
73 from impact which occur in situations, including, but not  
74 limited to, motor vehicle collisions, mass casualty incidents and  
75 industrial accidents.

**§16-30C-5. Presumed consent to cardiopulmonary resuscitation;  
health care facilities not required to expand to  
provide cardiopulmonary resuscitation.**

1 (a) Every person shall be presumed to consent to the  
2 administration of cardiopulmonary resuscitation in the event of

3 cardiac or respiratory arrest, unless one or more of the follow-  
4 ing conditions, of which the health care provider has actual  
5 knowledge, apply:

6 (1) A do-not-resuscitate order in accordance with the  
7 provisions of this article has been issued for that person;

8 (2) A completed living will for that person is in effect,  
9 pursuant to the provisions of article thirty of this chapter, and  
10 the person is in a terminal condition or a persistent vegetative  
11 state; or

12 (3) A completed medical power of attorney for that person  
13 is in effect, pursuant to the provisions of article thirty of this  
14 chapter, in which the person indicated that he or she does not  
15 wish to receive cardiopulmonary resuscitation, or his or her  
16 representative has determined that the person would not wish to  
17 receive cardiopulmonary resuscitation.

18 (4) A completed physician orders for scope of treatment  
19 form in which a qualified physician has ordered do-not-resusci-  
20 tate.

21 (b) Nothing in this article shall require a nursing home,  
22 personal care home, hospice or extended care facility operated  
23 in connection with hospitals to institute or maintain the ability  
24 to provide cardiopulmonary resuscitation or to expand its  
25 existing equipment, facilities or personnel to provide  
26 cardiopulmonary resuscitation: *Provided*, That if a health care  
27 facility does not provide cardiopulmonary resuscitation, this  
28 policy shall be communicated in writing to the person, repre-  
29 sentative or surrogate decision maker prior to admission.

**§16-30C-6. Issuance of a do-not-resuscitate order; order to be  
written by a physician.**

1 (a) An attending physician may issue a do-not-resuscitate  
2 order for persons who are present in or residing at home or in  
3 a health care facility if the person, representative or surrogate

4 has consented to the order. A do-not-resuscitate order shall be  
5 issued in writing in the form as described in this section for a  
6 person not present or residing in a health care facility. For  
7 persons present in health care facilities, a do-not-resuscitate  
8 order shall be issued in accordance with the policies and  
9 procedures of the health care facility or in accordance with the  
10 provisions of this article.

11 (b) Persons may request their physicians to issue do-not-  
12 resuscitate orders for them.

13 (c) The representative or surrogate decision maker may  
14 consent to a do-not-resuscitate order for a person with incapac-  
15 ity. A do-not-resuscitate order written by a physician for a  
16 person with incapacity with the consent of the representative or  
17 surrogate decision maker is valid and shall be respected by  
18 health care providers.

19 (d) A parent may consent to a do-not-resuscitate order for  
20 his or her minor child, provided that a second physician who  
21 has examined the child concurs with the opinion of the attend-  
22 ing physician that the provision of cardiopulmonary resuscita-  
23 tion would be contrary to accepted medical standards. If the  
24 minor is between the ages of sixteen and eighteen and, in the  
25 opinion of the attending physician, the minor is of sufficient  
26 maturity to understand the nature and effect of a do-not-  
27 resuscitate order, then no such order shall be valid without the  
28 consent of such minor. In the event of a conflict between the  
29 wishes of the parents or guardians and the wishes of the mature  
30 minor, the wishes of the mature minor shall prevail. For  
31 purposes of this section, no minor less than sixteen years of age  
32 shall be considered mature. Nothing in this article shall be  
33 interpreted to conflict with the provisions of the child abuse  
34 prevention and treatment act and implementing regulations at  
35 45 CFR 1340. In the event conflict is unavoidable, federal law  
36 and regulation shall govern.

37 (e) If a surrogate decision maker is not reasonably available  
 38 or capable of making a decision regarding a do-not-resuscitate  
 39 order, an attending physician may issue a do-not-resuscitate  
 40 order for a person with incapacity in a health care facility:  
 41 *Provided*, That a second physician who has personally exam-  
 42 ined the person concurs in the opinion of the attending physi-  
 43 cian that the provision of cardiopulmonary resuscitation would  
 44 be contrary to accepted medical standards.

45 (f) For persons not present or residing in a health care  
 46 facility, the do-not-resuscitate order shall be noted on a physi-  
 47 cian orders for scope of treatment form or in the following form  
 48 on a card suitable for carrying on the person:

49 Do-Not-Resuscitate Order

50 "As treating physician of \_\_\_\_\_ and a  
 51 licensed physician, I order that this person SHALL NOT BE  
 52 RESUSCITATED in the event of cardiac or respiratory arrest.  
 53 This order has been discussed with \_\_\_\_\_ or his/her  
 54 representative \_\_\_\_\_ or his/her  
 55 surrogate decision maker \_\_\_\_\_ who has given  
 56 consent as evidenced by his/her signature below.

57 Physician Name \_\_\_\_\_  
 58 Physician Signature \_\_\_\_\_  
 59 Address \_\_\_\_\_  
 60 Person Signature \_\_\_\_\_  
 61 Address \_\_\_\_\_  
 62 Surrogate Decision Maker Signature \_\_\_\_\_  
 63 Address \_\_\_\_\_"

64 (g) For persons residing in a health care facility, the do-  
 65 not-resuscitate order shall be reflected in at least one of the  
 66 following forms:

67 (1) Forms required by the policies and procedures of the  
 68 health care facility;

69       (2) The do-not-resuscitate card as set forth in subsection (f)  
70 of this section; or

71       (3) The physician orders for scope of treatment form.

**§16-30C-7. Compliance with a do-not-resuscitate order.**

1       (a) Health care providers shall comply with the do-not-  
2 resuscitate order when presented with one of the following:

3       (1) A do-not-resuscitate order completed by a physician on  
4 a form as specified in section six of this article;

5       (2) Do-not-resuscitate identification as set forth in section  
6 thirteen of this article;

7       (3) A do-not-resuscitate order for a person present or  
8 residing in a health care facility issued in accordance with the  
9 health care facility's policies and procedures; or

10       (4) A physician orders for scope of treatment form in which  
11 a qualified physician has documented a do-not-resuscitate  
12 order.

13       (b) Pursuant to this article, health care providers shall  
14 respect do-not-resuscitate orders for persons in health care  
15 facilities, ambulances, homes and communities within this  
16 state.

**§16-30C-11. Interinstitutional transfers.**

1       If a person with a do-not-resuscitate order is transferred  
2 from one health care facility to another health care facility, the  
3 health care facility initiating the transfer shall communicate the  
4 existence of a do-not-resuscitate order to the receiving facility  
5 prior to the transfer. The written do-not-resuscitate order, the  
6 do-not-resuscitate card as described in section six of this article  
7 or the physician orders for scope of treatment form shall  
8 accompany the person to the health care facility receiving the  
9 person and shall remain effective until a physician at the  
10 receiving facility issues admission orders. The do-not-resusci-



11     tate card or the physician orders for scope of treatment form  
12     shall be kept as the first page in the person's transfer records.

**§16-30C-13. Do-not-resuscitate order form; do-not-resuscitate  
identification; public education.**

1         (a) The secretary of the department of health and human  
2     resources, no later than the first day of July, one thousand nine  
3     hundred ninety-four, shall implement the statewide distribution  
4     of do-not-resuscitate forms as described in section six of this  
5     article.

6         (b) Do-not-resuscitate identification as set forth in this  
7     article may consist of either a medical condition bracelet or  
8     necklace with the inscription of the patient's name, date of birth  
9     in numerical form and "WV do-not-resuscitate" on it. Such  
10    identification shall be issued only upon presentation of a  
11    properly executed do-not-resuscitate order form as set forth in  
12    section six of this article, a physician orders for scope of  
13    treatment form in which a qualified physician has documented  
14    a do-not-resuscitate order, or a do-not-resuscitate order properly  
15    executed in accordance with a health care facility's written  
16    policy and procedure.

17        (c) The secretary of the department of health and human  
18    resources, no later than the first day of July, one thousand nine  
19    hundred ninety-four, shall be responsible for establishing a  
20    system for the distribution of the do-not-resuscitate identifica-  
21    tion bracelets and necklaces.

22        (d) The secretary of the department of health and human  
23    resources, no later than the first day of July, one thousand nine  
24    hundred ninety-four, shall develop and implement a statewide  
25    educational effort to inform the public of their right to accept or  
26    refuse cardiopulmonary resuscitation and to request their  
27    physician to write a do-not-resuscitate order for them.

---

## CHAPTER 159

(S. B. 216 — By Senators Redd, Burnette, Caldwell, Hunter, Minard, Rowe, Snyder, Wooton, Facemyer, Mitchell and Anderson)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article thirty-five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the screening of children under six years of age for lead poisoning.

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

That article thirty-five, 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 four-a, to read as follows:

**ARTICLE 35. LEAD ABATEMENT.**

**§16-35-4a. Duty of director to establish program for early identification of lead poisoning in children.**

- 1 (a) The director shall establish a program for early identifi-
- 2 cation of cases of lead poisoning. The program shall include a
- 3 systematic screening of all children under six years of age for
- 4 the presence of lead poisoning. The director shall, after consul-
- 5 tation with recognized professional medical groups and such
- 6 other sources as he deems appropriate, propose legislative rules
- 7 establishing: (1) The means by which and the intervals at which
- 8 children under six years of age shall be screened for lead
- 9 poisoning; and (2) guidelines for the medical follow-up of

10 children found to be lead poisoned. Such identification program  
11 shall, to the extent that all children residing in this state are not  
12 systematically screened, give priority in screening to children  
13 residing, or who have recently resided, in areas where signifi-  
14 cant numbers of lead poisoning cases have recently been  
15 reported or where other reliable evidence indicates that signifi-  
16 cant numbers of lead poisoning cases may be found. If the  
17 director is informed of any person having a medically con-  
18 firmed elevated blood-lead level, the director shall cause to  
19 have screened all other children under six years of age, and  
20 such other children as he or she finds advisable to screen,  
21 residing or recently residing in the household of the victim,  
22 unless the parents of such child object to the screening because  
23 it conflicts with their religious beliefs and practices. The results  
24 of the screenings shall be reported to the director, to the person  
25 or agency reporting the original case and to such other persons  
26 or agencies as the director deems advisable.

27 (b) The director shall maintain comprehensive records of all  
28 screenings conducted pursuant to this section. The records shall  
29 be geographically indexed in order to determine the location of  
30 areas of relatively high incidence of lead poisoning. The records  
31 shall be public records, except that the names of screened  
32 individuals may not be public. A summary of the results of all  
33 screenings conducted pursuant to this section shall be released  
34 quarterly, or more frequently if the director so determines, to all  
35 interested parties.

36 (c) All cases or probable cases of lead poisoning, as defined  
37 by legislative rule proposed by the director, found in the course  
38 of screenings conducted pursuant to this section shall be  
39 reported immediately to the affected individual, to a child's  
40 parent or legal guardian if the child is a minor, and to the  
41 director. The director shall inform such persons or agencies as  
42 the director determines is advisable of the existence of the case  
43 or probable case of lead poisoning.

---

## CHAPTER 160

(Com. Sub. for S. B. 672 — By Senators Helmick, Fanning,  
Boley, Prezioso, Ross and Anderson)

---

[Passed March 9, 2002; 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 forty, relating to the establishment and implementation of a statewide birth defects information system by the commissioner of the bureau for public health.

*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 forty, to read as follows:

### **ARTICLE 40. STATEWIDE BIRTH DEFECTS INFORMATION SYSTEM.**

§16-40-1. Definitions.

§16-40-2. Expansion and implementation of statewide birth defects information system.

§16-40-3. Purposes of system.

§16-40-4. Confidentiality of information.

§16-40-5. Parent or legal guardian may require removal of information concerning child from system.

§16-40-6. Advisory council.

§16-40-7. Rules.

§16-40-8. Reports by commissioner.

#### **§16-40-1. Definitions.**

1 As used in this article:

2 (1) "Commissioner" means the commissioner of the bureau  
3 for public health.

4 (2) "Freestanding birthing center" means any health care  
5 facility in which births routinely occur, regardless of whether  
6 the facility is located on the campus of another health care  
7 facility, and which is not licensed under article five-b of this  
8 chapter.

9 (3) "Hospital" means a hospital licensed under the provi-  
10 sions of article five-b of this chapter.

11 (4) "Nurse-midwife" means an individual authorized under  
12 article fifteen, chapter thirty of this code to practice  
13 nurse-midwifery.

14 (5) "Physician" means an individual authorized under  
15 article three or fourteen, chapter thirty of this code to practice  
16 medicine and surgery or osteopathic medicine and surgery.

**§16-40-2. Expansion and implementation of statewide birth  
defects information system.**

1 (a) The commissioner shall establish and implement a  
2 statewide birth defects information system for the collection of  
3 information concerning congenital anomalies, stillbirths and  
4 abnormal conditions of newborns.

5 (b) The commissioner may require each physician,  
6 nurse-midwife, hospital and freestanding birthing center to  
7 report to the system information concerning all patients under  
8 six years of age with a primary diagnosis of a congenital  
9 anomaly or abnormal condition: *Provided*, That the commis-  
10 sioner may not require the reporting of personal identifying  
11 information or enter into the system any personal identifying  
12 information regarding congenital anomalies or abnormal  
13 conditions of a child whose parent or legal guardian objects on

14 the basis of religious belief. The commissioner may not require  
15 a hospital, freestanding birthing center, nurse-midwife or  
16 physician to report to the system any information that is  
17 required to be reported to the commissioner or the bureau for  
18 public health under another provision of this code.

19 (c) On request, each physician, nurse-midwife, hospital and  
20 freestanding birthing center shall give the commissioner or  
21 authorized employees of the bureau access to the medical  
22 records of any patient described in subsection (b) of this  
23 section. The bureau shall pay the costs of copying any medical  
24 records pursuant to this section.

25 (d) A physician, nurse-midwife, hospital or freestanding  
26 birthing center that provides information to the system under  
27 subsection (b) of this section is not subject to criminal or civil  
28 liability for providing the information.

**§16-40-3. Purposes of system.**

1 The birth defects information system may be used for all of  
2 the following purposes:

3 (1) To identify and describe congenital anomalies, still-  
4 births and abnormal conditions of newborns;

5 (2) To detect trends and epidemics in congenital anomalies,  
6 stillbirths and abnormal conditions of newborns;

7 (3) To quantify morbidity and mortality of congenital  
8 anomalies and abnormal conditions of newborns;

9 (4) To stimulate epidemiological research regarding  
10 congenital anomalies, stillbirths and abnormal conditions of  
11 newborns;

12 (5) To identify risk factors for congenital anomalies,  
13 stillbirths and abnormal conditions of newborns;

14 (6) To facilitate intervention in and prevention of congeni-  
15 tal anomalies, stillbirths and abnormal conditions of newborns;

16 (7) To facilitate access to treatment for congenital anoma-  
17 lies and abnormal conditions of newborns;

18 (8) To inform and educate the public about congenital  
19 anomalies, stillbirths and abnormal conditions of newborns.

**§16-40-4. Confidentiality of information.**

1 (a) Except as provided in this section, records received and  
2 information assembled by the birth defects information system  
3 pursuant to section two of this article are confidential medical  
4 records.

5 (b) (1) The commissioner may use information assembled  
6 by the system to notify parents, guardians and custodians of  
7 children with congenital anomalies or abnormal conditions of  
8 medical care and other services available for the child and  
9 family.

10 (2) The commissioner may disclose information assembled  
11 by the system with the written consent of the parent or legal  
12 guardian of the child who is the subject of the information.

13 (c) (1) Access to information assembled by the system is  
14 limited to the following persons and government entities:

15 (A) The commissioner;

16 (B) Authorized employees of the bureau; and

17 (C) Qualified persons or government entities that are  
18 engaged in demographic, epidemiological or similar studies  
19 related to health and health care provision.

20 (2) The commissioner shall give a person or government  
21 entity described in subparagraph (C), subdivision (1) of this  
22 subsection access to the system only for informational requests  
23 of data and only if the person or a representative of the person  
24 or government entity signs an agreement to maintain the  
25 system's confidentiality.

26 (3) The commissioner shall maintain a record of all persons  
27 and government entities given access to the information in the  
28 system. The record shall include all of the following informa-  
29 tion:

30 (A) The name of the person who authorized access to the  
31 system;

32 (B) The name, title and organizational affiliation of the  
33 person or government entity given access to the system;

34 (C) The dates the person or government entity was given  
35 access to the system; and

36 (D) The specific purpose for which the person or govern-  
37 ment entity intends to use the information.

38 (4) The record maintained pursuant to subdivision (3) of  
39 this subsection is a public record as defined in chapter twenty-  
40 nine-b of this code.

41 (5) A person who violates an agreement described in  
42 subdivision (2) of this subsection shall be denied further access  
43 to confidential information maintained by the commissioner.

44 (d) The commissioner may disclose information assembled  
45 by the system in summary, statistical or other form that does



46 not identify particular individuals or individual sources of  
47 information.

**§16-40-5. Parent or legal guardian may require removal of information concerning child from system.**

1 (a) As used in this section, "local board of health" means a  
2 local board of health established under the provisions of article  
3 two of this chapter.

4 (b) A child's parent or legal guardian who wants informa-  
5 tion concerning the child removed from the birth defects  
6 information system shall request from the local board of health  
7 or the child's physician a form prepared by the commissioner.  
8 On request, a local board of health or physician shall provide  
9 the form to the child's parent or legal guardian. The individual  
10 providing the form shall discuss with the child's parent or legal  
11 guardian the information contained in the system. If the child's  
12 parent or legal guardian signs the form, the local board of health  
13 or physician shall forward it to the commissioner. On receipt of  
14 the signed form, the commissioner shall remove from the  
15 follow-up system any information that identifies the child. All  
16 personal identifying information may be removed from the  
17 record: *Provided*, That the record itself shall remain in the  
18 system for reporting and analysis purposes.

**§16-40-6. Advisory council.**

1 (a) Not later than thirty days after the effective date of this  
2 article, the commissioner shall appoint a council to advise on  
3 the establishment and implementation of the birth defects  
4 information system.

5 (b) The council shall include, at a minimum, persons  
6 representing each of the following interests:

7 (1) Obstetrics and gynecology;

8 (2) Pediatrics;

- 9       (3) Genetics;
- 10       (4) Epidemiology;
- 11       (5) Biostatistics;
- 12       (6) Hospital administration;
- 13       (7) The department of education;
- 14       (8) Parents of children with congenital anomalies or  
15 abnormal conditions;
- 16       (9) The march of dimes West Virginia state chapter; and
- 17       (10) The public.

18       (c) (1) Not later than thirty days after the initial appoint-  
19 ments are made under subsection (b) of this section, the  
20 commissioner shall convene the first meeting of the council. In  
21 consultation with and with the approval of the council, the  
22 commissioner shall appoint, at the first meeting of the council,  
23 the chairperson and vice chairperson of the council from among  
24 the members of the council. The chairperson may call addi-  
25 tional meetings as the chairperson considers appropriate.

26       (2) The council may establish rules of procedure as  
27 necessary to facilitate the council's orderly conduct of business.

28       (3) Council members serve without compensation but, to  
29 the extent funds are available, shall be reimbursed for their  
30 actual and necessary expenses incurred in the performance of  
31 their duties.

32       (d) The council shall recommend to the commissioner a list  
33 of congenital anomalies and abnormal conditions of newborns  
34 to be reported to the system.

**§16-40-7. Rules.**

1 Not later than the first day of July, two thousand three, the  
2 commissioner shall, in consultation with the council created  
3 under section six of this article, propose rules for legislative  
4 approval in accordance with the provisions of article three,  
5 chapter twenty-nine-a of this code to do all of the following:

6 (1) Implement the birth defects information system;

7 (2) Specify the types of congenital anomalies and abnormal  
8 conditions of newborns to be reported to the system under  
9 section two of this article;

10 (3) Establish reporting requirements for information  
11 concerning diagnosed congenital anomalies and abnormal  
12 conditions of newborns;

13 (4) Establish standards that are required to be met by  
14 persons or government entities that seek access to the system;  
15 and

16 (5) Establish a form for use by parents or legal guardians  
17 who seek to have information regarding their children removed  
18 from the system and a method of distributing the form to local  
19 boards of health and to physicians. The method of distribution  
20 must include making the form available on the internet.

**§16-40-8. Reports by commissioner.**

1 Prior to the first day of January, three years after the date a  
2 birth defects information system is implemented pursuant to  
3 this article, and by the first day of January of each year after  
4 that, the commissioner shall prepare a report regarding the birth  
5 defects information system. The council created under section  
6 six of this article shall, not later than two years after the date a  
7 birth defects information system is implemented, specify the  
8 information the commissioner is to include in each report. The  
9 commissioner shall file the report with the governor and the  
10 joint committee on government and finance.

---

## CHAPTER 161

(Com. Sub. for H. B. 3017 — By Delegates Fleischauer, Compton,  
Kominar, Butcher, Mahan, Hatfield and Beane)

---

[Passed March 9, 2002; 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 forty-one, relating to the creation of a state oral health program within the bureau for public health; setting requirements for the director of the program; setting forth the duties and the goals of the program; creating a special revenue account for funds received and requiring legislative appropriation of the moneys in the account; exception to legislative appropriation; authorizing the director to enter into contracts and agreements; and requiring annual reports.

*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 forty-one, to read as follows:

**ARTICLE 41. ORAL HEALTH IMPROVEMENT ACT.**

- §16-41-1. Short title.
- §16-41-2. Oral health program and director.
- §16-41-3. Duties and directives of oral health program.
- §16-41-4. Receipt of funds; special revenue account.
- §16-41-5. Contracts.
- §16-41-6. Reporting requirements.
- §16-41-7. Continuation of program.

**§16-41-1. Short title.**

- 1 This article may be cited as the “West Virginia Oral Health
- 2 Improvement Act”.

**§16-41-2. Oral health program and director.**

1 (a) The commissioner of the bureau for public health shall  
2 establish and maintain an oral health program.

3 (b) The commissioner of the bureau for public health shall  
4 appoint a dentist licensed in this state as director of the oral  
5 health program who shall administer the program pursuant to  
6 the provisions of section three of this article.

**§16-41-3. Duties and directives of oral health program.**

1 (a) The director of the oral health program shall implement  
2 and maintain the oral health program to include, but not be  
3 limited to, the following goals and objectives:

4 (1) The development of comprehensive dental health plans  
5 within the framework of the state plan of operation, provided  
6 for in subsection (f), section six, article one of this chapter, to  
7 maximize use of all available resources;

8 (2) Providing the consultation necessary to coordinate  
9 federal, state, county and city agency programs concerned with  
10 dental health;

11 (3) Encouraging, supporting and augmenting the efforts of  
12 local boards of health and boards of education in the implemen-  
13 tation of a dental health component in their program plans;

14 (4) Providing consultation and program information to, at  
15 a minimum, health professions, health professional educational  
16 institutions, school educators, extension specialists and volun-  
17 teer agencies;

18 (5) Providing programs aimed at preventing and detecting  
19 oral cancer in the state, with a primary focus of meeting the  
20 needs of high-risk under-served populations, with the intent to  
21 reduce oral cancer mortality;

22 (6) Providing programs addressing oral health education  
23 and promotion, including:

24 (A) Public health education to promote the prevention of  
25 oral disease through self-help methods, including the initiation  
26 and expansion of preschool, school age and adult education  
27 programs;

28 (B) Organized continuing health education training pro-  
29 grams for, at a minimum, health care providers, school educa-  
30 tors and extension specialists; and

31 (C) Preventive health education information for the public;

32 (7) Facilitation of access to oral health services, including:

33 (A) The improvement of the existing oral health services  
34 delivery system for the provision of services to all West  
35 Virginia residents;

36 (B) Outreach activities to inform the public of the type and  
37 availability of oral health services to increase the accessibility  
38 of oral health care for all West Virginia residents; and

39 (C) Assistance and cooperation in promoting better  
40 distribution of dentists and other oral health professionals  
41 throughout the state;

42 (8) Providing programs specifically targeting prevention of  
43 tooth loss and the restoration of existing teeth to the extent that  
44 funds are available.

45 (9) Providing oral or dental health services to individuals in  
46 need, to the extent funds are available for the services; and

47 (10) Provide evaluation of these programs in terms of  
48 preventive services.

49 (b) In consultation with dental care providers, the commis-  
50 sioner shall develop and implement ongoing oral cancer  
51 educational programs in the state:

52 (1) To train health care providers to screen and properly  
53 refer patients with oral cancers; and

54 (2) To promote the cessation of the use of alcohol and  
55 tobacco products with a primary focus of meeting the needs of  
56 high-risk under-served populations.

57 (c) The programs developed and implemented under this  
58 section shall address:

59 (1) The risk factors that lead to oral cancer;

60 (2) The signs and symptoms of oral cancer;

61 (3) The high-risk behaviors that may lead to oral cancer;  
62 and

63 (4) The accessibility of screening to detect oral cancer.

64 (d) In addition to the duties and responsibilities required  
65 under this section, the director of the oral health program shall  
66 administer and supervise all dental health programs within the  
67 bureau for public health.

**§16-41-4. Receipt of funds; special revenue account.**

1 (a) The secretary of the department of health and human  
2 resources may, in his or her discretion, transfer funds from  
3 other programs within his or her control, to the special revenue  
4 account created in this section for the purposes established in  
5 this article.

6 (b) The director may apply for and receive for the oral  
7 health program any financial aid granted by any private,  
8 federal, state or local or other grant or source.

9 (c) There is hereby established in the state treasury a special  
10 revenue account designated the "Oral Health Program Fund".  
11 All funds received by the director for the oral health program  
12 shall be deposited in the special revenue account.

13 (d) Moneys deposited in this fund shall be used exclusively  
14 to provide oral health services to accomplish the purposes of  
15 this article. Expenditures of moneys deposited in this fund are  
16 to be made in accordance with appropriation by the Legislature  
17 and in accordance with article three, chapter twelve of this code  
18 and upon fulfillment of the provisions of article two, chapter  
19 five-a of this code: *Provided*, That for the fiscal year beginning  
20 the first day of July, two thousand two, expenditures are  
21 authorized from deposits rather than pursuant to appropriation  
22 by the Legislature. The director may disburse funds from the  
23 special revenue account as required by this article.

**§16-41-5. Contracts.**

1 The director may enter into contracts and agreements  
2 necessary to facilitate the efficient and economical provision of  
3 oral health services under this article, including contracts for  
4 the purchase of services, equipment, and supplies from quali-  
5 fied providers, if included in the plan.

**§16-41-6. Reporting requirements.**

1 On or before the first day of December of each year, the  
2 commissioner shall submit a report on the commissioner's  
3 findings and recommendations to the governor and the joint  
4 committee on government and finance on the oral health  
5 programs established under this article. The report shall include  
6 the identification of existing barriers to proper oral health care  
7 in the state and recommendations addressing the removal of the  
8 barriers.

**§16-41-7. Continuation of program.**

1 Pursuant to the provisions of article ten, chapter four of this  
2 code, the oral health program shall continue until the first day  
3 of July, two thousand five, unless sooner terminated, continued  
4 or reestablished pursuant to the provisions of that article.



---

**CHAPTER 162**

**(Com. Sub. for S. B. 536 — By Senators Mitchell, Fanning, Kessler,  
Minard, Oliverio, Rowe, Facemyer and McKenzie)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one, two and three, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to mental hygiene proceedings generally; definitions; removing prosecutors from regular appearances at probable cause proceedings; extending time for hearing; allowing multiple county agreements; clarifying that no probable cause hearing is necessary where the physician or psychologist determines that the individual is neither mentally ill nor addicted or, if mentally ill, not a danger to self or others; proceedings involving involuntary custody; requiring probable cause hearings within a certain time period; clarifying that mental hygiene commissioners may elicit testimony regarding issues raised in the petition; requiring data collection by supreme court of appeals; allowing fifteen days for holding of final commitment proceeding; and authorizing qualified licensed independent clinical social workers or certain advanced nurse practitioners to certify an individual.

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

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

**ARTICLE 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.

**§27-5-1. 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.**

1           (a) *Appointment of mental hygiene commissioners.* — The  
2 chief judge in each judicial circuit of this state shall appoint a  
3 competent attorney and may, if necessary, appoint additional  
4 attorneys to serve as mental hygiene commissioners to preside  
5 over involuntary hospitalization hearings. Mental hygiene  
6 commissioners shall be persons of good moral character and of  
7 standing in their profession and they shall, before assuming the  
8 duties of such commissioner, take the oath required of other  
9 special commissioners as provided in article one, chapter six of  
10 this code.

11           All persons newly appointed to serve as mental hygiene  
12 commissioners shall attend and complete an orientation course,  
13 within one year of their appointment, consisting of at least three  
14 days of training provided annually by the supreme court of  
15 appeals. In addition, existing mental hygiene commissioners  
16 and any magistrates designated by the chief judge of a judicial  
17 circuit to hold probable cause and emergency detention  
18 hearings involving involuntary hospitalization shall attend and  
19 complete a course provided by the supreme court of appeals,  
20 which course shall include, but not be limited to, instruction on  
21 the manifestations of mental illness and addiction. Persons  
22 attending such courses outside the county of their residence

23 shall be reimbursed out of the budget of the supreme court —  
24 general judicial for reasonable expenses incurred. The supreme  
25 court shall establish rules for such courses, including rules  
26 providing for the reimbursement of reasonable expenses as  
27 authorized herein.

28 (b) *Duties of mental hygiene commissioners.* —

29 (1) Mental hygiene commissioners may sign and issue  
30 summonses for the attendance, at any hearing held pursuant to  
31 section four, article five of this chapter, of the individual sought  
32 to be committed; may sign and issue subpoenas for witnesses,  
33 including subpoenas duces tecum; may place any witness under  
34 oath; may elicit testimony from applicants, respondents and  
35 witnesses regarding factual issues raised in the petition; and  
36 may make findings of fact on evidence and may make conclu-  
37 sions of law, but such findings and conclusions shall not be  
38 binding on the circuit court. The circuit court, by order entered  
39 of record, shall allow the commissioner a reasonable fee for  
40 services rendered in connection with each case. Mental hygiene  
41 commissioners shall discharge their duties and hold their  
42 offices at the pleasure of the chief judge of the judicial circuit  
43 in which he or she is appointed and may be removed at any time  
44 by such chief judge. It shall be the duty of a mental hygiene  
45 commissioner to conduct orderly inquiries into the mental  
46 health of the individual sought to be committed concerning the  
47 advisability of committing the individual to a mental health  
48 facility. The mental hygiene commissioner shall safeguard, at  
49 all times, the rights and interests of the individual as well as the  
50 interests of the state. The mental hygiene commissioner shall  
51 make a written report of his or her findings to the circuit court.  
52 In any proceedings before any court of record as set forth in this  
53 article, the court of record shall appoint an interpreter for any  
54 individual who is deaf or cannot speak or who speaks a foreign  
55 language and who may be subject to involuntary commitment  
56 to a mental health facility.

57       (2) A mental hygiene commissioner appointed by the  
58 circuit court of one county or multiple county circuit may serve  
59 in such capacity in a jurisdiction other than that of his or her  
60 original appointment if such be agreed upon by the terms of a  
61 cooperative agreement between the circuit courts and county  
62 commissions of two or more counties entered into to provide  
63 prompt resolution of mental hygiene matters during noncourt  
64 hours or on nonjudicial days.

65       (c) *Duties of prosecuting attorney.* — It shall be the duty of  
66 the prosecuting attorney or one of his or her assistants to  
67 represent the applicants in all final commitment proceedings  
68 filed pursuant to the provisions of this article. The prosecuting  
69 attorney may appear in any proceeding held pursuant to the  
70 provisions of this article if he or she deems it to be in the public  
71 interest.

72       (d) *Duties of sheriff.* — Upon written order of the circuit  
73 court, mental hygiene commissioner or magistrate in the county  
74 where the individual formally accused of being mentally ill or  
75 addicted is a resident or is found, the sheriff of that county shall  
76 take said individual into custody and transport him or her to and  
77 from the place of hearing and the mental health facility. The  
78 sheriff shall also maintain custody and control of the accused  
79 individual during the period of time in which the individual is  
80 waiting for the involuntary commitment hearing to be convened  
81 and while such hearing is being conducted: *Provided*, That an  
82 individual who is a resident of a state other than West Virginia  
83 shall, upon a finding of probable cause, be transferred to his or  
84 her state of residence for treatment pursuant to the provisions  
85 of subsection (p), section four of this article: *Provided, how-*  
86 *ever*, That where an individual is a resident of West Virginia  
87 but not a resident of the county in which he or she is found and  
88 there is a finding of probable cause, the county in which the  
89 hearing is held may seek reimbursement from the county of  
90 residence for reasonable costs incurred by the county attendant

91 to the mental hygiene proceeding. Notwithstanding any  
92 provision of this code to the contrary, sheriffs may enter into  
93 cooperative agreements with sheriffs of one or more other  
94 counties, with the concurrence of their respective circuit courts  
95 and county commissions, whereby transportation and security  
96 responsibilities for hearings held pursuant to the provisions of  
97 this article during noncourt hours or on nonjudicial days may be  
98 shared in order to facilitate prompt hearings and to effectuate  
99 transportation of persons found in need of treatment.

100 (e) *Duty of sheriff upon presentment to mental health care*  
101 *facility.* — Where a person is brought to a mental health care  
102 facility for purposes of evaluation for commitment under the  
103 provisions of this article, if he or she is violent or combative,  
104 the sheriff or his or her designee shall maintain custody of the  
105 person in the facility until the evaluation is completed or the  
106 county commission shall reimburse the mental health care  
107 facility at a reasonable rate for security services provided by the  
108 mental health care facility for the period of time the person is  
109 at the hospital prior to the determination of mental competence  
110 or incompetence.

111 (f) *Duties of supreme court of appeals.* — The supreme  
112 court of appeals shall provide uniform petition, procedure and  
113 order forms which shall be used in all involuntary hospitaliza-  
114 tion proceedings brought in this state.

**§27-5-2. Institution of proceedings for involuntary custody for  
examination; custody; probable cause hearing;  
examination of individual.**

1 (a) Any adult person may make an application for involun-  
2 tary hospitalization for examination of an individual who is not  
3 incarcerated at the time the application is filed when the person  
4 making the application has reason to believe that:

5 (1) The individual to be examined is addicted, as defined in  
6 section eleven, article one of this chapter; or

7 (2) The individual is mentally ill and, because of his or her  
8 mental illness, the individual is likely to cause serious harm to  
9 himself or herself or to others if allowed to remain at liberty  
10 while awaiting an examination and certification by a physician  
11 or psychologist.

12 (b) The person making the application shall make the  
13 application under oath.

14 (c) Application for involuntary custody for examination  
15 may be made to the circuit court or a mental hygiene commis-  
16 sioner of the county in which the individual resides or of the  
17 county in which he or she may be found. When no circuit court  
18 judge or mental hygiene commissioner is available for immedi-  
19 ate presentation of the application, the application may be made  
20 to a magistrate designated by the chief judge of the judicial  
21 circuit to accept applications and hold probable cause hearings.  
22 A designated magistrate before whom an application or matter  
23 is pending may upon the availability of a mental hygiene  
24 commissioner or circuit court judge for immediate presentation  
25 of an application or pending matter, transfer the pending matter  
26 or application to the mental hygiene commissioner or circuit  
27 court judge for further proceedings, unless otherwise ordered by  
28 the chief judge of the judicial circuit.

29 (d) The person making the application shall give informa-  
30 tion and state facts in the application as may be required by the  
31 form provided for this purpose by the supreme court of appeals.

32 (e) The circuit court, mental hygiene commissioner or  
33 designated magistrate may enter an order for the individual  
34 named in the application to be detained and taken into custody  
35 for the purpose of holding a probable cause hearing as provided  
36 for in subsection (g) of this section for the purpose of an

37 examination of the individual by a physician, psychologist, a  
38 licensed independent clinical social worker practicing in  
39 compliance with article thirty, chapter thirty of this code, or  
40 advanced nurse practitioner with psychiatric certification,  
41 practicing in compliance with article seven of said chapter:  
42 *Provided*, That a licensed independent clinical social worker or  
43 an advanced nurse practitioner with psychiatric certification  
44 may only perform the examination if he or she has previously  
45 been authorized by an order of the circuit court to do so, said  
46 order having found that the licensed independent clinical social  
47 worker or advanced nurse practitioner with psychiatric certifi-  
48 cation has particularized expertise in the areas of mental health  
49 and mental hygiene sufficient to make such determinations as  
50 are required by the provisions of this section. The examination  
51 is to be provided or arranged by a community mental health  
52 center designated by the secretary of the department of health  
53 and human resources to serve the county in which the action  
54 takes place. The order is to specify that the hearing be held  
55 forthwith and is to provide for the appointment of counsel for  
56 the individual: *Provided, however*, That the order may allow the  
57 hearing to be held up to twenty-four hours after the person to be  
58 examined is taken into custody rather than forthwith if the  
59 circuit court of the county in which the person is found has  
60 previously entered a standing order which establishes within  
61 that jurisdiction a program for placement of persons awaiting a  
62 hearing which assures the safety and humane treatment of  
63 persons: *Provided further*, That the time requirements set forth  
64 in this subsection shall only apply to persons who are not in  
65 need of medical care for a physical condition or disease for  
66 which the need for treatment precludes the ability to comply  
67 with said time requirements. During periods of holding and  
68 detention authorized by this subsection upon consent of the  
69 individual or in the event of a medical or psychiatric emer-  
70 gency, the individual may receive treatment. The medical  
71 provider shall exercise due diligence in determining the  
72 individual's existing medical needs and provide such treatment

73 as the individual requires, including previously prescribed  
74 medications. As used in this section, "psychiatric emergency"  
75 means an incident during which an individual loses control and  
76 behaves in a manner that poses substantial likelihood of  
77 physical harm to himself, herself or others. Where a physician,  
78 psychologist, licensed independent clinical social worker or  
79 advanced nurse practitioner with psychiatric certification has  
80 within the preceding seventy-two hours performed the examina-  
81 tion required by the provisions of this subdivision, the commu-  
82 nity mental health center may waive the duty to perform or  
83 arrange another examination upon approving the previously  
84 performed examination. Notwithstanding the provisions of this  
85 subsection, subsection (r), section four of this article applies  
86 regarding payment by the county commission for examinations  
87 at hearings. If the examination reveals that the individual is not  
88 mentally ill or addicted, or is determined to be mentally ill but  
89 not likely to cause harm to himself, herself or others, the  
90 individual shall be immediately released without the need for a  
91 probable cause hearing and absent a finding of professional  
92 negligence such examiner shall not be civilly liable for the  
93 rendering of such opinion absent a finding of professional  
94 negligence. The examiner shall immediately provide the mental  
95 hygiene commissioner, circuit court or designated magistrate  
96 before whom the matter is pending, the results of the examina-  
97 tion on the form provided for this purpose by the supreme court  
98 of appeals for entry of an order reflecting the lack of probable  
99 cause.

100 (f) A probable cause hearing is to be held before a  
101 magistrate designated by the chief judge of the judicial circuit,  
102 the mental hygiene commissioner or circuit judge of the county  
103 of which the individual is a resident or where he or she was  
104 found. If requested by the individual or his or her counsel, the  
105 hearing may be postponed for a period not to exceed forty-eight  
106 hours.



107       The individual must be present at the hearing and has the  
108 right to present evidence, confront all witnesses and other  
109 evidence against him or her and to examine testimony offered,  
110 including testimony by representatives of the community  
111 mental health center serving the area. Expert testimony at the  
112 hearing may be taken telephonically or via videoconferencing.  
113 The individual has the right to remain silent and to be pro-  
114 ceeded against in accordance with the rules of evidence of the  
115 supreme court of appeals, except as provided for in section  
116 twelve, article one of this chapter. At the conclusion of the  
117 hearing, the magistrate, mental hygiene commissioner or circuit  
118 court judge shall find and enter an order stating whether or not  
119 there is probable cause to believe that the individual, as a result  
120 of mental illness, is likely to cause serious harm to himself or  
121 herself or to others or is addicted.

122       (g) The magistrate, mental hygiene commissioner or circuit  
123 court judge at a probable cause hearing or at a final commit-  
124 ment hearing held pursuant to the provisions of section four of  
125 this article finds that the individual, as a result of mental illness,  
126 is likely to cause serious harm to himself, herself or others or is  
127 addicted and because of mental illness or addiction requires  
128 treatment, the magistrate, mental hygiene commissioner or  
129 circuit court judge may consider evidence on the question of  
130 whether the individual's circumstances make him or her  
131 amenable to outpatient treatment in a nonresidential or  
132 nonhospital setting pursuant to a voluntary treatment agree-  
133 ment. The agreement is to be in writing and approved by the  
134 individual, his or her counsel and the magistrate, mental  
135 hygiene commissioner or circuit judge. If the magistrate, mental  
136 hygiene commissioner or circuit court judge determines that  
137 appropriate outpatient treatment is available in a nonresidential  
138 or nonhospital setting, the individual may be released to  
139 outpatient treatment upon the terms and conditions of the  
140 voluntary treatment agreement. The failure of an individual  
141 released to outpatient treatment pursuant to a voluntary

142 treatment agreement to comply with the terms of the voluntary  
143 treatment agreement constitutes evidence that outpatient  
144 treatment is insufficient and, after a hearing before a magistrate,  
145 mental hygiene commissioner or circuit judge on the issue of  
146 whether or not the individual failed or refused to comply with  
147 the terms and conditions of the voluntary treatment agreement  
148 and whether the individual as a result of mental illness remains  
149 likely to cause serious harm to himself, herself or others or  
150 remains addicted, the entry of an order requiring admission  
151 under involuntary hospitalization pursuant to the provisions of  
152 section three of this article may be entered. In the event a  
153 person released pursuant to a voluntary treatment agreement is  
154 unable to pay for the outpatient treatment and has no applicable  
155 insurance coverage, including, but not limited to, private  
156 insurance or medicaid, the secretary of health and human  
157 resources may transfer funds for the purpose of reimbursing  
158 community providers for services provided on an outpatient  
159 basis for individuals for whom payment for treatment is the  
160 responsibility of the department: *Provided*, That the department  
161 may not authorize payment of outpatient services for an  
162 individual subject to a voluntary treatment agreement in an  
163 amount in excess of the cost of involuntary hospitalization of  
164 the individual. The secretary shall establish and maintain fee  
165 schedules for outpatient treatment provided in lieu of involun-  
166 tary hospitalization. Nothing in the provisions of this article  
167 regarding release pursuant to a voluntary treatment agreement  
168 or convalescent status may be construed as creating a right to  
169 receive outpatient mental health services or treatment or as  
170 obligating any person or agency to provide outpatient services  
171 or treatment. Time limitations set forth in this article relating to  
172 periods of involuntary commitment to a mental health facility  
173 for hospitalization do not apply to release pursuant to the terms  
174 of a voluntary treatment agreement: *Provided, however*, That  
175 release pursuant to a voluntary treatment agreement may not be  
176 for a period of more than six months if the individual has not  
177 been found to be involuntarily committed during the previous

178 two years and for a period of no more than two years if the  
179 individual has been involuntarily committed during the preced-  
180 ing two years. If in any proceeding held pursuant to this article  
181 the individual objects to the issuance or conditions and terms of  
182 an order adopting a voluntary treatment agreement, then the  
183 circuit judge, magistrate or mental hygiene commissioner may  
184 not enter an order directing treatment pursuant to a voluntary  
185 treatment agreement. If involuntary commitment with release  
186 pursuant to a voluntary treatment agreement is ordered, the  
187 individual subject to the order may, upon request during the  
188 period the order is in effect, have a hearing before a  
189 mental hygiene commissioner or circuit judge where the  
190 individual may seek to have the order canceled or modi-  
191 fied. Nothing in this section may affect the appellate and  
192 habeas corpus rights of any individual subject to any commit-  
193 ment order.

194 (h) If the certifying physician or psychologist determines  
195 that a person requires involuntary hospitalization for an  
196 addiction to a substance which, due to the degree of addiction,  
197 creates a reasonable likelihood that withdrawal or detoxification  
198 from the substance of addiction will cause significant medical  
199 complications, the person certifying the individual shall  
200 recommend that the individual be closely monitored for  
201 possible medical complications. If the magistrate, mental  
202 hygiene commissioner or circuit court judge presiding orders  
203 involuntary hospitalization, he or she shall include a recommen-  
204 dation that the individual be closely monitored in the order of  
205 commitment.

206 (i) The supreme court of appeals and the secretary of the  
207 department of health and human resources shall collect data and  
208 report to the Legislature at its regular annual sessions in two  
209 thousand three and two thousand four of the effects of the  
210 changes made in the mental hygiene judicial process along with  
211 any recommendations which they may deem proper for further

212 revision or implementation in order to improve the administra-  
213 tion and functioning of the mental hygiene system utilized in  
214 this state, to serve the ends of due process and justice in  
215 accordance with the rights and privileges guaranteed to all  
216 citizens, to promote a more effective, humane and efficient  
217 system and to promote the development of good mental health.  
218 The supreme court of appeals and the secretary of the depart-  
219 ment of health and human resources shall specifically develop  
220 and propose a statewide system for evaluation and adjudication  
221 of mental hygiene petitions which shall include payment  
222 schedules and recommendations regarding funding sources.  
223 Additionally, the secretary of the department of health and  
224 human resources shall also immediately seek reciprocal  
225 agreements with officials in contiguous states to develop  
226 interstate/intergovernmental agreements to provide efficient and  
227 efficacious services to out-of-state residents found in West  
228 Virginia and who are in need of mental hygiene services.

**§27-5-3. Admission under involuntary hospitalization for exami-  
nation; hearing; release.**

1       (a) *Admission to a mental health facility for examination.*  
2 — Any individual may be admitted to a mental health facility  
3 for examination and treatment upon entry of an order finding  
4 probable cause as provided in section two of this article and  
5 upon certification by one physician or one psychologist that he  
6 or she has examined the individual and is of the opinion that the  
7 individual is mentally ill and, because of such mental illness, is  
8 likely to cause serious harm to himself or herself or to others if  
9 not immediately restrained, or is addicted.

10       (b) *Three-day time limitation on examination.* — If said  
11 examination does not take place within three days from the date  
12 the individual is taken into custody, the individual shall be  
13 released. If the examination reveals that the individual is not  
14 mentally ill or addicted, the individual shall be released.

15       (c) *Three-day time limitation on certification.* — The  
16 certification required in subsection (a) of this section shall be  
17 valid for three days. Any individual with respect to whom such  
18 certification has been issued may not be admitted on the basis  
19 thereof at any time after the expiration of three days from the  
20 date of such examination.

21       (d) *Findings and conclusions required for certification.* —  
22 A certification under this section must include findings and  
23 conclusions of the mental examination, the date, time and place  
24 thereof and the facts upon which the conclusion that involun-  
25 tary commitment is necessary is based.

26       (e) *Notice requirements.* — When an individual is admitted  
27 to a mental health facility pursuant to the provisions of this  
28 section, the chief medical officer thereof shall immediately give  
29 notice of the individual's admission to the individual's spouse,  
30 if any, and one of the individual's parents or guardians, or if  
31 there be no such spouse, parents or guardians, to one of the  
32 individual's adult next of kin: *Provided*, That such next of kin  
33 shall not be the applicant. Notice shall also be given to the  
34 community mental health facility, if any, having jurisdiction in  
35 the county of the individual's residence. Such notices other than  
36 to the community mental health facility shall be in writing and  
37 shall be transmitted to such person or persons at his, her or their  
38 last known address by certified or registered mail, return receipt  
39 requested.

40       (f) *Five-day time limitation for examination and certifica-*  
41 *tion at mental health facility.* — After the individual's admis-  
42 sion to a mental health facility, he or she may not be detained  
43 more than five days, excluding Sundays and holidays, unless,  
44 within such period, the individual is examined by a staff  
45 physician and such physician certifies that in his or her opinion  
46 the patient is mentally ill and is likely to injure himself or

47 herself or others or will remain addicted if allowed to be at  
48 liberty.

49 (g) *Fifteen-day time limitation for institution of final*  
50 *commitment proceedings.* — If, in the opinion of the examining  
51 physician, the patient is mentally ill and because of such mental  
52 illness is likely to injure himself or herself or others or will  
53 continue to abuse a substance to which he or she is addicted if  
54 allowed to be at liberty, the chief medical officer shall, within  
55 fifteen days from the date of admission, institute final commit-  
56 ment proceedings as provided in section four of this article. If  
57 such proceedings are not instituted within such fifteen-day  
58 period, the patient shall be immediately released. After the  
59 request for hearing is filed, the hearing shall not be canceled on  
60 the basis that the individual has become a voluntary patient  
61 unless the mental hygiene commissioner concurs in the motion  
62 for cancellation of the hearing.

63 (h) *Thirty-day time limitation for conclusion of all proceed-*  
64 *ings.* — If all proceedings as provided in articles three and four  
65 of this chapter are not completed within thirty days from the  
66 date of institution of such proceedings, the patient shall be  
67 immediately released.

---

## CHAPTER 163

(H. B. 4423 — By Delegates Douglas, Hubbard, Leach,  
Compton, Warner, Smirl and Fletcher)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one and one-a, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to commemorating the accomplishments of Susan B. Anthony by designating the first Tuesday after the first Monday of November as Susan B. Anthony day, a legal holiday in all years ending in an even number.

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

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

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.**

§2-2-1. Legal holidays; official acts or court proceedings.

§2-2-1a. Special memorial days.

**§2-2-1. Legal holidays; official acts or court proceedings.**

1 (a) The following days are legal holidays:

2 (1) The first day of January is “New Year’s Day”;

3 (2) The third Monday of January is “Martin Luther King’s  
4 Birthday”;

5 (3) The twelfth day of February is “Lincoln’s Birthday”;

6 (4) The third Monday of February is “Washington’s  
7 Birthday”;

8 (5) The last Monday in May is “Memorial Day”;

9 (6) The twentieth day of June is “West Virginia Day”;

10 (7) The fourth day of July is “Independence Day”;

11 (8) The first Monday of September is "Labor Day";

12 (9) The second Monday of October is "Columbus Day";

13 (10) The eleventh day of November is "Veterans' Day";

14 (11) The fourth Thursday of November is "Thanksgiving  
15 Day";

16 (12) The twenty-fifth day of December is "Christmas Day";

17 (13) Any day on which a general, primary or special  
18 election is held is a holiday throughout the state, a political  
19 subdivision of the state, a district or an incorporated city, town  
20 or village in which the election is conducted;

21 (14) General election day on even years shall be designated  
22 Susan B. Anthony Day, in accordance with the provisions of  
23 subsection (b), section one-a of this article; and

24 (15) Any day proclaimed or ordered by the governor or the  
25 president of the United States as a day of special observance or  
26 Thanksgiving, or a day for the general cessation of business, is  
27 a holiday.

28 (b) If a holiday otherwise described in subsection (a) of this  
29 section falls on a Sunday, then the following Monday is the  
30 legal holiday. If a holiday otherwise described in subsection (a)  
31 of this section falls on a Saturday, then the preceding Friday is  
32 the legal holiday: *Provided*, That this subsection (b) shall not  
33 apply to subdivision (13), subsection (a) of this section.

34 (c) Any day or part thereof designated by the governor as  
35 time off, without charge against accrued annual leave, for state  
36 employees statewide may also be time off for county employees  
37 if the county commission elects to designate the day or part  
38 thereof as time off, without charge against accrued annual leave  
39 for county employees. Any entire or part statewide day off



40 designated by the governor may, for all courts, be treated as if  
41 it were a legal holiday.

42 (d) In computing any period of time prescribed by any  
43 applicable provision of this code or any legislative rule or other  
44 administrative rule or regulation promulgated pursuant to the  
45 provisions of this code, the day of the act, event, default or  
46 omission from which the applicable period begins to run is not  
47 included. The last day of the period so computed is included,  
48 unless it is a Saturday, a Sunday, a legal holiday or a designated  
49 day off in which event the prescribed period of time runs until  
50 the end of the next day that is not a Saturday, Sunday, legal  
51 holiday or designated day off.

52 (e) If any applicable provision of this code or any legisla-  
53 tive rule or other administrative rule or regulation promulgated  
54 pursuant to the provisions of this code designates a particular  
55 date on, before or after which an act, event, default or omission  
56 is required or allowed to occur, and if the particular date  
57 designated falls on a Saturday, Sunday, legal holiday or  
58 designated day off, then the date on which the act, event,  
59 default or omission is required or allowed to occur is the next  
60 day that is not a Saturday, Sunday, legal holiday or designated  
61 day off.

62 (f) With regard to the courts of this state, the computation  
63 of periods of time, the specific dates or days when an act, event,  
64 default or omission is required or allowed to occur and the  
65 relationship of those time periods and dates to Saturdays,  
66 Sundays, legal holidays, or days designated as weather or other  
67 emergency days pursuant to section two of this article are  
68 governed by rules promulgated by the supreme court of appeals.

69 (g) The provisions of this section do not increase or  
70 diminish the legal school holidays provided for in section two,  
71 article five, chapter eighteen-a of this code.

**§2-2-1a. Special memorial days.**

1 (a) The governor shall, by proclamation, declare the week  
2 beginning with the Sunday before Thanksgiving as a special  
3 memorial week to be known as Native American Indian  
4 Heritage Week.

5 (b) The first Tuesday after the first Monday of November  
6 is designated Susan B. Anthony Day and shall only be a legal  
7 holiday in all years ending in an even number. The governor  
8 shall annually issue a proclamation calling on all schools, civic  
9 organizations, government departments and citizens to under-  
10 take activities on the designated day and surrounding days to  
11 pay tribute to the accomplishments of Susan B. Anthony in  
12 securing the civil and political rights of all Americans, includ-  
13 ing securing equal voting rights for women.

---

## CHAPTER 164

**(H. B. 4666 — By Delegates Warner, Leach, Boggs,  
Campbell, Proudfoot and Fletcher)**

---

[Passed March 7, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section fifteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing a process for the secretary of health and human resources to enter into negotiations with pharmaceutical companies for rebates that cannot be accessed through Freedom of Information Act requests or through open meetings.

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

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

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§9-5-15. Medicaid program; preferred drug list and drug utilization review.**

1       The Legislature finds that it is a public necessity that trade  
2       secrets, rebate amounts, percentage of rebate, manufacturer's  
3       pricing and supplemental rebates that are contained in records,  
4       as well as any meetings at which this information is negotiated  
5       or discussed need confidentiality to insure the most significant  
6       rebates available for the state. Information pertaining to similar  
7       agreements with the federal government and negotiated by  
8       pharmaceutical manufacturers is confidential pursuant to 42  
9       U.S.C. 1396r-8. A rebate as a percentage of average manufac-  
10      ture price is confidential under federal law and the federal  
11      rebate could be made known if not protected by state law.  
12      Because of the protection afforded by federal law, if this  
13      information is not protected by state law, manufacturers will  
14      not be willing to offer a rebate in West Virginia. Further, the  
15      Legislature finds that the number and value of supplemental  
16      rebates obtained by the department will increase, to the benefit  
17      of Medicaid recipients, if information related to the supplemen-  
18      tal rebates is protected in the records of the department and in  
19      meetings in which this information is disclosed because  
20      manufacturers will be assured they will not to be placed at a  
21      competitive disadvantage by exposure of this information.

22      The secretary of the department of health and human  
23      resources has the authority to develop a preferred drug list, in  
24      accordance with federal law, which shall consist of federally  
25      approved drugs. The department, through administration of the  
26      medicaid program, may reimburse, where applicable and in  
27      accordance with federal law, entities providing and dispensing  
28      prescription drugs from the preferred drug list.

29 The secretary of the department is hereby authorized to  
30 negotiate and enter into agreements with pharmaceutical  
31 manufacturers for supplemental rebates for medicaid reimburs-  
32 able drugs.

33 The provisions of article three, chapter five-a of this code  
34 shall not apply to any contract or contracts entered into under  
35 this section.

36 Trade secrets, rebate amounts, percentage of rebate,  
37 manufacturer's pricing and supplemental rebates which are  
38 contained in the department's records and those of its agents  
39 with respect to supplemental rebate negotiations and which are  
40 prepared pursuant to a supplemental rebate agreement are  
41 confidential and exempt from all of article one, chapter twenty-  
42 nine-b of this code.

43 Those portions of any meetings of the committee at which  
44 trade secrets, rebate amounts, percentage of rebate, manufac-  
45 turer's pricing and supplemental rebates are disclosed for  
46 discussion or negotiation of a supplemental rebate agreement  
47 are exempt from all of article nine-a, chapter six of this code.

48 The secretary of the department will monitor and evaluate  
49 the effects of this provision on medicaid recipients, the  
50 medicaid program, physicians and pharmacies.

51 The commissioner shall implement a drug utilization  
52 review program to assure that prescribing and dispensing of  
53 drug products result in the most rational cost-effective medica-  
54 tion therapy for medicaid patients.

55 Any moneys received in supplemental rebates will be  
56 deposited in the medical services fund established in section  
57 two, article four, chapter nine of this code.

---

## CHAPTER 165

**(Com. Sub. for S. B. 420 — By Senators Wooton, Craigo, Mitchell,  
Prezioso, Redd and McKenzie)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section eight, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child welfare agencies; and requiring the commissioner of human services to prescribe certain licensing application procedures, including fingerprinting of applicants and other persons responsible for the care of children, for submission for criminal history record checks.

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

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

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

**§49-2B-8. Application for license, certification or approval.**

- 1 (a) Any person or corporation or any governmental agency
- 2 intending to act as a child welfare agency shall apply for a
- 3 license, statement of certification, approval or registration
- 4 certificate to operate child care facilities regulated by this
- 5 article. Applications for licensure, certification, approval or

6 registration shall be made separately for each child care facility  
7 to be licensed, approved, certified or registered.

8 (b) The commissioner shall prescribe forms and reasonable  
9 application procedures including, but not limited to, fingerprint-  
10 ing of applicants and other persons responsible for the care of  
11 children for submission to the state police and, if necessary, to  
12 the federal bureau of investigation for criminal history record  
13 checks.

14 (c) Before issuing a license, certification or approval, the  
15 commissioner shall investigate the facility, program and  
16 persons responsible for the care of children. The investigation  
17 shall include, but not be limited to, review of resource need,  
18 reputation, character and purposes of applicants, a check of  
19 personnel criminal records, if any, and personnel medical  
20 records, the financial records of applicants and consideration of  
21 the proposed plan for child care from intake to discharge.

22 (d) Before a family day care home registration is granted,  
23 the commissioner shall make inquiry as to the facility, program  
24 and persons responsible for the care of children. The inquiry  
25 shall include self-certification by the prospective family day  
26 care home of compliance with standards including, but not  
27 limited to:

28 (1) Physical and mental health of persons present in the  
29 home while children are in care;

30 (2) Criminal and child abuse or neglect history of persons  
31 present in the home while children are in care;

32 (3) Discipline;

33 (4) Fire and environmental safety;

34 (5) Equipment and program for the children in care;

35 (6) Health, sanitation and nutrition.

36 (e) Further inquiry and investigation may be made as the  
37 commissioner may direct.

38 (f) The commissioner shall make a decision on each  
39 application within sixty days of its receipt and shall provide to  
40 unsuccessful applicants written reasons for the decision.

---

## CHAPTER 166

(Com. Sub. for S. B. 697 — By Senators Wooton, Prezioso and Craigo)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-three, relating to payment by the department of health and human resources for services to a health care professional associated with certain judicial proceedings; requiring the department to develop a fee schedule; and establishing health care professional documentation requirements relating thereto.

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

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

### **ARTICLE 7. GENERAL PROVISIONS.**

#### **§49-7-33. Payment of services.**

1       At any time during any proceedings brought pursuant  
2 to articles five and six of this chapter, the court may upon  
3 its own motion, or upon a motion of any party, order the  
4 West Virginia department of health and human resources  
5 to pay for professional services rendered by a psychologist,  
6 psychiatrist, physician, therapist or other health care  
7 professional to a child or other party to the proceedings.  
8 Professional services include, but are not limited to,  
9 treatment, therapy, counseling, evaluation, report prepara-  
10 tion, consultation and preparation of expert testimony. The  
11 West Virginia department of health and human resources  
12 shall set the fee schedule for such services in accordance  
13 with the Medicaid rate, if any, or the customary rate and  
14 adjust the schedule as appropriate. Every such psycholo-  
15 gist, psychiatrist, physician, therapist or other health care  
16 professional shall be paid by the West Virginia department  
17 of health and human resources upon completion of services  
18 and submission of a final report or other information and  
19 documentation as required by the policies and procedures  
20 implemented by the West Virginia department of health  
21 and human resources.

---

## CHAPTER 167

(Com. Sub. for S. B. 78 — By Senators Minard,  
Kessler, Edgell and Sharpe)

---

[Passed March 6, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article three, chapter twenty-eight of the code of  
West Virginia, one thousand nine hundred thirty-one, as amended,



by adding thereto a new section, designated section one-b, relating to clarifying that venue for criminal or civil actions occurring on the grounds at the West Virginia Industrial home for youth shall be in Harrison County, West Virginia.

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

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

**ARTICLE 3. INDUSTRIAL HOME FOR YOUTH.**

**§28-3-1b. Venue for industrial home for youth.**

1 Notwithstanding any other provision of law to the contrary,  
2 venue for any criminal or civil action arising from acts or  
3 omissions occurring on the property comprising the West  
4 Virginia Industrial home for youth, which is established by the  
5 provisions of this article, shall be in the circuit or magistrate  
6 courts of Harrison County, West Virginia.

---

## CHAPTER 168

(Com. Sub. for H. B. 4039 — By Mr. Speaker,  
Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred

thirty-one, as amended; and to amend and reenact section three-a, article sixteen, chapter thirty-three of said code; and to amend and reenact section two, article twenty-five-a of said chapter, all relating to mental health benefit coverage.

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

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

**Chapter**

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 33. Insurance.**

**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.**

- 1 (a) The agency shall establish a group hospital and surgical  
2 insurance plan or plans, a group prescription drug insurance

3 plan or plans, a group major medical insurance plan or plans  
4 and a group life and accidental death insurance plan or plans for  
5 those employees herein made eligible, and to establish and  
6 promulgate rules for the administration of these plans, subject  
7 to the limitations contained in this article. Those plans shall  
8 include:

9 (1) Coverages and benefits for X ray and laboratory  
10 services in connection with mammograms and pap smears when  
11 performed for cancer screening or diagnostic services;

12 (2) Annual checkups for prostate cancer in men age fifty  
13 and over;

14 (3) For plans that include maternity benefits, coverage for  
15 inpatient care in a duly licensed health care facility for a mother  
16 and her newly born infant for the length of time which the  
17 attending physician considers medically necessary for the  
18 mother or her newly born child: *Provided*, That no plan may  
19 deny payment for a mother or her newborn child prior to  
20 forty-eight hours following a vaginal delivery, or prior to  
21 ninety-six hours following a caesarean section delivery, if the  
22 attending physician considers discharge medically inappropri-  
23 ate;

24 (4) For plans which provide coverages for post-delivery  
25 care to a mother and her newly born child in the home, cover-  
26 age for inpatient care following childbirth as provided in  
27 subdivision (3) of this subsection if inpatient care is determined  
28 to be medically necessary by the attending physician. Those  
29 plans may also include, among other things, medicines, medical  
30 equipment, prosthetic appliances, and any other inpatient and  
31 outpatient services and expenses considered appropriate and  
32 desirable by the agency; and

33 (5) Coverage for treatment of serious mental illness.

34 (A) The coverage does not include custodial care, residen-  
35 tial care or schooling. For purposes of this section, “serious  
36 mental illness” means an illness included in the American  
37 psychiatric association’s diagnostic and statistical manual of  
38 mental disorders, as periodically revised, under the diagnostic  
39 categories or subclassifications of: (i) Schizophrenia and other  
40 psychotic disorders; (ii) bipolar disorders; (iii) depressive  
41 disorders; (iv) substance-related disorders with the exception of  
42 caffeine-related disorders and nicotine-related disorders; (v)  
43 anxiety disorders; and (vi) anorexia and bulimia. With regard  
44 to any covered individual who has not yet attained the age of  
45 nineteen years, “serious mental illness” also includes attention  
46 deficit hyperactivity disorder, separation anxiety disorder and  
47 conduct disorder.

48 (B) Notwithstanding any other provision in this section to  
49 the contrary, in the event that the agency can demonstrate  
50 actuarially that its total anticipated costs for the treatment of  
51 mental illness for any plan will exceed or have exceeded two  
52 percent of the total costs for such plan in any experience period,  
53 then the agency may apply whatever cost containment measures  
54 may be necessary, including, but not limited to, limitations on  
55 inpatient and outpatient benefits, to maintain costs below two  
56 percent of the total costs for the plan.

57 (C) The agency shall not discriminate between medical-  
58 surgical benefits and mental health benefits in the administra-  
59 tion of its plan. With regard to both medical-surgical and  
60 mental health benefits, it may make determinations of medical  
61 necessity and appropriateness, and it may use recognized health  
62 care quality and cost management tools, including, but not  
63 limited to, limitations on inpatient and outpatient benefits,  
64 utilization review, implementation of cost containment mea-  
65 sures, preauthorization for certain treatments, setting coverage  
66 levels, setting maximum number of visits within certain time  
67 periods, using capitated benefit arrangements, using fee-for-

68 service arrangements, using third-party administrators, using  
69 provider networks and using patient cost sharing in the form of  
70 copayments, deductibles and coinsurance.

71 (b) The agency shall make available to each eligible  
72 employee, at full cost to the employee, the opportunity to  
73 purchase optional group life and accidental death insurance as  
74 established under the rules of the agency. In addition, each  
75 employee is entitled to have his or her spouse and dependents,  
76 as defined by the rules of the agency, included in the optional  
77 coverage, at full cost to the employee, for each eligible depend-  
78 ent; and with full authorization to the agency to make the  
79 optional coverage available and provide an opportunity of  
80 purchase to each employee.

81 (c) The finance board may cause to be separately rated for  
82 claims experience purposes: (1) All employees of the state of  
83 West Virginia; (2) all teaching and professional employees of  
84 state public institutions of higher education and county boards  
85 of education; (3) all nonteaching employees of the university of  
86 West Virginia board of trustees or the board of directors of the  
87 state college system and county boards of education; or (4) any  
88 other categorization which would ensure the stability of the  
89 overall program.

## CHAPTER 33. INSURANCE.

### Article

#### 16. Group Accident and Sickness Insurance.

##### 25A. Health Maintenance Organization Act.

### ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

#### §33-16-3a. Same — Mental health.

1 (a)(1) Notwithstanding the requirements of subsection (b)  
2 of this section, any health benefits plan described in this article

3 that is delivered, issued or renewed in this state shall provide  
4 benefits to all individual subscribers and members and to all  
5 group members for expenses arising from treatment of serious  
6 mental illness. The expenses do not include custodial care,  
7 residential care or schooling. For purposes of this section,  
8 “serious mental illness” means an illness included in the  
9 American psychiatric association’s diagnostic and statistical  
10 manual of mental disorders, as periodically revised, under the  
11 diagnostic categories or subclassifications of: (i) Schizophrenia  
12 and other psychotic disorders; (ii) bipolar disorders; (iii)  
13 depressive disorders; (iv) substance-related disorders with the  
14 exception of caffeine-related disorders and nicotine-related  
15 disorders; (v) anxiety disorders; and (vi) anorexia and bulimia.

16 (2) Notwithstanding any other provision in this section to  
17 the contrary, in the event that an insurer can demonstrate  
18 actuarially to the insurance commissioner that its total antici-  
19 pated costs for treatment for mental illness, for any plan will  
20 exceed or have exceeded two percent of the total costs for such  
21 plan in any experience period, then the insurer may apply  
22 whatever cost containment measures may be necessary,  
23 including, but not limited to, limitations on inpatient and  
24 outpatient benefits, to maintain costs below two percent of the  
25 total costs for the plan: *Provided*, That for any group with  
26 twenty-five members or less, the insurer may apply such  
27 additional cost containment measures as may be necessary if  
28 the total anticipated actual costs for the treatment of mental  
29 illness will exceed one percent of the total costs for the group.

30 (3) The insurer shall not discriminate between medical-  
31 surgical benefits and mental health benefits in the administra-  
32 tion of its plan. With regard to both medical-surgical and  
33 mental health benefits, it may make determinations of medical  
34 necessity and appropriateness, and it may use recognized health  
35 care quality and cost management tools, including, but not  
36 limited to, utilization review, use of provider networks,

37 implementation of cost containment measures, preauthorization  
38 for certain treatments, setting coverage levels including the  
39 number of visits in a given time period, using capitated benefit  
40 arrangements, using fee-for-service arrangements, using third-  
41 party administrators, and using patient cost sharing in the form  
42 of copayments, deductibles and coinsurance.

43 (4) The provisions of this subsection shall apply with  
44 respect to group health plans for plan years beginning on or  
45 after the first day of January, two thousand three. The provi-  
46 sions of this section shall cease to be effective on and after the  
47 thirty-first day of March, two thousand seven, unless further  
48 extended by the Legislature.

49 (5) The commissioner on or before the thirty-first day of  
50 December, two thousand five, and annually thereafter, shall  
51 report to the Legislature's joint committee on government and  
52 finance and the committees on insurance of the respective  
53 houses of the Legislature regarding the fiscal impact of this  
54 subsection on the expenses of insurers affected thereby, and  
55 which insurers expenses of providing mental health benefits  
56 have exceeded the percentage limits established by this subsec-  
57 tion.

58 (b) With respect to mental health benefits furnished to an  
59 enrollee of a health benefit plan offered in connection with a  
60 group health plan, for a plan year beginning on or after the first  
61 day of January, one thousand nine hundred ninety-eight, the  
62 following requirements shall apply to aggregate lifetime limits  
63 and annual limits.

64 (1) Aggregate lifetime limits:

65 (A) If the health benefit plan does not include an aggregate  
66 lifetime limit on substantially all medical and surgical benefits,  
67 as defined under the terms of the plan but not including mental

68 health benefits, the plan may not impose any aggregate lifetime  
69 limit on mental health benefits;

70 (B) If the health benefit plan limits the total amount that  
71 may be paid with respect to an individual or other coverage unit  
72 for substantially all medical and surgical benefits (in this  
73 paragraph, “applicable lifetime limit”), the plan shall either  
74 apply the applicable lifetime limit to medical and surgical  
75 benefits to which it would otherwise apply and to mental health  
76 benefits, as defined under the terms of the plan, and not  
77 distinguish in the application of the limit between medical and  
78 surgical benefits and mental health benefits, or not include any  
79 aggregate lifetime limit on mental health benefits that is less  
80 than the applicable lifetime limit;

81 (C) If a health benefit plan not previously described in this  
82 subdivision includes no or different aggregate lifetime limits on  
83 different categories of medical and surgical benefits, the  
84 commissioner shall propose rules for legislative approval in  
85 accordance with the provisions of article three, chapter  
86 twenty-nine-a of this code under which paragraph (B) of this  
87 subdivision shall apply, substituting an average aggregate  
88 lifetime limit for the applicable lifetime limit.

89 (2) Annual limits:

90 (A) If a health benefit plan does not include an annual limit  
91 on substantially all medical and surgical benefits, as defined  
92 under the terms of the plan but not including mental health  
93 benefits, the plan may not impose any annual limit on mental  
94 health benefits, as defined under the terms of the plan;

95 (B) If the health benefit plan limits the total amount that  
96 may be paid in a twelve-month period with respect to an  
97 individual or other coverage unit for substantially all medical  
98 and surgical benefits (in this paragraph, “applicable annual



99 limit”), the plan shall either apply the applicable annual limit to  
100 medical and surgical benefits to which it would otherwise apply  
101 and to mental health benefits, as defined under the terms of the  
102 plan, and not distinguish in the application of the limit between  
103 medical and surgical benefits and mental health benefits, or not  
104 include any annual limit on mental health benefits that is less  
105 than the applicable annual limit;

106 (C) If a health benefit plan not previously described in this  
107 subdivision includes no or different annual limits on different  
108 categories of medical and surgical benefits, the commissioner  
109 shall propose rules for legislative approval in accordance with  
110 the provisions of article three, chapter twenty-nine-a of this  
111 code under which paragraph (B) of this subdivision shall apply,  
112 substituting an average annual limit for the applicable annual  
113 limit.

114 (3) If a group health plan or a health insurer offers a  
115 participant or beneficiary two or more benefit package options,  
116 this subsection shall apply separately with respect to coverage  
117 under each option.

#### **ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

##### **§33-25A-2. Definitions.**

1 (1) “Basic health care services” means physician, hospital,  
2 out-of-area, podiatric, chiropractic, laboratory, X ray, emer-  
3 gency, treatment for serious mental illness as provided in  
4 section three-a, article sixteen of this chapter, and cost-effective  
5 preventive services including immunizations, well-child care,  
6 periodic health evaluations for adults, voluntary family plan-  
7 ning services, infertility services, and children’s eye and ear  
8 examinations conducted to determine the need for vision and  
9 hearing corrections, which services need not necessarily include  
10 all procedures or services offered by a service provider.

11       (2) “Capitation” means the fixed amount paid by a health  
12 maintenance organization to a health care provider under  
13 contract with the health maintenance organization in exchange  
14 for the rendering of health care services.

15       (3) “Commissioner” means the commissioner of insurance.

16       (4) “Consumer” means any person who is not a provider of  
17 care or an employee, officer, director or stockholder of any  
18 provider of care.

19       (5) “Copayment” means a specific dollar amount, or  
20 percentage, except as otherwise provided for by statute, that the  
21 subscriber must pay upon receipt of covered health care  
22 services and which is set at an amount or percentage consistent  
23 with allowing subscriber access to health care services.

24       (6) “Employee” means a person in some official employ-  
25 ment or position working for a salary or wage continuously for  
26 no less than one calendar quarter and who is in such a relation  
27 to another person that the latter may control the work of the  
28 former and direct the manner in which the work shall be done.

29       (7) “Employer” means any individual, corporation, partner-  
30 ship, other private association, or state or local government that  
31 employs the equivalent of at least two full-time employees  
32 during any four consecutive calendar quarters.

33       (8) “Enrollee”, “subscriber” or “member” means an  
34 individual who has been voluntarily enrolled in a health  
35 maintenance organization, including individuals on whose  
36 behalf a contractual arrangement has been entered into with a  
37 health maintenance organization to receive health care services.

38       (9) “Evidence of coverage” means any certificate, agree-  
39 ment or contract issued to an enrollee setting out the coverage  
40 and other rights to which the enrollee is entitled.

41 (10) "Health care services" means any services or goods  
42 included in the furnishing to any individual of medical, mental  
43 or dental care, or hospitalization or incident to the furnishing of  
44 the care or hospitalization, osteopathic services, chiropractic  
45 services, podiatric services, home health, health education or  
46 rehabilitation, as well as the furnishing to any person of any and  
47 all other services or goods for the purpose of preventing,  
48 alleviating, curing or healing human illness or injury.

49 (11) "Health maintenance organization" or "HMO" means  
50 a public or private organization which provides, or otherwise  
51 makes available to enrollees, health care services, including at  
52 a minimum basic health care services and which:

53 (a) Receives premiums for the provision of basic health  
54 care services to enrollees on a prepaid per capita or prepaid  
55 aggregate fixed sum basis, excluding copayments;

56 (b) Provides physicians' services primarily: (i) Directly  
57 through physicians who are either employees or partners of the  
58 organization; or (ii) through arrangements with individual  
59 physicians or one or more groups of physicians organized on a  
60 group practice or individual practice arrangement; or (iii)  
61 through some combination of paragraphs (i) and (ii) of this  
62 subdivision;

63 (c) Assures the availability, accessibility and quality,  
64 including effective utilization, of the health care services which  
65 it provides or makes available through clearly identifiable focal  
66 points of legal and administrative responsibility; and

67 (d) Offers services through an organized delivery system in  
68 which a primary care physician or primary care provider is  
69 designated for each subscriber upon enrollment. The primary  
70 care physician or primary care provider is responsible for  
71 coordinating the health care of the subscriber and is responsible  
72 for referring the subscriber to other providers when necessary:

73 *Provided*, That when dental care is provided by the health  
74 maintenance organization the dentist selected by the subscriber  
75 from the list provided by the health maintenance organization  
76 shall coordinate the covered dental care of the subscriber, as  
77 approved by the primary care physician or the health mainte-  
78 nance organization.

79 (12) "Impaired" means a financial situation in which, based  
80 upon the financial information which would be required by this  
81 chapter for the preparation of the health maintenance organiza-  
82 tion's annual statement, the assets of the health maintenance  
83 organization are less than the sum of all of its liabilities and  
84 required reserves including any minimum capital and surplus  
85 required of the health maintenance organization by this chapter  
86 so as to maintain its authority to transact the kinds of business  
87 or insurance it is authorized to transact.

88 (13) "Individual practice arrangement" means any agree-  
89 ment or arrangement to provide medical services on behalf of  
90 a health maintenance organization among or between physi-  
91 cians or between a health maintenance organization and  
92 individual physicians or groups of physicians, where the  
93 physicians are not employees or partners of the health mainte-  
94 nance organization and are not members of or affiliated with a  
95 medical group.

96 (14) "Insolvent" or "insolvency" means a financial situation  
97 in which, based upon the financial information that would be  
98 required by this chapter for the preparation of the health  
99 maintenance organization's annual statement, the assets of the  
100 health maintenance organization are less than the sum of all of  
101 its liabilities and required reserves.

102 (15) "Medical group" or "group practice" means a profes-  
103 sional corporation, partnership, association or other organiza-  
104 tion composed solely of health professionals licensed to

105 practice medicine or osteopathy and of other licensed health  
106 professionals, including podiatrists, dentists and optometrists,  
107 as are necessary for the provision of health services for which  
108 the group is responsible: (a) A majority of the members of  
109 which are licensed to practice medicine or osteopathy; (b) who  
110 as their principal professional activity engage in the coordinated  
111 practice of their profession; (c) who pool their income for  
112 practice as members of the group and distribute it among  
113 themselves according to a prearranged salary, drawing account  
114 or other plan; and (d) who share medical and other records and  
115 substantial portions of major equipment and professional,  
116 technical and administrative staff.

117 (16) "Premium" means a prepaid per capita or prepaid  
118 aggregate fixed sum unrelated to the actual or potential utiliza-  
119 tion of services of any particular person which is charged by the  
120 health maintenance organization for health services provided to  
121 an enrollee.

122 (17) "Primary care physician" means the general practitio-  
123 ner, family practitioner, obstetrician/gynecologist, pediatrician  
124 or specialist in general internal medicine who is chosen or  
125 designated for each subscriber who will be responsible for  
126 coordinating the health care of the subscriber, including  
127 necessary referrals to other providers.

128 (18) "Primary care provider" means a person who may be  
129 chosen or designated in lieu of a primary care physician for  
130 each subscriber, who will be responsible for coordinating the  
131 health care of the subscriber, including necessary referrals to  
132 other providers, and includes:

133 (a) An advanced nurse practitioner practicing in compliance  
134 with article seven, chapter thirty of this code and other applica-  
135 ble state and federal laws, who develops a mutually agreed  
136 upon association in writing with a primary care physician on the

137 panel of and credentialed by the health maintenance organiza-  
138 tion; and

139 (b) A certified nurse-midwife, but only if chosen or  
140 designated in lieu of a subscriber's primary care physician or  
141 primary care provider during the subscriber's pregnancy and for  
142 a period extending through the end of the month in which the  
143 sixty-day period following termination of pregnancy ends.

144 (c) Nothing in this subsection may be construed to expand  
145 the scope of practice for advanced nurse practitioners as  
146 governed by article seven, chapter thirty of this code or any  
147 legislative rule, or for certified nurse-midwives, as defined in  
148 article fifteen, chapter thirty of this code.

149 (19) "Provider" means any physician, hospital or other  
150 person or organization which is licensed or otherwise autho-  
151 rized in this state to furnish health care services.

152 (20) "Uncovered expenses" means the cost of health care  
153 services that are covered by a health maintenance organization,  
154 for which a subscriber would also be liable in the event of the  
155 insolvency of the organization.

156 (21) "Service area" means the county or counties approved  
157 by the commissioner within which the health maintenance  
158 organization may provide or arrange for health care services to  
159 be available to its subscribers.

160 (22) "Statutory surplus" means the minimum amount of  
161 unencumbered surplus which a corporation must maintain  
162 pursuant to the requirements of this article.

163 (23) "Surplus" means the amount by which a corporation's  
164 assets exceeds its liabilities and required reserves based upon  
165 the financial information which would be required by this  
166 chapter for the preparation of the corporation's annual state-

167 ment except that assets pledged to secure debts not reflected on  
168 the books of the health maintenance organization shall not be  
169 included in surplus.

170 (24) “Surplus notes” means debt which has been subordi-  
171 nated to all claims of subscribers and general creditors of the  
172 organization.

173 (25) “Qualified independent actuary” means an actuary who  
174 is a member of the American academy of actuaries or the  
175 society of actuaries and has experience in establishing rates for  
176 health maintenance organizations and who has no financial or  
177 employment interest in the health maintenance organization.

178 (26) “Quality assurance” means an ongoing program  
179 designed to objectively and systematically monitor and evaluate  
180 the quality and appropriateness of the enrollee’s care, pursue  
181 opportunities to improve the enrollee’s care and to resolve  
182 identified problems at the prevailing professional standard of  
183 care.

184 (27) “Utilization management” means a system for the  
185 evaluation of the necessity, appropriateness and efficiency of  
186 the use of health care services, procedure and facilities.

---

## CHAPTER 169

**(Com. Sub. for H. B. 2730 — By Delegates R. M. Thompson, Staton,  
Mezzatesta, Leach, Perdue, Compton and Douglas)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-c; to amend article fifteen, chapter thirty-three of said code by adding thereto a new section, designated section four-g; to amend article sixteen of said chapter by adding thereto a new section, designated section three-p; to amend article twenty-four of said chapter by adding thereto a new section, designated section seven-g; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-f, all relating to public employees insurance plans, individual health benefit plans, group accident and sickness insurance health benefit plans, hospital, medical and dental corporation health benefit plans and health maintenance organizations; requiring all policy plans with benefits covering mastectomy to include certain other costs; and providing certain exceptions.

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

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

**Chapter**

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.**
- 33. Insurance.**



**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-7c. Required coverage for reconstruction surgery following mastectomies.**

1       (a) The plan shall provide, in a case of a participant or  
2 beneficiary who is receiving benefits in connection with a  
3 mastectomy and who elects breast reconstruction in connection  
4 with such mastectomy, coverage for:

5       (1) All stages of reconstruction of the breast on which the  
6 mastectomy has been performed;

7       (2) Surgery and reconstruction of the other breast to  
8 produce a symmetrical appearance; and

9       (3) Prostheses and physical complications of mastectomy,  
10 including lymphedemas in a manner determined in consultation  
11 with the attending physician and the patient. Coverage shall be  
12 provided for a minimum stay in the hospital of not less than  
13 forty-eight hours for a patient following a radical or modified  
14 mastectomy and not less than twenty-four hours of inpatient  
15 care following a total mastectomy or partial mastectomy with  
16 lymph node dissection for the treatment of breast cancer.  
17 Nothing in this section shall be construed as requiring inpatient  
18 coverage where inpatient coverage is not medically necessary  
19 or where the attending physician in consultation with the patient  
20 determines that a shorter period of hospital stay is appropriate.  
21 Such coverage may be subject to annual deductibles and  
22 coinsurance provisions as may be deemed appropriate and as  
23 are consistent with those established for other benefits under the

24 plan. Written notice of the availability of such coverage shall be  
25 delivered to the participant upon enrollment and annually  
26 thereafter in the summary plan description or similar document.

27 (b) The plan may not:

28 (1) Deny to a patient eligibility, or continued eligibility, to  
29 enroll or to renew coverage under the terms of the plan, solely  
30 for the purpose of avoiding the requirements of this section; and

31 (2) Penalize or otherwise reduce or limit the reimbursement  
32 of an attending provider, or provide incentives (monetary or  
33 otherwise) to an attending provider, to induce such provider to  
34 provide care to an individual participant or beneficiary in a  
35 manner inconsistent with this section.

36 (c) Nothing in this section shall be construed to prevent a  
37 health benefit plan policy or a health insurer offering health  
38 insurance coverage from negotiating the level and type of  
39 reimbursement with a provider for care provided in accordance  
40 with this section.

41 (d) The provisions of this section shall be included under  
42 any policy, contract or plan delivered after the first day of July,  
43 two thousand two.

### **CHAPTER 33. INSURANCE.**

#### **Article**

**15. Accident and Sickness Insurance.**

**16. Group Accident and Sickness Insurance.**

**24. Hospital Service Corporations, Medical Service Corporations, Dental  
Service Corporations and Health Service Corporations.**

**25A. Health Maintenance Organization Act.**

#### **ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

**§33-15-4g. Required coverage for reconstruction surgery following mastectomies.**

1 (a) Any policy of insurance described in this article which  
2 provides medical and surgical benefits with respect to a  
3 mastectomy shall provide, in a case of a policyholder who is  
4 receiving benefits in connection with a mastectomy and who  
5 elects breast reconstruction in connection with such mastec-  
6 tomy, coverage for:

7 (1) All stages of reconstruction of the breast on which the  
8 mastectomy has been performed;

9 (2) Surgery and reconstruction of the other breast to  
10 produce a symmetrical appearance; and

11 (3) Protheses and physical complications of mastectomy,  
12 including lymphedemas in a manner determined in consultation  
13 with the attending physician and the patient. Coverage shall be  
14 provided for a minimum stay in the hospital of not less than  
15 forty-eight hours for a patient following a radical or modified  
16 mastectomy and not less than twenty-four hours of inpatient  
17 care following a total mastectomy or partial mastectomy with  
18 lymph node dissection for the treatment of breast cancer.  
19 Nothing in this section shall be construed as requiring inpatient  
20 coverage where inpatient coverage is not medically necessary  
21 or where the attending physician in consultation with the patient  
22 determines that a shorter period of hospital stay is appropriate.  
23 Such coverage may be subject to annual deductibles and  
24 coinsurance provisions as may be deemed appropriate and as  
25 are consistent with those established for other benefits under the  
26 health benefit plan policy or coverage. Written notice of the  
27 availability of such coverage shall be delivered to the partici-  
28 pant upon enrollment and annually thereafter.

29 (b) A health benefit plan policy, and a health insurer  
30 providing health insurance coverage in connection with a health

31 benefit plan policy, shall provide notice to each participant and  
32 beneficiary under such plan regarding the coverage required by  
33 this section. Such notice shall be in writing and prominently  
34 positioned in any literature or correspondence made available  
35 or distributed by the issuer of the health benefit plan policy.

36 (c) A health benefit plan policy and a health insurer  
37 offering health insurance coverage in connection with a health  
38 benefit plan policy, may not:

39 (1) Deny to a patient eligibility, or continued eligibility, to  
40 enroll or to renew coverage under the terms of the plan, solely  
41 for the purpose of avoiding the requirements of this section; and

42 (2) Penalize or otherwise reduce or limit the reimbursement  
43 of an attending provider, or provide incentives (monetary or  
44 otherwise) to an attending provider, to induce such provider to  
45 provide care to an individual participant or beneficiary in a  
46 manner inconsistent with this section.

47 (d) Nothing in this section shall be construed to prevent a  
48 health benefit plan policy or a health insurer offering health  
49 insurance coverage from negotiating the level and type of  
50 reimbursement with a provider for care provided in accordance  
51 with this section.

52 (e) The provisions of this section shall be included under  
53 any policy, contract or plan delivered after the first day of July,  
54 two thousand two.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-3p. Required coverage for reconstruction surgery following mastectomies.**

1 (a) Any policy of insurance described in this article which  
2 provides medical and surgical benefits with respect to a

3 mastectomy shall provide, in a case of a participant or benefi-  
4 ciary who is receiving benefits in connection with a mastec-  
5 tomy and who elects breast reconstruction in connection with  
6 such mastectomy, coverage for:

7 (1) All stages of reconstruction of the breast on which the  
8 mastectomy has been performed;

9 (2) Surgery and reconstruction of the other breast to  
10 produce a symmetrical appearance; and

11 (3) Prosthesis and physical complications of mastectomy,  
12 including lymphedemas in a manner determined in consultation  
13 with the attending physician and the patient. Coverage shall be  
14 provided for a minimum stay in the hospital of not less than  
15 forty-eight hours for a patient following a radical or modified  
16 mastectomy and not less than twenty-four hours of inpatient  
17 care following a total mastectomy or partial mastectomy with  
18 lymph node dissection for the treatment of breast cancer.  
19 Nothing in this section shall be construed as requiring inpatient  
20 coverage where inpatient coverage is not medically necessary  
21 or where the attending physician in consultation with the patient  
22 determines that a shorter period of hospital stay is appropriate.  
23 Such coverage may be subject to annual deductibles and  
24 coinsurance provisions as may be deemed appropriate and as  
25 are consistent with those established for other benefits under the  
26 health benefit plan policy or coverage. Written notice of the  
27 availability of such coverage shall be delivered to the partici-  
28 pant upon enrollment and annually thereafter.

29 (b) A health benefit plan policy, and a health insurer  
30 providing health insurance coverage in connection with a health  
31 benefit plan policy, shall provide notice to each participant and  
32 beneficiary under such plan regarding the coverage required by  
33 this section. Such notice shall be in writing and prominently

34 positioned in any literature or correspondence made available  
35 or distributed by the issuer of the health benefit plan policy.

36 (c) A health benefit plan policy and a health insurer  
37 offering health insurance coverage in connection with a health  
38 benefit plan policy, may not:

39 (1) Deny to a patient eligibility, or continued eligibility, to  
40 enroll or to renew coverage under the terms of the plan, solely  
41 for the purpose of avoiding the requirements of this section; and

42 (2) Penalize or otherwise reduce or limit the reimbursement  
43 of an attending provider, or provide incentives (monetary or  
44 otherwise) to an attending provider, to induce such provider to  
45 provide care to an individual participant or beneficiary in a  
46 manner inconsistent with this section.

47 (d) Nothing in this section shall be construed to prevent a  
48 health benefit plan policy or a health insurer offering health  
49 insurance coverage from negotiating the level and type of  
50 reimbursement with a provider for care provided in accordance  
51 with this section.

52 (e) The provisions of this section shall be included under  
53 any policy, contract or plan delivered after the first day of July,  
54 two thousand two.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SER-  
VICE CORPORATIONS, DENTAL SERVICE CORPORA-  
TIONS AND HEALTH SERVICE CORPORATIONS.**

**§33-24-7g. Required coverage for reconstruction surgery follow-  
ing mastectomies.**

1 (a) Any policy of insurance described in this article which  
2 provides medical and surgical benefits with respect to a  
3 mastectomy shall provide, in a case of a participant or benefi-  
4 ciary who is receiving benefits in connection with a mastec-

5 tomy and who elects breast reconstruction in connection with  
6 such mastectomy, coverage for:

7 (1) All stages of reconstruction of the breast on which the  
8 mastectomy has been performed;

9 (2) Surgery and reconstruction of the other breast to  
10 produce a symmetrical appearance; and

11 (3) Prostheses and physical complications of mastectomy,  
12 including lymphedemas in a manner determined in consultation  
13 with the attending physician and the patient. Coverage shall be  
14 provided for a minimum stay in the hospital of not less than  
15 forty-eight hours for a patient following a radical or modified  
16 mastectomy and not less than twenty-four hours of inpatient  
17 care following a total mastectomy or partial mastectomy with  
18 lymph node dissection for the treatment of breast cancer.  
19 Nothing in this section shall be construed as requiring inpatient  
20 coverage where inpatient coverage is not medically necessary  
21 or where the attending physician in consultation with the patient  
22 determines that a shorter period of hospital stay is appropriate.  
23 Such coverage may be subject to annual deductibles and  
24 coinsurance provisions as may be deemed appropriate and as  
25 are consistent with those established for other benefits under the  
26 health benefit plan policy or coverage. Written notice of the  
27 availability of such coverage shall be delivered to the partici-  
28 pant upon enrollment and annually thereafter.

29 (b) A health benefit plan policy, and a health insurer  
30 providing health insurance coverage in connection with a health  
31 benefit plan policy, shall provide notice to each participant and  
32 beneficiary under such plan regarding the coverage required by  
33 this section. Such notice shall be in writing and prominently  
34 positioned in any literature or correspondence made available  
35 or distributed by the issuer of the health benefit plan policy.

36 (c) A health benefit plan policy and a health insurer  
37 offering health insurance coverage in connection with a health  
38 benefit plan policy, may not:

39 (1) Deny to a patient eligibility, or continued eligibility, to  
40 enroll or to renew coverage under the terms of the plan, solely  
41 for the purpose of avoiding the requirements of this section; and

42 (2) Penalize or otherwise reduce or limit the reimbursement  
43 of an attending provider, or provide incentives (monetary or  
44 otherwise) to an attending provider, to induce such provider to  
45 provide care to an individual participant or beneficiary in a  
46 manner inconsistent with this section.

47 (d) Nothing in this section shall be construed to prevent a  
48 health benefit plan policy or a health insurer offering health  
49 insurance coverage from negotiating the level and type of  
50 reimbursement with a provider for care provided in accordance  
51 with this section.

52 (e) The provisions of this section shall be included under  
53 any policy, contract or plan delivered after the first day of July,  
54 two thousand two.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-8f. Required coverage for reconstruction surgery following mastectomies.**

1 (a) Any policy of insurance described in this article which  
2 provides medical and surgical benefits with respect to a  
3 mastectomy shall provide, in a case of a participant or benefi-  
4 ciary who is receiving benefits in connection with a mastec-  
5 tomy and who elects breast reconstruction in connection with  
6 such mastectomy, coverage for:



7 (1) All stages of reconstruction of the breast on which the  
8 mastectomy has been performed;

9 (2) Surgery and reconstruction of the other breast to  
10 produce a symmetrical appearance; and

11 (3) Prostheses and physical complications of mastectomy,  
12 including lymphedemas in a manner determined in consultation  
13 with the attending physician and the patient. Coverage shall be  
14 provided for a minimum stay in the hospital of not less than  
15 forty-eight hours for a patient following a radical or modified  
16 mastectomy and not less than twenty-four hours of inpatient  
17 care following a total mastectomy or partial mastectomy with  
18 lymph node dissection for the treatment of breast cancer.  
19 Nothing in this section shall be construed as requiring inpatient  
20 coverage where inpatient coverage is not medically necessary  
21 or where the attending physician in consultation with the patient  
22 determines that a shorter period of hospital stay is appropriate.  
23 Such coverage may be subject to annual deductibles and  
24 coinsurance provisions as may be deemed appropriate and as  
25 are consistent with those established for other benefits under the  
26 health benefit plan policy or coverage. Written notice of the  
27 availability of such coverage shall be delivered to the partici-  
28 pant upon enrollment and annually thereafter.

29 (b) A health benefit plan policy, and a health insurer  
30 providing health insurance coverage in connection with a health  
31 benefit plan policy, shall provide notice to each participant and  
32 beneficiary under such plan regarding the coverage required by  
33 this section. Such notice shall be in writing and prominently  
34 positioned in any literature or correspondence made available  
35 or distributed by the issuer of the health benefit plan policy.

36 (c) A health benefit plan policy and a health insurer  
37 offering health insurance coverage in connection with a health  
38 benefit plan policy, may not:

39 (1) Deny to a patient eligibility, or continued eligibility, to  
40 enroll or to renew coverage under the terms of the plan, solely  
41 for the purpose of avoiding the requirements of this section; and

42 (2) Penalize or otherwise reduce or limit the reimbursement  
43 of an attending provider, or provide incentives (monetary or  
44 otherwise) to an attending provider, to induce such provider to  
45 provide care to an individual participant or beneficiary in a  
46 manner inconsistent with this section.

47 (d) Nothing in this section shall be construed to prevent a  
48 health benefit plan policy or a health insurer offering health  
49 insurance coverage from negotiating the level and type of  
50 reimbursement with a provider for care provided in accordance  
51 with this section.

52 (e) The provisions of this section shall be included under  
53 any policy, contract or plan delivered after the first day of July,  
54 two thousand two.

---

## CHAPTER 170

(H. B. 4581 — By Delegates Michael, Doyle,  
Frederick, Warner and Stalnaker)

---

[Passed March 7, 2002; in effect from passage. Approved by the Governor.]

---

AN ACT to repeal section five-c, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and five, article twelve of said chapter; and to amend and reenact sections six and ten, article twelve-b of said chapter, all relating to

repealing the section relating to coverage of obstetricians providing Medicaid coverage, redefining certain terms, including emergency services agencies as an entity eligible for board of risk and insurance management coverage, removing the payment of money into the guarantee fund by the medical liability program, allowing general liability coverage to be provided through the medical liability program, allowing audits to be done according to generally accepted accounting principles and allowing the medical liability program to capitalize its program through a loan from the liability insurance trust fund.

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

That section five-c, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections two and five, article twelve of said chapter be amended and reenacted; and that sections six and ten, article twelve-b of said chapter, be amended and reenacted, all to read as follows:

#### **Article**

#### **12. State Insurance.**

#### **12B. West Virginia Health Care Provider Professional Liability Insurance Availability Act.**

#### **ARTICLE 12. STATE INSURANCE.**

§29-12-2. Definitions.

§29-12-5. Powers and duties of board.

#### **§29-12-2. Definitions.**

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

3 (a) "Board" means the state board of risk and insurance  
4 management.

5 (b) "Company" means and includes corporations, associa-  
6 tions, partnerships and individuals.

7 (c) "Insurance" means all forms of insurance and bonding  
8 services available for protection and indemnification of the  
9 state and its officials, employees, properties, activities and  
10 responsibilities against loss or damage or liability, including  
11 fire, marine, casualty, and surety insurance.

12 (d) "Insurance company" means all insurers or insurance  
13 carriers, including, but not limited to, stock insurance compa-  
14 nies, mutual insurance companies, reciprocal and interinsurance  
15 exchanges, and all other types of insurers and insurance  
16 carriers, including life, accident, health, fidelity, indemnity,  
17 casualty, hospitalization and other types and kinds of insurance  
18 companies, organizations and associations, but excepting and  
19 excluding workers' compensation coverage.

20 (e) "State property activities" and "state responsibilities"  
21 means and includes all operations, boards, commission, works,  
22 projects and functions of the state, its properties, officials,  
23 agents and employees which, within the scope and in the course  
24 of governmental employment, may be subject to liability, loss,  
25 damage, risks and hazards recognized to be and normally  
26 included within insurance and bond coverages.

27 (f) "State property" means all property belonging to the  
28 state of West Virginia and any boards or commissions thereof  
29 wherever situated and which is the subject of risk or reasonably  
30 considered to be subject to loss or damage or liability by any  
31 single occurrence of any event insured against.

#### **§29-12-5. Powers and duties of board.**

1 (a) The board shall have general supervision and control  
2 over the insurance of all state property, activities and responsi-  
3 bilities, including the acquisition and cancellation thereof;

4 determination of amount and kind of coverage, including, but  
5 not limited to, deductible forms of insurance coverage, inspec-  
6 tions or examinations relating thereto, reinsurance, and any and  
7 all matters, factors and considerations entering into negotiations  
8 for advantageous rates on and coverage of all such state  
9 property, activities and responsibilities. The board shall have  
10 the authority to employ an executive director for an annual  
11 salary of seventy thousand dollars and such other employees,  
12 including legal counsel, as may be necessary to carry out its  
13 duties. The legal counsel may represent the board before any  
14 judicial or administrative tribunal and perform such other duties  
15 as may be requested by the board. Any policy of insurance  
16 purchased or contracted for by the board shall provide that the  
17 insurer shall be barred and estopped from relying upon the  
18 constitutional immunity of the state of West Virginia against  
19 claims or suits: *Provided*, That nothing herein shall bar the  
20 insurer of political subdivisions from relying upon any statutory  
21 immunity granted such political subdivisions against claims or  
22 suits. The board may enter into any contracts necessary to the  
23 execution of the powers granted to it by this article. It shall  
24 endeavor to secure the maximum of protection against loss,  
25 damage or liability to state property and on account of state  
26 activities and responsibilities by proper and adequate insurance  
27 coverage through the introduction and employment of sound  
28 and accepted methods of protection and principles of insurance.  
29 It is empowered and directed to make a complete survey of all  
30 presently owned and subsequently acquired state property  
31 subject to insurance coverage by any form of insurance, which  
32 survey shall include and reflect inspections, appraisals, expo-  
33 sures, fire hazards, construction, and any other objectives or  
34 factors affecting or which might affect the insurance protection  
35 and coverage required. It shall keep itself currently informed on  
36 new and continuing state activities and responsibilities within  
37 the insurance coverage herein contemplated. The board shall  
38 work closely in cooperation with the state fire marshal's office

39 in applying the rules of that office insofar as the appropriations  
40 and other factors peculiar to state property will permit. The  
41 board is given power and authority to make rules governing its  
42 functions and operations and the procurement of state insur-  
43 ance.

44 The board is hereby authorized and empowered to negotiate  
45 and effect settlement of any and all insurance claims arising on  
46 or incident to losses of and damages to state properties,  
47 activities and responsibilities hereunder and shall have authority  
48 to execute and deliver proper releases of all such claims when  
49 settled. The board may adopt rules and procedures for handling,  
50 negotiating and settlement of all such claims. Any discussion  
51 or consideration of the financial or personal information of an  
52 insured may be held by the board in executive session closed to  
53 the public, notwithstanding the provisions of article nine-a,  
54 chapter six of this code.

55 (b) If requested by a political subdivision, a charitable or  
56 public service organization, or an emergency medical services  
57 agency, the board is authorized to provide property and liability  
58 insurance to insure their property, activities and responsibilities.  
59 The board is authorized to enter into any necessary contract of  
60 insurance to further the intent of this subsection.

61 The property insurance provided by the board, pursuant to  
62 this subsection, may also include insurance on property leased  
63 to or loaned to the political subdivision, a charitable or public  
64 service organization or an emergency medical services agency  
65 which is required to be insured under a written agreement.

66 The cost of this insurance, as determined by the board, shall  
67 be paid by the political subdivision, the charitable or public  
68 service organization or the emergency medical services agency  
69 and may include administrative expenses. For purposes of this  
70 section: *Provided*, That if an emergency medical services

71 agency is a for-profit entity its claims history may not adversely  
72 affect other participant's rates in the same class. All funds  
73 received by the board (including, but not limited to, state  
74 agency premiums, mine subsidence premiums, and political  
75 subdivision premiums) shall be deposited with the West  
76 Virginia investment management board with the interest  
77 income and returns on investment a proper credit to such  
78 property insurance trust fund or liability insurance trust fund, as  
79 applicable.

80 "Political subdivision" as used in this subsection shall have  
81 the same meaning as in section three, article twelve-a of this  
82 chapter.

83 Charitable or public service organization as used in this  
84 subsection means a bona fide, not-for-profit, tax-exempt,  
85 benevolent, educational, philanthropic, humane, patriotic, civic,  
86 religious, eleemosynary, incorporated or unincorporated  
87 association or organization or a rescue unit or other similar  
88 volunteer community service organization or association, but  
89 does not include any nonprofit association or organization,  
90 whether incorporated or not, which is organized primarily for  
91 the purposes of influencing legislation or supporting or promot-  
92 ing the campaign of any candidate for public office.

93 "Emergency medical service agency" as used in this  
94 subsection shall have the same meaning as in section three,  
95 article four-c, chapter sixteen of this code.

96 (c) (1) The board shall have general supervision and control  
97 over the optional medical liability insurance programs provid-  
98 ing coverage to health care providers as authorized by the  
99 provisions of article twelve-b of this chapter. The board is  
100 hereby granted and may exercise all powers necessary or  
101 appropriate to carry out and effectuate the purposes of this  
102 article.

103 (2) The board shall:

104 (A) Administer the preferred medical liability program and  
105 the high risk medical liability program and exercise and  
106 perform other powers, duties and functions specified in this  
107 article;

108 (B) Obtain and implement, at least annually, from an  
109 independent outside source, such as a medical liability actuary  
110 or a rating organization experienced with the medical liability  
111 line of insurance, written rating plans for the preferred medical  
112 liability program and high risk medical liability program on  
113 which premiums shall be based;

114 (C) Prepare and annually review written underwriting  
115 criteria for the preferred medical liability program and the high  
116 risk medical liability program. The board may utilize review  
117 panels, including but not limited to, the same specialty review  
118 panels to assist in establishing criteria;

119 (D) Prepare and publish, before each regular session of the  
120 Legislature, separate summaries for the preferred medical  
121 liability program and high risk medical liability program  
122 activity during the preceding fiscal year, each summary to be  
123 included in the Board of Risk and Insurance Management  
124 audited financial statements as "other financial information",  
125 and which shall include a balance sheet, income statement and  
126 cash flow statement, an actuarial opinion addressing adequacy  
127 of reserves, the highest and lowest premiums assessed, the  
128 number of claims filed with the program by provider type, the  
129 number of judgments and amounts paid from the program, the  
130 number of settlements and amounts paid from the program and  
131 the number of dismissals without payment;

132 (E) Determine and annually review the claims history debit  
133 or surcharge for the high risk medical liability program;



134 (F) Determine and annually review the criteria for transfer  
135 from the preferred medical liability program to the high risk  
136 medical liability program;

137 (G) Determine and annually review the role of independent  
138 agents, the amount of commission, if any, to be paid therefor,  
139 and agent appointment criteria;

140 (H) Study and annually evaluate the operation of the  
141 preferred medical liability program and the high risk medical  
142 liability program, and make recommendations to the Legisla-  
143 ture, as may be appropriate, to ensure their viability, including  
144 but not limited to, recommendations for civil justice reform  
145 with an associated cost-benefit analysis, recommendations on  
146 the feasibility and desirability of a plan which would require all  
147 health care providers in the state to participate with an associ-  
148 ated cost-benefit analysis, recommendations on additional  
149 funding of other state run insurance plans with an associated  
150 cost-benefit analysis and recommendations on the desirability  
151 of ceasing to offer a state plan with an associated analysis of a  
152 potential transfer to the private sector with a cost-benefit  
153 analysis, including impact on premiums;

154 (I) Establish a five-year financial plan to ensure an adequate  
155 premium base to cover the long tail nature of the claims-made  
156 coverage provided by the preferred medical liability program  
157 and the high risk medical liability program. The plan shall be  
158 designed to meet the program's estimated total financial  
159 requirements, taking into account all revenues projected to be  
160 made available to the program, and apportioning necessary  
161 costs equitably among participating classes of health care  
162 providers. For these purposes, the board shall:

163 (i) Retain the services of an impartial, professional actuary,  
164 with demonstrated experience in analysis of large group  
165 malpractice plans, to estimate the total financial requirements

166 of the program for each fiscal year and to review and render  
167 written professional opinions as to financial plans proposed by  
168 the board. The actuary shall also assist in the development of  
169 alternative financing options and perform any other services  
170 requested by the board or the executive director. All reasonable  
171 fees and expenses for actuarial services shall be paid by the  
172 board. Any financial plan or modifications to a financial plan  
173 approved or proposed by the board pursuant to this section shall  
174 be submitted to and reviewed by the actuary and may not be  
175 finally approved and submitted to the governor and to the  
176 Legislature without the actuary's written professional opinion  
177 that the plan may be reasonably expected to generate sufficient  
178 revenues to meet all estimated program and administrative  
179 costs, including incurred but not reported claims, for the fiscal  
180 year for which the plan is proposed. The actuary's opinion for  
181 any fiscal year shall include a requirement for establishment of  
182 a reserve fund;

183 (ii) Submit its final, approved five-year financial plan, after  
184 obtaining the necessary actuary's opinion, to the governor and  
185 to the Legislature no later than the first day of January preced-  
186 ing the fiscal year. The financial plan for a fiscal year becomes  
187 effective and shall be implemented by the executive director on  
188 the first day of July of the fiscal year. In addition to each final,  
189 approved financial plan required under this section, the board  
190 shall also simultaneously submit an audited financial statement  
191 based on generally accepted accounting practices (GAAP) and  
192 which shall include allowances for incurred but not reported  
193 claims: *Provided*, That the financial statement and the accrual-  
194 based financial plan restatement shall not affect the approved  
195 financial plan. The provisions of chapter twenty-nine-a of this  
196 code shall not apply to the preparation, approval and implemen-  
197 tation of the financial plans required by this section;

198 (iii) Submit to the governor and the Legislature a prospec-  
199 tive five-year financial plan beginning on the first day of

200 January, two thousand three, and every year thereafter, for the  
201 programs established by the provisions of article twelve-b of  
202 this chapter. Factors that the board shall consider include, but  
203 shall not be limited to, the trends for the program and the  
204 industry; claims history, number and category of participants in  
205 each program; settlements and claims payments; and judicial  
206 results;

207 (iv) Obtain annually, certification from participants that  
208 they have made a diligent search for comparable coverage in  
209 the voluntary insurance market and have been unable to obtain  
210 the same;

211 (J) Meet on at least a quarterly basis to review implementa-  
212 tion of its current financial plan in light of the actual experience  
213 of the medical liability programs established in article twelve-b  
214 of this chapter. The board shall review actual costs incurred,  
215 any revised cost estimates provided by the actuary, expendi-  
216 tures and any other factors affecting the fiscal stability of the  
217 plan and may make any additional modifications to the plan  
218 necessary to ensure that the total financial requirements of these  
219 programs for the current fiscal year are met;

220 (K) To analyze the benefit of and necessity for excess  
221 verdict liability coverage;

222 (L) Consider purchasing reinsurance, in the amounts as it  
223 may from time to time determine is appropriate, and the cost  
224 thereof shall be considered to be an operating expense of the  
225 board;

226 (M) Make available to participants, optional extended  
227 reporting coverage or tail coverage: *Provided*, That, at least five  
228 working days prior to offering such coverage to a participant or  
229 participants, the board shall notify the president of the Senate  
230 and the speaker of the House of Delegates in writing of its

231 intention to do so, and such notice shall include the terms and  
232 conditions of the coverage proposed;

233 (N) Review and approve, reject or modify rules that are  
234 proposed by the executive director to implement, clarify or  
235 explain administration of the preferred medical liability  
236 program and the high risk medical liability program. Notwith-  
237 standing any provisions in this code to the contrary, rules  
238 promulgated pursuant to this paragraph are not subject to the  
239 provisions of sections nine through sixteen, article three,  
240 chapter twenty-nine-a of this code. The board shall comply with  
241 the remaining provisions of article three and shall hold hearings  
242 or receive public comments before promulgating any proposed  
243 rule filed with the secretary of state: *Provided*, That the initial  
244 rules proposed by the executive director and promulgated by  
245 the board shall become effective upon approval by the board  
246 notwithstanding any provision of this code;

247 (O) Enter into settlements and structured settlement  
248 agreements whenever appropriate. The policy may not require  
249 as a condition precedent to settlement or compromise of any  
250 claim the consent or acquiescence of the policy holder. The  
251 board may own or assign any annuity purchased by the board to  
252 a company licensed to do business in the state;

253 (P) Refuse to provide insurance coverage for individual  
254 physicians whose prior loss experience or current professional  
255 training and capability are such that the physician represents an  
256 unacceptable risk of loss if coverage is provided;

257 (Q) Terminate coverage for nonpayment of premiums upon  
258 written notice of the termination forwarded to the health care  
259 provider not less than thirty days prior to termination of  
260 coverage;

261 (R) Assign coverage or transfer all insurance obligations  
262 and/or risks of existing or in-force contracts of insurance to a  
263 third party medical professional liability insurance carrier with  
264 the comparable coverage conditions as determined by the  
265 board. Any transfer of obligation or risk shall effect a novation  
266 of the transferred contract of insurance and if the terms of the  
267 assumption reinsurance agreement extinguish all liability of the  
268 board and the state of West Virginia such extinguishment shall  
269 be absolute as to any and all parties; and

270 (S) Meet and consult with and consider recommendations  
271 from the medical malpractice advisory panel established by the  
272 provisions of article twelve-b of this chapter.

273 (d) If, after the first day of September, two thousand two,  
274 the board has assigned coverages or transferred all insurance  
275 obligations and/or risks of existing or in-force contracts of  
276 insurance to a third party medical professional liability insur-  
277 ance carrier, and the board otherwise has no covered partici-  
278 pants, then the board shall not thereafter offer or provide  
279 professional liability insurance to any health care provider  
280 pursuant to the provisions of subsection (c) of this section or the  
281 provisions of article twelve-b of this chapter unless the Legisla-  
282 ture adopts a concurrent resolution authorizing the board to  
283 reestablish medical liability insurance programs.

**ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFES-  
SIONAL LIABILITY INSURANCE AVAILABILITY ACT.**

§29-12B-6. Health care provider professional liability insurance programs.

§29-12B-10. Deposit, expenditure and investment of premiums.

**§29-12B-6. Health care provider professional liability insurance  
programs.**

1 (a) There is hereby established through the board of risk  
2 and insurance management optional insurance for health care

3 providers consisting of a preferred professional liability  
4 insurance program and a high risk professional liability  
5 insurance program.

6 (b) Each of the programs described in subsection (a) of this  
7 section shall provide claims-made coverage for any covered act  
8 or omission resulting in injury or death arising out of medical  
9 professional liability as defined in subsection (d), section two,  
10 article seven-b, chapter fifty-five of this code.

11 (c) Each of the programs described in subsection (a) of this  
12 section shall offer optional prior acts coverage from and after  
13 a retroactive date established by the policy declarations. The  
14 premium for prior acts coverage may be based upon a five-year  
15 maturity schedule depending on the years of prior acts expo-  
16 sure, as more specifically set forth in a written rating manual  
17 approved by the board.

18 (d) Each of the programs described in subsection (a) of this  
19 section shall further provide an option to purchase an extended  
20 reporting endorsement or tail coverage.

21 (e) Each of the programs described in subsection (a) of this  
22 section shall offer limits for each health care provider in the  
23 amount of one million dollars per claim, including repeated  
24 exposure to the same event or series of events, and all deriva-  
25 tive claims, and three million dollars in the annual aggregate.  
26 Health care providers have the option to purchase higher limits  
27 of up to two million dollars per claim, including repeated  
28 exposure to the same event or series of events, and all deriva-  
29 tive claims, and up to four million dollars in the annual aggre-  
30 gate. In addition, hospitals covered by the plan shall have  
31 available limits of three million dollars per claim, including  
32 repeated exposure to the same event or series of events, and all  
33 derivative claims, and five million dollars in the annual

34 aggregate. Installment payment plans as established in the  
35 rating manual shall be available to all participants.

36 (f) Each of the programs described in subsection (a) of this  
37 section shall cover any act or omission resulting in injury or  
38 death arising out of medical professional liability as defined in  
39 subsection (d), section two, article seven-b, chapter fifty-five of  
40 this code. The board shall exclude from coverage sexual acts as  
41 defined in subdivision (e), section three of this article, and shall  
42 have the authority to exclude other acts or omission from  
43 coverage.

44 (g) Each of the programs described in subsection (a) of this  
45 section shall apply to damages, except punitive damages, for  
46 medical professional liability as defined in subsection (d),  
47 section two, article seven-b, chapter fifty-five of this code.

48 (h) The board may, but is not required, to obtain excess  
49 verdict liability coverage for the programs described in subsec-  
50 tion (a) of this section.

51 (i) Each of the programs shall be liable to the extent of the  
52 limits purchased by the health care provider as set forth in  
53 subsection (e) of this section. In the event that a claimant and a  
54 health care provider are willing to settle within those limits  
55 purchased by the health care provider, but the board refuses or  
56 declines to settle, and the ultimate verdict is in excess of the  
57 purchased limits, the board shall not be liable for the portion of  
58 the verdict in excess of the coverage provided in subsection (e)  
59 of this section unless the board acts in bad faith, with actual  
60 malice, in declining or refusing to settle: *Provided*, That if the  
61 board has in effect applicable excess verdict liability insurance,  
62 the health care provider shall not be required to prove that the  
63 board acted with actual malice in declining or refusing to settle  
64 in order to be indemnified for that portion of the verdict in  
65 excess of the limits of the purchased policy and within the

66 limits of the excess liability coverage. Notwithstanding any  
67 provision of this code to the contrary, the board shall not be  
68 liable for any verdict in excess of the combined limit of the  
69 purchased policy and any applicable excess liability coverage  
70 unless the board acts in bad faith with actual malice.

71 (j) Rates for each of the programs described in subsection  
72 (a) of this section may not be excessive, inadequate or unfairly  
73 discriminatory: *Provided*, That the rates charged for the  
74 preferred professional liability insurance program shall not be  
75 less than the highest approved comparable base rate for a  
76 licensed carrier providing five percent of the malpractice  
77 insurance coverage in this state for the previous calendar year  
78 on file with the insurance commissioner: *Provided, however*,  
79 That if there is only one licensed carrier providing five percent  
80 or more of the malpractice insurance coverage in the state  
81 offering comparable coverage, the board shall have discretion  
82 to disregard the approved comparable base rate of the licensed  
83 carrier.

84 (k) The premiums for each of the programs described in  
85 subsection (a) of this section are subject to premium taxes  
86 imposed by article three, chapter thirty-three of this code.

87 (l) Nothing in this article shall be construed to preclude a  
88 health care provider from obtaining professional liability  
89 insurance coverage for claims in excess of the coverage made  
90 available by the provisions of this article.

91 (m) General liability coverage that may be required by a  
92 health care provider may be offered as determined by the board.

**§29-12B-10. Deposit, expenditure and investment of premiums.**

1 (a) The premiums charged and collected by the board under  
2 this article shall be deposited into a special revenue account  
3 hereby created in the state treasury known as the "Medical



4 Liability Fund”, and shall not be part of the general revenues of  
5 the state. Disbursements from the special revenue fund shall be  
6 upon requisition of the executive director and in accordance  
7 with the provisions of chapter five-a of this code. Disburse-  
8 ments shall pay operating expenses of the board attributed to  
9 these programs and the board’s share of any judgments or  
10 settlements of medical malpractice claims. Funds shall be  
11 invested with the consolidated fund managed by the West  
12 Virginia investment management board and interest earned  
13 shall be used for purposes of this article.

14 (b) Start-up operating expenses of the medical liability  
15 fund, not to exceed five hundred thousand dollars, may be  
16 transferred to the medical liability fund pursuant to an appropri-  
17 ation by the Legislature from any special revenue funds  
18 available. The medical liability fund shall reimburse the board  
19 within twenty-four months of the date of the transfer.

20 (c) For purposes of establishing a pool from which settle-  
21 ments and judgments may be paid, notwithstanding any other  
22 provision of this code to the contrary, a portion of the initial  
23 capitalization of the pool may be provided through a transfer of  
24 no greater than four million dollars from the state special  
25 insurance fund established in section five, article twelve of this  
26 chapter. All funds transferred pursuant to this section are to be  
27 repaid by transfer from the medical liability fund to the state  
28 special insurance fund, together with interest that would have  
29 accrued in the state special insurance fund, by the first day of  
30 July, two thousand six. Funds are to be transferred only as  
31 needed for expenditures from the medical liability fund created  
32 in this section. The treasurer shall effect these transfers pursu-  
33 ant to this section upon written request of the director of the  
34 board of risk and insurance management.

---

## CHAPTER 171

(H. B. 4669 — By Delegates Flanigan, Pino, Beach,  
Azinger, Faircloth, Walters and Webb)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the hiring of examiners by the insurance commissioner; exempting from purchasing requirements; requiring the posting of a bond.

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

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

### **ARTICLE 2. INSURANCE COMMISSIONER.**

#### **§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.**

- 1 (a) The purpose of this section is to provide an effective and
- 2 efficient system for examining the activities, operations,
- 3 financial condition and affairs of all persons transacting the
- 4 business of insurance in this state and all persons otherwise
- 5 subject to the jurisdiction of the commissioner. The provisions
- 6 of this section are intended to enable the commissioner to adopt
- 7 a flexible system of examinations which directs resources as
- 8 may be considered appropriate and necessary for the adminis-
- 9 tration of the insurance and insurance related laws of this state.

10 (b) For purposes of this section, the following definitions  
11 shall apply:

12 (1) "Commissioner" means the commissioner of insurance  
13 of this state;

14 (2) "Company" or "insurance company" means any person  
15 engaging in or proposing or attempting to engage in any  
16 transaction or kind of insurance or surety business and any  
17 person or group of persons who may otherwise be subject to the  
18 administrative, regulatory or taxing authority of the commis-  
19 sioner, including, but not limited to, any domestic or foreign  
20 stock company, mutual company, mutual protective association,  
21 farmers mutual fire companies, fraternal benefit society,  
22 reciprocal or inter-insurance exchange, nonprofit medical care  
23 corporation, nonprofit health care corporation, nonprofit  
24 hospital service association, nonprofit dental care corporation,  
25 health maintenance organization, captive insurance company,  
26 risk retention group or other insurer, regardless of the type of  
27 coverage written, benefits provided or guarantees made by  
28 each;

29 (3) "Department" means the department of insurance of this  
30 state; and

31 (4) "Examiners" means the commissioner of insurance or  
32 any individual or firm having been authorized by the commis-  
33 sioner to conduct an examination pursuant to this section,  
34 including, but not limited to, the commissioner's deputies, other  
35 employees, appointed examiners or other appointed individuals  
36 or firms who are not employees of the department of insurance.

37 (c) The commissioner or his or her examiners may conduct  
38 an examination under this section of any company as often as  
39 the commissioner in his or her discretion considers appropriate.  
40 The commissioner or his or her examiners shall at least once

41 every five years visit each domestic insurer and thoroughly  
42 examine its financial condition and methods of doing business  
43 and ascertain whether it has complied with all the laws and  
44 regulations of this state. The commissioner may also examine  
45 the affairs of any insurer applying for a license to transact any  
46 insurance business in this state.

47 (d) The commissioner or his or her examiners shall, at a  
48 minimum, conduct an examination of every foreign or alien  
49 insurer licensed in this state not less frequently than once every  
50 five years. The examination of an alien insurer may be limited  
51 to its United States business: Provided, That in lieu of an  
52 examination under this section of any foreign or alien insurer  
53 licensed in this state, the commissioner may accept an examina-  
54 tion report on the company as prepared by the insurance  
55 department for the company's state of domicile or port-of-entry  
56 state until the first day of January, one thousand nine hundred  
57 ninety-four. Thereafter, the reports may only be accepted if:

58 (1) The insurance department was at the time of the  
59 examination accredited under the national association of  
60 insurance commissioners' financial regulation standards and  
61 accreditation program; or

62 (2) The examination is performed under the supervision of  
63 an accredited insurance department or with the participation of  
64 one or more examiners who are employed by an accredited state  
65 insurance department and who, after a review of the examina-  
66 tion work papers and report, state under oath that the examina-  
67 tion was performed in a manner consistent with the standards  
68 and procedures required by their insurance department.

69 (e) In scheduling and determining the nature, scope and  
70 frequency of examinations conducted pursuant to this section,  
71 the commissioner may consider such matters as the results of  
72 financial statement analyses and ratios, changes in management

73 or ownership, actuarial opinions, reports of independent  
74 certified public accountants and other criteria as set forth in the  
75 examiners' handbook adopted by the national association of  
76 insurance commissioners and in effect when the commissioner  
77 exercises discretion under this section.

78 (f) For purposes of completing an examination of any  
79 company under this section, the commissioner may examine or  
80 investigate any person, or the business of any person, insofar as  
81 the examination or investigation is, in the sole discretion of the  
82 commissioner, necessary or material to the examination of the  
83 company.

84 (g) The commissioner may also cause to be examined, at  
85 the times as he or she considers necessary, the books, records,  
86 papers, documents, correspondence and methods of doing  
87 business of any agent, broker, excess lines broker or solicitor  
88 licensed by this state. For these purposes, the commissioner or  
89 his or her examiners shall have free access to all books, records,  
90 papers, documents and correspondence of all the agents,  
91 brokers, excess lines brokers and solicitors wherever the books,  
92 records, papers, documents and records are situate. The  
93 commissioner may revoke the license of any agent, broker,  
94 excess lines broker or solicitor who refuses to submit to the  
95 examination.

96 (h) In addition to conducting an examination, the commis-  
97 sioner or his or her examiners may, as the commissioner  
98 considers necessary, analyze or review any phase of the  
99 operations or methods of doing business of an insurer, agent,  
100 broker, excess lines broker, solicitor or other individual or  
101 corporation transacting or attempting to transact an insurance  
102 business in the state of West Virginia. The commissioner may  
103 use the full resources provided by this section in carrying out  
104 these responsibilities, including any personnel and equipment

105 provided by this section as the commissioner considers necessary.

106 (i) Examinations made pursuant to this section shall be  
107 conducted in the following manner:

108 (1) Upon determining that an examination should be  
109 conducted, the commissioner or his or her designee shall issue  
110 an examination warrant appointing one or more examiners to  
111 perform the examination and instructing them as to the scope of  
112 the examination. The appointment of any examiners pursuant  
113 to this section by the commissioner shall not be subject to the  
114 requirements of article three, chapter five-a of this code, except  
115 that the contracts and agreements shall be approved as to form  
116 and conformity with applicable law by the attorney general. In  
117 conducting the examination, the examiner shall observe those  
118 guidelines and procedures set forth in the examiners' handbook  
119 adopted by the national association of insurance commissioners.  
120 The commissioner may also employ any other guidelines or  
121 procedures as the commissioner may consider appropriate;

122 (2) Every company or person from whom information is  
123 sought, its officers, directors and agents shall provide to the  
124 examiners appointed under subdivision (1) of this subsection  
125 timely, convenient and free access at all reasonable hours at its  
126 offices to all books, records, accounts, papers, documents and  
127 any or all computer or other recordings relating to the property,  
128 assets, business and affairs of the company being examined.  
129 The officers, directors, employees and agents of the company  
130 or person shall facilitate the examination and aid in the exami-  
131 nation so far as it is in their power to do so;

132 (3) The refusal of any company, by its officers, directors,  
133 employees or agents, to submit to examination or to comply  
134 with any reasonable written request of the examiners shall be  
135 grounds for suspension, revocation, refusal or nonrenewal of  
136 any license or authority held by the company to engage in an

137 insurance or other business subject to the commissioner's  
138 jurisdiction. Any proceedings for suspension, revocation,  
139 refusal or nonrenewal of any license or authority shall be  
140 conducted pursuant to section eleven, article two of this  
141 chapter;

142 (4) The commissioner or his or her examiners shall have the  
143 power to issue subpoenas, to administer oaths and to examine  
144 under oath any person as to any matter pertinent to the exami-  
145 nation, analysis or review. The subpoenas shall be enforced  
146 pursuant to the provisions of section six, article two of this  
147 chapter;

148 (5) When making an examination, analysis or review under  
149 this section, the commissioner may retain attorneys, appraisers,  
150 independent actuaries, independent certified public accountants,  
151 professionals or specialists with training or experience in  
152 reinsurance, investments or information systems, or other  
153 professionals and specialists as examiners, the cost of which  
154 shall be borne by the company which is the subject of the  
155 examination, analysis or review or, in the commissioner's  
156 discretion, paid from the commissioner's examination revolving  
157 fund. The commissioner may recover costs paid from the  
158 commissioner's examination revolving fund pursuant to this  
159 subdivision from the company upon which the examination,  
160 analysis or review is conducted unless the subject of the  
161 examination, analysis or review is an individual, described in  
162 subdivision (2), subsection (q) of this section;

163 (6) Nothing contained in this section may be construed to  
164 limit the commissioner's authority to terminate or suspend any  
165 examination, analysis or review in order to pursue other legal  
166 or regulatory action pursuant to the insurance laws of this state.  
167 The commissioner or his or her examiners may at any time  
168 testify and offer other proper evidence as to information  
169 secured during the course of an examination, analysis or

170 review, whether or not a written report of the examination has  
171 at that time either been made, served or filed in the commis-  
172 sioner's office;

173 (7) Nothing contained in this section may be construed to  
174 limit the commissioner's authority to use and, if appropriate, to  
175 make public any final or preliminary examination report, any  
176 examiner or company workpapers or other documents or any  
177 other information discovered or developed during the course of  
178 any examination, analysis or review in the furtherance of any  
179 legal or regulatory action which the commissioner may, in his  
180 or her sole discretion, consider appropriate. An examination  
181 report, when filed, shall be admissible in evidence in any action  
182 or proceeding brought by the commissioner against an insur-  
183 ance company, its officers or agents and shall be prima facie  
184 evidence of the facts stated therein.

185 (j) Examination reports prepared pursuant to the provisions  
186 of this section shall comply with the following requirements:

187 (1) All examination reports shall be comprised of only facts  
188 appearing upon the books, records or other documents of the  
189 company, its agents or other persons examined or as ascertained  
190 from the testimony of its officers or agents or other persons  
191 examined concerning its affairs and any conclusions and  
192 recommendations the examiners find reasonably warranted  
193 from the facts;

194 (2) No later than sixty days following completion of the  
195 examination, the examiner in charge shall file with the commis-  
196 sioner a verified written report of examination under oath. Upon  
197 receipt of the verified report, the commissioner shall transmit  
198 the report to the company examined, together with a notice  
199 which shall afford the company examined a reasonable opportu-  
200 nity of not more than ten days to make a written submission or



201 rebuttal with respect to any matters contained in the examina-  
202 tion report;

203 (3) Within thirty days of the end of the period allowed for  
204 the receipt of written submissions or rebuttals, the commis-  
205 sioner shall fully consider and review the report, together with  
206 any written submissions or rebuttals and any relevant portions  
207 of the examiner's workpapers, and enter an order:

208 (A) Adopting the examination report as filed or with  
209 modification or corrections. If the examination report reveals  
210 that the company is operating in violation of any law, rule or  
211 prior order of the commissioner, the commissioner may order  
212 the company to take any action the commissioner considers  
213 necessary and appropriate to cure the violation; or

214 (B) Rejecting the examination report with directions to the  
215 examiners to reopen the examination for purposes of obtaining  
216 additional data, documentation or information and refile  
217 pursuant to subdivision (2) above; or

218 (C) Calling for an investigatory hearing with no less than  
219 twenty days notice to the company for purposes of obtaining  
220 additional documentation, data, information and testimony;

221 (4) All orders entered pursuant to this subsection shall be  
222 accompanied by findings and conclusions resulting from the  
223 commissioner's consideration and review of the examination  
224 report, relevant examiner workpapers and any written submis-  
225 sions or rebuttals. Any order issued pursuant to paragraph (A),  
226 subdivision (3) of this subsection shall be considered a final  
227 administrative decision and may be appealed pursuant to  
228 section fourteen [ §§ 33-2-14 ], article two of this chapter and  
229 shall be served upon the company by certified mail, together  
230 with a copy of the adopted examination report. Within thirty  
231 days of the issuance of the adopted report, the company shall

232 file affidavits executed by each of its directors stating under  
233 oath that they have received a copy of the adopted report and  
234 related orders.

235 (k) Hearings conducted pursuant to this section shall be  
236 subject to the following requirements:

237 (1) Any hearing conducted pursuant to this section by the  
238 commissioner or the commissioner's authorized representative  
239 shall be conducted as a nonadversarial confidential investiga-  
240 tory proceeding as necessary for the resolution of any inconsis-  
241 tencies, discrepancies or disputed issues apparent upon the face  
242 of the filed examination report or raised by or as a result of the  
243 commissioner's review of relevant workpapers or by the written  
244 submission or rebuttal of the company. Within twenty days of  
245 the conclusion of any hearing, the commissioner shall enter an  
246 order pursuant to paragraph (A), subdivision (3), subsection (j)  
247 of this section;

248 (2) The commissioner may not appoint an examiner as an  
249 authorized representative to conduct the hearing. The hearing  
250 shall proceed expeditiously with discovery by the company  
251 limited to the examiner's workpapers which tend to substantiate  
252 any assertions set forth in any written submission or rebuttal.  
253 The commissioner or the commissioner's representative may  
254 issue subpoenas for the attendance of any witnesses or the  
255 production of any documents considered relevant to the  
256 investigation whether under the control of the commissioner,  
257 the company or other persons. The documents produced shall  
258 be included in the record and testimony taken by the commis-  
259 sioner or the commissioner's representative shall be under oath  
260 and preserved for the record. Nothing contained in this section  
261 shall require the commissioner to disclose any information or  
262 records which would indicate or show the existence or content  
263 of any investigation or activity of a criminal justice agency;

264 (3) The hearing shall proceed with the commissioner or the  
265 commissioner's representative posing questions to the persons  
266 subpoenaed. Thereafter, the company and the department may  
267 present testimony relevant to the investigation. Cross-examina-  
268 tion may be conducted only by the commissioner or the  
269 commissioner's representative. The company and the commis-  
270 sioner shall be permitted to make closing statements and may  
271 be represented by counsel of their choice.

272 (l) Adoption of the examination report shall be subject to  
273 the following requirements:

274 (1) Upon the adoption of the examination report under  
275 paragraph (A), subdivision (3), subsection (j) of this section, the  
276 commissioner may continue to hold the content of the examina-  
277 tion report as private and confidential information for a period  
278 of ninety days except to the extent provided in subdivision (6),  
279 subsection (i) of this section. Thereafter, the commissioner may  
280 open the report for public inspection so long as no court of  
281 competent jurisdiction has stayed its publication;

282 (2) Nothing contained in this section may prevent or be  
283 construed as prohibiting the commissioner from disclosing the  
284 content of an examination report, preliminary examination  
285 report or results or any matter relating thereto or the results of  
286 any analysis or review to the insurance department of this or  
287 any other state or country or to law-enforcement officials of this  
288 or any other state or agency of the federal government at any  
289 time, so long as the agency or office receiving the report or  
290 matters relating thereto agrees in writing to hold it confidential  
291 and in a manner consistent with this section;

292 (3) In the event the commissioner determines that regula-  
293 tory action is appropriate as a result of any examination,  
294 analysis or review, he or she may initiate any proceedings or  
295 actions as provided by law;

296 (4) All working papers, recorded information, documents  
297 and copies thereof produced by, obtained by or disclosed to the  
298 commissioner or any other person in the course of an examina-  
299 tion, analysis or review made under this section must be given  
300 confidential treatment and are not subject to subpoena and may  
301 not be made public by the commissioner or any other person,  
302 except to the extent provided in subdivision (5), subsection (i)  
303 of this section. Access may also be granted to the national  
304 association of insurance commissioners. The parties must agree  
305 in writing prior to receiving the information to provide to it the  
306 same confidential treatment as required by this section, unless  
307 the prior written consent of the company to which it pertains  
308 has been obtained.

309 (m) The commissioner may require any examiner to furnish  
310 a bond in such amount as the commissioner may determine to  
311 be appropriate, and the bond shall be approved, filed and  
312 premium paid, with suitable proof submitted to the commis-  
313 sioner, prior to commencement of employment by the commis-  
314 sioner. No examiner may be appointed by the commissioner if  
315 the examiner, either directly or indirectly, has a conflict of  
316 interest or is affiliated with the management of or owns a  
317 pecuniary interest in any person subject to examination under  
318 this section. This section shall not be construed to automatically  
319 preclude an examiner from being:

320 (1) A policyholder or claimant under an insurance policy;

321 (2) A grantor of a mortgage or similar instrument on the  
322 examiner's residence to a regulated entity if done under  
323 customary terms and in the ordinary course of business;

324 (3) An investment owner in shares of regulated diversified  
325 investment companies; or

326 (4) A settlor or beneficiary of a "blind trust" into which any  
327 otherwise impermissible holdings have been placed;

328 (5) Notwithstanding the requirements of this subsection, the  
329 commissioner may retain, from time to time, on an individual  
330 basis, qualified actuaries, certified public accountants or other  
331 similar individuals who are independently practicing their  
332 professions, even though these persons may from time to time  
333 be similarly employed or retained by persons subject to  
334 examination under this section.

335 (n) Personnel conducting examinations, analyses or reviews  
336 of either a domestic, foreign or alien insurer shall be compen-  
337 sated for each day worked at a rate set by the commissioner.  
338 The personnel shall also be reimbursed for their travel and  
339 living expenses at the rate set by the commissioner. Other  
340 individuals who are not employees of the department of  
341 insurance shall all be compensated for their work, travel and  
342 living expenses at rates approved by the commissioner, or as  
343 otherwise provided by law. As used in this section the costs of  
344 an examination, analysis or review means:

345 (1) The entire compensation for each day worked by all  
346 personnel, including those who are not employees of the  
347 department of insurance, the conduct of the examination,  
348 analysis or review calculated as hereinbefore provided;

349 (2) Travel and living expenses of all personnel, including  
350 those who are not employees of the department of insurance,  
351 directly engaged in the conduct of the examination, analysis or  
352 review calculated at the rates as hereinbefore provided for;

353 (3) All other incidental expenses incurred by or on behalf  
354 of the personnel in the conduct of any authorized examination,  
355 analysis or review.

356 (o) All insurers subject to the provisions of this section  
357 shall annually pay to the commissioner on or before the first  
358 day of July, one thousand nine hundred ninety-one, and every  
359 first day of July thereafter an examination assessment fee of  
360 eight hundred dollars. Four hundred fifty dollars of this fee  
361 shall be paid to the treasurer of the state to the credit of a  
362 special revolving fund to be known as the "Commissioner's  
363 Examination Revolving Fund" which is hereby established and  
364 three hundred fifty dollars shall be paid to the treasurer of the  
365 state. The commissioner may at his or her discretion, upon  
366 notice to the insurers subject to this section, increase this  
367 examination assessment fee or levy an additional examination  
368 assessment fee of two hundred fifty dollars. In no event may the  
369 total examination assessment fee including any additional  
370 examination assessment fee levied exceed one thousand five  
371 hundred dollars per insurer in any calendar year.

372 (p) The moneys collected by the commissioner from an  
373 increase or additional examination assessment fee shall be paid  
374 to the treasurer of the state to be credited to the commissioner's  
375 examination revolving fund. Any funds expended or obligated  
376 by the commissioner from the commissioner's examination  
377 revolving fund may be expended or obligated solely for  
378 defrayment of the costs of examinations, analyses or reviews of  
379 the financial affairs and business practices of insurance  
380 companies, agents, brokers, excess lines brokers, solicitors or  
381 other individuals or corporations transacting or attempting to  
382 transact an insurance business in this state made by the com-  
383 missioner pursuant to this section or for the purchase of  
384 equipment and supplies, travel, education and training for the  
385 commissioner's deputies, other employees and appointed  
386 examiners necessary for the commissioner to fulfill the statu-  
387 tory obligations created by this section.

388 (q) The commissioner may require other individuals who  
389 are not employees of the department of insurance who have

390 been appointed by the commissioner to conduct or participate  
391 in the examination, analysis or review of insurers, agents,  
392 brokers, excess lines brokers, solicitors or other individuals or  
393 corporations transacting or attempting to transact an insurance  
394 business in this state to:

395 (1) Bill and receive payments directly from the insurance  
396 company being examined, analyzed or reviewed for their work,  
397 travel and living expenses as previously provided for in this  
398 section; or

399 (2) If an individual agent, broker or solicitor is being  
400 examined, analyzed or reviewed, bill and receive payments  
401 directly from the commissioner's examination revolving fund  
402 for their work, travel and living expenses as previously pro-  
403 vided for in this section. The commissioner may recover costs  
404 paid from the commissioner's examination revolving fund  
405 pursuant to this subdivision from the person upon whom the  
406 examination, analysis or review is conducted.

407 (r) The commissioner and his or her examiners shall be  
408 entitled to immunity to the following extent:

409 (1) No cause of action shall arise nor shall any liability be  
410 imposed against the commissioner or his or her examiners for  
411 any statements made or conduct performed in good faith while  
412 carrying out the provisions of this section;

413 (2) No cause of action shall arise, nor shall any liability be  
414 imposed, against any person for the act of communicating or  
415 delivering information or data to the commissioner or his or her  
416 examiners pursuant to an examination, analysis or review made  
417 under this section if the act of communication or delivery was  
418 performed in good faith and without fraudulent intent or the  
419 intent to deceive;

420 (3) The commissioner or any examiner shall be entitled to  
421 an award of attorney's fees and costs if he or she is the prevail-  
422 ing party in a civil cause of action for libel, slander or any other  
423 relevant tort arising out of activities in carrying out the provi-  
424 sions of this section and the party bringing the action was not  
425 substantially justified in doing so. For purposes of this section  
426 a proceeding is "substantially justified" if it had a reasonable  
427 basis in law or fact at the time that it was initiated;

428 (4) This subsection does not abrogate or modify in any way  
429 any constitutional immunity or common law or statutory  
430 privilege or immunity heretofore enjoyed by any person  
431 identified in subdivision (1) of this subsection.

---

## CHAPTER 172

(S. B. 647 — By Senator Craigo)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section fifteen, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxes on the sale of annuities in the state; and clarifying the alternatives that life insurers may choose for reporting and paying taxes on annuities.

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

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



**ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.****§33-3-15. Annuity tax.**

1       (a) Every life insurer transacting insurance in West Virginia  
2 shall make a return to the commissioner annually on a form  
3 prescribed by the commissioner, on or before the first day of  
4 March, under the oath of its president or secretary, of the gross  
5 amount of annuity considerations collected and received by it  
6 during the previous calendar year on its annuity business  
7 transacted in this state and stating the amount of tax due under  
8 this section, together with payment in full for the tax due. The  
9 tax is the sum equal to one per centum of the gross amount of  
10 the annuity considerations, less annuity considerations returned  
11 and less termination allowances on group annuity contracts. All  
12 the taxes received by the commissioner shall be paid into the  
13 insurance tax fund created in subsection (b), section fourteen of  
14 this article. In the case of funds accepted by a life insurer under  
15 an agreement which provides for an accumulation of money to  
16 purchase annuities at future dates, annuity considerations may  
17 be either considered by the life insurer to be collected and  
18 received upon receipt or upon actual application to the purchase  
19 of annuities. Any earnings credited to money accumulated  
20 while under the latter alternative will also be considered annuity  
21 considerations. For purposes of this election, the alternative  
22 which the life insurer elected to file its tax return for the two  
23 thousand one tax year or which it elects when it enters the state,  
24 whichever is later, shall be considered the life insurer's election  
25 between these alternatives. A life insurer filing a year two  
26 thousand one tax return shall provide written notice to the  
27 commissioner of its election within ninety days of the effective  
28 date of this enactment. Otherwise, a life insurer shall provide  
29 written notice to the commissioner of its election within ninety  
30 days after it enters the state. Thereafter, a life insurer may not  
31 change its election without the consent of the insurance  
32 commissioner. The insurance commissioner may develop forms  
33 to assure compliance with this subsection.

34 (b) The amendment to this section enacted during the  
35 regular session of the Legislature in the year one thousand nine  
36 hundred ninety-eight is effective on the first day of July, one  
37 thousand nine hundred ninety-eight.

---

## CHAPTER 173

(S. B. 461 — By Senators Minard and Kessler)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirty-two, article five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to domestic stock and mutual insurers; and defining principal office or place of business.

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

That section thirty-two, article five, 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 5. ORGANIZATION AND PROCEDURES OF DOMESTIC STOCK AND MUTUAL INSURERS.**

**§33-5-32. Principal place of business of domestic insurers.**

1 Any domestic insurer which moves or maintains its  
2 principal office or place of business outside the state of West  
3 Virginia after the first day of June, one thousand nine hundred  
4 sixty-nine, shall not thereafter be licensed as a domestic insurer  
5 in this state.

6 For purposes of this article, “principal office or place of  
7 business” means the single state in which the direction, control  
8 and coordination of the operations of the insurer as a whole are  
9 primarily exercised, with consideration being given to, but not  
10 limited to:

11 (1) The state in which the primary executive and adminis-  
12 trative headquarters of the insurer is located;

13 (2) The state in which the principal office of the chief  
14 executive officer of the insurer is located;

15 (3) The state in which the assets and books and records of  
16 the insurer are located;

17 (4) The state in which the board of directors (or similar  
18 governing body) of the insurer conducts the majority of its  
19 meetings;

20 (5) The state in which the executive or management  
21 committee of the board of directors (or similar governing body)  
22 of the insurer conducts the majority of its meetings; and

23 (6) The state from which the management of the overall  
24 operations of the insurer is directed.

---

## CHAPTER 174

**(H. B. 4670 — By Delegates Beane, Staton,  
Michael, Amores, Trump and G. White)**

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirty, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to construction of insurance policies; setting forth legislative findings and clarifying that specific line item premium discounts are not required.

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

That section thirty, article six, 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 6. THE INSURANCE POLICY.**

**§33-6-30. Construction of policies.**

1           (a) Every insurance contract shall be construed according  
2 to the entirety of its terms and conditions as set forth in the  
3 policy and as amplified, extended or modified by any rider,  
4 endorsement or application attached to and made a part of the  
5 policy: *Provided*, That the word "physician" when used in  
6 any accident and sickness policy or other contract providing  
7 for the payment of surgical procedures shall be construed to  
8 include a physician, dentist or chiropodist-podiatrist perform-  
9 ing surgical procedures or chiropractor performing other  
10 health care services within the scope of his or her profes-  
11 sional license: *Provided, however*, That any policy of insur-  
12 ance or medical or health service contract providing for pay-  
13 ment or reimbursement for any professional services pertain-  
14 ing to eye examination, refractions or the fitting of corrective  
15 lenses shall be construed to include payment or reimburse-  
16 ment for professional services rendered by either a duly li-  
17 censed physician or a duly licensed optometrist, within the  
18 scope of their respective professional licenses, and that the  
19 insured or subscriber have freedom of choice to select either  
20 a physician or an optometrist to render or perform profes-  
21 sional services.

22           (b) The Legislature finds:

23 (1) That consumers and insurers both benefit from the  
24 legislative mandate that the insurance commissioner approve  
25 the forms used and the rates charged by insurance companies  
26 in this state;

27 (2) That certain classes of persons are seeking refunds of  
28 insurance premiums and seeking to void exclusions and other  
29 policy provisions on the basis that insurance companies al-  
30 legedly failed to provide or demonstrate a reduction in premi-  
31 ums charged in relation to certain terms or exclusions incor-  
32 porated into policies of insurance;

33 (3) That historically, as a prerequisite to a rate or form  
34 being approved, neither the Legislature nor the insurance  
35 commissioner has ever required that the insurer demonstrate  
36 that there was a specific premium reduction for certain exclu-  
37 sions incorporated into policies of insurance;

38 (4) That the provisions of this chapter were enacted with  
39 the intent of requiring the filing of all rates and forms with  
40 the insurance commissioner to enable the insurance commis-  
41 sioner to review and regulate rates and forms in a fair and  
42 consistent manner;

43 (5) That the provisions of this chapter do not provide and  
44 were not intended to provide the basis for monetary damages  
45 in the form of premium refunds or partial premium refunds  
46 when the form used and the rates charged by the insurance  
47 company have been approved by the insurance commis-  
48 sioner;

49 (6) That actions seeking premium refunds or partial pre-  
50 mium refunds have a severe and negative impact upon insur-  
51 ers operating in this state by imposing unexpected liabilities  
52 when insurers have relied upon the insurance commissioner's  
53 approval of the forms used and the rates charged insureds;  
54 and

55 (7) That it is in the best interest of the citizens of this  
56 state to ensure a stable insurance market.

57 (c) Nothing in this chapter may be construed as requiring  
58 specific line item premium discounts or rate adjustments  
59 corresponding to any exclusion, condition, definition, term or  
60 limitation in any policy of insurance, including policies in-  
61 corporating statutorily mandated benefits or optional benefits  
62 which as a matter of law must be offered. Where any insur-  
63 ance policy form, including any endorsement thereto, has  
64 been approved by the commissioner, and the corresponding  
65 rate has been approved by the commissioner, there is a pre-  
66 sumption that the policy forms and rate structure are in full  
67 compliance with the requirements of this chapter. It is the  
68 intent of the Legislature that the amendments in this section  
69 enacted during the regular session of two thousand two are:  
70 (1) A clarification of existing law as previously enacted by  
71 the Legislature, including, but not limited to, the provisions  
72 of subsection (k), section thirty-one of this article; and, (2)  
73 specifically intended to clarify the law and correct a misinter-  
74 pretation and misapplication of the law that was expressed in  
75 the holding of the Supreme Court of Appeals of West Vir-  
76 ginia in the case of Mitchell v. Broadnax, 537 S.E.2d 882  
77 (W.Va. 2000). These amendments are a clarification of the  
78 existing law as previously enacted by this Legislature.

---

## CHAPTER 175

**(Com. Sub. for S. B. 459 — By Senators Minard and Kessler)**

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirty-one-c, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to imposing a money penalty on insurers who write substandard insurance for failing to notify policyholders, under certain circumstances, that they may be eligible for a standard or preferred policy.

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

That section thirty-one-c, article six, 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 6. THE INSURANCE POLICY.**

**§33-6-31c. Substandard risk motor vehicle insurance policies; definitions; required notices and provisions; promulgation of rules; effective date; money penalty for failure to give required notice.**

1       (a) For purposes of this section, the following definitions  
2 apply:

3       (1) A “substandard risk” means an applicant for insur-  
4 ance who presents a greater exposure to loss than that con-  
5 templated by commonly used rate classifications, as evi-  
6 denced by one or more of the following conditions:

7       (A) A record of traffic accidents;

8       (B) A record of traffic law violations;

9       (C) Undesirable occupational circumstances; or

10      (D) Any other valid underwriting consideration.

11       (2) “Substandard risk rate” means a rate or premium  
12 charge that reflects the greater than normal exposure to loss  
13 which is assumed by an insurer writing insurance for a sub-  
14 standard risk.

15       (b) Every application for a motor vehicle insurance pol-  
16 icy to be issued in this state and written on the basis of a  
17 substandard risk rate schedule shall have printed on the appli-  
18 cation, in bold-faced type in a contrasting color or in reverse  
19 print, a statement reading substantially as follows: **THE POL-  
20 ICY FOR WHICH YOU ARE APPLYING HAS BEEN  
21 RATED IN ACCORDANCE WITH A SPECIAL RATING  
22 SCHEDULE FILED WITH THE COMMISSIONER OF  
23 INSURANCE PROVIDING FOR HIGHER PREMIUM  
24 CHARGES THAN THOSE GENERALLY APPLICABLE  
25 FOR AVERAGE RISKS. IF THE COVERAGE OR PRE-  
26 MIUM IS NOT SATISFACTORY, YOU MAY BE ELIGI-  
27 BLE FOR OTHER INSURANCE. IF THIS COVERAGE OR  
28 PREMIUM IS SATISFACTORY, YOU MAY BE ELIGI-  
29 BLE FOR COVERAGE UNDER A STANDARD OR PRE-  
30 FERRED POLICY IF DURING THE NEXT THREE  
31 YEARS YOU HAVE NO TRAFFIC VIOLATIONS OR  
32 ACCIDENTS AND YOU MAINTAIN CONTINUOUS IN-  
33 SURANCE COVERAGE.**

34       (c) Every motor vehicle insurance policy issued in this  
35 state and written on the basis of a substandard risk rate sched-  
36 ule shall have printed on the policy, in bold-faced type in a  
37 contrasting color or in reverse print, a statement reading sub-  
38 stantially as follows: **THIS POLICY HAS BEEN RATED IN  
39 ACCORDANCE WITH A SPECIAL RATING SCHEDULE  
40 FILED WITH THE COMMISSIONER OF INSURANCE  
41 PROVIDING FOR HIGHER PREMIUM CHARGES THAN  
42 THOSE GENERALLY APPLICABLE FOR AVERAGE  
43 RISKS. IF THE COVERAGE OR PREMIUM IS NOT SAT-**



44 ISFACTORY, YOU MAY BE ELIGIBLE FOR OTHER  
45 INSURANCE. IF THIS COVERAGE OR PREMIUM IS  
46 SATISFACTORY, YOU MAY BE ELIGIBLE FOR COV-  
47 ERAGE UNDER A STANDARD OR PREFERRED POL-  
48 ICY IF DURING THE NEXT THREE YEARS YOU HAVE  
49 NO TRAFFIC VIOLATIONS OR ACCIDENTS AND YOU  
50 MAINTAIN CONTINUOUS INSURANCE COVERAGE.

51 (d) All insurers licensed or registered in this state to mar-  
52 ket or sell substandard risk motor vehicle insurance policies  
53 shall submit all applications and policies for substandard risk  
54 insurance to the commissioner of insurance for approval prior  
55 to being used by the insurer.

56 (e) All insurers selling or which have in force substan-  
57 dard risk motor vehicle insurance policies shall provide a  
58 one-time notice in writing to the policyholders who have  
59 maintained continuous insurance coverage for three years,  
60 have not been convicted of any moving traffic violations and  
61 had no at fault accidents that they may be eligible for cover-  
62 age under a standard or preferred policy. The commissioner  
63 may levy an administrative penalty not to exceed one thou-  
64 sand dollars for each incidence where an insurer fails to give  
65 notice in accordance with the provisions in this subsection.

66 (f) The commissioner shall promulgate rules in accor-  
67 dance with the provisions of article three, chapter  
68 twenty-nine-a of this code regarding the format, style, design  
69 and approval of substandard risk insurance applications, no-  
70 tices and policies and any other procedures that are required  
71 by this section.

72 (g) This section, as amended in the year two thousand  
73 two, shall take effect on the first day of July, two thousand  
74 two.

---

## CHAPTER 176

(S. B. 593 — By Senators Minard and Kessler)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirty-three, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the use of used car guides that are approved by the West Virginia insurance commissioner for setting the minimum value of motor vehicles involved in total loss claims.

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

That section thirty-three, article six, 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 6. THE INSURANCE POLICY.**

#### **§33-6-33. Value of motor vehicle involved in claim.**

1 Insurance companies doing business in this state shall use  
2 the most recent version of an “official used car guide” ap-  
3 proved by the insurance commissioner as a guide for setting  
4 the minimum value of any motor vehicle involved in a claim  
5 settlement arising from a motor vehicle accident. In addition  
6 to any cash settlement value so agreed to by the claimant,  
7 there shall be added an amount equal to five percent of the  
8 cash settlement value as reimbursement to the claimant for  
9 the excise tax imposed under section four, article three, chap-  
10 ter seventeen-a of the code of West Virginia.

---

## CHAPTER 177

(S. B. 479 — By Senators Minard and Kessler)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section thirty-four, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to insurance policies; increasing the fees for form and rate filings; imposing a fee for rule filings; and specifying effective date.

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

That section thirty-four, article six, 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 6. THE INSURANCE POLICY.

#### §33-6-34. Fee for form, rate and rule filing.

1       (a) A fee of fifty dollars for every form filing and  
2       seventy-five dollars for every rate or rule filing shall be sub-  
3       mitted with each filing. If a form filing or rate or rule filing is  
4       made on behalf of more than one insurer, other than a filing  
5       made by a rating organization licensed by the commissioner  
6       pursuant to section six, article twenty of this chapter, the fee  
7       shall be submitted as if the filing were made by each individ-  
8       ual insurer. Fees submitted pursuant to this section shall not  
9       be refunded if the form filing or rate or rule filing, for which  
10      the fee was submitted, is disapproved, in whole or in part, by  
11      the commissioner. The refiling of a form filing or rate or rule

12 filing previously disapproved by the commissioner shall be  
13 considered a new filing for the purposes of the filing fee:  
14 *Provided*, That any request by the commissioner for addi-  
15 tional information pertaining to a form filing shall not be  
16 considered a new filing for purposes of the filing fee. All fees  
17 collected pursuant to this section shall be used by the com-  
18 missioner for the operation of the division of insurance.

19 (b) This section as amended in the year two thousand two  
20 applies to filings submitted after the thirtieth day of June, two  
21 thousand two. When there is a refiling after that date of a  
22 filing denied before the first day of July, two thousand two,  
23 the new filing fee structure applies and the fee shall be remit-  
24 ted when the form, rate or rule is refiled after the thirtieth day  
25 of June, two thousand two.

---

## CHAPTER 178

(S. B. 506 — By Senators Minard and Kessler)

---

[Passed March 8, 2002; in effect ninety days from passage. 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 eight-a; to amend and reenact section two, article twenty-two of said chapter; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to amend and reenact section twenty-six, article twenty-five-d of said chapter, all relating to the use of clearing corporations and federal reserve book-entry

system by domestic insurance companies with respect to invested assets.

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

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

**Article**

- 8A. Use of Clearing Corporations and Federal Reserve Book-Entry System.**
- 22. Farmers' Mutual Fire Insurance Companies.**
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**
- 25A. Health Maintenance Organization Act.**
- 25D. Prepaid Limited Health Service Organization.**

**ARTICLE 8A. USE OF CLEARING CORPORATIONS AND FEDERAL RESERVE BOOK-ENTRY SYSTEM.**

- §33-8A-1. Purpose.
- §33-8A-2. Definitions.
- §33-8A-3. Use of book-entry systems.
- §33-8A-4. Deposit of securities by domestic insurance companies.
- §33-8A-5. Deposit of securities by foreign insurance companies.
- §33-8A-6. Custody agreements: requirements.
- §33-8A-7. Deposit with affiliates: requirements.
- §33-8A-8. Effective date.

**§33-8A-1. Purpose.**

1       The purpose of this article is to authorize domestic insur-  
2       ance companies to utilize modern systems for holding and  
3       transferring securities without physical delivery of securities  
4       certificates, subject to appropriate regulation of the commis-  
5       sioner.

### §33-8A-2. Definitions.

1       As used in this article, the term:

2       (a) “Agent” means a national bank, state bank or trust  
3       company that maintains an account in its name in a clearing  
4       corporation or that is a member of the federal reserve system  
5       and through which a custodian participates in a clearing cor-  
6       poration or the federal reserve book-entry system, except that  
7       with respect to securities issued by institutions organized or  
8       existing under the laws of a foreign country or securities used  
9       to meet the deposit requirements pursuant to the laws of a  
10      foreign country as a condition of doing business therein,  
11      “agent” may include a corporation that is organized or exist-  
12      ing under the laws of a foreign country and that is legally  
13      qualified under those laws to accept custody of securities.

14      (b) “Clearing corporation” means a corporation as de-  
15      fined in subdivision (5), subsection (a), section one hundred  
16      two, article eight, chapter forty-six of this code, except that  
17      with respect to securities issued by institutions organized or  
18      existing under the laws of any foreign country or securities  
19      used to meet the deposit requirements pursuant to the laws of  
20      a foreign country as a condition of doing business therein,  
21      clearing corporation may include a corporation which is or-  
22      ganized or existing under the laws of any foreign country and  
23      is legally qualified under such laws to effect the transactions  
24      in securities by computerized book entry.

25      (c) “Custodian” means a national bank, state bank or trust  
26      company that shall at all times during which it acts as a cus-

27 todian pursuant to this regulation be no less than adequately  
28 capitalized as determined by the standards adopted by United  
29 States banking regulators and that is regulated by either state  
30 banking laws or is a member of the federal reserve system  
31 and that is legally qualified to accept custody of securities in  
32 accordance with the standards set forth below, except that  
33 with respect to securities issued by institutions organized or  
34 existing under the laws of a foreign country, or securities  
35 used to meet the deposit requirements pursuant to the laws of  
36 a foreign country as a condition of doing business therein,  
37 “custodian” may include a bank or trust company incorpo-  
38 rated or organized under the laws of a country other than the  
39 United States that is regulated as such by that country’s gov-  
40 ernment or an agency thereof that shall at all times during  
41 which it acts as a custodian pursuant to this regulation be no  
42 less than adequately capitalized as determined by the stan-  
43 dards adopted by international banking authorities and that is  
44 legally qualified to accept custody of securities.

45 (d) “Direct participant” means a bank or trust company  
46 or other institution which maintains an account in its name in  
47 a clearing corporation and through which an insurance com-  
48 pany participates in a clearing corporation.

49 (e) “Federal reserve book-entry system” means the com-  
50 puterized systems sponsored by the United States department  
51 of the treasury and certain agencies and instrumentalities of  
52 the United States for holding and transferring securities of the  
53 United States government and such agencies and instrumen-  
54 talities, respectively, in federal reserve banks, through banks  
55 which are members of the federal reserve system or which  
56 otherwise have access to such computerized systems.

57 (f) “Member bank” means a national bank, state bank or  
58 trust company which is a member of the federal reserve sys-

59 tem and through which an insurance company participates in  
60 the federal reserve book-entry system.

61 (g) "Securities" means certificated securities as defined  
62 in subdivision (4), subsection (a), section one hundred two,  
63 article eight, chapter forty-six of this code and uncertificated  
64 securities as defined in subdivision (18) of said subsection.

**§33-8A-3. Use of book-entry systems.**

1 (a) Notwithstanding any other provision of law, a domes-  
2 tic insurance company may deposit or arrange for the deposit  
3 of securities held in or purchased for its general account and  
4 its separate accounts in a clearing corporation or the federal  
5 reserve book-entry system. When securities are deposited  
6 with a clearing corporation, certificates representing securi-  
7 ties of the same class of the same issuer may be merged and  
8 held in bulk in the name of the nominee of the clearing cor-  
9 poration with any other securities deposited with the clearing  
10 corporation by any person, regardless of the ownership of the  
11 securities, and certificates representing securities of small  
12 denominations may be merged into one or more certificates  
13 of larger denominations. The records of a member bank  
14 through which an insurance company holds securities in the  
15 federal reserve book-entry system and the records of any  
16 custodian banks through which an insurance company holds  
17 securities in a clearing corporation shall at all times show that  
18 the securities are held for the insurance company and for  
19 which accounts. Ownership of, and other interests in, the  
20 securities may be transferred by bookkeeping entry on the  
21 books of such clearing corporation or in the federal reserve  
22 book-entry system without, in either case, physical delivery  
23 of certificates representing the securities.

24 (b) The insurance commissioner is authorized to promul-  
25 gate rules and regulations governing the deposit by insurance



26 companies of securities with clearing corporations and in the  
27 federal reserve book-entry system.

**§33-8A-4. Deposit of securities by domestic insurance companies.**

1 Notwithstanding any other provision of law, the securi-  
2 ties qualified for deposit under this section may be deposited  
3 with a clearing corporation or held in the federal reserve  
4 book-entry system. Securities deposited with a clearing cor-  
5 poration or held in the federal reserve book-entry system and  
6 used to meet the deposit requirements set forth in this section  
7 shall be under the control of the commissioner and may not  
8 be withdrawn by the insurance company without the approval  
9 of the commissioner. An insurance company holding securi-  
10 ties in this manner shall provide to the commissioner evi-  
11 dence issued by its custodian or member bank through which  
12 the insurance company has deposited the securities in a clear-  
13 ing corporation or through which the securities are held in the  
14 federal reserve book-entry system, respectively, in order to  
15 establish that the securities are actually recorded in an ac-  
16 count in the name of the custodian or other direct participant  
17 or member bank and that the records of the custodian, other  
18 participant or member bank reflect that the securities are held  
19 subject to the order of the commissioner.

**§33-8A-5. Deposit of securities by foreign insurance companies.**

1 Notwithstanding any other provision of law, securities  
2 eligible for deposit under the insurance law of this state relat-  
3 ing to deposit of securities by an insurance company as a  
4 condition of commencing or continuing to do an insurance  
5 business in this state may be deposited with a clearing corpo-  
6 ration or held in the federal reserve book-entry system. Secu-  
7 rities deposited with a clearing corporation or held in the  
8 federal reserve book-entry system and used to meet the de-

9 posit requirements under the insurance laws of this state shall  
10 be under the control of the commissioner and shall not be  
11 withdrawn by the insurance company without the approval of  
12 the commissioner. An insurance company holding securities  
13 in this manner shall provide to the commissioner evidence  
14 issued by its custodian or a member bank through which the  
15 insurance company has deposited securities with a clearing  
16 corporation or held in the federal reserve book-entry system,  
17 respectively, in order to establish that the securities are actu-  
18 ally recorded in an account in the name of the custodian or  
19 other direct participant or member bank and evidence that the  
20 records of the custodian, other participant or member bank  
21 reflect that the securities are held subject to the order of the  
22 commissioner.

**§33-8A-6. Custody agreements; requirements.**

1 (a) An insurance company may, by written agreement  
2 with a custodian, provide for the custody of its securities with  
3 a custodian. The securities may be held by the custodian or  
4 its agent or in a clearing corporation or in the federal reserve  
5 book-entry system. Securities so held, whether held by the  
6 custodian or its agent or in a clearing corporation or in the  
7 federal reserve book-entry system, are referred to herein as  
8 “custodied securities”.

9 (b) The agreement shall be in writing and shall be autho-  
10 rized by a resolution of the board of directors of the insurance  
11 company or of an authorized committee of the board. The  
12 terms of the agreement shall comply with the following:

13 (1) Certificated securities held by the custodian shall be  
14 held either separate from the securities of the custodian and  
15 of all of its other customers or in a fungible bulk of securities  
16 as part of a filing of securities by issue (FOSBI) arrangement.

17       (2) Securities held in a fungible bulk by the custodian  
18 and securities in a clearing corporation or in the federal re-  
19 serve book-entry system shall be separately identified on the  
20 custodian's official records as being owned by the insurance  
21 company. The records shall identify which custodied securi-  
22 ties are held by the custodian or by its agent and which secu-  
23 rities are in a clearing corporation or in the federal reserve  
24 book-entry system. If the securities are in a clearing corpora-  
25 tion or in the federal reserve book-entry system, the records  
26 shall also identify where the securities are and if in a clearing  
27 corporation, the name of the clearing corporation and, if  
28 through an agent, the name of the agent.

29       (3) All custodied securities that are registered shall be  
30 registered in the name of the company or in the name of a  
31 nominee of the company or in the name of the custodian or  
32 its nominee or, if in a clearing corporation, in the name of the  
33 clearing corporation or its nominee.

34       (4) Custodied securities shall be held subject to the in-  
35 structions of the insurance company and shall be  
36 withdrawable upon the demand of the insurance company,  
37 except that custodied securities used to meet the deposit re-  
38 quirements set forth in section six, article three of this chap-  
39 ter shall, to the extent required by said section, be under the  
40 control of the state treasurer and shall not be withdrawn by  
41 the insurance company without the approval of the insurance  
42 commissioner.

43       (5) The custodian shall be required to send or cause to be  
44 sent to the insurance company a confirmation of all transfers  
45 of custodied securities to or from the account of the insurance  
46 company. In addition, the custodian shall be required to fur-  
47 nish no less than monthly the insurance company with reports  
48 of holdings of custodied securities at times and containing  
49 information reasonably requested by the insurance company.

50 The custodian's trust committee's annual reports of its re-  
51 view of the insurer's trust accounts shall also be provided to  
52 the insurer. Reports and verifications may be transmitted in  
53 electronic or paper form.

54 (6) During the course of the custodian's regular business  
55 hours, an officer or employee of the insurance company, an  
56 independent accountant selected by the insurance company  
57 and a representative of an appropriate regulatory body shall  
58 be entitled to examine, on the premises of the custodian, the  
59 custodian's records relating to custodied securities, but only  
60 upon furnishing the custodian with written instructions to that  
61 effect from an appropriate officer of the insurance company.

62 (7) The custodian and its agents shall be required to send  
63 to the insurance company:

64 (A) All reports which they receive from a clearing corpo-  
65 ration or the federal reserve book-entry system on their re-  
66 spective systems of internal accounting control; and

67 (B) Reports prepared by outside auditors on the custodi-  
68 ans or its agent's internal accounting control of custodied  
69 securities that the insurance company may reasonably re-  
70 quest.

71 (8) The custodian shall maintain records sufficient to  
72 determine and verify information relating to custodied securi-  
73 ties that may be reported in the insurance company's annual  
74 statement and supporting schedules and information required  
75 in an audit of the financial statements of the insurance com-  
76 pany.

77 (9) The custodian shall provide, upon written request  
78 from an appropriate officer of the insurance company, the  
79 appropriate affidavits, substantially in the form attached to  
80 this regulation, with respect to custodied securities.

81       (10) The custodian shall secure and maintain insurance  
82 protection in an adequate amount covering the custodian's  
83 duties and activities as custodian for the insurer's assets and  
84 shall state in the custody agreement that protection is in com-  
85 pliance with the requirements of the custodian's banking  
86 regulator. The commissioner may determine whether the type  
87 of insurance is appropriate and the amount of coverage is  
88 adequate.

89       (11) The custodian shall be obligated to indemnify the  
90 insurance company for any loss of custodied securities occa-  
91 sioned by the negligence or dishonesty of the custodian's  
92 officers or employees, or burglary, robbery, holdup, theft or  
93 mysterious disappearance, including loss by damage or de-  
94 struction.

95       (12) In the event that there is a loss of custodied securi-  
96 ties for which the custodian shall be obligated to indemnify  
97 the insurance company as provided in subdivision (11) of this  
98 subsection, the custodian shall promptly replace the securities  
99 or the value thereof and the value of any loss of rights or  
100 privileges resulting from the loss of securities.

101       (13) The agreement may provide that the custodian will  
102 not be liable for a failure to take an action required under the  
103 agreement in the event and to the extent that the taking of the  
104 action is prevented or delayed by war (whether declared or  
105 not and including existing wars), revolution, insurrection,  
106 riot, civil commotion, act of God, accident, fire, explosion,  
107 stoppage of labor, strikes or other differences with employ-  
108 ees, laws, regulations, orders or other acts of any governmen-  
109 tal authority, or any other cause whatever beyond its reason-  
110 able control.

111       (14) In the event that the custodian gains entry in a clear-  
112 ing corporation or in the federal reserve book-entry system

113 through an agent, there shall be an agreement between the  
114 custodian and the agent under which the agent shall be sub-  
115 ject to the same liability for loss of custodied securities as the  
116 custodian. However, if the agent shall be subject to regulation  
117 under the laws of a jurisdiction that is different from the ju-  
118 risdiction the laws of which regulate the custodian, the insur-  
119 ance commissioner of the state of domicile of the insurance  
120 company may accept a standard of liability applicable to the  
121 agent that is different from the standard of liability applicable  
122 to the custodian.

123 (15) The custodian shall provide written notification to  
124 the insurer's domiciliary commissioner if the custodial agree-  
125 ment with the insurer has been terminated or if one hundred  
126 percent of the account assets in any one custody account have  
127 been withdrawn. This notification shall be remitted to the  
128 insurance commissioner within three business days of the  
129 receipt by the custodian of the insurer's written notice of  
130 termination or within three business days of the withdrawal  
131 of one hundred percent of the account assets.

**§33-8A-7. Deposit with affiliates; requirements.**

1 (a) Nothing in this regulation shall prevent an insurance  
2 company from depositing securities with another insurance  
3 company with which the depositing insurance company is  
4 affiliated, provided that the securities are deposited pursuant  
5 to a written agreement authorized by the board of directors of  
6 the depositing insurance company or an authorized commit-  
7 tee thereof and that the receiving insurance company is orga-  
8 nized under the laws of one of the states of the United States  
9 of America or of the District of Columbia. If the respective  
10 states of domicile of the depositing and receiving insurance  
11 companies are not the same, the depositing insurance com-  
12 pany shall have given notice of the deposit to the insurance  
13 commissioner in the state of its domicile and the insurance

14 commissioner shall not have objected to it within thirty days  
15 of the receipt of the notice.

16 (b) The terms of the agreement shall comply with the  
17 following:

18 (1) The insurance company receiving the deposit shall  
19 maintain records adequate to identify and verify the securities  
20 belonging to the depositing insurance company.

21 (2) The receiving insurance company shall allow repre-  
22 sentatives of an appropriate regulatory body to examine re-  
23 cords relating to securities held subject to the agreement.

24 (3) The depositing insurance company may authorize the  
25 receiving insurance company:

26 (A) To hold the securities of the depositing insurance  
27 company in bulk, in certificates issued in the name of the  
28 receiving insurance company or its nominee, and to commin-  
29 gle them with securities owned by other affiliates of the re-  
30 ceiving insurance company; and

31 (B) To provide for the securities to be held by a custo-  
32 dian, including the custodian of securities of the receiving  
33 insurance company or in a clearing corporation or the federal  
34 reserve book-entry system.

#### **§33-8A-8. Effective date.**

1 This article shall become effective on the first day of  
2 July, two thousand two.

#### **ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.**

##### **§33-22-2. Applicability of other provisions.**

1 Each company to the same extent that provisions are  
2 applicable to domestic mutual insurers shall be governed by  
3 and be subject to the following articles of this chapter: Arti-  
4 cle one (definitions); article two (insurance commissioner);  
5 article four (general provisions) except that section sixteen of  
6 said article may not be applicable thereto; article seven (as-  
7 sets and liabilities); article eight-a (use of clearing corpora-  
8 tions and federal reserve book-entry system); article ten (re-  
9 habilitation and liquidation) except that under the provisions  
10 of section thirty-two of said article assessments may not be  
11 levied against any former member of a farmers' mutual fire  
12 insurance company who is no longer a member of the com-  
13 pany at the time the order to show cause was issued; article  
14 eleven (unfair trade practices); article twelve (agents, brokers  
15 and solicitors) except that the agent's license fee shall be five  
16 dollars; article twenty-six (West Virginia insurance guaranty  
17 association act); article twenty-seven (insurance holding  
18 company systems); article thirty (mine subsidence insurance)  
19 except that under the provisions of section six of said article,  
20 a farmers' mutual insurance company shall have the option of  
21 offering mine subsidence coverage to all of its policyholders  
22 but may not be required to do so; article thirty-three (annual  
23 audited financial report); article thirty-four (administrative  
24 supervision); article thirty-four-a (standards and commis-  
25 sioner's authority for companies considered to be in hazard-  
26 ous financial condition); article thirty-five (criminal sanc-  
27 tions for failure to report impairment); article thirty-six (busi-  
28 ness transacted with producer-controlled property-casualty  
29 insurer); article thirty-seven (managing general agents); arti-  
30 cle thirty-nine (disclosure of material transactions); article  
31 forty (risk-based capital for insurers); and article forty-one  
32 (privileges and immunity); but only to the extent these provi-  
33 sions are not inconsistent with the provisions of this article.



**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.**

**§33-24-4. Exemptions; applicability of insurance laws.**

1 Every corporation defined in section two of this article is  
2 hereby declared to be a scientific, nonprofit institution and  
3 exempt from the payment of all property and other taxes.  
4 Every corporation, to the same extent the provisions are ap-  
5 plicable to insurers transacting similar kinds of insurance and  
6 not inconsistent with the provisions of this article, shall be  
7 governed by and be subject to the provisions as herein below  
8 indicated, of the following articles of this chapter: Article  
9 two (insurance commissioner), except that, under section  
10 nine of said article, examinations shall be conducted at least  
11 once every four years; article four (general provisions), ex-  
12 cept that section sixteen of said article may not be applicable  
13 thereto; section twenty, article five (borrowing by insurers);  
14 section thirty-four, article six (fee for form and rate filing);  
15 article six-c (guaranteed loss ratio); article seven (assets and  
16 liabilities); article eight-a (use of clearing corporations and  
17 federal reserve book-entry system); article eleven (unfair  
18 trade practices); article twelve (agents, brokers and solici-  
19 tors), except that the agent's license fee shall be twenty-five  
20 dollars; section two-a, article fifteen (definitions); section  
21 two-b, article fifteen (guaranteed issue); section two-d, article  
22 fifteen (exception to guaranteed renewability); section two-e,  
23 article fifteen (discontinuation of coverage); section two-f,  
24 article fifteen (certification of creditable coverage); section  
25 two-g, article fifteen (applicability); section four-e, article  
26 fifteen (benefits for mothers and newborns); section fourteen,  
27 article fifteen (individual accident and sickness insurance);  
28 section sixteen, article fifteen (coverage of children); section  
29 eighteen, article fifteen (equal treatment of state agency);  
30 section nineteen, article fifteen (coordination of benefits with

31 medicaid); article fifteen-a (long-term care insurance); article  
32 fifteen-c (diabetes insurance); section three, article sixteen  
33 (required policy provisions); section three-a, article sixteen  
34 (mental health); section three-c, article sixteen (group acci-  
35 dent and sickness insurance); section three-d, article sixteen  
36 (medicare supplement insurance); section three-f, article  
37 sixteen (treatment of temporomandibular joint disorder and  
38 craniomandibular disorder); section three-j, article sixteen  
39 (benefits for mothers and newborns); section three-k, article  
40 sixteen (preexisting condition exclusions); section three-l,  
41 article sixteen (guaranteed renewability); section three-m,  
42 article sixteen (creditable coverage); section three-n, article  
43 sixteen (eligibility for enrollment); section eleven, article  
44 sixteen (coverage of children); section thirteen, article sixteen  
45 (equal treatment of state agency); section fourteen, article  
46 sixteen (coordination of benefits with medicaid); section  
47 sixteen, article sixteen (diabetes insurance); article sixteen-a  
48 (group health insurance conversion); article sixteen-c (small  
49 employer group policies); article sixteen-d (marketing and  
50 rate practices for small employers); article twenty-six-a  
51 (West Virginia life and health insurance guaranty association  
52 act), after the first day of October, one thousand nine hundred  
53 ninety-one; article twenty-seven (insurance holding company  
54 systems); article twenty-eight (individual accident and sick-  
55 ness insurance minimum standards); article thirty-three (an-  
56 nual audited financial report); article thirty-four (administra-  
57 tive supervision); article thirty-four-a (standards and commis-  
58 sioner's authority for companies considered to be in hazard-  
59 ous financial condition); article thirty-five (criminal sanc-  
60 tions for failure to report impairment); article thirty-seven  
61 (managing general agents); and article forty-one (privileges  
62 and immunity) and no other provision of this chapter may  
63 apply to these corporations unless specifically made applica-  
64 ble by the provisions of this article. If, however, the corpora-  
65 tion is converted into a corporation organized for a pecuniary

66 profit or if it transacts business without having obtained a  
67 license as required by section five of this article, it shall  
68 thereupon forfeit its right to these exemptions.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-24. Scope of provisions; applicability of other laws.**

1 (a) Except as otherwise provided in this article, provi-  
2 sions of the insurance laws and provisions of hospital or  
3 medical service corporation laws are not applicable to any  
4 health maintenance organization granted a certificate of au-  
5 thority under this article. The provisions of this article shall  
6 not apply to an insurer or hospital or medical service corpora-  
7 tion licensed and regulated pursuant to the insurance laws or  
8 the hospital or medical service corporation laws of this state  
9 except with respect to its health maintenance corporation  
10 activities authorized and regulated pursuant to this article.  
11 The provisions of this article may not apply to an entity prop-  
12 erly licensed by a reciprocal state to provide health care ser-  
13 vices to employer groups, where residents of West Virginia  
14 are members of an employer group, and the employer group  
15 contract is entered into in the reciprocal state. For purposes of  
16 this subsection, a "reciprocal state" means a state which  
17 physically borders West Virginia and which has subscriber or  
18 enrollee hold harmless requirements substantially similar to  
19 those set out in section seven-a of this article.

20 (b) Factually accurate advertising or solicitation regard-  
21 ing the range of services provided, the premiums and  
22 copayments charged, the sites of services and hours of opera-  
23 tion and any other quantifiable, nonprofessional aspects of its  
24 operation by a health maintenance organization granted a  
25 certificate of authority, or its representative may not be con-  
26 strued to violate any provision of law relating to solicitation  
27 or advertising by health professions: *Provided*, That nothing  
28 contained in this subsection shall be construed as authorizing

29 any solicitation or advertising which identifies or refers to  
30 any individual provider or makes any qualitative judgment  
31 concerning any provider.

32 (c) Any health maintenance organization authorized un-  
33 der this article may not be considered to be practicing medi-  
34 cine and is exempt from the provisions of chapter thirty of  
35 this code, relating to the practice of medicine.

36 (d) The provisions of sections fifteen and twenty, article  
37 four (general provisions); section seventeen, article six (non-  
38 complying forms); section twenty, article five (borrowing by  
39 insurers); article six-c (guaranteed loss ratio); article seven  
40 (assets and liabilities); article eight (investments); article  
41 eight-a (use of clearing corporations and federal reserve  
42 book-entry system); article nine (administration of deposits);  
43 article twelve (agents, brokers, solicitors and excess line);  
44 section fourteen, article fifteen (individual accident and sick-  
45 ness insurance); section sixteen, article fifteen (coverage of  
46 children); section eighteen, article fifteen (equal treatment of  
47 state agency); section nineteen, article fifteen (coordination  
48 of benefits with medicaid); article fifteen-b (uniform health  
49 care administration act); section three, article sixteen (re-  
50 quired policy provisions); section three-f, article sixteen  
51 (treatment of temporomandibular disorder and  
52 craniomandibular disorder); section eleven, article sixteen  
53 (coverage of children); section thirteen, article sixteen (equal  
54 treatment of state agency); section fourteen, article sixteen  
55 (coordination of benefits with medicaid); article sixteen-a  
56 (group health insurance conversion); article sixteen-d (mar-  
57 keting and rate practices for small employers); article  
58 twenty-five-c (health maintenance organization patient bill of  
59 rights); article twenty-seven (insurance holding company  
60 systems); article thirty-four-a (standards and commissioner's  
61 authority for companies considered to be in hazardous finan-  
62 cial condition); article thirty-five (criminal sanctions for fail-

63 ure to report impairment); article thirty-seven (managing  
64 general agents); article thirty-nine (disclosure of material  
65 transactions); article forty-one (privileges and immunity);  
66 and article forty-two (women's access to health care) shall be  
67 applicable to any health maintenance organization granted a  
68 certificate of authority under this article. In circumstances  
69 where the code provisions made applicable to health mainte-  
70 nance organizations by this section refer to the "insurer", the  
71 "corporation" or words of similar import, the language shall  
72 be construed to include health maintenance organizations.

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

**ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZA-  
TION.**

**§33-25D-26. Scope of provisions; applicability of other laws.**

1 (a) Except as otherwise provided in this article, provi-  
2 sions of the insurance laws, provisions of hospital, medical,  
3 dental or health service corporation laws and provisions of  
4 health maintenance organization laws are not applicable to  
5 any prepaid limited health service organization granted a  
6 certificate of authority under this article. The provisions of  
7 this article do not apply to an insurer, hospital, medical, den-  
8 tal or health service corporation, or health maintenance orga-  
9 nization licensed and regulated pursuant to the insurance  
10 laws, hospital, medical, dental or health service corporation  
11 laws or health maintenance organization laws of this state  
12 except with respect to its prepaid limited health service cor-  
13 poration activities authorized and regulated pursuant to this  
14 article. The provisions of this article do not apply to an entity  
15 properly licensed by a reciprocal state to provide a limited  
16 health care service to employer groups, where residents of  
17 West Virginia are members of an employer group, and the

18 employer group contract is entered into in the reciprocal  
19 state. For purposes of this subsection, a “reciprocal state”  
20 means a state which physically borders West Virginia and  
21 which has subscriber or enrollee hold harmless requirements  
22 substantially similar to those set out in section ten of this  
23 article.

24 (b) Factually accurate advertising or solicitation regard-  
25 ing the range of services provided, the premiums and  
26 copayments charged, the sites of services and hours of opera-  
27 tion and any other quantifiable, nonprofessional aspects of its  
28 operation by a prepaid limited health service organization  
29 granted a certificate of authority, or its representative do not  
30 violate any provision of law relating to solicitation or adver-  
31 tising by health professions: *Provided*, That nothing con-  
32 tained in this subsection authorizes any solicitation or adver-  
33 tising which identifies or refers to any individual provider or  
34 makes any qualitative judgment concerning any provider.

35 (c) Any prepaid limited health service organization au-  
36 thorized under this article is not considered to be practicing  
37 medicine and is exempt from the provision of chapter thirty  
38 of this code relating to the practice of medicine.

39 (d) The provisions of section nine, article two, examina-  
40 tions; section thirteen, article two, hearings; sections fifteen  
41 and twenty, article four, general provisions; section twenty,  
42 article five, borrowing by insurers; section seventeen, article  
43 six, noncomplying forms; article six-c, guaranteed loss ratio;  
44 article seven, assets and liabilities; article eight, investments;  
45 article eight-a, use of clearing corporations and federal re-  
46 serve book-entry system; article nine, administration of de-  
47 posits; article ten, rehabilitation and liquidation; article  
48 twelve, agents, brokers, solicitors and excess line; section  
49 fourteen, article fifteen, individual accident and sickness  
50 insurance; section sixteen, article fifteen, coverage of chil-  
51 dren; section eighteen, article fifteen, equal treatment of state  
52 agency; section nineteen, article fifteen, coordination of ben-

53 efits with medicaid; article fifteen-b, uniform health care  
54 administration act; section three, article sixteen, required  
55 policy provisions; section eleven, article sixteen, coverage of  
56 children; section thirteen, article sixteen, equal treatment of  
57 state agency; section fourteen, article sixteen, coordination of  
58 benefits with medicaid; article sixteen-a, group health insur-  
59 ance conversion; article sixteen-d, marketing and rate prac-  
60 tices for small employers; article twenty-seven, insurance  
61 holding company systems; article thirty-three, annual audited  
62 financial report; article thirty-four, administrative supervi-  
63 sion; article thirty-four-a, standards and commissioner's au-  
64 thority for companies considered to be in hazardous financial  
65 condition; article thirty-five, criminal sanctions for failure to  
66 report impairment; article thirty-seven, managing general  
67 agents; article thirty-nine, disclosure of material transactions;  
68 and article forty-one, privileges and immunity, all of this  
69 chapter are applicable to any prepaid limited health service  
70 organization granted a certificate of authority under this arti-  
71 cle. In circumstances where the code provisions made appli-  
72 cable to prepaid limited health service organizations by this  
73 section refer to the "insurer", the "corporation" or words of  
74 similar import, the language includes prepaid limited health  
75 service organizations.

76 (e) Any long-term care insurance policy delivered or  
77 issued for delivery in this state by a prepaid limited health  
78 service organization shall comply with the provisions of arti-  
79 cle fifteen-a of this chapter.

80 (f) A prepaid limited health service organization granted  
81 a certificate of authority under this article is exempt from  
82 paying municipal business and occupation taxes on gross  
83 income it receives from its enrollees, or from their employers  
84 or others on their behalf, for health care items or services  
85 provided directly or indirectly by the prepaid limited health  
86 service organization.

---

## CHAPTER 179

(Com. Sub. for H. B. 4469 — By Delegate Beane)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section four, article eleven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making a violation of the insurance commissioner's rule regarding a consumer's financial and health information a violation of the unfair trade practices.

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

That section four, article eleven, 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 11. UNFAIR TRADE PRACTICES.

#### **§33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined.**

1       The following are defined as unfair methods of competi-  
2       tion and unfair or deceptive acts or practices in the business  
3       of insurance:

4       (1) *Misrepresentation and false advertising of insurance*  
5       *policies.* — No person shall make, issue, circulate, or cause  
6       to be made, issued or circulated, any estimate, circular, state-  
7       ment, sales presentation, omission or comparison which:



- 8       (a) Misrepresents the benefits, advantages, conditions or  
9 terms of any insurance policy; or
- 10       (b) Misrepresents the dividends or share of the surplus to  
11 be received on any insurance policy; or
- 12       (c) Makes any false or misleading statements as to the  
13 dividends or share of surplus previously paid on any insur-  
14 ance policy; or
- 15       (d) Is misleading or is a misrepresentation as to the finan-  
16 cial condition of any person, or as to the legal reserve system  
17 upon which any life insurer operates; or
- 18       (e) Uses any name or title of any insurance policy or  
19 class of insurance policies misrepresenting the true nature  
20 thereof; or
- 21       (f) Is a misrepresentation for the purpose of inducing or  
22 tending to induce the lapse, forfeiture, exchange, conversion  
23 or surrender of any insurance policy; or
- 24       (g) Is a misrepresentation for the purpose of effecting a  
25 pledge or assignment of or effecting a loan against any insur-  
26 ance policy; or
- 27       (h) Misrepresents any insurance policy as being shares of  
28 stock.
- 29       (2) *False information and advertising generally.* — No  
30 person shall make, publish, disseminate, circulate or place  
31 before the public, or cause, directly or indirectly, to be made,  
32 published, disseminated, circulated or placed before the pub-  
33 lic, in a newspaper, magazine or other publication, or in the  
34 form of a notice, circular, pamphlet, letter or poster or over  
35 any radio or television station, or in any other way, an adver-  
36 tisement, announcement or statement containing any asser-

37 tion, representation or statement with respect to the business  
38 of insurance or with respect to any person in the conduct of  
39 his or her insurance business, which is untrue, deceptive or  
40 misleading.

41 (3) *Defamation.* — No person shall make, publish, dis-  
42 seminate or circulate, directly or indirectly, or aid, abet or  
43 encourage the making, publishing, disseminating or circulat-  
44 ing of any oral or written statement or any pamphlet, circular,  
45 article or literature which is false, or maliciously critical of or  
46 derogatory to the financial condition of any person and which  
47 is calculated to injure the person.

48 (4) *Boycott, coercion and intimidation.* — No person  
49 shall enter into any agreement to commit, or by any con-  
50 certed action commit, any act of boycott, coercion or intimi-  
51 dation resulting in or tending to result in unreasonable re-  
52 straint of, or monopoly in, the business of insurance.

53 (5) *False statements and entries.* — (a) No person shall  
54 knowingly file with any supervisory or other public official,  
55 or knowingly make, publish, disseminate, circulate or deliver  
56 to any person, or place before the public, or knowingly cause  
57 directly or indirectly, to be made, published, disseminated,  
58 circulated, delivered to any person, or placed before the pub-  
59 lic, any false material statement of fact as to the financial  
60 condition of a person.

61 (b) No person shall knowingly make any false entry of a  
62 material fact in any book, report or statement of any person  
63 or knowingly omit to make a true entry of any material fact  
64 pertaining to the business of any person in any book, report  
65 or statement of such person.

66 (6) *Stock operations and advisory board contracts.* — No  
67 person shall issue or deliver or permit agents, officers or

68 employees to issue or deliver, agency company stock or other  
69 capital stock, or benefit certificates or shares in any com-  
70 mon-law corporation, or securities or any special or advisory  
71 board contracts or other contracts of any kind promising re-  
72 turns and profits as an inducement to insurance.

73 (7) *Unfair discrimination.* — (a) No person shall make or  
74 permit any unfair discrimination between individuals of the  
75 same class and equal expectation of life in the rates charged  
76 for any contract of life insurance or of life annuity or in the  
77 dividends or other benefits payable thereon, or in any other of  
78 the terms and conditions of the contract.

79 (b) No person shall make or permit any unfair discrimi-  
80 nation between individuals of the same class and of essen-  
81 tially the same hazard in the amount of premium policy fees,  
82 or rates charged for any policy or contract of accident and  
83 sickness insurance or in the benefits payable thereunder, or in  
84 any of the terms or conditions of the contract, or in any other  
85 manner whatever.

86 (c) As to kinds of insurance other than life and accident  
87 and sickness, no person shall make or permit any unfair dis-  
88 crimination in favor of particular persons, or between  
89 insureds or subjects of insurance having substantially like  
90 insuring, risk and exposure factors or expense elements, in  
91 the terms or conditions of any insurance contract, or in the  
92 rate or amount of premium charge therefor. This paragraph  
93 shall not apply as to any premium or premium rate in effect  
94 pursuant to article twenty of this chapter.

95 (8) *Rebates.* — (a) Except as otherwise expressly pro-  
96 vided by law, no person shall knowingly permit or offer to  
97 make or make any contract of life insurance, life annuity, or  
98 accident and sickness insurance, or agreement as to any con-  
99 tract other than as plainly expressed in the insurance contract

100 issued thereon, or pay or allow or give or offer to pay, allow  
101 or give, directly or indirectly, as inducement to any insurance  
102 or annuity, any rebate of premiums payable on the contract,  
103 or any special favor or advantage in the dividends or other  
104 benefits thereon, or any valuable consideration or inducement  
105 whatever not specified in the contract; or give or sell, or pur-  
106 chase or offer to give, sell or purchase as inducement to any  
107 insurance contract or annuity or in connection therewith, any  
108 stocks, bonds or other securities of any insurance company or  
109 other corporation, association or partnership, or any divi-  
110 dends or profits accrued thereon, or anything of value what-  
111 soever not specified in the contract.

112 (b) Nothing in subdivision (7) or paragraph (a) of subdivi-  
113 sion (8) of this section shall be construed as including  
114 within the definition of unfair discrimination or rebates any  
115 of the following practices:

116 (i) In the case of any contract of life insurance or life  
117 annuity, paying bonuses to policyholders or otherwise abat-  
118 ing their premiums in whole or in part out of surplus accumu-  
119 lated from nonparticipating insurance: *Provided*, That any  
120 such bonuses or abatement of premiums shall be fair and  
121 equitable to policyholders and for the best interests of the  
122 insurer and its policyholders;

123 (ii) In the case of life insurance policies issued on the  
124 industrial debit plan, making allowance to policyholders who  
125 have continuously for a specified period made premium pay-  
126 ments directly to an office of the insurer in an amount which  
127 fairly represents the saving in collection expenses;

128 (iii) Readjustment of the rate of premium for a group  
129 insurance policy based on the loss or expense thereunder, at  
130 the end of the first or any subsequent policy year of insurance

131 thereunder, which may be made retroactive only for such  
132 policy year;

133 (iv) Issuing life or accident and sickness policies on a  
134 salary savings or payroll deduction plan at a reduced rate  
135 commensurate with the savings made by the use of the plan.

136 (c) With respect to insurance other than life, accident and  
137 sickness, ocean marine or marine protection and indemnity  
138 insurance, no person shall knowingly charge, demand or  
139 receive a premium for the insurance except in accordance  
140 with an applicable filing on file with the commissioner. No  
141 person shall pay, allow or give, directly or indirectly, either  
142 as an inducement to insurance or after insurance has been  
143 effected, any rebate, discount, abatement, credit or reduction  
144 of the premium named in a policy of insurance, or any spe-  
145 cial favor or advantage in the dividends or other benefits to  
146 accrue thereon, or any valuable consideration or inducement  
147 whatever, not specified in the policy of insurance, except to  
148 the extent provided for in an applicable filing. No insured  
149 named in a policy of insurance, nor any relative, representa-  
150 tive or employee of the insured shall knowingly receive or  
151 accept directly or indirectly, any rebate, discount, abatement,  
152 credit or reduction of premium, or any special favor or ad-  
153 vantage or valuable consideration or inducement. Nothing in  
154 this section shall be construed as prohibiting the payment of  
155 commissions or other compensation to duly licensed agents  
156 and brokers, nor as prohibiting any insurer from allowing or  
157 returning to its participating policyholders, members or sub-  
158 scribers, dividends, savings or unabsorbed premium deposits.  
159 As used in this section the word "insurance" includes  
160 suretyship and the word "policy" includes bond.

161 (9) *Unfair claim settlement practices.* — No person shall  
162 commit or perform with such frequency as to indicate a gen-  
163 eral business practice any of the following:

164 (a) Misrepresenting pertinent facts or insurance policy  
165 provisions relating to coverages at issue;

166 (b) Failing to acknowledge and act reasonably promptly  
167 upon communications with respect to claims arising under  
168 insurance policies;

169 (c) Failing to adopt and implement reasonable standards  
170 for the prompt investigation of claims arising under insurance  
171 policies;

172 (d) Refusing to pay claims without conducting a reason-  
173 able investigation based upon all available information;

174 (e) Failing to affirm or deny coverage of claims within a  
175 reasonable time after proof of loss statements have been com-  
176 pleted;

177 (f) Not attempting in good faith to effectuate prompt, fair  
178 and equitable settlements of claims in which liability has  
179 become reasonably clear;

180 (g) Compelling insureds to institute litigation to recover  
181 amounts due under an insurance policy by offering substan-  
182 tially less than the amounts ultimately recovered in actions  
183 brought by the insureds, when the insureds have made claims  
184 for amounts reasonably similar to the amounts ultimately  
185 recovered;

186 (h) Attempting to settle a claim for less than the amount  
187 to which a reasonable man would have believed he was enti-  
188 tled by reference to written or printed advertising material  
189 accompanying or made part of an application;

190 (i) Attempting to settle claims on the basis of an applica-  
191 tion which was altered without notice to, or knowledge or  
192 consent of, the insured;

193       (j) Making claims payments to insureds or beneficiaries  
194 not accompanied by a statement setting forth the coverage  
195 under which payments are being made;

196       (k) Making known to insureds or claimants a policy of  
197 appealing from arbitration awards in favor of insureds or  
198 claimants for the purpose of compelling them to accept set-  
199 tlements or compromises less than the amount awarded in  
200 arbitration;

201       (l) Delaying the investigation or payment of claims by  
202 requiring an insured, claimant, or the physician of either to  
203 submit a preliminary claim report and then requiring the sub-  
204 sequent submission of formal proof of loss forms, both of  
205 which submissions contain substantially the same informa-  
206 tion;

207       (m) Failing to promptly settle claims, where liability has  
208 become reasonably clear, under one portion of the insurance  
209 policy coverage in order to influence settlements under other  
210 portions of the insurance policy coverage;

211       (n) Failing to promptly provide a reasonable explanation  
212 of the basis in the insurance policy in relation to the facts or  
213 applicable law for denial of a claim or for the offer of a com-  
214 promise settlement;

215       (o) Failing to notify the first party claimant and the pro-  
216 vider(s) of services covered under accident and sickness in-  
217 surance and hospital and medical service corporation insur-  
218 ance policies whether the claim has been accepted or denied  
219 and if denied, the reasons therefor, within fifteen calendar  
220 days from the filing of the proof of loss: *Provided*, That  
221 should benefits due the claimant be assigned, notice to the  
222 claimant shall not be required: *Provided, however*, That  
223 should the benefits be payable directly to the claimant, notice  
224 to the health care provider shall not be required. If the insurer

225 needs more time to investigate the claim, it shall so notify the  
226 first party claimant in writing within fifteen calendar days  
227 from the date of the initial notification and every thirty calen-  
228 dar days, thereafter; but in no instance shall a claim remain  
229 unsettled and unpaid for more than ninety calendar days from  
230 the first party claimant's filing of the proof of loss unless, as  
231 determined by the insurance commissioner: (1) There is a  
232 legitimate dispute as to coverage, liability or damages; or (2)  
233 the claimant has fraudulently caused or contributed to the  
234 loss. In the event that the insurer fails to pay the claim in full  
235 within ninety calendar days from the claimant's filing of the  
236 proof of loss, except for exemptions provided above, there  
237 shall be assessed against the insurer and paid to the insured a  
238 penalty which will be in addition to the amount of the claim  
239 and assessed as interest on the claim at the then current prime  
240 rate plus one percent. Any penalty paid by an insurer pursu-  
241 ant to this section shall not be a consideration in any rate  
242 filing made by the insurer.

243 (10) *Failure to maintain complaint handling procedures.*  
244 — No insurer shall fail to maintain a complete record of all  
245 the complaints which it has received since the date of its last  
246 examination under section nine, article two of this chapter.  
247 This record shall indicate the total number of complaints,  
248 their classification by line of insurance, the nature of each  
249 complaint, the disposition of these complaints, and the time it  
250 took to process each complaint. For purposes of this subsec-  
251 tion, "complaint" shall mean any written communication  
252 primarily expressing a grievance.

253 (11) *Misrepresentation in insurance applications.* — No  
254 person shall make false or fraudulent statements or represen-  
255 tations on or relative to an application for an insurance pol-  
256 icy, for the purpose of obtaining a fee, commission, money or  
257 other benefit from any insurer, agent, broker or individual.



258 (12) *Failure to maintain privacy of consumer financial and*  
259 *health information.* —Any licensee who violates any provision  
260 of the commissioner’s rule relating to the privacy of consumer  
261 financial and health information shall be deemed to have  
262 violated the provisions of this article: *Provided,* That any  
263 licensee who complies with the provisions of this subsection, a  
264 commissioner’s rule, or a court order shall not be deemed to be  
265 in violation of any other provisions of sections three and four of  
266 this article by their compliance with this subsection, the rule or  
267 court order. For purposes of this subsection, “licensee” means  
268 all licensed insurers, producers and other persons licensed or  
269 required to be licensed, or authorized or required to be autho-  
270 rized, or registered or required to be registered pursuant to this  
271 chapter.

---

## CHAPTER 180

(Com. Sub. for H. B. 4497— By Delegate Beane)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twelve-c, all relating to insurance, licensing, insurance producers, solicitors and excess lines; defining terms for implementation of the NAIC producer licensing model act; creating an insurance producer license for individuals and insurance agencies; creating a new license type that would allow the licensee to sell all types of credit insurance; establishing consistency among states; licensing laws; creating new specific nonresident license types to allow for full reciprocal licensing with other states; creating a new “personal lines”

license, pursuant to the most recent amendments to the model act; providing specific provisions from the model act that have been added to clarify in detail who needs to be licensed and who does not; liberalizing reciprocity for licensing nonresident agents; providing grounds upon which the commission may deny a license or seek the suspension or revocation of a license; placing notice requirements upon insurers and insurance producers when an appointment is terminated for "cause," including notice to the commissioner, immunity provisions, and protection of confidentiality of documentation; changing certain continuing education requirements for agents; allowing the commissioner to contract for the administration of the continuing education system; providing for the regulation of excess lines; and eliminating certain conflicting and redundant excess line-related provisions.

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

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

**Article**

- 12. Insurance Producers and Solicitors.**
- 12C. Excess Line.**

**ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.**

- §33-12-1. Purpose and scope.
- §33-12-2. Definitions.
- §33-12-3. License required.
- §33-12-4. Exceptions to licensing.
- §33-12-5. Application for examination.
- §33-12-6. Application for license.
- §33-12-6a. Residency-Individuals-Agencies.
- §33-12-6b. Licensing of agencies.
- §33-12-7. Board of insurance agent education.
- §33-12-8. Continuing education required.
- §33-12-9. Issuance of license.
- §33-12-10. Fees.

- §33-12-11. Countersignature.
- §33-12-12. Nonresident licensing.
- §33-12-13. Agent resident in contiguous municipalities.
- §33-12-14. Exemption from examination.
- §33-12-15. Assumed names.
- §33-12-16. Temporary licensing.
- §33-12-17. Expiration of license; renewal.
- §33-12-18. Agent to deal only with licensed insurer or solicitor  
appointment as agent required prior to transacting business.
- §33-12-19. Solicitor to act only through appointed agent.
- §33-12-20. Personal liability of agent.
- §33-12-21. Coverage must be placed with a solvent insurer.
- §33-12-22. Person soliciting insurance is agent of insurer.
- §33-12-23. Payment of commissions.
- §33-12-24. Revocation, suspension or refusal to renew license; penalty.
- §33-12-25. Termination of authority to represent insurer.
- §33-12-26. Insurance vending machines.
- §33-12-27. Payment of commissions under assigned risk plan.
- §33-12-28. Service representative permit.
- §33-12-29. Notice of hearing before the commissioner; failure to appear; entry of  
orders; appeal.
- §33-12-30. Termination of contractual relationship prohibited.
- §33-12-31. Termination of contractual relationship; continuation of certain commis-  
sions; exceptions.
- §33-12-32. Limited licenses for rental companies.
- §33-12-33. Reciprocity.
- §33-12-34. Reporting of actions.
- §33-12-35. Regulations.
- §33-12-36. Severability.

### **§33-12-1. Purpose and scope.**

1        This article governs the qualifications and procedures for  
2 the licensing of insurance producers. It simplifies and organizes  
3 some statutory language to improve efficiency, permits the use  
4 of new technology and reduces costs associated with issuing  
5 and renewing insurance licenses.

6        This article does not apply to excess line and surplus line  
7 agents and brokers licensed pursuant to article twelve-c of this  
8 chapter except as provided in sections six, twelve, twenty-four  
9 and thirty-three of this article.

**§33-12-2. Definitions.**

1 For the purpose of this article:

2 (a) "Business entity" means a corporation, association,  
3 partnership, limited liability company, or other legal entity.

4 (b) "Home state" means the District of Columbia and any  
5 state or territory of the United States in which an insurance  
6 producer maintains his or her principal place of residence or  
7 principal place of business and is licensed to act as an insurance  
8 producer.

9 (c) "Individual" means any private or natural person as  
10 distinguished from a partnership, corporation, limited liability  
11 company or other legal entity.

12 (d) "Insurance" means any of the lines of authority in  
13 section ten, article one of this chapter.

14 (e) "Insurance agency" means an individual, corporation,  
15 partnership, association, limited liability company, or other  
16 legal entity except for an employee of the individual, corpora-  
17 tion, partnership, association, limited liability company, or  
18 other legal entity, and other than an insurer or an adjuster as  
19 defined by section twelve-b, article one of this chapter, which  
20 employs individuals licensed to engage in activity or whose  
21 members engage in any activity be performed only by a  
22 licensed individual insurance producer or solicitor. It shall not  
23 include sole proprietor or partnerships in which there is only  
24 one licensed insurance producer.

25 (f) "Insurance producer" means a person required to be  
26 licensed under the laws of this state to sell, solicit or negotiate  
27 insurance. Wherever the word "agent" appears in this chapter,  
28 it shall mean an individual insurance producer.

29 (g) "Insurer" means every person engaged in the business  
30 of making contracts of insurance under section two, article one  
31 of this chapter.

32 (h) "License" means a document issued by this state's  
33 insurance commissioner authorizing a person to act as an  
34 insurance producer for the lines of authority specified in the  
35 document. The license itself does not create any authority,  
36 actual, apparent or inherent, in the holder to represent or  
37 commit an insurance carrier.

38 (i) "Limited line credit insurance" includes credit life,  
39 credit disability, credit property, credit unemployment, involun-  
40 tary unemployment, mortgage life, mortgage guaranty, mort-  
41 gage disability, guaranteed automobile protection (gap)  
42 insurance and any other form of insurance offered in connection  
43 with an extension of credit that is limited to partially or wholly  
44 extinguishing that credit obligation that the insurance commis-  
45 sioner determines should be designated a form of limited line  
46 credit insurance.

47 (j) "Limited line credit insurance producer" means an  
48 individual who sells, solicits or negotiates one or more forms of  
49 limited line credit insurance coverage to individuals through a  
50 master, corporate, group or individual policy.

51 (k) "Limited lines insurance" means those lines of insur-  
52 ance defined in section thirty-two of this article or any other  
53 line of insurance that the insurance commissioner considers  
54 necessary to recognize for the purposes of complying with  
55 subsection (g), section twelve of this article.

56 (l) "Limited lines producer" means an individual authorized  
57 by the insurance commissioner to sell, solicit or negotiate  
58 limited lines insurance.

59 (m) "Negotiate" means the act of conferring directly with  
60 or offering advice directly to a purchaser or prospective  
61 purchaser of a particular contract of insurance concerning any  
62 of the substantive benefits, terms or conditions of the contract:  
63 *Provided*, That the individual engaged in that act either sells  
64 insurance or obtains insurance from insurers for purchasers.

65 (n) "Person" means an individual or a business entity.

66 (o) "Sell" means to exchange a contract of insurance by any  
67 means, for money or its equivalent, on behalf of an insurance  
68 company.

69 (p) "Solicit" means attempting to sell insurance or asking  
70 or urging a person to apply for a particular kind of insurance  
71 from a particular company.

72 (q) "Terminate" means the cancellation of the relationship  
73 between an insurance producer and the insurer or the termina-  
74 tion of a producer's authority to transact insurance.

75 (r) "Uniform application" means the current version of the  
76 NAIC uniform application for resident and nonresident pro-  
77 ducer licensing.

78 (s) "Uniform business entity application" means the current  
79 version of the NAIC uniform business entity application for  
80 resident and nonresident insurance agencies.

### **§33-12-3. License required.**

1 (a) A person shall not sell, solicit or negotiate insurance in  
2 this state for any class or classes of insurance unless the person  
3 is licensed for that line of authority in accordance with this  
4 article.

5 (b) No person shall in West Virginia act as or hold himself  
6 or herself out to be an agent or insurance agency or solicitor  
7 unless then licensed therefor pursuant to this article.

8 (c) No agent, insurance agency or solicitor or any represen-  
9 tative or employee thereof shall solicit or take application for,  
10 negotiate, procure or place for others any kind of insurance for  
11 which that person is not then licensed.

12 (d) No insurer shall accept any business from any agent  
13 who does not then hold an appointment as agent for such  
14 insurer pursuant to this article.

#### **§33-12-4. Exceptions to licensing.**

1 (a) Nothing in this article shall be construed to require an  
2 insurer to obtain an insurance producer license. In this section,  
3 the term "insurer" does not include an insurer's officers,  
4 directors, employees, subsidiaries or affiliates.

5 (b) A license as an insurance producer shall not be required  
6 of the following:

7 (1) An officer, director or employee of an insurer or of an  
8 insurance producer: *Provided*, That the officer, director or  
9 employee does not receive any commission on policies written  
10 or sold to insure risks residing, located or to be performed in  
11 this state and:

12 (A) The officer, director or employee's activities are  
13 executive, administrative, managerial, clerical or a combination  
14 of these, and are only indirectly related to the sale, solicitation  
15 or negotiation of insurance; or

16 (B) The officer, director or employee's function relates to  
17 underwriting, loss control, inspection or the processing,

18 adjusting, investigating or settling of a claim on a contract of  
19 insurance; or

20 (C) The officer, director or employee is acting in the  
21 capacity of a special agent or agency supervisor assisting  
22 insurance producers where the person's activities are limited to  
23 providing technical advice and assistance to licensed insurance  
24 producers and do not include the sale, solicitation or negotiation  
25 of insurance;

26 (2) A person who secures and furnishes information for the  
27 purpose of group life insurance, group property and casualty  
28 insurance, group annuities, group or blanket accident and health  
29 insurance; or for the purpose of enrolling individuals under  
30 plans; issuing certificates under plans or otherwise assisting in  
31 administering plans; or performs administrative services related  
32 to mass marketed property and casualty insurance; where no  
33 commission is paid to the person for the service;

34 (3) An employer or association or its officers, directors,  
35 employees, or the trustees of an employee trust plan, to the  
36 extent that the employers, officers, employees, director or  
37 trustees are engaged in the administration or operation of a  
38 program of employee benefits for the employer's or associa-  
39 tion's own employees or the employees of its subsidiaries or  
40 affiliates, which program involves the use of insurance issued  
41 by an insurer, as long as the employers, associations, officers,  
42 directors, employees or trustees are not in any manner compen-  
43 sated, directly or indirectly, by the company issuing the  
44 contracts;

45 (4) Employees of insurers or organizations employed by  
46 insurers who are engaging in the inspection, rating or classifica-  
47 tion of risks, or in the supervision of the training of insurance  
48 producers and who are not individually engaged in the sale,  
49 solicitation or negotiation of insurance;



50 (5) A person whose activities in this state are limited to  
51 advertising without the intent to solicit insurance in this state  
52 through communications in printed publications or other forms  
53 of electronic mass media whose distribution is not limited to  
54 residents of the state: *Provided*, That the person does not sell,  
55 solicit or negotiate insurance that would insure risks residing,  
56 located or to be performed in this state;

57 (6) An individual who is not a resident of this state who  
58 sells, solicits or negotiates a contract of insurance for commer-  
59 cial property and casualty risks to an insured with risks located  
60 in more than one state insured under that contract: *Provided*,  
61 That individual is otherwise licensed as an insurance producer  
62 to sell, solicit or negotiate that insurance in the state where the  
63 insured maintains its principal place of business and the  
64 contract of insurance insures risks located in that state; or

65 (7) A salaried full-time employee who counsels or advises  
66 his or her employer relative to the insurance interests of the  
67 employer or of the subsidiaries or business affiliates of the  
68 employer provided that the employee does not sell or solicit  
69 insurance or receive a commission.

**§33-12-5. Application for examination.**

1 (a) A resident individual applying for an insurance producer  
2 license shall pass a written examination unless exempt pursuant  
3 to section fourteen of this article. The examination shall test the  
4 knowledge of the individual concerning the lines of authority  
5 for which application is made, the duties and responsibilities of  
6 an insurance producer and the insurance laws and regulations  
7 of this state. Examinations required by this section may be  
8 developed and conducted under rules and regulations prescribed  
9 by the insurance commissioner.

10 (b) The insurance commissioner may make arrangements,  
11 including contracting with an outside testing service, for  
12 administering examinations and collecting the nonrefundable  
13 fee set forth in subdivision (8), subsection (a), section six of this  
14 article.

15 (c) Each individual applying for an examination shall remit  
16 a nonrefundable fee as prescribed by the insurance commis-  
17 sioner as set forth in subdivision (8), subsection (a), section six  
18 of this article.

19 (d) An individual who fails to appear for the examination  
20 as scheduled or fails to pass the examination, shall reapply for  
21 an examination and remit all required fees and forms before  
22 being rescheduled for another examination.

23 (e) An individual who fails to pass examination is limited  
24 to seven additional attempts to pass the examination.

**§33-12-6. Application for license.**

1 (a) An individual applying for a resident insurance producer  
2 license shall make application to the insurance commissioner  
3 on the Uniform Application and declare under penalty of  
4 refusal, suspension or revocation of the license that the state-  
5 ments made in the application are true, correct and complete to  
6 the best of the individual's knowledge and belief. Before  
7 approving the application, the insurance commissioner shall  
8 find that the individual:

9 (1) Is at least eighteen years of age;

10 (2) Has not committed any act that is a ground for denial,  
11 suspension or revocation set forth in section twenty-four of this  
12 article;

13       (3) Where required by the insurance commissioner, has  
14 completed a prelicensing course of study for the lines of  
15 authority for which the person has applied;

16       (4) Has paid the fees set forth in section thirteen, article  
17 three of this chapter; and section ten of this article;

18       (5) Has successfully passed the examinations for the lines  
19 of authority for which the person has applied;

20       (6) On or after the first day of June, one thousand nine  
21 hundred ninety, no solicitor's license will be issued which is not  
22 a renewal of an existing license;

23       (7) Does not intend to use the license principally for the  
24 purpose, in the case of life or accident and sickness insurance,  
25 of procuring insurance on himself or herself, members of his or  
26 her family or his or her relatives; or, as to insurance other than  
27 life and accident and sickness, upon his or her property or  
28 insurable interests of those of his or her family or his or her  
29 relatives or those of his or her employer, employees or firm, or  
30 corporation in which he or she owns a substantial interest, or of  
31 the employees of the firm or corporation, or on property or  
32 insurable interests for which the applicant or any relative,  
33 employer, firm or corporation is the trustee, bailee or receiver.  
34 For the purposes of this provision, a vendor's or lender's  
35 interest in property sold or being sold under contract or which  
36 is the security for any loan, shall not be considered to constitute  
37 property or an insurable interest of the vendor or lender;

38       (8) Satisfies the commissioner that he or she is trustworthy  
39 and competent. The commissioner may test the competency of  
40 an applicant for a license under this section by examination.  
41 Each examinee shall pay a twenty-five dollar examination fee  
42 for each examination to the commissioner who shall deposit  
43 said examination fee into the state treasury for the benefit of the

44 state fund, general revenue. The commissioner may, at his or  
45 her discretion, designate an independent testing service to  
46 prepare and administer the examination subject to direction and  
47 approval by the commissioner, and examination fees charged  
48 by the service shall be paid by the applicant. In addition to  
49 examination fees charged by the independent testing service,  
50 the independent testing service shall collect and remit to the  
51 commissioner the twenty-five dollar examination fee; and

52 (9) For new agents first licensed on or after the first day of  
53 July, one thousand nine hundred eighty-nine, completes a  
54 program of insurance education as established in section seven  
55 of this article.

56 (b) A business entity acting as an insurance agency is  
57 required to obtain an insurance producer license. Application  
58 shall be made using the uniform business entity application.  
59 Before approving the application, the insurance commissioner  
60 shall find that:

61 (1) The insurance agency has disclosed to the insurance  
62 commissioner all officers, partners, and directors, whether or  
63 not they are licensed as insurance producers;

64 (2) The insurance agency's officers, directors, or partners  
65 are trustworthy, of good moral character, and of good business  
66 reputation;

67 (3) The insurance agency has paid the fees set forth as set  
68 forth in section ten of this article;

69 (4) The insurance agency has designated an individual  
70 licensed producer who is an officer, partner, or director  
71 responsible for the insurance agency's or business entity's  
72 compliance with the insurance laws and rules of this state;

73 (5) The insurance agency has registered with the commis-  
74 sioner the name of each natural person who, as an officer,  
75 director, partner, owner, or member of the agency, is acting as  
76 and is licensed as an insurance producer;

77 (6) The insurance agency has registered with the commis-  
78 sioner the name of each natural person who, as an officer,  
79 director, partner, owner, or member of the insurance agency or  
80 business entity, is acting as and is licensed as an insurance  
81 producer;

82 (7) The insurance agency or business entity has registered  
83 with the commissioner at least one individual who holds a valid  
84 insurance producer license for the line or lines of authority  
85 requested in the application;

86 (8) If the insurance agency's filing status is nonresident, the  
87 insurance agency or business entity has complied with the  
88 qualification requirements of section twelve of this article; and

89 (9) An insurance agency may qualify as a resident if the  
90 agency has its principal office in this state.

91 (c) The insurance commissioner may require any docu-  
92 ments reasonably necessary to verify the information contained  
93 in an application.

94 (d) Each insurer that sells, solicits or negotiates any form of  
95 limited line credit insurance shall provide to each individual  
96 whose duties will include selling, soliciting or negotiating  
97 limited line credit insurance a program of instruction that may  
98 be approved by the insurance commissioner.

### **§33-12-6a. Residency—Individuals—Agencies.**

1 The commissioner may qualify an applicant as a resident of  
2 this state and shall issue an insurance producer license to any

3 qualified resident person of this state in accordance with the  
4 following:

5 (1) An individual applicant may qualify as a resident only  
6 if he or she resides in this state. Any license issued pursuant to  
7 any application claiming residency for licensing purposes shall  
8 constitute an election of residency in this state and shall be void  
9 if the licensee, while holding a resident license in this state, also  
10 holds or makes application for a license in or thereafter claims  
11 to be a resident of any other state or jurisdiction, or if the  
12 licensee ceases to be a resident of this state.

13 (2) An insurance agency or business entity may qualify as  
14 a resident if the agency has its principal office in this state;

15 (3) The resident person is in compliance with the require-  
16 ments of section six of this article.

**§33-12-6b. Licensing of agencies.**

1 (a) For the purposes set forth in section twenty-three of this  
2 article, an insurance agency shall be licensed as an insurance  
3 producer.

4 (b) The insurance agency shall maintain a current list with  
5 the name of every individual who, as a member, officer,  
6 director, stockholder, owner, or employee of the insurance  
7 agency, is acting as and is licensed as an insurance producer.  
8 Each insurance agency shall make such list available to the  
9 commissioner upon reasonable request for purposes of conduct-  
10 ing investigations and enforcing the provisions of this chapter.

11 (c) The insurance agency shall, within ten days, notify the  
12 commissioner, on a form prescribed by the commissioner, of  
13 every change relative to the licensed individual insurance  
14 producers registered and authorized to act as insurance produc-  
15 ers for the insurance agency.

16 (d) The insurance agency shall, within ten days, notify the  
17 commissioner, on a form prescribed by the commissioner, of  
18 any change relative to the insurance agency or business entity  
19 name, officers, directors, partners, or owners, to report a  
20 merger, or that the insurance agency or business entity has  
21 ceased doing business in this state.

22 (e) When an insurance agency ceases to do business in this  
23 state, the insurance agency shall return the producer license to  
24 the commissioner within ten days after ceasing to do business.

25 (f) When an insurance agency changes its principal address  
26 to another state, the insurance agency shall, within ten days,  
27 notify the commissioner and return the producer license for  
28 cancellation. Relicensing will be subject to section twelve of  
29 this article.

30 (g)(1) The insurance agency shall comply with section six  
31 of this article.

32 (2) A nonresident insurance agency shall also comply with  
33 the qualification requirements of section twenty-three of this  
34 article.

35 (h) The provisions of this section become effective on or  
36 after the first day of July, two thousand three.

### **§33-12-7. Board of insurance agent education.**

1 The board of insurance agent education shall continue in  
2 existence. The board of insurance agent education shall consist  
3 of the commissioner of insurance and six members appointed  
4 by the commissioner. The members appointed by the commis-  
5 sioner shall be two licensed property and casualty insurance  
6 agents, one licensed life insurance agent, one licensed health  
7 and accident insurance agent, one representative of a domestic  
8 insurance company, and one representative of a foreign

9 insurance company: *Provided*, That no board shall be appointed  
10 that fails to include companies or agents for companies repre-  
11 senting at least two thirds of the net written insurance premiums  
12 in the state. Each member shall serve a term of three years and  
13 shall be eligible for reappointment.

14 (a) The board of insurance agent education shall establish  
15 the criteria for a program of insurance education and submit the  
16 proposal for the approval of the commissioner on or before the  
17 thirty-first day of December of each year.

18 (b) The commissioner and the board, under standards  
19 established by the board, may approve any course or program  
20 of instruction developed or sponsored by an authorized insurer,  
21 accredited college or university, agents association, insurance  
22 trade association, or independent program of instruction that  
23 presents the criteria and the number of hours that the board and  
24 commissioner determine appropriate for the purpose of this  
25 article.

### **§33-12-8. Continuing education required.**

1 The purpose of this provision is to provide continuing  
2 education under guidelines set up under the insurance commis-  
3 sioner's office, with the guidelines to be set up under the board  
4 of insurance agent education. Nothing in this section prohibits  
5 an individual from receiving commissions which have been  
6 vested and earned while that individual maintained an approved  
7 insurance agent's license.

8 (a) This section applies to individual producers licensed to  
9 engage in the sale of the following types of insurance:

10 (1) Life insurance coverage on human lives including  
11 benefits of endowment and annuities, and may include benefits  
12 in the event of death or dismemberment by accident and  
13 benefits for disability income;



14       (2) *Accident and health or sickness*.—insurance coverage  
15 for sickness, bodily injury or accidental death and may include  
16 benefits for disability income;

17       (3) Property insurance coverage for the direct or consequen-  
18 tial loss or damage to property of every kind;

19       (4) *Casualty*.—insurance coverage against legal liability,  
20 including that for death, injury or disability or damage to real  
21 or personal property;

22       (5) *Variable life and variable annuity products*.—insurance  
23 coverage provided under variable life insurance contracts and  
24 variable annuities;

25       (6) Personal lines-property and casualty insurance coverage  
26 sold to individuals and families for primarily noncommercial  
27 purposes; and

28       (7) Any other line of insurance permitted under state laws  
29 or regulations.

30       (b) This section does not apply to:

31       (1) Individual producers holding limited line credit insur-  
32 ance licenses for any kind or kinds of insurance offered in  
33 connection with loans or other credit transactions or insurance  
34 for which an examination is not required by the commissioner,  
35 nor does it apply to any limited or restricted license as the  
36 commissioner may exempt; and

37       (2) Individual producers selling credit life or credit accident  
38 and health insurance.

39       (c)(1) The board of insurance agent education as established  
40 by section seven of this article shall develop a program of  
41 continuing insurance education and submit the proposal for the

42 approval of the commissioner on or before the thirty-first day  
43 of December of each year. No program may be approved by the  
44 commissioner that includes a requirement that any agent  
45 complete more than twenty-four hours of continuing insurance  
46 education triennially. No program may be approved by the  
47 commissioner that includes a requirement that any of the  
48 following individual producers complete more than six hours of  
49 continuing insurance education biennially:

50 (A) Individual insurance producers who sell only preneed  
51 burial insurance contracts; and

52 (B) Individual insurance producers who engage solely in  
53 telemarketing insurance products by a scripted presentation  
54 which scripted presentation has been filed with and approved by  
55 the commissioner.

56 (C) The biennium mandatory continuing insurance educa-  
57 tion provisions of this section become effective on the reporting  
58 period beginning the first day of July, two thousand three.

59 (2) The commissioner and the board, under standards  
60 established by the board, may approve any course or program  
61 of instruction developed or sponsored by an authorized insurer,  
62 accredited college or university, agents' association, insurance  
63 trade association or independent program of instruction that  
64 presents the criteria and the number of hours that the board and  
65 commissioner determine appropriate for the purpose of this  
66 section.

67 (d) Individual insurance producers licensed to sell insurance  
68 and who are not otherwise exempt shall satisfactorily complete  
69 the courses or programs of instructions the commissioner may  
70 prescribe.

71 (e) Every individual insurance producer subject to the  
72 continuing education requirements shall furnish, at intervals

73 and on forms as may be prescribed by the commissioner,  
74 written certification listing the courses, programs or seminars  
75 of instruction successfully completed by the person. The  
76 certification shall be executed by, or on behalf of, the organiza-  
77 tion sponsoring the courses, programs or seminars of instruc-  
78 tion.

79 (f) Any individual insurance producer failing to meet the  
80 requirements mandated in this section, and who has not been  
81 granted an extension of time, with respect to the requirements,  
82 or who has submitted to the commissioner a false or fraudulent  
83 certificate of compliance shall have his or her license automati-  
84 cally suspended and no further license may be issued to the  
85 person for any kind or kinds of insurance until the person  
86 demonstrates to the satisfaction of the commissioner that he or  
87 she has complied with all of the requirements mandated by this  
88 section and all other applicable laws or rules.

89 (g) The commissioner shall notify the individual insurance  
90 producer of his or her suspension pursuant to subsection (f) of  
91 this section by certified mail, return receipt requested, to the  
92 last address on file with the commissioner pursuant to subsec-  
93 tion (e), section nine of this article. Any individual insurance  
94 producer who has had a suspension order entered against him  
95 or her pursuant to this section may, within thirty calendar days  
96 of receipt of the order, file with the commissioner a request for  
97 a hearing for reconsideration of the matter.

98 (h) Any individual insurance producer who does not  
99 satisfactorily demonstrate compliance with this section and all  
100 other laws applicable thereto as of the last day of the biennium  
101 following his or her suspension shall have his or her license  
102 automatically canceled and is subject to the education and  
103 examination requirements of section five of this article.

104 (i) The commissioner is authorized to hire personnel and  
105 make reasonable expenditures considered necessary for  
106 purposes of establishing and maintaining a system of continuing  
107 education for insurers. The commissioner shall charge a fee of  
108 twenty-five dollars to continuing education providers for each  
109 continuing education course submitted for approval which shall  
110 be used to maintain the continuing education system. The  
111 commissioner may, at his or her discretion, designate an outside  
112 administrator to provide all of or part of the administrative  
113 duties of the continuing education system subject to direction  
114 and approval by the commissioner. The fees charged by the  
115 outside administrator shall be paid by the continuing education  
116 providers. In addition to fees charged by the outside administra-  
117 tor, the outside administrator shall collect and remit to the  
118 commissioner the twenty-five dollar course submission fee.

**§33-12-9. Issuance of license.**

1 (a) Unless denied licensure pursuant to article twenty-four  
2 of this chapter, individuals who have met the requirements of  
3 articles five and six of this chapter shall be issued an insurance  
4 producer license. An insurance producer may receive qualifica-  
5 tion for a license in one or more of the following lines of  
6 authority:

7 (1) Life insurance coverage on human lives including  
8 benefits of endowment and annuities, and may include benefits  
9 in the event of death or dismemberment by accident and  
10 benefits for disability income;

11 (2) *Accident and health or sickness.*—insurance coverage  
12 for sickness, bodily injury or accidental death and may include  
13 benefits for disability income;

14 (3) Property insurance coverage for the direct or consequen-  
15 tial loss or damage to property of every kind;

16       (4) *Casualty*—insurance coverage against legal liability,  
17 including that for death, injury or disability or damage to real  
18 or personal property;

19       (5) *Variable life and variable annuity products*—insurance  
20 coverage provided under variable life insurance contracts and  
21 variable annuities;

22       (6) *Personal lines*.—property and casualty insurance  
23 coverage sold to individuals and families for primarily noncom-  
24 mercial purposes;

25       (7) *Credit*.—limited line credit insurance; or

26       (8) Any other line of insurance permitted under state laws  
27 or regulations.

28       (b) An insurance producer license shall remain in effect  
29 unless revoked or suspended as long as the fee set forth in  
30 section thirteen, article three of this chapter is paid and educa-  
31 tion requirements for resident individual producers are met by  
32 the due date.

33       (c) An individual insurance producer who allows his or her  
34 license to lapse may, within twelve months from the due date  
35 of the renewal fee, reinstate the same license without the  
36 necessity of passing a written examination. However, a penalty  
37 in the amount of double the unpaid renewal fee shall be  
38 required for any renewal fee received after the due date.

39       (d) An individual licensed insurance producer who is  
40 unable to comply with license renewal procedures due to  
41 military service or some other extenuating circumstance (e.g.,  
42 a long-term medical disability) may request a waiver of those  
43 procedures. The producer may also request a waiver of any  
44 examination requirement or any other fine or sanction imposed  
45 for failure to comply with renewal procedures.

46 (e) The license shall contain the licensee's name, address,  
47 personal identification number, and the date of issuance, the  
48 lines of authority, the expiration date and any other information  
49 the insurance commissioner considers necessary.

50 (f) Licensees shall inform the insurance commissioner by  
51 any means acceptable to the insurance commissioner of a  
52 change of address or residency within thirty days of the change.  
53 Failure to timely inform the insurance commissioner of a  
54 change in legal name, residency or address may result in a  
55 penalty pursuant to section twenty-four of this article. The  
56 commissioner shall maintain the mailing address of each agent,  
57 insurance agency, solicitor and service representative on file.

58 (g) In order to assist in the performance of the insurance  
59 commissioner's duties, the insurance commissioner may  
60 contract with nongovernmental entities, including the national  
61 association of insurance commissioner (NAIC) or any affiliates  
62 or subsidiaries that the NAIC oversees, to perform any ministe-  
63 rial functions, including the collection of fees, related to  
64 producer licensing that the insurance commissioner and the  
65 nongovernmental entity may consider appropriate.

### §33-12-10. Fees.

1 The fee for an agent's license shall be twenty-five dollars  
2 as provided in section thirteen, article three of this chapter, the  
3 fee for a solicitor's license shall be twenty-five dollars, and the  
4 fee for an insurance agency producer license shall be two  
5 hundred dollars. The commissioner shall receive the following  
6 fees from insurance agents, solicitors, insurance agencies and  
7 excess line brokers: For letters of certification, five dollars; for  
8 letters of clearance, ten dollars; for duplicate license, five  
9 dollars. All fees and moneys so collected shall be used for the  
10 purposes set forth in section thirteen, article three of this  
11 chapter.

**§33-12-11. Countersignature.**

1 No contract of insurance covering a subject of insurance,  
2 resident, located, or to be performed in this state, shall be  
3 executed, issued or delivered by any insurer unless the contract,  
4 or in the case of an interstate risk a countersignature endorse-  
5 ment carrying full information as to the West Virginia risk, is  
6 signed or countersigned in writing by a licensed resident agent  
7 of the insurer except that excess line insurance shall be counter-  
8 signed by a duly licensed excess line broker. This section does  
9 not apply to: Reinsurance; credit insurance; any contract of  
10 insurance covering the rolling stock of any railroad or covering  
11 any vessel, aircraft or motor carrier used in interstate or foreign  
12 commerce, or covering any liability or other risks incident to  
13 the ownership, maintenance or operation thereof; any contract  
14 of insurance covering any property in interstate or foreign  
15 commerce, or any liability or risks incident thereto. Countersig-  
16 nature of a duly licensed resident agent of the company  
17 originating a contract of insurance participated in by other  
18 companies as cosureties or coindemnitors shall satisfy all  
19 countersignature requirements in respect to such contract of  
20 insurance.

**§33-12-12. Nonresident licensing.**

1 (a) Unless denied licensure pursuant to section twenty-four,  
2 a nonresident person shall receive a nonresident producer  
3 license if:

4 (1) The person is currently licensed as a resident and in  
5 good standing in his or her home state;

6 (2) The person has submitted the proper request for  
7 licensure and has paid the fees required by section thirteen,  
8 article three of this chapter;

9           (3) The nonresident person holds a similar license that is  
10 awarded on the same basis in the nonresident's home state and  
11 for the same line or lines of authority applied for in this state;

12           (4) The person has submitted or transmitted to the insurance  
13 commissioner the application for licensure that the person  
14 submitted to his or her home state, or in lieu of the same, a  
15 completed uniform application; and

16           (5) The person's home state awards nonresident producer  
17 licenses to residents of this state on the same basis.

18           (b) An insurance agency may qualify as a nonresident if the  
19 agency has its principal office located in another state.

20           (c) The insurance commissioner may verify the producer's  
21 licensing status through the producer database maintained by  
22 the national association of insurance commissioners, its  
23 affiliates or subsidiaries.

24           (d) A nonresident producer who moves from one state to  
25 another state or a resident producer who moves from this state  
26 to another state shall file a change of address and provide  
27 certification from the new resident state within thirty days of  
28 the change of legal residence. No fee or license application is  
29 required.

30           (e) If the insurance department of the nonresident insurance  
31 producer's resident state suspends, terminates, or revokes the  
32 producer's insurance license in that state, the nonresident  
33 insurance producer shall notify the commissioner and shall  
34 return the West Virginia nonresident license.

35           (f) Notwithstanding any other provision of this article, an  
36 individual licensed as a surplus lines producer in his or her  
37 home state shall receive a nonresident surplus lines producer  
38 license pursuant to subsection (a) of this section. Except as to



39 subsection (a), nothing in this section otherwise amends or  
40 supercedes any provision of sections one through fourteen,  
41 article twelve-c of this chapter.

42 (g) Notwithstanding any other provision of this article, an  
43 individual licensed as a limited line credit insurance or other  
44 type of limited lines producer in his or her home state shall  
45 receive a nonresident limited lines producer license, pursuant to  
46 subsection (a) of this section, granting the same scope of  
47 authority as granted under the license issued by the producer's  
48 home state. For the purposes of subsection (e), section twelve  
49 of this article, limited line insurance is any authority granted by  
50 the home state which restricts the authority of the license to less  
51 than the total authority prescribed in the associated major lines  
52 pursuant to subdivisions (1) through (6), subsection (a), section  
53 nine of this article.

**§33-12-13. Agent resident in contiguous municipalities.**

1 An agent who has his or her residence in an urban commu-  
2 nity composed of two immediately contiguous municipal  
3 corporations not separated by a river or other stream, one of  
4 which is located in this state and the other located in another  
5 state, shall be considered a resident of this state for the purposes  
6 of this article if his or her residence is in any part of such urban  
7 community and the state wherein the other municipal corpora-  
8 tion is located has established by law or regulation like require-  
9 ments as to residence of agents in such urban community.

**§33-12-14. Exemption from examination.**

1 (a) An individual who applies for an insurance producer  
2 license in this state who was previously licensed for the same  
3 lines of authority in another state may not be required to  
4 complete any prelicensing education or examination. This  
5 exemption is only available if the individual is currently

6 licensed in that state or if the application is received within  
7 ninety days of the cancellation of the applicant's previous  
8 license and if the prior state issues a certification that, at the  
9 time of cancellation, the applicant was in good standing in that  
10 state or the state's producer database records, maintained by the  
11 national association of insurance commissioners, its affiliates  
12 or subsidiaries, indicate that the producer is or was licensed in  
13 good standing for the line of authority requested.

14 (b) An individual licensed as an insurance producer in  
15 another state who moves to this state shall make application  
16 within ninety days of establishing legal residence to become a  
17 resident licensee pursuant to section five of this article. No  
18 precicensing education or examination shall be required of that  
19 individual to obtain any line of authority previously held in the  
20 prior state except where the insurance commissioner determines  
21 otherwise by regulation.

**§33-12-15. Assumed names.**

1 An insurance producer doing business under any name  
2 other than the producer's legal name is required to notify the  
3 insurance commissioner prior to using the assumed name.

**§33-12-16. Temporary licensing.**

1 (a) The insurance commissioner may issue an individual a  
2 temporary insurance producer license for a period not to exceed  
3 one hundred eighty days without requiring an examination if  
4 the insurance commissioner considers that the temporary  
5 license is necessary for the servicing of an insurance business  
6 in the following cases:

7 (1) To the surviving spouse or court-appointed personal  
8 representative of a licensed insurance producer who dies or  
9 becomes mentally or physically disabled to allow adequate time  
10 for the sale of the insurance business owned by the producer or

11 for the recovery or return of the producer to the business or to  
12 provide for the training and licensing of new personnel to  
13 operate the producer's business;

14 (2) To the designee of a licensed insurance producer  
15 entering active service in the armed forces of the United States  
16 of America; or

17 (3) In any other circumstance where the insurance commis-  
18 sioner considers that the public interest will best be served by  
19 the issuance of this license.

20 (b) The insurance commissioner may by order limit the  
21 authority of any temporary licensee in any way considered  
22 necessary to protect insureds and the public. The insurance  
23 commissioner may require the temporary licensee to have a  
24 suitable sponsor who is a licensed producer or insurer and who  
25 assumes responsibility for all acts of the temporary licensee and  
26 may impose other similar requirements designed to protect  
27 insureds and the public. The insurance commissioner may by  
28 order revoke a temporary license if the interest of insureds or  
29 the public are endangered. A temporary license may not  
30 continue after the owner or the personal representative disposes  
31 of the business.

**§33-12-17. Expiration of license; renewal.**

1 (a) The commissioner may, in his or her discretion, fix the  
2 dates of expiration of respective licenses for individual insur-  
3 ance producers and solicitors in any manner as is considered by  
4 him or her to be advisable for an efficient distribution of the  
5 work load of his or her office. If the expiration date so fixed  
6 would upon first occurrence shorten the period for which  
7 license fee has theretofore been paid, no refund of unearned fee  
8 shall be made; and if the expiration date so fixed would upon  
9 first occurrence lengthen the period for which license fee had

10 theretofore been paid, the commissioner shall charge no  
11 additional fee for the lengthened period. If another date is not  
12 so fixed by the commissioner, each license shall, unless  
13 continued as herein above provided, expire at midnight on the  
14 thirty-first day of May next following the date of issuance. The  
15 commissioner shall renew annually on the date as provided for  
16 in this section the license of the licensee who qualifies and  
17 makes application therefor, and has paid the fees set forth in  
18 section thirteen, article three of this chapter; and section ten of  
19 this article.

20 (b) All producer licenses of insurance agencies shall expire  
21 at midnight on the thirtieth day of June following the date of  
22 issuance. The commissioner shall renew annually the license of  
23 all licensees who qualify and make application therefor and  
24 have paid the fees set forth in section ten of this article.

**§33-12-18. Agent to deal only with licensed insurer or solicitor;  
appointment as agent required prior to transact-  
ing business.**

1 (a) An individual insurance producer may not act as an  
2 agent of an insurer unless the insurance producer becomes an  
3 appointed agent of that insurer. An insurance producer who is  
4 not acting as an agent of an insurer is not required to become  
5 appointed.

6 (b) To appoint an individual producer as its agent, the  
7 appointing insurer shall file, in a format approved by the  
8 insurance commissioner, a notice of appointment within fifteen  
9 days from the date the agency contract is executed or the first  
10 insurance application is submitted. An insurer may also elect to  
11 appoint an individual producer to all or some insurers within the  
12 insurer's holding company system or group by the filing of a  
13 single appointment request.

14 (c) Upon receipt of the notice of appointment, the insurance  
15 commissioner shall verify within a reasonable time not to  
16 exceed thirty days that the individual insurance producer is  
17 eligible for appointment. If the individual insurance producer is  
18 determined to be ineligible for appointment, the insurance  
19 commissioner shall notify the insurer within five days of its  
20 determination.

21 (d) An insurer shall pay a nonrefundable appointment  
22 processing fee, in the amount and method of payment set forth  
23 in section thirteen, article three of this chapter, for each  
24 appointment notification submitted by the insurer to the  
25 commissioner.

26 (e) An insurer shall remit, in a manner prescribed by the  
27 insurance commissioner, a renewal appointment fee in the  
28 amount set forth in section thirteen, article three of this chapter  
29 no later than midnight the thirty-first day of May annually.

30 (f) Each insurer shall maintain a current list of individual  
31 insurance producers appointed to accept applications on behalf  
32 of the insurer. Each insurer shall make a list available to the  
33 commissioner upon reasonable request for purposes of conduct-  
34 ing investigations and enforcing the provisions of this chapter.

35 (g) Insurance agencies licensed as producers are not subject  
36 to the provisions of this section.

**§33-12-19. Solicitor to act only through appointed agent.**

1 A solicitor shall solicit and receive applications for insur-  
2 ance only for the duly licensed agent who appointed such  
3 solicitor, and shall report all business through the agent. The  
4 expiration, cancellation, suspension or revocation of the license  
5 of the appointing agent shall automatically expire, cancel,  
6 suspend or revoke the solicitor's license in like manner, and the  
7 appointing agent may cancel a solicitor's license at any time by

8 written request to the commissioner. No agent may apply for  
9 licenses for more than two solicitors. No solicitors shall be  
10 permitted for life insurance agents.

**§33-12-20. Personal liability of agent.**

1 Any agent who participates directly or indirectly in  
2 effecting any insurance contract, except authorized reinsurance,  
3 upon any subject of insurance resident, located or to be per-  
4 formed in this state, where the insurer is not licensed to transact  
5 insurance in this state, shall be personally liable upon the  
6 contract as though such agent were the insurer thereof. This  
7 section shall not apply to excess line insurance procured in the  
8 manner provided in article twelve-c of this chapter, nor to ocean  
9 marine insurance or marine protection and indemnity insurance.

**§33-12-21. Coverage must be placed with a solvent insurer.**

1 No agent, or excess line broker shall knowingly place any  
2 coverage in an insolvent insurer.

**§33-12-22. Person soliciting insurance is agent of insurer.**

1 Any person who shall solicit within this state an application  
2 for insurance shall, in any controversy between the insured or  
3 his or her beneficiary and the insurer issuing any policy upon  
4 such application, be regarded as the agent of the insurer and not  
5 the agent of the insured.

**§33-12-23. Payment of commissions.**

1 (a) The entire commission payable by any insurer licensed  
2 to transact insurance in this state on any insurance policy shall  
3 be paid directly to the licensed resident agent who countersigns  
4 the policy. The countersigning agent may not pay any part of  
5 the commission to any person other than a licensed agent:  
6 *Provided*, That the portion of such commission retained by the

7 countersigning resident agent may not be less than ten percent  
8 of the gross policy premium or fifty percent of the commission  
9 payable by the insurer as provided herein, whichever is the  
10 lesser amount. The term "commission" as used herein shall  
11 include engineering fees, service fees or any other compensa-  
12 tion incident to the issuance of a policy payable by or to any  
13 insurer or agent.

14 (b) It shall be unlawful for any insurer or agent to pay, and  
15 any person to accept, directly or indirectly, any commission  
16 except as provided in this section: *Provided*, That any licensed  
17 resident agent may pay his or her commissions, or direct that  
18 his or her commissions be paid, to a business entity licensed as  
19 an insurance producer if:

20 (1) The business entity is engaged, through its licensed  
21 resident agents, in conducting an insurance agency business  
22 with respect to the general public;

23 (2) If a partnership licensed as an insurance agency  
24 producer, each partner satisfies the commissioner that he or she  
25 meets the licensing qualifications as set forth in section six of  
26 this article;

27 (3) If a corporation licensed as an insurance agency  
28 producer, each officer, employee or any one or more stockhold-  
29 ers owning, directly or indirectly, the controlling interest in the  
30 corporation satisfies the commissioner that he or she meets the  
31 licensing qualifications as set forth in section six of this article.  
32 The requirements set forth in this subdivision may not apply to  
33 clerical employees, or other employees not directly engaged in  
34 the selling or servicing of insurance;

35 (4) If a limited liability company licensed as an insurance  
36 agency producer, each officer, employee or any one or more  
37 members owning, directly or indirectly, the controlling interest  
38 in a limited liability company satisfies the commissioner that he

39 or she meets the licensing qualifications as set forth in section  
40 six of this article. The requirements set forth in this subdivision  
41 shall not apply to clerical employees, or other employees not  
42 directly engaged in the selling or servicing of insurance; and

43 (5) If any other business entity licensed as an insurance  
44 agency producer, approval is granted by the commissioner.

45 (c) This section will not apply to reinsurance, or life  
46 insurance, or accident and sickness insurance; nor to excess line  
47 insurance procured in accordance with the provisions of article  
48 twelve-c relating thereto; nor to credit insurance, any contract  
49 of insurance covering the rolling stock of any railroad or  
50 covering any vessel, aircraft or motor carrier used in interstate  
51 or foreign commerce, any liability or other risks incident to the  
52 ownership, maintenance or operation thereof, any contract of  
53 insurance covering any property in interstate or foreign com-  
54 merce, or any liability or risks incident thereto.

55 (d) An insurance company or insurance producer may not  
56 pay a commission, service fee, brokerage or other valuable  
57 consideration to a person for selling, soliciting or negotiating  
58 insurance in this state if that person is required to be licensed  
59 under this article and is not so licensed.

60 (e) A person shall not accept a commission, service fee,  
61 brokerage or other valuable consideration for selling, soliciting  
62 or negotiating insurance in this state if that person is required  
63 to be licensed under this article and is not so licensed.

64 (f) Renewal or other deferred commissions may be paid to  
65 a person for selling, soliciting or negotiating insurance in this  
66 state if the person was required to be licensed under this article  
67 at the time of the sale, solicitation or negotiation and was so  
68 licensed at that time.



**§33-12-24. Revocation, suspension or refusal to renew license; penalty.**

1 (a) The commissioner may examine and investigate the  
2 business affairs and conduct of every person applying for or  
3 holding an insurance producer license, solicitor's license or  
4 excess line broker's license to determine whether such person  
5 has been or is engaged in any violation of the insurance laws or  
6 rules of this state or has engaged in unfair or deceptive acts or  
7 practices in any state.

8 (b) The insurance commissioner may place on probation,  
9 suspend, revoke or refuse to issue or renew an insurance  
10 producer's license, solicitor's license or excess line broker's  
11 license, or may levy a civil penalty or any combination of  
12 actions, for any one or more of the following causes:

13 (1) Providing incorrect, misleading, incomplete or materi-  
14 ally untrue information in the license application;

15 (2) Violating any insurance laws, or violating any regula-  
16 tion, subpoena or order of the insurance commissioner or of  
17 another state's insurance commissioner;

18 (3) Obtaining or attempting to obtain a license through  
19 misrepresentation or fraud;

20 (4) Improperly withholding, misappropriating or converting  
21 any moneys or properties received in the course of doing  
22 insurance business;

23 (5) Intentionally misrepresenting the terms of an actual or  
24 proposed insurance contract or application for insurance;

25 (6) Having been convicted of or pleaded nolo contendere to  
26 any felony;

- 27       (7) Been convicted of or pleaded nolo contendere to a  
28 misdemeanor in connection with his or her activities as an  
29 agent, solicitor, or excess line broker;
- 30       (8) Having admitted or been found to have committed any  
31 insurance unfair trade practice or fraud;
- 32       (9) Using fraudulent, coercive, or dishonest practices, or  
33 demonstrating incompetence, untrustworthiness or financial  
34 irresponsibility in the conduct of business in this state or  
35 elsewhere;
- 36       (10) Having an insurance producer license, solicitor license,  
37 excess line broker license or its equivalent, denied, suspended  
38 or revoked in any other state, province, district or territory;
- 39       (11) Forging another's name to an application for insurance  
40 or to any document related to an insurance transaction or  
41 fraudulently procured a forged signature to an insurance  
42 application or any other document, knowing the signature to be  
43 forged;
- 44       (12) Improperly using notes or any other reference material  
45 to complete an examination for an insurance producer license;
- 46       (13) Knowingly accepting insurance business from an  
47 individual who is not licensed;
- 48       (14) Failing to comply with an administrative or court order  
49 imposing a child support obligation;
- 50       (15) Having a statutory lien recorded for failing to pay state  
51 income tax or comply with any administrative or court order  
52 directing payment of state income tax; or

53 (16) Obtained the license for the purpose of writing  
54 controlled business, as described in subdivision (7), subsection  
55 (a), section six of this article;

56 (c) In the event that the action by the insurance commis-  
57 sioner is to nonrenew or to deny an application for a license, the  
58 insurance commissioner shall notify the applicant or licensee  
59 and advise, in writing, the applicant or licensee of the reason for  
60 the denial or nonrenewal of the applicant's or licensee's license.  
61 The applicant or licensee may make written demand upon the  
62 insurance commissioner within ten days for a hearing before the  
63 insurance commissioner to determine the reasonableness of the  
64 insurance commissioner's action. The hearing shall be held  
65 within forty-five days and shall be held pursuant to section  
66 thirteen, article two of this chapter.

67 (d) The producer's license of a business entity may be  
68 placed on probation, suspended, revoked, refused or have civil  
69 penalty or any combination of actions, if the insurance commis-  
70 sioner finds, after hearing, that an individual licensee's viola-  
71 tion was known or should have been known by one or more of  
72 the partners, officers or managers acting on behalf of the  
73 partnership, corporation, limited liability company or other  
74 business entity and the violation was neither reported to the  
75 insurance commissioner nor corrective action taken.

76 (e) In addition to or in lieu of any applicable denial,  
77 probation, suspension or revocation of a license, a person may,  
78 after hearing, be subject to a civil penalty in a sum not to  
79 exceed five thousand dollars. Upon the failure of the licensee to  
80 pay such penalty by delivery of the sum to the commissioner  
81 within thirty days of notice thereof, the commissioner shall  
82 revoke or suspend such license.

83 (f) The insurance commissioner shall retain the authority to  
84 enforce the provisions of and impose any penalty or remedy

85 authorized by this article against any person even if the person's  
86 license or registration has been surrendered or has lapsed by  
87 operation of law.

**§33-12-25. Termination of authority to represent insurer.**

1 (a) *Termination for cause.* -- An insurer or authorized  
2 representative of the insurer that terminates the appointment,  
3 employment, contract or other insurance business relationship  
4 with a producer shall notify the insurance commissioner within  
5 thirty days following the effective date of the termination, using  
6 a format prescribed by the insurance commissioner, if the  
7 reason for termination is one of the reasons set forth in section  
8 twenty-four of this article or the insurer has knowledge the  
9 producer was found by a court, government body, or self-  
10 regulatory organization authorized by law to have engaged in  
11 any of the activities in section twenty-four of this article. Upon  
12 the written request of the insurance commissioner, the insurer  
13 shall provide additional information, documents, records or  
14 other data pertaining to the termination or activity of the  
15 producer.

16 (b) *Termination without cause.* -- An insurer or authorized  
17 representative of the insurer that terminates the appointment,  
18 employment, or contract with a producer for any reason not set  
19 forth in section twenty-four of this article, shall notify the  
20 insurance commissioner within thirty days following the  
21 effective date of the termination, using a format prescribed by  
22 the insurance commissioner. Upon written request of the  
23 insurance commissioner, the insurer shall provide additional  
24 information, documents, records or other data pertaining to the  
25 termination.

26 (c) *Ongoing notification requirement.* -- The insurer or the  
27 authorized representative of the insurer shall promptly notify

28 the insurance commissioner in a format acceptable to the  
29 insurance commissioner if, upon further review or investiga-  
30 tion, the insurer discovers additional information that would  
31 have been reportable to the insurance commissioner in accor-  
32 dance with subsection (a) of this section had the insurer then  
33 known of its existence.

34 (d) *Copy of notification to be provided to producer.* —

35 (1) At the time of making the notification required by  
36 subsections (a), (b) and (c) of this section, the insurer shall  
37 simultaneously mail a copy of the notification to the producer  
38 at his or her last known address. If the producer is terminated  
39 for cause for any of the reasons listed in section twenty-four of  
40 this article, the insurer shall provide a copy of the notification  
41 to the producer at his or her last known address by certified  
42 mail, return receipt requested, postage prepaid or by overnight  
43 delivery using a nationally recognized carrier.

44 (2) Within thirty days after the producer has received the  
45 original or additional notification, the producer may file written  
46 comments concerning the substance of the notification with the  
47 insurance commissioner. The producer shall, by the same  
48 means, simultaneously send a copy of the comments to the  
49 reporting insurer, and the comments shall become a part of the  
50 insurance commissioner's file and accompany every copy of a  
51 report distributed or disclosed for any reason about the producer  
52 as permitted under subsection (f) of this section.

53 (e) *Immunities.* —

54 (1) In the absence of actual malice, an insurer, the autho-  
55 rized representative of the insurer, a producer, the insurance  
56 commissioner, or an organization of which the insurance  
57 commissioner is a member and that compiles the information

58 and makes it available to other insurance commissioners or  
59 regulatory or law-enforcement agencies may not be subject to  
60 civil liability, and a civil cause of action of any nature shall not  
61 arise against these entities or their respective agents or employ-  
62 ees, as a result of any statement or information required by or  
63 provided pursuant to this section or any information relating to  
64 any statement that may be requested in writing by the insurance  
65 commissioner, from an insurer or producer; or a statement by  
66 a terminating insurer or producer to an insurer or producer  
67 limited solely and exclusively to whether a termination for  
68 cause under subsection (a) of this section was reported to the  
69 insurance commissioner, provided that the propriety of any  
70 termination for cause under subsection (a) is certified in writing  
71 by an officer or authorized representative of the insurer or  
72 producer terminating the relationship.

73 (2) In any action brought against a person that may have  
74 immunity under subdivision (1), subsection (e) of this section  
75 for making any statement required by this section or providing  
76 any information relating to any statement that may be requested  
77 by the insurance commissioner, the party bringing the action  
78 shall plead specifically in any allegation that subdivision (1),  
79 subsection (e) does not apply because the person making the  
80 statement or providing the information did so with actual  
81 malice.

82 (3) Subdivision (1), subsection (e) or subdivision (2),  
83 subsection (e) shall not abrogate or modify any existing  
84 statutory or common law privileges or immunities.

85 (f) *Confidentiality.* –

86 (1) Any documents, materials or other information in the  
87 control or possession of the department of insurance that is  
88 furnished by an insurer, producer or an employee or agent

89 thereof acting on behalf of the insurer or producer, or obtained  
90 by the insurance commissioner in an investigation pursuant to  
91 this section shall be confidential by law and privileged, may not  
92 be subject to chapter twenty-nine-b of this code, may not be  
93 subject to subpoena, and may not be subject to discovery or  
94 admissible in evidence in any private civil action. However, the  
95 insurance commissioner is authorized to use the documents,  
96 materials or other information in the furtherance of any  
97 regulatory or legal action brought as a part of the insurance  
98 commissioner's duties.

99 (2) Neither the insurance commissioner nor any person who  
100 received documents, materials or other information while acting  
101 under the authority of the insurance commissioner shall be  
102 permitted or required to testify in any private civil action  
103 concerning any confidential documents, materials, or informa-  
104 tion subject to subdivision (1) of subsection (f).

105 (3) In order to assist in the performance of the insurance  
106 commissioner's duties under this article, the insurance commis-  
107 sioner:

108 (A) May share documents, materials or other information,  
109 including the confidential and privileged documents, materials  
110 or information subject to subdivision (1) of this subsection,  
111 with other state, federal, and international regulatory agencies,  
112 with the national association of insurance commissioners, its  
113 affiliates or subsidiaries, and with state, federal, and interna-  
114 tional law-enforcement authorities, provided that the recipient  
115 agrees to maintain the confidentiality and privileged status of  
116 the document, material or other information;

117 (B) May receive documents, materials or information,  
118 including otherwise confidential and privileged documents,  
119 materials or information, from the national association of

120 insurance commissioners, its affiliates or subsidiaries and from  
121 regulatory and law-enforcement officials of other foreign or  
122 domestic jurisdictions, and shall maintain as confidential or  
123 privileged any document, material or information received with  
124 notice or the understanding that it is confidential or privileged  
125 under the laws of the jurisdiction that is the source of the  
126 document, material or information; and

127 (C) May enter into agreements governing sharing and use  
128 of information consistent with this subsection.

129 (4) No waiver of any applicable privilege or claim of  
130 confidentiality in the documents, materials, or information shall  
131 occur as a result of disclosure to the commissioner under this  
132 section or as a result of sharing as authorized in subdivision (3)  
133 of this subsection.

134 (5) Nothing in this article shall prohibit the insurance  
135 commissioner from releasing final, adjudicated actions includ-  
136 ing for cause terminations that are open to public inspection  
137 pursuant to chapter twenty-nine-b of this code to a database or  
138 other clearinghouse service maintained by the national associa-  
139 tion of insurance commissioners, its affiliates or subsidiaries of  
140 the national association of insurance commissioners.

141 (g) *Penalties for failing to report.* — An insurer, the  
142 authorized representative of the insurer, or producer that fails  
143 to report as required under the provisions of this section or that  
144 is found to have reported with actual malice by a court of  
145 competent jurisdiction may, after notice and hearing, have its  
146 license or certificate of authority suspended or revoked and may  
147 be fined in accordance with subsection (e), section twenty-four  
148 of this article.

**§33-12-26. Insurance vending machines.**



1 (a) A licensed resident agent may solicit applications for  
2 and issue policies for trip accident insurance by means of  
3 mechanical vending machines supervised by him or her, if:

4 (1) The commissioner finds that the kind of insurance and  
5 form of policy to be so sold is reasonably suited for sale and  
6 issuance through vending machines and otherwise complies  
7 with this chapter, and that use of such machines therefor would  
8 be of convenience to the public; and

9 (2) The commissioner finds that the type of vending  
10 machines to be used is reasonably suitable and practical for the  
11 purpose.

12 (b) The commissioner shall issue to the agent a special  
13 vending machine license as to each such machine to be used.  
14 The license shall specify name and address of the insurer and  
15 agent, kind of insurance and type of policy to be sold, and the  
16 place where the machine is to be in operation. The license shall  
17 expire, be renewable, and be suspended or revoked,  
18 coincidentally with that of the agent. The license fee shall be five  
19 dollars for each year or part thereof for each vending machine.  
20 Proof of existence of the license shall be displayed on or about  
21 each machine in a manner as the commissioner may reasonably  
22 require. Fees so collected are subject to the provisions of  
23 section thirteen, article three of this chapter.

**§33-12-27. Payment of commissions under assigned risk plan.**

1 An insurer participating in a plan for assignment of  
2 personal injury liability insurance or property damage liability  
3 insurance on owner's automobiles or operators, which plan has  
4 been approved by the commissioner, may pay a commission to  
5 a qualified agent who is licensed to act as agent for any insurer  
6 participating in the plan when the agent is designated by the

7 insured as the producer of record under an automobile assigned  
8 risk plan pursuant to which a policy is issued under the plan,  
9 and section eleven of this article shall not be applicable thereto.

**§33-12-28. Service representative permit.**

1 Individual nonresidents of West Virginia, employed on  
2 salary by an insurer, who enter the state to assist and advise  
3 resident agents in the solicitation, negotiation, making or  
4 procuring of contracts of insurance on risks resident, located or  
5 to be performed in West Virginia shall obtain a service repre-  
6 sentative permit. The commissioner may, upon receipt of a  
7 properly prepared application, issue the permit without requir-  
8 ing a written examination therefor. The fee for a service  
9 representative permit shall be twenty-five dollars and the permit  
10 shall expire at midnight on the thirty-first day of March next  
11 following the date of issuance. Issuance of a service representa-  
12 tive permit may not entitle the holder to countersign policies.  
13 The representative may not in any manner solicit, negotiate,  
14 make or procure insurance in this state except when in the  
15 actual company of the licensed resident agent whom he or she  
16 has been assigned to assist. All fees collected under this section  
17 shall be used for the purposes set forth in section thirteen,  
18 article three of this chapter.

**§33-12-29. Notice of hearing before the commissioner; failure to  
appear; entry of orders; appeal.**

1 (a) When conducting any hearing authorized by section  
2 thirteen, article two of this chapter which concerns any insur-  
3 ance producer, solicitor, or service representative, the commis-  
4 sioner shall give notice of the hearing and the matters to be  
5 determined therein to the insurance producer, solicitor or  
6 service representative by certified mail, return receipt re-

7 requested, sent to the last address filed by the person or entity  
8 pursuant to subsection (e), section nine of this article.

9 (b) If an insurance producer, solicitor or service representa-  
10 tive fails to appear at the hearing, the hearing may proceed, at  
11 which time the commissioner shall establish that notice was  
12 sent to the person pursuant to this section prior to the entry of  
13 any orders adverse to the interests of the insurance producer,  
14 solicitor or service representative based upon the allegations  
15 against a person which were set forth in the notice of hearing.  
16 Certified copies of all orders entered by the commissioner shall  
17 be sent to the person affected therein by certified mail, return  
18 receipt requested, at the last address filed by such person with  
19 the division.

20 (c) An insurance producer, solicitor or service representa-  
21 tive who fails to appear at a hearing of which notice has been  
22 provided pursuant to this section, and who has had an adverse  
23 order entered by the commissioner against them as a result of  
24 their failure to so appear may, within thirty calendar days of the  
25 entry of an adverse order, file with the commissioner a written  
26 verified appeal with any relevant documents attached thereto,  
27 which demonstrates good and reasonable cause for the person's  
28 failure to appear, and may request reconsideration of the matter  
29 and a new hearing. The commissioner in his or her discretion,  
30 and upon a finding that the insurance producer, solicitor or  
31 service representative has shown good and reasonable cause for  
32 his or her failure to appear, shall issue an order that the previous  
33 order be rescinded, that the matter be reconsidered, and that a  
34 new hearing be set.

35 (d) Orders entered pursuant to this section are subject to the  
36 judicial review provisions of section fourteen, article two of this  
37 chapter.

**§33-12-30. Termination of contractual relationship prohibited.**

1 No insurance company may cancel, refuse to renew or  
2 otherwise terminate a written contractual relationship with any  
3 insurance agent who has been employed or appointed pursuant  
4 to that written contract by an insurance company as a result of  
5 any analysis of a loss ratio resulting from claims paid under the  
6 provisions of an endorsement for uninsured and underinsured  
7 motor vehicle coverage issued pursuant to the provisions of  
8 section thirty-one, article six of this chapter, nor may any  
9 provision of that contract, including the provisions for compen-  
10 sation therein, operate to deter or discourage the insurance  
11 agent from selling and writing endorsements for optional  
12 uninsured or underinsured motor vehicle coverage.

**§33-12-31. Termination of contractual relationship; continuation of certain commissions; exceptions.**

1 (a) In the event of a termination of a contractual relation-  
2 ship between a duly licensed insurance agent and an automobile  
3 insurer of private passenger automobiles who is withdrawing  
4 from writing private passenger automobile insurance within the  
5 state, the insurer shall pay the agent a commission, equal to the  
6 commission the agent would have otherwise been entitled to  
7 under his or her contract with the insurer, for a period of two  
8 years from the date of termination of the contractual relation-  
9 ship for those renewal policies that cannot otherwise be  
10 canceled or nonrenewed pursuant to law, which policies the  
11 agent continues to service. The insurer must continue the  
12 appointment of the agent for the duration of time the agent  
13 continues to service the business: *Provided*, That this require-  
14 ment shall not obligate the withdrawing insurer to accept any  
15 new private passenger automobile insurance within the state.

16 (b) Subsection (a) of this section does not apply to an agent  
17 who is an employee of the insurer, or an agent as defined by  
18 article twelve-a of this chapter, or an agent, who by contractual  
19 agreement either represents only one insurer or group of  
20 affiliated insurers or who is required by contract to submit risks  
21 to a specified insurer or group of affiliated insurers prior to  
22 submitting them to others.

**§33-12-32. Limited licenses for rental companies.**

1 (a) *Purpose.* — This section authorizes the insurance  
2 commissioner to issue limited licenses for the sale of automo-  
3 bile rental coverage.

4 (b) *Definitions.* — The following words when used in this  
5 section shall have the following meanings:

6 (1) “Authorized insurer” means an insurer that is licensed  
7 by the commissioner to transact insurance in West Virginia.

8 (2) “Automobile rental coverage” or “rental coverage” is  
9 insurance offered incidental to the rental of a vehicle as  
10 described in this section.

11 (3) “Limited license” means the authorization by the  
12 commissioner for a person to sell rental coverage as agent of an  
13 authorized insurer pursuant to the provisions of this section  
14 without the necessity of agent prelicensing education, examina-  
15 tion, or continuing education.

16 (4) “Limited licensee” is an individual resident of this state  
17 who obtains a limited license.

18       (5) "Rental agreement" means any written agreement  
19 setting forth the terms and conditions governing the use of a  
20 vehicle provided by the rental company for rental or lease.

21       (6) "Rental company" means any person or entity in the  
22 business of providing private motor vehicles to the public under  
23 a rental agreement for a period not to exceed ninety days.

24       (7) "Renter" means any person obtaining the use of a  
25 vehicle from a rental company under the terms of a rental  
26 agreement for a period not to exceed ninety days.

27       (8) "Vehicle" or "rental vehicle" means a motor vehicle of  
28 the private passenger type including passenger vans, minivans  
29 and sport utility vehicles and of the cargo type, including cargo  
30 vans, pick-up trucks and trucks with a gross vehicle weight of  
31 twenty-six thousand pounds or less and which do not require  
32 the operator to possess a commercial driver's license.

33       (9) "Rental period" means the term of the rental agreement.

34       (c) The commissioner may issue a limited license for the  
35 sale of automobile rental coverage to an employee of a rental  
36 company, who has satisfied the requirements of this section.

37       (d) As a prerequisite for issuance of a limited license under  
38 this section, there shall be filed with the commissioner a written  
39 application for a limited license, signed by the applicant, in a  
40 form or forms and supplements thereto, and containing any  
41 information, as the commissioner may prescribe. The limited  
42 licensee shall pay to the insurance commissioner an annual fee  
43 of twenty-five dollars.

44       (e) The limited licensee shall be appointed by the licensed  
45 insurer or insurers for the sale of automobile rental coverage.

46 The employer of the limited licensee shall maintain at each  
47 insurance sales location a list of the names and addresses of  
48 employees which are selling insurance at the location.

49 (f) In the event that any provision of this section or applica-  
50 ble provisions of the insurance code is violated by a limited  
51 licensee or other employees operating under his or her direc-  
52 tion, the commissioner may:

53 (1) After notice and a hearing, revoke or suspend a limited  
54 license issued under this section in accordance with the  
55 provisions of section thirteen, article two of this chapter; or

56 (2) After notice and hearing, impose any other penalties,  
57 including suspending the transaction of insurance at specific  
58 locations where applicable violations of the insurance code  
59 have occurred, as the commissioner considers to be necessary  
60 or convenient to carry out the purposes of this section.

61 (g) Any limited license issued under this section shall also  
62 authorize any other employee working for the same employer  
63 and at the same location as the limited licensee to act individu-  
64 ally, on behalf, and under the supervision, of the limited  
65 licensee with respect to the kinds of coverage authorized in this  
66 section. In order to sell insurance products under this section at  
67 least one employee who has obtained a limited license must be  
68 present at each location where insurance is sold. All other  
69 employees working at that location may offer or sell insurance  
70 consistent with this section without obtaining a limited license.  
71 However, the limited licensee shall directly supervise and be  
72 responsible for the actions of all other employees at that  
73 location related to the offer or sale of insurance as authorized  
74 by this section. No limited licensee under this section shall  
75 advertise, represent, or otherwise hold himself or herself or any

76 other employees out as licensed insurers, insurance agents or  
77 insurance brokers.

78 (h) No automobile rental coverage insurance may be issued  
79 by a limited licensee pursuant to this section unless:

80 (1) The rental period of the rental agreement does not  
81 exceed ninety consecutive days; and

82 (2) At every rental location where rental agreements are  
83 executed, brochures or other written material are readily  
84 available to the prospective renter that:

85 (A) Summarize clearly and correctly, the material terms of  
86 coverage offered to renters, including the identity of the insurer;

87 (B) Disclose that the coverage offered by the rental  
88 company may provide a duplication of coverage provided by a  
89 renter's personal automobile insurance policy, homeowner's  
90 insurance policy, personal liability insurance policy, or other  
91 source of coverage;

92 (C) State that the purchase by the renter of the kinds of  
93 coverage specified in this section is not required in order to rent  
94 a vehicle; and

95 (D) Describe the process for filing a claim in the event the  
96 renter elects to purchase coverage and in the event of a claim.

97 (3) Any evidence of coverage on the face of the rental  
98 agreement is disclosed to every renter who elects to purchase  
99 the coverage.

100 (4) The limited licensee to sell automobile rental coverage  
101 may offer or sell insurance only in connection with and  
102 incidental to the rental of vehicles, whether at the rental office



103 or by preselection of coverage in a master, corporate, group  
104 rental, or individual agreements in any of the following general  
105 categories;

106 (A) Personal accident insurance covering the risks of travel,  
107 including, but not limited to, accident and health insurance that  
108 provides coverage, as applicable, to renters and other rental  
109 vehicle occupants for accidental death or dismemberment and  
110 reimbursement for medical expenses resulting from an accident  
111 that occurs during the rental period;

112 (B) Liability insurance (which may include uninsured and  
113 underinsured motorist coverage whether offered separately or  
114 in combination with other liability insurance) that provides  
115 coverage, as applicable, to renters and other authorized drivers  
116 of rental vehicles for liability arising from the operation of the  
117 rental vehicle;

118 (C) Personal effects insurance that provides coverage,  
119 applicable to renters and other vehicle occupants of the loss of,  
120 or damage to, personal effects that occurs during the rental  
121 period;

122 (D) Roadside assistance and emergency sickness protection  
123 programs; and

124 (E) Any other travel or auto-related coverage that a rental  
125 company offers in connection with and incidental to the rental  
126 of vehicles.

127 (i) Each rental company for which an employee has  
128 received a limited license pursuant to this section shall conduct  
129 a training program in which its employees being trained shall  
130 receive basic instruction about the kinds of coverage specified  
131 in this section and offered for purchase by prospective renters

132 of rental vehicles: *Provided*, That limited licensees and employ-  
133 ees working hereunder are not subject to the agent prelicensing  
134 education, examination or continuing education requirements  
135 of this article.

136 (j) Notwithstanding any other provision of this section, or  
137 any rule adopted by the commissioner neither the rental  
138 company, the limited licensee, nor the other employees working  
139 with the limited licensee at the rental company, shall be  
140 required to treat moneys collected from renters purchasing such  
141 insurance when renting vehicles as funds received in a fiduciary  
142 capacity, provided that the charges for coverage shall be  
143 itemized and be ancillary to a rental transaction. The sale of  
144 insurance not in conjunction with a rental transaction may not  
145 be permitted.

### **§33-12-33. Reciprocity.**

1 (a) The insurance commissioner shall waive any require-  
2 ments for a nonresident license applicant with a valid license  
3 from his or her home state, except the requirements imposed by  
4 section twelve of this article, if the applicant's home state  
5 awards nonresident licenses to residents of this state on the  
6 same basis.

7 (b) An individual nonresident producer's satisfaction of his  
8 or her home state's continuing education requirements for  
9 licensed insurance producers shall constitute satisfaction of this  
10 state's continuing education requirements if the nonresident  
11 producer's home state recognizes the satisfaction of its continu-  
12 ing education requirements imposed upon producers from this  
13 state on the same basis.

### **§33-12-34. Reporting of actions.**

1 (a) A producer shall report to the insurance commissioner  
2 any administrative action taken against the producer in another  
3 jurisdiction or by another governmental agency in this state  
4 within thirty days of the final disposition of the matter. This  
5 report shall include a copy of the order, consent to order or  
6 other relevant legal documents.

7 (b) Within thirty days of the initial pretrial hearing date, a  
8 producer shall report to the insurance commissioner any  
9 criminal prosecution of the producer taken in any jurisdiction.  
10 The report shall include a copy of the initial complaint filed, the  
11 order resulting from the hearing and any other relevant legal  
12 documents.

### **§33-12-35. Regulations.**

1 The insurance commissioner may, in accordance with  
2 article three, chapter twenty-nine-a of this code, promulgate  
3 reasonable regulations as are necessary or proper to carry out  
4 the purposes of this article. Any legislative rules promulgated  
5 under the former article twelve of this chapter shall remain in  
6 full force and effect but shall henceforth relate to the  
7 redesignated statutory provisions contained herein.

### **§33-12-36. Severability.**

1 If any provisions of this article, or the application of a  
2 provision to any person or circumstances, shall be held invalid,  
3 the remainder of the article, and the application of the provision  
4 to persons or circumstances other than those to which it is held  
5 invalid, shall not be affected.

## **ARTICLE 12C. EXCESS LINE.**

§33-12C-1. Excess lines.

- §33-12C-2. Excess line broker's reporting requirements.
- §33-12C-3. Excess line insurance valid.
- §33-12C-4. Licensing of excess line brokers.
- §33-12C-5. License expiration and renewal.
- §33-12C-6. Licensed excess line brokers may accept business from agents.
- §33-12C-7. Countersignature requirements.
- §33-12C-8. Records of excess line brokers.
- §33-12C-9. Excess line brokers; additional premium tax.
- §33-12C-10. Fees.
- §33-12C-11. Coverage must be placed in solvent insurer.
- §33-12C-12. Change of address.
- §33-12C-13. Service of process on excess line insurers and brokers.
- §33-12C-14. Hearings.
- §33-12C-15. Severability.

#### **§33-12C-1. Excess lines.**

1 Any portion or all of an insurance coverage against loss or  
2 damage to property or person from any cause which cannot be  
3 procured from licensed insurers, which coverages are hereinaf-  
4 ter designated as "excess line," may be procured from unli-  
5 censed insurers subject to the following conditions:

6 (a) The insurance must be procured only through a licensed  
7 excess line broker; and

8 (b) The insurance coverage must not be procurable, after  
9 diligent effort has been made to do so by the individual  
10 insurance producer from licensed insurers authorized to transact  
11 that kind of insurance in this state, or has been procured to the  
12 full extent the insurers are willing to insure, and the placing of  
13 insurance with an unlicensed insurer must not be for the  
14 purpose of securing advantages either as to premium rate or  
15 terms of the insurance contract.

#### **§33-12C-2. Excess line broker's reporting requirements.**

1 On or before the first day of March, one thousand nine  
2 hundred ninety-six, and on or before the first day of March  
3 thereafter, each excess line broker shall file, on a form pre-  
4 scribed by the commissioner, a report under oath, setting forth  
5 facts from which it may be determined whether the require-  
6 ments of section one of this article have been met with respect  
7 to each excess line policy procured by the excess line broker  
8 during the preceding calendar year. The report shall include, but  
9 not be limited to, the following:

- 10 (a) Name and address of the insurer;
- 11 (b) Number of the policy issued;
- 12 (c) Name and address of the insured;
- 13 (d) Nature and amount of liability assumed by the insurer;
- 14 (e) Premium, and premium rate if applicable; and
- 15 (f) Other information reasonably required by the commis-  
16 sioner.

17 The commissioner may promulgate rules pursuant to the  
18 provisions of section one, article one, chapter twenty-nine-a of  
19 this code, specifying the reporting forms required by this  
20 section. Legislative rules previously promulgated under former  
21 article twelve of this chapter regarding excess line brokers at  
22 the effective date of this article shall remain in full force and  
23 effect to this article.

**§33-12C-3. Excess line insurance valid.**

1 Insurance contracts procured as excess line coverage from  
2 unlicensed insurers in accordance with this article shall be fully  
3 valid and enforceable as to all parties, and shall be given

4 recognition in all matters and respects to the same effect as like  
5 contracts issued by licensed insurers whose rates and terms  
6 have been filed and approved by the insurance commissioner.

**§33-12C-4. Licensing of excess line brokers.**

1 (a) Any licensed insurance agent determined by the  
2 commissioner to be competent and trustworthy for the purpose,  
3 may be licensed as an excess line broker.

4 (b) The license fee shall be two hundred dollars, all fees so  
5 collected are to be used for the purposes set forth in section  
6 thirteen, article three of this chapter.

7 (c) Prior to issuance of the license, the applicant therefor  
8 shall file with the commissioner and thereafter maintain in force  
9 for so long as the license or any renewal thereof remains in  
10 effect, a bond in favor of the state of West Virginia in the penal  
11 sum of two thousand dollars, with an authorized corporate  
12 surety approved by the commissioner, conditioned that he or  
13 she will conduct business under the license in accordance with  
14 this article, that he or she will promptly remit the taxes pro-  
15 vided by section sixteen of this article, and that he or she will  
16 properly account to the person entitled thereto for funds  
17 received by him or her through transactions under the license.  
18 No bond shall be terminated unless at least thirty days' prior  
19 written notice thereof is filed with the commissioner.

**§33-12C-5. License expiration and renewal.**

1 All licenses of excess line brokers shall expire at midnight  
2 on the thirty-first day of May next following the date of  
3 issuance. The commissioner shall renew annually the license of  
4 all such licensees who qualify and make application therefor.

**§33-12C-6. Licensed excess line brokers may accept business from agents.**

1       A licensed excess line broker may accept and place  
2 authorized excess line business from any insurance agent or  
3 broker licensed in this state for the kind of insurance involved,  
4 and may compensate an agent or broker therefor. The excess  
5 line broker shall have the right to receive from the insurer the  
6 customary commission.

**§33-12C-7. Countersignature requirements.**

1       Excess line insurance shall be countersigned by a duly  
2 licensed excess line broker.

**§33-12C-8. Records of excess line brokers.**

1       Each excess line broker shall keep in his or her office a full  
2 and true record of each excess line contract procured by him or  
3 her, and the record may be examined at any time thereafter by  
4 the commissioner. The record shall include such of the follow-  
5 ing items as are applicable:

6       (a) Name and address of the insurer;

7       (b) Name and address of the insured;

8       (c) Amount of insurance;

9       (d) Gross premium charged;

10      (e) Return premium paid, if any;

11      (f) Rate of premium charged on the several items of  
12 coverage;

- 13 (g) Effective date of the contract and the terms thereof; and
- 14 (h) Brief general description of the risks insured against and
- 15 the property insured.

**§33-12C-9. Excess line brokers; additional premium tax.**

1 (a) Every excess line broker shall make an annual return,  
2 under oath, on or before the first day of March to the commis-  
3 sioner of the gross amount of premiums charged by the insurers  
4 and of the gross amount of the fees charged by the excess line  
5 broker for the insurance procured by the excess line broker  
6 during the previous calendar year. Every excess line policy-  
7 holder obtaining insurance from an excess line broker shall pay  
8 and every excess line broker shall collect from the policyholder  
9 and remit to the commissioner a sum equal to four percent of  
10 the gross premiums and fees received on the excess line policies  
11 procured by the excess line broker on subjects of insurance,  
12 resident, located or to be performed in this state, including any  
13 so-called dividends on participating policies applied in reduc-  
14 tion of premiums, but less premiums returned to policyholders  
15 because of cancellation of policy. This tax is imposed for the  
16 purpose of providing additional revenue for municipal police-  
17 men's and firemen's pension and relief funds and additional  
18 revenue for volunteer and part volunteer fire companies and  
19 departments. This tax is required to be paid and remitted, on a  
20 calendar year basis and in quarterly estimated installments due  
21 and payable on or before the twenty-fifth day of the month  
22 succeeding the close of the quarter in which they accrued,  
23 except for the fourth quarter, in respect of which taxes shall be  
24 due and payable and final computation of actual total liability  
25 for the prior calendar year shall be made, less credit for the  
26 three quarterly estimated payments prior made, and filed with  
27 the annual return to be made on or before the first day of March



28 of the succeeding year. Provisions of this chapter relating to the  
29 levy, imposition and collection of the regular premium tax are  
30 applicable to the levy, imposition and collection of this tax to  
31 the extent that the provisions are not in conflict with this  
32 section.

33 All taxes remitted to the commissioner pursuant to this  
34 section shall be paid by him or her into a special account in the  
35 state treasury, designated "municipal pensions and protection  
36 fund," and after appropriation by the Legislature, shall be  
37 distributed in accordance with the provisions of subsection (c),  
38 section fourteen-d, article three of this chapter. The excess line  
39 broker shall return to the policyholder the tax on any unearned  
40 portion of the premium returned to the policyholder because of  
41 cancellation of policy.

42 (b) The excess line broker may not:

43 (1) Pay directly or indirectly the tax or any portion thereof,  
44 either as an inducement to the policyholder to purchase the  
45 insurance or for any other reason; or

46 (2) Rebate all or part of the tax or the excess line broker's  
47 commission, either as an inducement to the policyholder to  
48 purchase the insurance or for any reason.

49 (c) The licensed excess line broker may charge the prospec-  
50 tive policyholder a fee for the cost of underwriting, issuing,  
51 processing, inspecting, service or auditing the policy for  
52 placement with the excess line insurer if:

53 (1) The service is required by the excess line insurer;

54 (2) The service is actually provided by the excess line  
55 broker or the cost of the service is actually incurred by the  
56 excess line broker; and

57 (3) The provision or cost of the service is reasonable,  
58 documented and verifiable.

59 (d) The excess line broker shall make a clear and conspicu-  
60 ous written disclosure to the policyholder of:

61 (1) The total amount of premium for the policy;

62 (2) Any fee charged;

63 (3) The total amount of any fee charged; and

64 (4) The total amount of tax on the premium and fee.

65 (e) The clear and conspicuous written disclosure required  
66 by subsection (d) of this section is subject to the record mainte-  
67 nance requirements of section eight of this article.

#### **§33-12C-10. Fees.**

1 The commissioner shall receive the following fees from  
2 excess line brokers: For letters of certification, five dollars; for  
3 letters of clearance, ten dollars; for duplicate license, five  
4 dollars. All fees and moneys so collected shall be used for the  
5 purposes set forth in section thirteen, article three of this  
6 chapter.

#### **§33-12C-11. Coverage must be placed in solvent insurer.**

1 No excess line broker shall knowingly place any coverage  
2 in an insolvent insurer.

**§33-12C-12. Change of address.**

1       An excess line broker shall notify the commissioner of any  
2 change in his or her mailing address within thirty days of such  
3 change. The commissioner shall maintain the mailing address  
4 of each excess line broker, and service representative on file.  
5 Failure to timely inform the insurance commissioner of a  
6 change in legal name or address may result in a penalty  
7 pursuant to section twenty-four of this article.

**§33-12C-13. Service of process on excess line insurers and brokers.**

1       As to every unlicensed insurer issuing or delivering an  
2 excess line policy through an excess line broker in this state, the  
3 secretary of state shall be, and is hereby constituted the attor-  
4 ney-in-fact of each such insurer and broker for service of  
5 process in the same manner as for licensed insurers as provided  
6 in section twelve, article four of this chapter.

**§33-12C-14. Hearings.**

1       (a) When conducting any hearing authorized by section  
2 thirteen, article two of this chapter which concerns any excess  
3 line broker, the commissioner shall give notice of the hearing  
4 and the matters to be determined therein to the excess line  
5 broker by certified mail, return receipt requested, sent to the last  
6 address filed by a person or entity pursuant to section twelve of  
7 this article.

8       (b) If an excess line broker fails to appear at the hearing, the  
9 hearing may proceed, at which time the commissioner shall  
10 establish that notice was sent to the person pursuant to this  
11 section prior to the entry of any orders adverse to the interests  
12 of an excess line broker based upon the allegations against the

13 person which were set forth in the notice of hearing. Certified  
14 copies of all orders entered by the commissioner shall be sent  
15 to the person affected therein by certified mail, return receipt  
16 requested, at the last address filed by a person with the division.

17 (c) An excess line broker who fails to appear at a hearing of  
18 which notice has been provided pursuant to this section, and  
19 who has had an adverse order entered by the commissioner  
20 against them as a result of their failure to so appear may, within  
21 thirty calendar days of the entry of an adverse order, file with  
22 the commissioner a written verified appeal with any relevant  
23 documents attached thereto, which demonstrates good and  
24 reasonable cause for the person's failure to appear, and may  
25 request reconsideration of the matter and a new hearing. The  
26 commissioner in his or her discretion, and upon a finding that  
27 the excess line broker has shown good and reasonable cause for  
28 his or her failure to appear, shall issue an order that the previous  
29 order be rescinded, that the matter be reconsidered, and that a  
30 new hearing be set.

31 (d) Orders entered pursuant to this section are subject to the  
32 judicial review provisions of section fourteen, article two of this  
33 chapter.

### **§33-12C-15. Severability.**

1 If any provisions of this article, or the application of a  
2 provision to any person or circumstances, shall be held invalid,  
3 the remainder of the article and the application of the provision  
4 to persons or circumstances other than those to which it is held  
5 invalid, shall not be affected.

---

## CHAPTER 181

(S. B. 583 — By Senators Kessler and Minard)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to repeal section twenty-two, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article sixteen of said chapter, relating generally to group accident and sickness insurance; specifying eligible groups; eliminating erroneous definition of bona fide association; and clarifying entities to which certain licensed insurers may issue a group policy.

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

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

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-2. Eligible groups.**

1 Any insurer licensed to transact accident and sickness  
2 insurance in this state may issue group accident and sickness  
3 policies coming within any of the following classifications:

4 (a) A policy issued to an employer, who shall be consid-  
5 ered the policyholder, insuring at least ten employees of such  
6 employer, for the benefit of persons other than the employer,  
7 and conforming to the following requirements:

8 (1) If the premium is paid by the employer the group  
9 shall comprise all employees or all of any class or classes  
10 thereof determined by conditions pertaining to the employ-  
11 ment; or

12 (2) If the premium is paid by the employer and employ-  
13 ees jointly, or by the employees, the group shall comprise not  
14 less than seventy percent of all employees of the employer or  
15 not less than seventy-five percent of all employees of any  
16 class or classes thereof determined by conditions pertaining  
17 to the employment;

18 (3) The term "employee" as used herein shall be consid-  
19 ered to include the officers, managers and employees of the  
20 employer, the partners, if the employer is a partnership, the  
21 officers, managers and employees of subsidiary or affiliated  
22 corporations of a corporation employer, and the individual  
23 proprietors, partners and employees of individuals and firms,  
24 the business of which is controlled by the insured employer  
25 through stock ownership, contract or otherwise. The term  
26 "employer" as used herein may be considered to include any  
27 municipal or governmental corporation, unit, agency or de-  
28 partment thereof and the proper officers, as such, of any un-  
29 incorporated municipality or department thereof, as well as  
30 private individuals, partnerships and corporations.

31 (b) A policy issued to an association which has been in  
32 existence for at least one year, which has a constitution and  
33 bylaws and which has been organized and is maintained in  
34 good faith for purposes other than that of obtaining insur-  
35 ance, insuring at least ten members of the association for the  
36 benefit of persons other than the association or its officers or  
37 trustees, as such;

38 (c) A policy issued to a bona fide association;

39 (d) A policy issued to a college, school or other institu-  
40 tion of learning or to the head or principal thereof, insuring at  
41 least ten students, or students and employees, of the institu-  
42 tion;

43 (e) A policy issued to or in the name of any volunteer fire  
44 department, insuring all of the members of the department or  
45 all of any class or classes thereof against any one or more of  
46 the hazards to which they are exposed by reason of the mem-  
47 bership but in each case not less than ten members;

48 (f) A policy issued to any person or organization to  
49 which a policy of group life insurance may be issued or de-  
50 livered in this state, to insure any class or classes of individu-  
51 als that could be insured under the group life policy.

---

## CHAPTER 182

(H. B. 4465 — By Delegate Beane)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section four, article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the waiting period for rate filings for medical malpractice policies.

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

That section four, article twenty-b, 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 20B. RATES AND MALPRACTICE INSURANCE POLICIES.**

#### **§33-20B-4. Disapproval of filings.**

1 (a) If within the waiting period or any extension thereof  
2 as provided in subsection (b), section three of this article, the  
3 commissioner finds that a filing does not meet the require-

4 ments of this article, he or she shall send to the insurer or  
5 rating organization which made the filing written notice of  
6 disapproval of the filing specifying therein in what respects  
7 he or she finds the filing fails to meet the requirements of this  
8 article and stating that the filing shall not be effective. Within  
9 thirty days from the issuance of written notice of disapproval,  
10 any insurer or rating organization aggrieved by the disap-  
11 proval of any filing may request a hearing pursuant to section  
12 thirteen, article two of this chapter.

13 (b) If at any time subsequent to the waiting period or any  
14 extension thereof as provided in subsection (b), section three  
15 of this article, the commissioner finds that a filing does not  
16 meet the requirements of this article, he or she shall send to  
17 the insurer or rating organization which made the filing a  
18 written order specifying in what respect he or she finds that  
19 such filing fails to meet the requirements of this article and a  
20 date, not less than thirty days from the issuance of the order,  
21 when the filing shall be considered no longer effective.  
22 Within thirty days from the issuance of the order, any insurer  
23 or rating organization aggrieved by the order may request a  
24 hearing thereon pursuant to section thirteen, article two of  
25 this chapter. Any such order shall not affect any contract or  
26 policy made or issued prior to the expiration date set forth in  
27 the order.

28 (c) Any person or organization aggrieved by any filing  
29 which is in effect or the application thereof may request a  
30 hearing thereon pursuant to section thirteen, article two of  
31 this chapter. The insurer or rating organization which made  
32 the filing shall be notified in writing upon receipt of any re-  
33 quest for hearing and thereby made a party to the hearing.  
34 Upon hearing, if the commissioner finds that the filing fails  
35 to meet the requirements of this article, he or she shall issue  
36 an order specifying in what respects he or she so finds and a



37 date, not less than thirty days from the issuance of the order,  
38 when the filings shall be considered no longer effective.

39 (d) Within the initial ninety-day waiting period, the com-  
40 missioner shall hold a public hearing upon every filing which  
41 requests an increase in general rates of ten percent or more  
42 and upon every filing which, in the opinion of the commis-  
43 sioner, is of such import that it will affect the public. The  
44 insurer or rating organization which made the filing shall be  
45 notified in writing not less than fifteen days prior to the hear-  
46 ing date. Notice of the time, place and filing to be considered  
47 shall be published as a Class II legal advertisement in every  
48 county in the state in accordance with article three, chapter  
49 fifty-nine of this code.

---

## CHAPTER 183

(Com. Sub. for S. B. 516 — By Senators Minard and Kessler)

---

[Passed March 8, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one and three, article twenty-d, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to tail insurance and malpractice insurance generally; extending scope of article to include hospital coverage; and requiring malpractice insurers to submit plan for determination of partial limits in event of default on amortized payment.

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

That sections one and three, article twenty-d, 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 20D. TAIL INSURANCE.**

§33-20D-1. Scope of article.

§33-20D-3. Tail insurance to be offered upon cancellation; availability of amortization; minimum premium rates; penalties for noncompliance.

**§33-20D-1. Scope of article.**

1        This article applies to malpractice insurance as defined in  
2        subdivision (9), subsection (e), section ten, article one of this  
3        chapter insuring a medical physician, osteopathic physician,  
4        podiatric physician, chiropractic physician, dentist, midwife,  
5        nurse practitioner or hospital which has been in effect for at  
6        least sixty days.

**§33-20D-3. Tail insurance to be offered upon cancellation;  
availability of amortization; minimum premium  
rates; penalties for noncompliance.**

1        (a) Upon cancellation, nonrenewal or termination of any  
2        claims made professional malpractice insurance policy, the  
3        insurer shall offer to the insured tail insurance coverage.

4        (b) Upon cancellation, nonrenewal or termination of any  
5        claims made professional malpractice insurance policy, the  
6        insurer shall offer to any professional licensed and practicing  
7        in the state of West Virginia, or who, upon retirement, last  
8        practiced in the state of West Virginia, the opportunity to  
9        amortize the payment of premiums for tail insurance over a  
10       period of not more than thirty-six months, in quarterly pay-  
11       ments, at a rate to be established by the insurance commis-  
12       sioner: *Provided*, That quarterly premiums paid pursuant to  
13       this subsection shall not be less than seven hundred fifty  
14       dollars.

15 (c) The first quarterly payment shall be payable contem-  
16 poraneous with the issuance of the tail coverage policy. Sub-  
17 sequent payments shall be due and payable quarterly thereaf-  
18 ter. Each licensed malpractice insurer shall submit for ap-  
19 proval, by the commissioner, a plan for determination of  
20 partial limits in the event of default on amortized payment.

21 (d) Any insurer who fails to offer tail insurance or in any  
22 other way violates the provisions of this article shall be as-  
23 sessed a penalty equal to the amount of the premium due.

24 (e) The offer of tail insurance coverage required by this  
25 section shall expire forty-five days after the cancellation,  
26 termination or other expiration of the claims made profes-  
27 sional malpractice insurance policy, unless sooner accepted,  
28 in writing, by the insured.

---

## CHAPTER 184

(Com. Sub. for S. B. 458 — By Senators Minard and Kessler)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend article twenty-five-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three-a, relating to the health maintenance organization act; authorizing the commissioner to impose a civil penalty on providers who collect or attempt to collect from health maintenance organization subscribers money for covered services; providing for notice and hearing; and establishing penalties.

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

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

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-23a. Civil penalty imposed by commissioner.**

1 No provider shall collect or attempt to collect from a  
2 health maintenance organization enrollee any money for  
3 services covered by the health maintenance organization. If a  
4 provider collects or attempts to collect from a health mainte-  
5 nance organization enrollee any money for services covered  
6 by the health maintenance organization, then the provider  
7 may be subjected to a civil money penalty to be imposed by  
8 the commissioner. Upon a determination that there is proba-  
9 ble cause to believe that there has been a violation of this  
10 section, the commissioner may provide written notice to the  
11 alleged violator, stating the nature of the alleged violation  
12 and that failure to refund the amount of any improper billing  
13 within thirty days may result in imposition of a civil penalty  
14 pursuant to the provisions of this section. If the alleged viola-  
15 tor fails to make a refund within thirty days, the commis-  
16 sioner shall issue a written notice of hearing stating the na-  
17 ture of the alleged violation and the time and place at which  
18 the alleged violator shall appear to show good cause why a  
19 civil penalty should not be imposed: *Provided*, That if the  
20 commissioner has previously found on three occasions that  
21 probable cause existed to support a violation, the alleged  
22 violator shall not be afforded the opportunity to make a re-  
23 fund before issuance of the notice of hearing for any subse-  
24 quent violation.

25 If, after notice and hearing, the commissioner determines  
26 that a violation of this section has occurred, the commis-  
27 sioner may assess a civil penalty of not less than the amount  
28 charged the subscriber but not more than one thousand dol-  
29 lars. Subsequent violations of this section result in fines of  
30 not more than two thousand dollars. Any provider so assessed  
31 shall be notified of the assessment in writing and the notice  
32 shall specify the reasons for the assessment. Any provider  
33 may waive the right to a hearing and receive a reduction in  
34 penalties of twenty-five percent.

---

## CHAPTER 185

(S. B. 450 — By Senators Minard and Kessler)

---

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact section six, article forty-three, chap-  
ter thirty-three of the code of West Virginia, one thousand nine  
hundred thirty-one, as amended, relating to insurance tax re-  
turns and payment of quarterly insurance premium taxes.

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

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

**ARTICLE 43. INSURANCE TAX PROCEDURES ACT.**

**§33-43-6. Returns.**

1 (a) Any person who is subject to a tax in a given taxable  
2 year shall file a return for that tax and that taxable year, even  
3 if the person has no tax liability for that taxable year.

4 (1) Each return shall be filed by the applicable filing  
5 date. The commissioner, at his or her discretion, may accept a  
6 return after the filing date.

7 (2) Should a taxpayer file more than one return for the  
8 same tax, only the return last filed shall be effective. The  
9 commissioner, at his or her discretion, may approve the with-  
10 drawal of a return by the taxpayer.

11 (b) Each return shall be executed by the taxpayer in a  
12 manner prescribed by the commissioner. Each return so exe-  
13 cuted shall constitute a sworn statement by the signatory that,  
14 to the best of his or her knowledge and belief, the informa-  
15 tion provided in the return or in any supporting materials  
16 which accompany the return is true and accurate.

17 (c) All returns shall be prepared on forms prescribed by  
18 the commissioner. If no form has been prescribed for a par-  
19 ticular tax, the return may be in a form chosen by the tax-  
20 payer but shall clearly set forth the following information:  
21 The taxpayer's name, address and telephone number; the  
22 identification number used by the taxpayer in filing federal  
23 income tax returns; the tax and taxable year to which the  
24 return applies; and all information used to calculate the tax  
25 liability of the taxpayer.

26 (d) For purposes of this article, a return is not regarded as  
27 filed if:

28 (1) It is not filed by the applicable filing date, unless the  
29 commissioner accepts the return; or

30 (2) It has not been received by the commissioner; or

- 31       (3) It has not been properly executed by the taxpayer; or
- 32       (4) It is not in the proper form; or
- 33       (5) It is incomplete or inaccurate in any material respect;
- 34 or
- 35       (6) It is not accompanied by supporting material required
- 36 by the commissioner; or
- 37       (7) It is withdrawn by the taxpayer with the approval of
- 38 the commissioner; or
- 39       (8) It is not accompanied by the payment for any tax due.
- 40       (e) If a tax is to be paid in installments, the taxpayer shall
- 41 file an appropriate return for each period for which an install-
- 42 ment payment is calculated, even if the taxpayer is not re-
- 43 quired to make an installment payment for that period. The
- 44 returns shall satisfy all requirements established for annual
- 45 returns by this section except that the filing date for an in-
- 46 stallment return is the date prescribed for the installment
- 47 payment for the period described by the return. Failure of a
- 48 taxpayer to make quarterly payments, if required, of at least
- 49 one fourth of either the total tax paid during the preceding
- 50 calendar year or eighty percent of the actual tax liability for
- 51 the current calendar year is considered the same as a failure
- 52 or refusal to pay the estimated taxes and subjects the taxpayer
- 53 to the penalties provided in this article.
- 54       (f) If a taxpayer has failed to file a return by the applica-
- 55 ble filing date or has filed a false or fraudulent return, the
- 56 commissioner may use any information which is available to
- 57 him or her to determine the taxpayer's tax liability: *Provided,*
- 58 That a determination of tax liability by the commissioner
- 59 pursuant to this subsection does not relieve the taxpayer of
- 60 the duty to file a true, accurate and complete return and does

61 not reduce or preclude any penalty based upon the taxpayer's  
62 failure to file.

63 (g) A taxpayer to whom a credit has been issued may  
64 apply the credit as payment for any like tax due to be remit-  
65 ted by the taxpayer upon written notice to the commissioner  
66 stating the amount of the credit to be so applied.

---

## CHAPTER 186

(Com. Sub. for H. B. 3181 — By Delegates Ashley, Michael,  
Mezzatesta, Williams and Stemple)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections one and two, article five-q, chapter sixteen 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 three, all relating to the James "Tiger" Morton catastrophic illness fund; the composition, meetings, powers and duties of the catastrophic illness commission; executive director and staff; promulgation of rules; investigation of fraud and abuse; and continuation of the commission.

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

That sections one and two, article five-q, chapter sixteen 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 three, all to read as follows:



**ARTICLE 5Q. THE JAMES "TIGER" MORTON CATASTROPHIC ILLNESS FUND.**

§16-5Q-1. Creation of the James "Tiger" Morton catastrophic illness fund.

§16-5Q-2. Catastrophic illness commission; composition, meetings.

§16-5Q-3. Continuation of catastrophic illness commission.

**§16-5Q-1. Creation of the James "Tiger" Morton catastrophic illness fund.**

1 Moneys in the fund created in the state treasury, desig-  
2 nated the "James 'Tiger' Morton Catastrophic Illness Fund"  
3 shall be distributed in accordance with the provisions of this  
4 article. The purpose of this fund is to provide a source of  
5 economic assistance to the citizens of this state facing cata-  
6 strophic illness. In addition to any funds appropriated by the  
7 Legislature, the Tiger Morton Fund may receive donations of  
8 cash or property from other sources, including gifts, grants,  
9 or donations from any source whatsoever. After appropriation  
10 by the Legislature, the catastrophic illness commission may  
11 make expenditures from the fund as necessary to accomplish  
12 the purposes of this article.

**§16-5Q-2. Catastrophic illness commission; composition; meet-  
ings.**

1 (a) The catastrophic illness commission shall consist of  
2 six members appointed for terms of five years by the gover-  
3 nor, by and with the advice and consent of the Senate, and the  
4 ombudsman from the department of health and human re-  
5 sources, who shall serve as a nonvoting ex officio member.  
6 One member shall be a medical doctor licensed to practice  
7 medicine in this state, one member shall be an attorney li-  
8 censed to practice law in this state, two members shall be  
9 from the public at large who are active in community affairs,  
10 one member shall be a nurse licensed to practice in this state,  
11 and one member shall be a social worker licensed in this  
12 state. The terms of office of the first appointments to the  
13 catastrophic illness commission shall be as follows: The

14 medical doctor and attorney shall be appointed for an initial  
15 term of three years; the initial term of the nurse appointee  
16 and the licensed social worker appointee shall be four years;  
17 the initial term of the remaining members of the commission  
18 appointed by the governor shall be five years. No more than  
19 five of the members appointed by the governor may be from  
20 the same political party. Members of the catastrophic illness  
21 commission, other than the ex officio member, may receive  
22 expenses only up to one hundred twenty-five dollars per day,  
23 not to exceed fifteen thousand dollars in the aggregate per  
24 year. The commission shall meet at least quarterly and annu-  
25 ally elect a chairperson. Meetings shall be conducted in ac-  
26 cordance with the provisions of article nine-a, chapter six of  
27 this code. Special meetings may be called. Before discharg-  
28 ing any duties, members shall comply with the oath or affir-  
29 mation requirements of article one, chapter six of this code.  
30 Members are subject to the ethical standards and financial  
31 disclosure requirements of the West Virginia governmental  
32 ethics act in chapter six-b of this code and serve at the will  
33 and pleasure of the governor as provided in section four,  
34 article six, chapter six of this code.

35 (b) The catastrophic illness commission shall make an  
36 annual recommendation to the Legislature regarding appro-  
37 priations from the catastrophic illness fund. This recommen-  
38 dation shall be made annually, in writing, to the Legislature  
39 no later than the second Wednesday of January.

40 (c) The commission shall appoint an executive director  
41 whose compensation shall be fixed by the commission within  
42 its budgetary appropriation. The executive director shall be  
43 classified exempt and may not be a member of the commis-  
44 sion. The executive director may attend all meetings of the  
45 commission, as well as its committees, but has no vote on  
46 decisions or actions of the commission or its committees. The  
47 executive director shall carry out the decisions and actions of  
48 the commission, administer all affairs of the commission in

49 accordance with its policies and discharge other duties as the  
50 commission shall from time to time determine. The commis-  
51 sion may employ other officers, employees and clerical assis-  
52 tants as it considers necessary and may fix their compensa-  
53 tion within the amounts made available by appropriation.

54 (d) The secretary of the department of health and human  
55 resources shall propose legislative rules for promulgation in  
56 accordance with article three, chapter twenty-nine-a of this  
57 code to accomplish the purpose of the James "Tiger" Morton  
58 catastrophic illness fund including, but not limited to, estab-  
59 lishing eligibility standards for the distribution of moneys  
60 from the fund. The secretary may propose emergency rules to  
61 establish the eligibility standards.

62 (e) The secretary shall assist the commission in the inves-  
63 tigation of any suspected fraud related to an application for  
64 assistance through the catastrophic illness fund.

**§16-5Q-3. Continuation of catastrophic illness commission.**

1 The catastrophic illness commission shall continue to  
2 exist until the first day of July, two thousand five, pursuant to  
3 the provisions of article ten, chapter four of this code, unless  
4 sooner terminated, continued or reestablished pursuant to the  
5 provisions of that article.

---

## CHAPTER 187

**(S. B. 560 — By Senators Mitchell, Wooton, Caldwell, Hunter,  
Kessler, Minard, Redd, Rowe, Snyder and Facemyer)**

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact article one-b, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reporting of alien workers employed in West Virginia; findings; definitions; recordkeeping; and penalties.

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

That article one-b, 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 1B. REPORTING OF EMPLOYMENT OF ALIEN WORKERS.**

§21-1B-1. Findings; policy.

§21-1B-2. Definitions.

§21-1B-3. Unauthorized aliens; employment prohibited.

§21-1B-4. Record-keeping requirements; employer compliance.

§21-1B-5. Penalties.

**§21-1B-1. Findings; policy.**

1       The Legislature finds that employers have the responsi-  
2       bility to check the residence status of their prospective em-  
3       ployees and are precluded from hiring illegal aliens and can  
4       be penalized for doing so. Additionally, employers owe a  
5       duty to the legal residents of the state to uphold the intent and  
6       integrity of the general workforce due to the potential loss of  
7       revenue to the state by loss of taxes, unemployment premi-  
8       ums and workers' compensation premiums.

**§21-1B-2. Definitions.**

1       (a) "Employer" means any individual, person, corpora-  
2       tion, department, board, bureau, agency, commission, divi-  
3       sion, office, company, firm, partnership, council or commit-  
4       tee of the state government, public benefit corporation, public

5 authority or political subdivision of the state, or other busi-  
6 ness entity which employs or seeks to employ an individual  
7 or individuals;

8 (b) "Commissioner" means the labor commissioner or his  
9 or her designated agent;

10 (c) "Alien" means any individual who is not a natural  
11 born or naturalized citizen of the United States; and

12 (d) "Records" means those records as may be required by  
13 the commissioner of labor for the purposes of compliance  
14 with the provisions of this article.

**§21-1B-3. Unauthorized aliens; employment prohibited.**

1 (a) It is unlawful for any employer to employ, hire, re-  
2 cruit, or refer, either for him or herself or on behalf of an-  
3 other, for private or public employment within the state, an  
4 alien who is not duly authorized to work by the immigration  
5 laws or the attorney general of the United States.

6 (b) Employers shall be required to verify a prospective  
7 employee's legal status or authorization to work prior to em-  
8 ploying the individual or contracting with the individual for  
9 employment services.

10 (c) For purposes of this article, proof of legal status or  
11 authorization to work includes, but is not limited to, a valid  
12 social security card, a valid immigration visa, a valid birth  
13 certificate, a valid passport, a valid photo identification card  
14 issued by a government agency, valid permits issued by the  
15 department of justice or other valid document providing evi-  
16 dence of legal residence or authorization to work in the

17 United States: *Provided*, That for an alien, such identification  
18 must include some form of photo identification.

**§21-1B-4. Record-keeping requirements; employer compliance.**

1 Every employer, firm and corporation shall make such  
2 records of the persons he or she employs including records of  
3 proof of the legal status or authorization to work of all em-  
4 ployees. Such records shall be preserved pursuant to the pro-  
5 visions of section five, article five-c of this chapter and shall  
6 be maintained at the place of employment. Pursuant to sec-  
7 tion three, article one of this chapter, such records shall be  
8 made available to the commissioner or his or her authorized  
9 representative for inspection and investigation as the com-  
10 missioner deems necessary and appropriate for the purposes  
11 of determining whether any employer, firm or corporation  
12 has violated any provision of this article which may aid in the  
13 enforcement of the provisions of this article.

**§21-1B-5. Penalties.**

1 (a) The first violation of the provisions of this article is a  
2 misdemeanor and, upon conviction thereof, a employer shall  
3 be fined not less than one hundred dollars nor more than one  
4 thousand dollars for each violation.

5 (b) Any employer who has previously been convicted of  
6 a violation of this article and who thereafter violates the pro-  
7 visions of this article shall be deemed to have knowingly  
8 violated the provisions of this article and shall be guilty of a  
9 misdemeanor and shall be fined not less than five hundred or  
10 more than five thousand dollars for each violation.

---

## CHAPTER 188

(H. B. 4407— By Delegates Douglas, Kuhn, Manchin,  
Tucker, Faircloth, Hrutkay and Caputo)

---

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]

---

AN ACT to amend and reenact sections two, three and ten, article nine, chapter twenty-one 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 thirteen, all relating to the West Virginia manufactured housing construction and safety standards board; compensation for board members; revising the definition of contractor; clarifying the use of funds from the forfeiture of licensee bonds or other forms of assurance; and continuation of the board.

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

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

### **ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.**

§21-9-2. Definitions.

§21-9-3. Board continued; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.

§21-9-10. Licensee to furnish bond or other form of assurance.

§21-9-13. Continuation of the board of manufactured housing construction and safety.

**§21-9-2. Definitions.**

1 (a) "Board" means the West Virginia manufactured hous-  
2 ing construction and safety board created in this article.

3 (b) "Commissioner" means the commissioner of the  
4 West Virginia state division of labor.

5 (c) "Contractor" means any person who performs opera-  
6 tions in this state at the occupancy site which render a manu-  
7 factured home fit for habitation. The operations include,  
8 without limitation, installation or construction of the founda-  
9 tion, positioning, blocking, leveling, supporting, tying down,  
10 connecting utility systems, making minor adjustments or  
11 assembling multiple or expandable units. The operations also  
12 include transporting the unit to the occupancy site by other  
13 than a motor carrier regulated by the West Virginia public  
14 service commission.

15 Contractor does not include:

16 (1) A person who personally does work on a manufac-  
17 tured home which the person owns or leases; or

18 (2) A person who is licensed under article eleven of this  
19 chapter and is performing work on a manufactured home  
20 pursuant to a contract with a person licensed under section  
21 nine of this article.

22 (d) "Dealer" means any person engaged in this state in  
23 the sale, leasing or distributing of new or used manufactured  
24 homes, primarily to persons who in good faith purchase or  
25 lease a manufactured home for purposes other than resale.

26 (e) "Defect" includes any defect in the performance,  
27 construction, components or material of a manufactured



28 home that renders the home or any part of the home not fit  
29 for the ordinary use for which it was intended.

30 (f) "Distributor" means any person engaged in this state  
31 in the sale and distribution of manufactured homes for resale.

32 (g) "Federal standards" means the National Manufac-  
33 tured Housing Construction and Safety Standards Act of  
34 1974, and federal manufactured home construction and safety  
35 standards and regulations promulgated by the secretary of  
36 HUD to implement that act.

37 (h) "HUD" means the United States department of hous-  
38 ing and urban development.

39 (i) "Manufacturer" means any person engaged in manu-  
40 facturing or assembling manufactured homes, including any  
41 person engaged in importing manufactured homes for resale.

42 (j) "Manufactured home" means a structure, transport-  
43 able in one or more sections, which in the traveling mode is  
44 eight body feet or more in width or forty or more feet in  
45 length or, when erected on site, is three hundred twenty or  
46 more square feet, and which is built on a permanent chassis  
47 and designed to be used as a dwelling with or without a per-  
48 manent foundation when connected to the required utilities,  
49 and includes the plumbing, heating, air-conditioning and  
50 electrical systems contained therein; except that such term  
51 shall include any structure which meets all the requirements  
52 of this definition except the size requirements and with re-  
53 spect to which the manufacturer voluntarily files a certificate  
54 which complies with the applicable federal standards. Calcula-  
55 tions used to determine the number of square feet in a struc-  
56 ture will be based on the structure's exterior dimensions mea-

57 sured at the largest horizontal projections when erected on  
58 site.

59 (k) "Purchaser" means the first person purchasing a man-  
60 ufactured home in good faith for purposes other than resale.

**§21-9-3. Board continued; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.**

1 (a) There is hereby continued the West Virginia board of  
2 manufactured housing construction and safety, which shall  
3 consist of six members and the commissioner, who shall be  
4 chairman. At least two of the six members of the board shall  
5 represent and be consumers who are not related or employed  
6 in the manufactured housing and construction industry. The  
7 six members shall be appointed by the governor by and with  
8 the advice and consent of the Senate. No more than three of  
9 the members appointed may be of the same political party.

10 (b) The members of the board shall be appointed for  
11 overlapping terms of six years, except that of the original  
12 appointments, two members shall be appointed for a term of  
13 two years, two members shall be appointed for a term of four  
14 years and two members shall be appointed for a term of six  
15 years, and in every instance until their respective successors  
16 have been appointed and qualified. Before entering upon the  
17 performance of his or her duties, each member shall take and  
18 subscribe to the oath required by section 5, article IV of the  
19 constitution of the state of West Virginia, and shall certify  
20 that he or she is and during the term of his or her appointment  
21 shall remain free of any conflict of interest. The governor  
22 shall, within sixty days following the occurrence of a vacancy  
23 on the board, fill the same by appointing a person for the

24 unexpired term of the person vacating the office. Any mem-  
25 ber may be removed by the governor in case of incompe-  
26 tency, neglect of duty, gross immorality or malfeasance in  
27 office.

28 (c) A majority of the members of the board constitutes a  
29 quorum. The board shall meet at least once in each calendar  
30 quarter on a date fixed by the board. The commissioner may,  
31 upon his or her own motion, or shall upon the written request  
32 of three members of the board, call additional meetings of the  
33 board upon at least twenty-four hours' notice. No member  
34 shall participate in a proceeding before the board to which a  
35 corporation, partnership or unincorporated association is a  
36 party, and of which he or she is or was at any time in the  
37 preceding twelve months a director, officer, owner, partner,  
38 employee, member or stockholder. A member may disqualify  
39 himself or herself from participation in a proceeding for any  
40 other cause considered by him or her to be sufficient. Each  
41 member shall receive compensation not to exceed the amount  
42 paid to members of the Legislature for their interim duties as  
43 recommended by the citizens legislative compensation com-  
44 mission and authorized by law for each day or portion of a  
45 day spent in attending meetings of the board and shall be  
46 reimbursed for all reasonable and necessary expenses in-  
47 curred incident to his or her duties as a member of the board.

48 (d) The board shall keep an accurate record of all its pro-  
49 ceedings and make certificates thereupon as may be required  
50 by law. The commissioner shall make available necessary  
51 office space and secretarial and other assistance as the board  
52 may reasonably require.

**§21-9-10. Licensee to furnish bond or other form of assurance.**

1 (a) Each manufacturer, dealer, distributor or contractor  
2 which applies for a license under section nine of this article  
3 shall, at the time of making application for the license, fur-  
4 nish a surety bond or any other form of assurance of the ap-  
5 plicant's financial responsibility permitted by the board by  
6 rule or regulation, the surety bond or other form of assurance  
7 to be in the amount prescribed by rule or regulation. In the  
8 event of forfeiture of any bond or security, the proceeds  
9 thereof shall be deposited in the special account created un-  
10 der section nine of this article.

11 (b) The bond or other form of assurance shall cover any  
12 misappropriation of funds of a purchaser or prospective pur-  
13 chaser of a manufactured home, any deception or false or  
14 fraudulent representations or deceitful practices in selling or  
15 representing a product, any failure by a licensee, because of  
16 bankruptcy, insolvency or other reason, to fulfill warranty  
17 obligations and any failure of the licensee, its agents or em-  
18 ployees, to comply with federal standards, this article or any  
19 rules or regulations promulgated by the board pursuant to this  
20 article: *Provided*, That any payment to purchasers or prospec-  
21 tive purchasers by the board from licensee bonds or other  
22 forms of financial assurance shall not include punitive or  
23 exemplary damages, any compensation for property damage  
24 other than to the manufactured home, any recompense for  
25 any personal injury or inconvenience, any reimbursement for  
26 alternate housing, or any payments for attorney fees, legal  
27 expenses or court costs.

**§21-9-13. Continuation of the board of manufactured housing  
construction and safety.**

1 Pursuant to the provisions of article ten, chapter four of  
2 this code, the West Virginia board of manufactured housing  
3 construction and safety shall continue to exist until the first  
4 day of July, two thousand three, unless sooner terminated,  
5 continued or reestablished by act of the Legislature.