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
FOREWORD


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.

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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.

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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.*
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REGULAR SESSION, 2002

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

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<td>Morgantown</td>
<td>70th;72nd-75th</td>
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<td></td>
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<td>Sheirl L. Fletcher (R)</td>
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<td>Charlene J. Marshall (D)</td>
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<td>Forty-fourth</td>
<td>Larry A. Williams (R)</td>
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<td>Stanley E. Shaver (D)</td>
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<td>Harold K. Michael (D)</td>
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<td>Allen V. Evans (R)</td>
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<td>Robert A. Schadler (R)</td>
<td>Keyser</td>
<td>69th-71st;74th-75th</td>
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<td>Terry L. Mezzetasia (D)</td>
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<td>Vicki V. Douglas (D)</td>
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<td>John Overington (R)</td>
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<td>John Doyle (D)</td>
<td>Shepherdstown</td>
<td>66th;71st-75th</td>
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<td>Fifty-sixth</td>
<td>Dale Manuel (D)</td>
<td>Charles Town</td>
<td>69th-75th</td>
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(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

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
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<tr>
<td>First</td>
<td>Edwin J. Bowman (D)</td>
<td>Weirton</td>
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<td>Andy McKenzie (R)</td>
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<td>Larry J. Edgell (D)</td>
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<td>Jeffrey V. Kessler (D)</td>
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<td>J. Frank Deem (R)</td>
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<td>(House 52nd-56th);57th-62nd; 64th-65th; (House 69th); 72nd-75th</td>
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<td>Oshel B. Craigo (D)</td>
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<td>Karen L. Facemyer (R)</td>
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<td>Marie E. Reda (D)</td>
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<td>Roman W. Prezioso, Jr. (D)</td>
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<td>Mike Ross (D)</td>
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<td>John R. Unger II (D)</td>
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<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston</td>
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<td>Larry L. Rowe (D)</td>
<td>Malden</td>
<td>(House 73rd-74th); 75th</td>
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(C) 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.
L

HOUSE OF DELEGATES COMMITTEES

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

GOVERNMENT ORGANIZATION

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

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

JUDICIARY
Amores (Chair), Manuel (Vice Chair), Caputo, Coleman, Craig, Ferrell, Fleischauer, Givens, Hrutkay, Mahan, Pethel, 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.
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, Craigo, Fanning, Helmick, Prezioso, Sharpe, Snyder, Wooton, Deem and Facemyer.

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

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

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

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

FINANCE
Craigo (Chair), Sharpe (Vice Chair), Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Plymale, Prezioso, Unger, Boley, Minear and Sprouse.
GOVERNMENT ORGANIZATION
Bowman (Chair), Bailey (Vice Chair), Burnette, Chafin, Jackson, Kessler, McCabe, Minard, Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse.

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

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

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

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

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

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

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

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

**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.
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.

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

(b) In any action at law, whether in circuit court or magistrate court, on a note or contract, express or implied, for the payment of money, if: (1) The plaintiff files with the complaint an affidavit made by the plaintiff or an agent, stating therein to the best of the affiant’s belief the amount of the plaintiff’s claim, that the amount is justly due, and the time from which plaintiff claims interest; and (2) a copy of the affidavit together with a copy of any account filed with the complaint is served upon the defendant, the plaintiff is entitled to a judgment on the affidavit and statement of account without further evidence unless the defendant files an answer denying the claim or otherwise makes an appearance before the court denying that
the plaintiff is entitled to recover from the defendant on the
claim. The affidavit must show the calculation of the amount
sought. The calculation is to also include an itemization of the
principal and any interest, insurance or other charges of the
original obligation. The calculation is also to include an
itemization of all credits to the original obligation including
credits to principal, interest, insurance, any other charges,
rebates of unearned interest, rebates of insurance, rebates of
other charges and proceeds of sale of all collateral. If the
defendant’s pleading or affidavit admits that the plaintiff is
entitled to recover from the defendant a sum certain less than
that stated in the affidavit filed by the plaintiff, judgment may
be taken by the plaintiff for the sum so admitted to be due and
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.

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

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

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

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

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

(3) Reasonable costs incurred in filing the action.

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

1. Describe the check and the circumstances of its dishonor;
2. Contain a demand for payment and a notice of intent to file suit for damages under this section if payment is not received within thirty days; and
3. Be delivered by personal service, certified mail or regular mail to the defendant at his or her last known address: Provided, That service by regular mail shall be supported by either a post-marked certificate of mailing or a notarized affidavit of service.

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

1. Full satisfaction of the amount of the check was made before the beginning of the action; or
2. The bank or depository erred in dishonoring the check.

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

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CHAPTER 3

(Com. Sub. for S. B. 667 — By Senators Tomblin, Mr. President, Wooton, Craigo, 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.

(a) The Legislature finds that there are numerous actions, suits and proceedings filed against state government agencies and officials that may affect the public interest. Depending upon the outcome, this type of litigation may have significant consequences that can only be addressed by subsequent legislative action. In these actions, the Legislature is not directly involved as a party. The Legislature is not a proper party to these actions because of an extensive structure of
constitutional protections established to safeguard the preroga-
tives of the legislative branch under our governmental system
of checks and balances. Government agencies and their officials
require more notice of these actions and time to respond to
them and the Legislature requires more timely information
regarding these actions, all in order to protect the public
interest. The Legislature further finds that protection of the
public interest is best served by clarifying that no government
agency may be subject to awards of punitive damages in any
judicial proceeding.

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

§55-17-2. Definitions.

For the purposes of this section:

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

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

(3) “Judgment” means a judgment, order or decree of a
court which would:
(A) Require or otherwise mandate an expansion of, increase in, or addition to the services, duties or responsibilities of a government agency;

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

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

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

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

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

(a)(1) Notwithstanding any provision of law to the contrary, at least thirty days prior to the institution of an action against a government agency, the complaining party or parties must provide the chief officer of the government agency and the attorney general written notice, by certified mail, return receipt requested, of the alleged claim and the relief desired. Upon receipt, the chief officer of the government agency shall forthwith forward a copy of the notice to the president of the Senate and the speaker of the House of Delegates. The provisions of this subdivision do not apply in actions seeking injunctive relief where the court finds that irreparable harm would have occurred if the institution of the action was delayed by the provisions of this subsection.
(2) The written notice to the chief officer of the government agency and the attorney general required by subdivision (1) of this subsection is considered to be provided on the date of mailing of the notice by certified mail, return receipt requested. If the written notice is provided to the chief officer of the government agency as required by subdivision (1) of this subsection, any applicable statute of limitations is tolled for thirty days from the date the notice is provided and, if received by the government agency as evidenced by the return receipt of the certified mail, for thirty days from the date of the returned receipt.

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

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

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

(e) The requirements for notice and delivery of pleadings and other documents to the president of the Senate or speaker of the House of Delegates pursuant to the provisions of this
section do not constitute a waiver of any constitutional immuni-
ty or protection that proscribes or limits actions, suits or
proceedings against the Legislature or the state of West
Virginia.

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

§55-17-4. Procedures pending action.

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

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

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

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

§55-17-5. Construction of article.

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

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

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

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

(a) Every agency of the state government when making requests or preparing budgets to be submitted to the federal government for funds, equipment, material or services, the grant or allocation of which is conditioned upon the use of state matching funds, shall have the request or budget approved in
writing by the secretary before submitting it to the proper federal authority. When the federal authority has approved the request or budget, the agency of the state government shall resubmit it to the secretary for recording before any allotment or encumbrance of the federal funds can be made. Whenever any agency of the state government receives from any agency of the federal government a grant or allocation of funds which do not require state matching, the state agency shall report to the secretary the amount of the federal funds granted or allocated.

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

(c) In addition to the other requirements of this section, the secretary shall, as soon as possible after the end of each fiscal year but no later than the first day of October of each year, submit to the governor a consolidated report which shall contain a detailed itemization of all federal funds received by the state during the preceding and current fiscal years, as well as those scheduled or anticipated to be received during the next ensuing fiscal year. The itemization shall show: (1) Each spending unit which has received or is scheduled or expected to receive federal funds in either of the fiscal years; (2) the amount of each separate grant or distribution received or to be received; and (3) a brief description of the purpose of every grant or other distribution, with the name of the federal agency, bureau or department making the grant or distribution: Provided, That it
is not necessary to include in the report an itemization of federal revenue sharing funds deposited in and appropriated from the revenue sharing trust fund, or federal funds received for the benefit of the division of highways of the department of transportation.

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

(e) Notwithstanding the other provisions of this section and in supplementation of the provisions of this section, the Legislature hereby determines that the department of administration and its secretary need to be the single and central agency for receipt of information and documents in respect of applications for, and changes, receipt and expenditure of, federal funds by state agencies. Every agency of state government, when making application for federal funds in the nature of a grant, allocation or otherwise; when amending the applications or requests; when in receipt of federal funds; or when undertaking any expenditure of federal funds, in all respective instances, shall provide to the secretary of administration document copies or sufficient summary information in respect of the federal funds to enable the secretary to provide approval in writing for 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 protec­
tion 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
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 author­
ity—board of trustees.
(a) Composition; chairman; quorum; qualifications. — The
authority, which shall be established by the first day of July,
two thousand two, shall be governed and administered by a
board of trustees composed of the state treasurer, the auditor
and the commissioner of agriculture, who shall serve as ex
officio members, and nine members to be appointed by the
governor, by and with the advice and consent of the Senate, at least five of whom shall be representative of farmers from different areas of the state. The state treasurer, auditor and the commissioner of agriculture may appoint designees to serve on the board of trustees. One of the appointed members who is not a representative of farmers shall be a representative of the division of natural resources; one of the appointed members who is not a representative of farmers shall be a representative of the soil conservation district; and one of the appointed members who is not a representative of farmers shall be a representative of an I.R.C. 501(c)(3) qualified land trust. Three of the five representatives of farmers shall be appointed as follows:

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

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

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

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

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

(A) Three for a term of four years;

(B) Three for a term of three years; and
37 (C) Three for a term of two years.

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

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

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

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

1 (a) County funds.

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

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

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

11 (B) Any moneys collected pursuant to section eighty-five of this article;
(C) Any money made available to the fund by grants or transfers from governmental or private sources; and

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

(b) State fund.

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

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

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

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

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

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

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

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

(B) For reasonable expenses incurred by the members of the board of trustees of the authority in the performance of official duties; and
(C) For consideration in the purchase of farmland conservation and preservation easements.

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

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

48. **Audit.** — The fund shall be audited annually.

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

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

(b) The tax imposed pursuant to this section is to be administered and collected as the tax on the privilege of transferring title to real estate imposed pursuant to the provisions of article twenty-two, chapter eleven of this code.
(c) The tax imposed pursuant to this section is to be used exclusively for the purpose of funding farmland preservation.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

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

There is hereby created a special revenue account within the state treasury to be known as “Farmland Preservation Fees Fund”. Expenditures from the fund shall be used exclusively by the commissioner of agriculture for the purpose of funding farmland preservation boards in any county which has adopted and implemented a farmland protection program pursuant to the farmland preservation act as enacted beginning with section 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.

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

§ 19-12E-2. Purpose.

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

§ 19-12E-3. Definitions.

As used in this article:
(1) “Commissioner” means the commissioner of agriculture;

(2) “Industrial hemp” means all parts and varieties of the plant cannabis sativa L. containing no greater than one percent tetrahydrocannabinol; and

(3) “Marijuana” means all plant material from the genus cannabis containing more than one percent tetrahydrocannabinol or seeds of the genus capable of germination.

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

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

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

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

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

(c) The commissioner shall require each first-time applicant for a license to file a set of the applicant’s fingerprints, taken by a law-enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of
investigation for federal processing. All of the costs associated
with the criminal history check are the responsibility of the
applicant. Criminal history records provided to the department
under this section are confidential. The commissioner may use
the records only to determine if an applicant is eligible to
receive a license for the production of industrial hemp.

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

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

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

(a) Every licensee shall file with the commissioner:

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

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

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

§19-12E-7. Rule-making authority.
The commissioner shall promulgate legislative rules that include, but are not limited to:

1. Testing of the industrial hemp during growth to determine tetrahydrocannabinol levels;
2. Supervision of the industrial hemp during its growth and harvest;
3. Assessment of a fee that is commensurate with the costs of the commissioner’s activities in licensing, testing and supervising industrial hemp production;
4. Promulgate rules relating to the production and sale of industrial hemp which are consistent with the rules of the United States department of justice, drug enforcement administration for the production, distribution and sale of industrial hemp; and
5. Any other rules and procedures necessary to carry out the purposes of this article.

§19-12E-8. Disposition of fees.

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


(a) It is a complete defense to a prosecution for the possession or cultivation of marijuana pursuant to the provisions of article four, chapter sixty-a of this code that:
(1) The defendant was growing industrial hemp pursuant to the provisions of this article;

(2) The defendant has a valid applicable controlled substances registration from the United States department of justice, drug enforcement administration; and

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

(b) This section is not a defense to a charge of criminal sale or distribution of marijuana as defined in chapter sixty-a of this 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-4. State conservation committee; continuation.
§19-21A-4a. Continuation of state conservation committee.
§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-10. Authority of supervisors in determining observance of land-use regulations; suits to enforce compliance.
§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-1. Title of article.

This article may be known and cited as the "Conservation Districts Law of West Virginia".

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

It is hereby declared, as a matter of legislative determination:
(a) That the farm and grazing lands of the state of West Virginia are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by water; that the breaking of natural grass, plant and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any landowner to conserve the soil and control erosion upon his lands causes a washing of soil and water from his or her lands onto other lands and makes the conservation of soil and control of erosion of such other lands difficult or impossible.

(b) That the consequences of such soil erosion in the form of soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches and harbors; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; the washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve which causes water shortages, intensifies periods of drought and causes crop failures; an increase in the speed and volume
of rainfall runoff, causing severe and increasing floods which bring suffering, disease and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings and other property from floods; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

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

(d) It is hereby declared to be the policy of the Legislature to provide for the conservation of the soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization and disposal of water, and thereby to preserve natural resources, control floods,
prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and promote the health, safety and general welfare of the people of this state.

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


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

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

(2) “Supervisor” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(3) “Committee” or “state conservation committee” means the agency created in section four of this article.

(4) “Petition” means a petition filed under the provisions of subsection (a), section five of this article for the creation of a district.
(5) "State" means the state of West Virginia.

(6) "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

(7) "United States" or "agencies of the United States" includes the United States of America, natural resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

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

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

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

(11) The terms "soil conservation", "erosion control" or "erosion prevention projects", when used throughout the article, shall denote those projects that have been established by federal agencies in cooperation with state agencies for the purpose of
demonstrating soil erosion control and water conservation practices.

(12) The term "governing body" means the supervisors of any conservation district, town or city, council, city commission, county court or body acting in lieu of a county court, in this state, and the term "governmental division" means any conservation district, town, city or county in this state.

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

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

(a) The state conservation committee is continued. It is to serve as an agency of the state and to perform the functions conferred upon it in this article. The committee shall consist of nine members. The following shall serve, ex officio, as members of the committee: The director of the state cooperative extension service; the director of the state agricultural experiment station; the director of the division of environmental protection; the state commissioner of agriculture, who shall be chairman of the committee; and the director of the division of forestry.

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

The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.
The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings and promulgate such rules as may be necessary for the execution of its functions under this article.

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

(c) A member of the committee shall hold office so long as he or she shall retain the office by virtue of which he or she shall be serving on the committee. A majority of the committee shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee but shall be entitled to expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of
surety bonds for all employees and officers who shall be
entrusted with funds or property; shall provide for the keeping
of a full and accurate public record of all proceedings and of all
resolutions, rules and orders issued or adopted; and shall
provide for an annual audit of the accounts of receipts and
disbursements.

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

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

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

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

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

(5) To disseminate information throughout the state
concerning the activities and programs of the conservation
districts organized hereunder and to encourage the formation of
such districts in areas where their organization is desirable;
(6) To accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise from the United States or any of its agencies, from the state of West Virginia or from other sources and to use or expend such money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate such money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and

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

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

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


(a) Any twenty-five owners of land lying within the limits of the territory proposed to be organized into a district may file
a petition with the state conservation committee asking that a
conservation district be organized to function in the territory
described in the petition. Such petition shall set forth:

(1) The proposed name of said district;

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

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

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

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

(b) Within thirty days after such a petition has been filed
with the state conservation committee, it shall cause due notice
to be given of a proposed hearing upon the question of the
desirability and necessity, in the interest of the public health,
safety and welfare, of the creation of such district, upon the
question of the appropriate boundaries to be assigned to such
district, upon the propriety of the petition and other proceedings
taken under this article and upon all questions relevant to such
inquiries. All owners of land within the limits of the territory
described in the petition, and of lands within any territory
considered for addition to such described territory, and all other
interested parties shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. Districts thus defined may be a watershed or portion thereof and nothing in this article shall be interpreted to exclude from consideration, small areas often constituting a very small part of a large watershed. The district may be large or small, but in making such determination and in defining such boundaries the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions and to other conservation districts already organized or proposed for organization under the provisions of this article and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determinations set forth in section two of this article. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a conservation district to function in the territory considered at the
in hearing, it shall make and record such determination and shall
deny the petition. After six months shall have expired from the
date of the denial of any such petition, subsequent petitions
covering the same or substantially the same territory may be
filed as aforesaid and new hearings held and determinations
made thereon.

(c) After the committee has made and recorded a determi-
nation that there is need, in the interest of the public health,
safety and welfare, for the organization of a district in a
particular territory and has defined the boundaries thereof, it
shall consider the question whether the operation of a district
within such boundaries with the powers conferred upon
conservation districts in this article is administratively practica-
ble and feasible. To assist the committee in the determination
of such administrative practicability and feasibility, it shall be
the duty of the committee, within a reasonable time after entry
of the finding that there is need for the organization of the
proposed district and the determination of the boundaries
thereof, to hold a referendum within the proposed district upon
the proposition of the creation of the district and to cause due
notice of such referendum to be given. The question shall be
submitted by ballots upon which the words "For creation of a
conservation district of the lands below described and lying in
the county (ies) of __________, __________, and
__________ Against creation of a conservation district of the
lands below described and lying in the county (ies) of
__________, __________, and __________" shall
appear, with a square before each proposition and a direction to
insert an X mark in the square before one or the other of said
propositions as the voter may favor or oppose creation of such
district. The ballot shall set forth the boundaries of such
proposed districts as determined by the committee. All owners
of lands lying within the boundaries of the territory, as deter-
mined by the state conservation committee, shall be eligible to
vote in such referendum.
(d) The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matter relating thereto shall invalidate said referendum or the result thereof if notice shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(e) The committee shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section two of this article: Provided, That the committee shall not have authority to determine that the operation of
the proposed district within the defined boundaries is administratively practicable and feasible unless at least sixty percent of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

(f) If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the supervisors elected as provided hereinafter, as the governing body of the district.

(g) The two appointed supervisors shall present to the secretary of state an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals): (1) That a petition for the creation of the district was filed with the state conservation committee pursuant to the provisions of this article and that the proceedings specified in this article were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district under this article; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed,
notice issued and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district; that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; and that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall file them and shall record them in an appropriate book of record in his or her office. If the secretary of state shall find that the name proposed for the district is identical with that of any other conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state conservation committee which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his or her office. The secretary of state shall make and issue to the said supervisors a certificate, under the seal of the state, of the due organization of the said district and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another
conservation district organized under the provisions of this article.

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

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

(j) In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate duly certified by the secretary of state shall be admissible in evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof.
§19-21A-6. Election of supervisors for each district.

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

The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by twenty-five or more owners of lands lying within the boundaries of such district and within the boundaries of the county in which the candidate resides. Landowners may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of an election to be held for the election of one supervisor from each county or portion thereof within the boundaries of the district. The names of all nominees in each county on behalf of whom such nominating petitions have been filed within the time designated, shall appear arranged in alphabetical order of the surnames upon a ballot, with a square before each name and a direction to insert an X mark in the square before any one name to indicate the voter’s preference. All owners of lands lying within the district shall be eligible to vote in such election for one candidate from the county in which they reside. Only such landowners shall be eligible to vote. The candidate in each county who shall receive the largest number of votes cast in such election by landowners residing in his or her county shall be one of the elected supervisors for such district. The committee shall pay all expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein and shall make public the results thereof.
§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.

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

The supervisors shall designate a chairman and may, from time to time, change the designation. The term of office of each supervisor is three years. A supervisor shall hold office until his or her successor has been elected or appointed. In case a new county or portion of a county is added to a district, the committee may appoint a supervisor to represent it until such time as the next regular election of supervisors for the district takes place. In case a vacancy occurs among the elected supervisors of a district the committee shall appoint a successor from the same county to fill the unexpired term. The appointment shall be made from a name or list of names submitted by local farm organizations and agencies. When any county or portion of a county lying within the boundaries of a district has in effect eight hundred or more signed agreements of cooperation with occupiers of land located within the county, then at the next regular election of supervisors the land occupiers within the county or portion of the county are entitled to elect two supervisors to represent the county instead of one for the term and in the manner prescribed in this section. A majority of the supervisors constitutes a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor is entitled to expenses and a per diem not to exceed twenty dollars when engaged in the performance of his or her duties.
The supervisors may, with the approval of the state committee, employ a secretary, technical experts and any other officers, agents and employees, permanent and temporary, as they may require and shall determine their qualifications, duties and compensation. The supervisors may delegate to their chairman, to one or more supervisors or to one or more agents, or employees, those administrative powers and duties they consider proper. The supervisors shall furnish to the state conservation committee, upon request, copies of the ordinances, rules, regulations, orders, contracts, forms and other documents they adopt or employ and any other information concerning their activities as it may require in the performance of its duties under this article.

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

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


A conservation district organized under the provisions of this article shall have the following powers and the supervisor
thereof shall have the following powers, in addition to others granted in other sections of this article:

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

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

(3) To carry out preventive and control measures and works of improvement within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land and the measures listed in subsection (c), section two of this article on lands owned or controlled by this state or any of its agencies with the consent and cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district
(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion-control and prevention operations and works of improvement within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;

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

(6) To make available, on such terms as it shall prescribe, to land occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water;
(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article;

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

(9) To take over, by purchase, lease or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, located within its boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to accept donations, gifts, contributions and grants in money, services, materials or otherwise, from the United States or any
of its agencies, or from this state or any of its agencies, or from any other source and to use or expend such money, services, materials or other contributions in carrying on its operations;

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

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

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

(13) To enter into contracts and other arrangements with agencies of the United States, with persons, firms or corporations, including public corporations, with the state government of this state or other states, or any department or agency thereof, with governmental divisions, with soil conservation, drainage, flood control, soil erosion or other improvement districts in this state or other states, for cooperation or assistance in constructing, improving, operating or maintaining works of improvement within the district, or in preventing
floods, or in conserving, developing, utilizing and disposing of water in the district, or for making surveys, investigations or reports thereof; and to obtain options upon and acquire property, real or personal, or rights or interests therein, in other districts or states required for flood prevention or the conservation, development, utilization and disposal of water within the district and to construct, improve, operate or maintain thereon or therewith works of improvement.

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

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

Where the supervisors of any district shall find that any of the provisions of land-use regulations adopted in accordance with the provisions of section nine hereof are not being observed on particular lands and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the circuit court for the county in which the lands of the defendant may lie, a bill in equity, duly verified, setting forth the adoption of the land-use regulations, the failure of the defendant land occupier to observe such regulations and to perform particular work, operations or avoidances as required thereby and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district and praying the court to require the defendant to perform the work, operations or avoidances within a reasonable time and to order that if the defendant shall fail so to perform, the supervisors may go on the land, perform the
work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the occupiers of such land. Upon the presentation of such bill in equity, the court shall cause process to be issued against the defendant and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a special commissioner to take such evidence as it may direct, and report the same to the court with his or her findings of fact and conclusions of law which shall constitute a part of the proceedings upon which the determination of the court shall be made. In ascertaining whether the land-use regulations are reasonable and just, the court may inquire into the extent to which the supervisors have been guided by the administrative standards set forth in paragraph (E), section nine of this article. The court may dismiss the bill; or it may require the defendant to perform the work, operations or avoidances and may provide that upon the failure of the defendant to initiate such performance within the time specified in the decree of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum per annum, from the occupier of such lands. In all cases where the person in possession of lands who shall fail to perform such work, operations or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such decree of the court, the supervisors may apply to the court, notice thereof being served upon the defendant in the case, stating the costs and expenses sustained by them in the
performance of the work and praying judgment therefor with
interest. The court shall have jurisdiction to enter judgment for
the amount of such costs and expenses, with interest at the rate
of five per centum per annum until paid, together with the costs
of suit, including a reasonable attorney's fee to be fixed by the
court.


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

Vacancies in the board of adjustment shall be filled in the
same manner as original appointments and shall be for the
unexpired term of the member whose term becomes vacant.
Members of the state conservation committee and the supervi-
sors of the district shall be ineligible to appointment as mem-
ers of the board of adjustment during their tenure of such other
office. The members of the board of adjustment shall receive no
compensation for their services, but they shall be entitled to
expenses, including traveling expenses, necessarily incurred in
the discharge of their duties. The state committee shall pay the
necessary administrative and other expenses of operation
incurred by the board, upon the certificate of the chairman of
the board.
(b) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this article and with the provisions of any ordinance adopted pursuant to this section. The board shall designate a chairman from among its members and may, from time to time, change such designation. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board shall constitute a quorum. The chairman, or in his or her absence such other member of the board as he or she may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it and of all orders entered which shall be filed in the office of the board and shall be a public record.

(c) Any land occupier may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his or her carrying out upon his or her lands the land-use regulations prescribed by ordinance approved by the supervisors and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his or her lands are located and upon the chairman of the state conservation committee. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The supervisors of the district and the state conservation committee shall have the right to appear and be heard at such hearing. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent or by attorney. If, upon
the facts presented at such hearing, the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest and such that the spirit of the land-use regulations shall be observed, the public health, safety and welfare secured and substantial justice done.

(d) Any petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district or any intervening party may obtain a review of such order in the circuit court of the county in which the land lies, by filing in such a court a petition praying that the order of the board be modified or set aside. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered and the findings, determination and order of the board. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein and shall have power to grant such temporary relief as it deems just and proper and to make and enter a decree enforcing or setting aside, in whole or in part, the order of the board. No contentions that have not been urged before the board shall be considered by the court unless the failure or neglect to urge such contentions
shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive and shall file with the court its recommendations, if any, for the setting aside of its original order. The jurisdiction of the court shall be conclusive and its judgment and decree shall be final, except that the same shall be subject to review in 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.

The governing body of any governmental division which may reasonably be expected to receive a benefit from the construction, improvement, operation or maintenance of any works of improvement may expend money for such construction, improvement, operation or maintenance if this expectation exists as to any part of the governmental division and even though such works of improvement are not located within the corporate limits of the governmental division or are not within this state: Provided, That if the expenditure is not made directly by the governmental division for such purpose, it shall be made only through a conservation district or watershed improvement district organized under the laws of this state, but it shall not be necessary that any part of the governmental division be within the limits of the district through which the expenditure is made. Such governing bodies or governmental divisions may set up in
their respective budgets funds to be spent for such purposes and
municipalities and counties may levy and collect taxes for such
purposes in the manner provided by law: Provided, however,
That in case sufficient funds cannot be raised by ordinary
levies, additional funds may be raised by municipalities and
counties as provided by section sixteen, article eight, chapter
eleven of this code.

§19-21A-13b. Assurances of cooperation by governmental divi-
sion.

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

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

Any assurance hereunder may be valid and binding for a
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 each municipality in the state is hereby authorized and empowered to enter into a contract or agreement with the conservation district or districts for the purpose of constructing flood control projects within their respective counties or municipalities or adjacent thereto and to use said projects as recreational areas or public parks. For the purpose of defraying the cost of any such project or projects, the county court or the governing body of any municipality is hereby authorized to borrow from the federal government or from any federal agency having money to loan, a sum sufficient to cover the cost of such project or projects. For the purpose of retiring any such indebtedness incurred under the provisions of this section, notwithstanding any other provisions of law, said county courts or the governing body of any municipality is hereby authorized to lay and impose a county or citywide levy as the case might be.


1 At any time after five years following the organization of a district under the provisions of this article, any twenty-five owners of land lying within the boundaries of such district may file a petition with the state conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty days after such a petition has been received by the committee it shall give due notice of the holding of a referendum and shall supervise such referendum and issue appropriate regulations governing the conduct thereof. The questions shall be submitted by ballots upon which the words "For terminating the existence of the ..................... (name of the conservation
district to be here inserted)" and "Against terminating the
existence of the ............... (name of the conservation district to
be here inserted)" shall appear, with a square before each
proposition and a direction to insert an X mark in the square
before one or the other of said propositions as the voter may
favor or oppose discontinuance of such district. All owners of
lands lying within the boundaries of the district shall be eligible
to vote in such referendum. Only such landowners shall be
eligible to vote. No informalities in the conduct of such
referendum or in any matters relating thereto shall invalidate
said referendum or the result thereof if notice thereof shall have
been given substantially as herein provided and said referendum
shall have been fairly conducted.

The committee shall publish the result of such referendum
and shall thereafter consider and determine whether the
continued operation of the district within the defined boundaries
is administratively practicable and feasible. If the committee
shall determine that the continued operation of such district is
administratively practicable and feasible, it shall record such
determination and deny the petition. If the committee shall
determine that the continued operation of such district is not
administratively practicable and feasible, it shall record such
determination and shall certify such determination to the
supervisors of the district. In making such determination the
committee shall give due regard and weight to the attitudes of
the owners of lands lying within the district, the number of
landowners eligible to vote in such referendum who shall have
voted, the proportion of the votes cast in such referendum in
favor of the discontinuance of the district to the total number of
votes cast, the approximate wealth and income of the land
occupiers of the district, the probable expense of carrying on
erosion-control operations within such district and such other
economic and social factors as may be relevant to such determi-
nation, having due regard to the legislative findings set forth in
section two of this article: Provided, That the committee shall
not have authority to determine that the continued operation of
the district is administratively practicable and feasible unless at
least a majority of the votes cast in the referendum shall have
been cast in favor of the continuance of such district.

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

Upon issuance of a certificate of dissolution under the
provisions of this section, all regulations theretofore adopted
and in force within such district shall be of no further force and
effect. All contracts theretofore entered into, to which the
district or supervisors are parties, shall remain in force and
effect for the period provided in such contracts. The state
conservation committee shall be substituted for the district or
supervisors as party to such contracts. The committee shall be
entitled to all benefits and subject to all liabilities under such
contracts and shall have the same right and liability to perform,
to require performance, to sue and be sued thereon and to
modify or terminate such contracts by mutual consent or
otherwise, as the supervisor of the district would have had.
Such dissolution shall not affect the lien of any judgment
entered under the provisions of section ten of this article, nor
the pendency of any action instituted under the provisions of
such section, and the committee shall succeed to all the rights
and obligations of the district or supervisors as to such liens and
actions.

The state conservation committee shall not entertain
petitions for the discontinuance of any district nor conduct
referenda upon such petitions nor make determinations pursuant
to such petitions in accordance with the provisions of this
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
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;
(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: Provided, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor must initiate the transfer no later than noon of one business day after the delivery;

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

(6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or to offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events: Provided, however, That no event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;
(7) For any licensee to permit in his or her premises any lewd, immoral or improper entertainment, conduct or practice;

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

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

(10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: Provided, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as such private wine restaurant is authorized to serve wine;
(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

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

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

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

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

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

(17) For any Class A licensee, his, her, its or their servants, agents or employees, or for any licensee by or through any servants, agents or employees, to allow, suffer or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of eighteen years is in or upon the premises in the immediate
company of his or her parent or parents, or where and while a
person under the age of eighteen years is in or upon the
premises for the purpose of and actually making a lawful
purchase of any items or commodities therein sold, or for the
purchase of and actually receiving any lawful service therein
rendered, including the consumption of any item of food, drink
or soft drink therein lawfully prepared and served or sold for
consumption on the premises;

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

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

(b) Any person who violates any provision of this article
including, but not limited to, any provision of this section, or
any rule, regulation or order lawfully promulgated by the
commissioner, or who makes any false statement concerning
any material fact in submitting application for license or for a
renewal of a license or in any hearing concerning the revocation
thereof, or who commits any of the acts herein declared to be
unlawful shall be guilty of a misdemeanor and shall be pun-
ished for each offense by a fine of not less than twenty-five nor
more than five hundred dollars, or imprisoned in the county jail
for not less than thirty days nor more than six months, or by
both fine and imprisonment in the discretion of the court.
Magistrates shall have concurrent jurisdiction with the circuit
court and any other courts having criminal jurisdiction in their
county for the trial of all misdemeanors arising under this
article.

(c) Nothing in this article nor any rule or regulation of the
commissioner shall prevent or be deemed to prohibit any
licensee from employing any person who is at least eighteen
years of age to serve in the licensee’s lawful employ, including
the sale or delivery of nonintoxicating beer as defined in this
article. With the prior approval of the commissioner, a licensee
whose principal business is the sale of food or consumer goods
or the providing of recreational activities, including, but not
limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount
stores, grocery stores and convenience stores, may employ
persons who are less than eighteen years of age but at least
sixteen years of age: Provided, That the person’s duties shall
not include the sale or delivery of nonintoxicating beer or
alcoholic liquors: Provided, however, That the authorization to
employ persons under the age of eighteen years shall be clearly
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.

It shall be unlawful for a distributor to sell or offer to sell,
or a retailer to purchase or receive, any wine except on a cash
basis and no right of action exists to collect any claims for
credit extended contrary to the provisions of this subdivision:
Provided, That nothing herein prohibits, as a credit on any
subsequent sale, the crediting of the purchase price charged for wine returned by the purchaser because of damage, spoilage, erroneous shipments or orders and other such reasons customary in the trade: Provided, however, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the wine. The cost of the electronic fund transfer must be borne by the retailer and the distributor must initiate the transfer no later than noon of one business day after the 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.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

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

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

1. Comply with all Federal Communications Commission regulations and its rulings and orders;
2. Reasonably accommodate amateur radio communications; and
3. Represent the minimum practicable regulation to accomplish the county’s legitimate purpose.

(b) Nothing in this section shall be deemed to prohibit a county commission from taking action to protect or preserve historic buildings, structures, sites and districts that have been 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 EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

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

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

1. Comply with all Federal Communications Commission regulations and its rulings and orders;
(2) Reasonably accommodate amateur radio communications; and

(3) Represent the minimum practicable regulation to accomplish the municipality’s legitimate purpose.

(b) Nothing in this section shall be deemed to prohibit a municipal governing body from taking action to protect or preserve historic buildings, structures, sites and districts that 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.
§21-10-15. 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.

§21-10-2. Definitions.

As used in this article:

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

(b) “Amusement attraction” means any building or structure around, over or through which people may move or walk without the aid of any moving device integral to the building or structure that provides amusement, pleasure, thrills or excite-
ment, including those of a temporary or portable nature which are assembled and reassembled or which are relocated from place to place. The term does not include any enterprise principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts and shall not be construed to include any concession stand or booth for the selling of food or drink or souvenirs;

(c) "Intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant or any combination of alcohol, controlled substances and intoxicants.

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

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

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

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

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

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


Any operator or owner who knowingly permits the operation of an amusement ride or amusement attraction in violation
of the provisions of sections six, seven, eight, nine, eleven, twelve or twelve-a of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than one thousand dollars, confined in the county or regional jail not more than twelve months, or both. Each day that a violation continues shall be considered a separate violation.

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

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

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

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

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

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

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

(a) If an individual is convicted of, or enters a guilty plea or a plea of nolo contendere to, a violation of subsection (a), section fifteen of this article, and the individual was not the owner of the ride being operated or assembled, the commis-
sioner may impose a civil penalty not to exceed five thousand dollars on the owner of the ride being operated or assembled.

(b) All civil penalties collected by the commissioner shall be deposited into the amusement rides and amusement attractions safety fund created in section four of this article.


Nothing in this article shall be construed to be in conflict with or to in any way limit the authority of the state fire marshal under the provisions of article three, chapter twenty-nine of this 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.


(a) An individual who is at least eighteen years of age may:
(1) Make an anatomical gift for any of the purposes stated in subsection (a), section six of this article;

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

(3) Refuse to make an anatomical gift.

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

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

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

(e) An anatomical gift by will takes effect upon certification of death of the testator, whether or not the will is probated. If, after certification of death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.
(f) A donor may amend or revoke an anatomical gift, not made by will, only by:

(1) A signed statement;

(2) An oral statement made in the presence of two individuals;

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

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

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

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

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

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

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

(3) If the individual is suffering from a terminal illness or injury, the refusal may be an oral statement or other form of communication.
(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under section three of this article or on a removal or release of other parts under section four of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation. Such expenditures shall be considered an employee benefit.

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

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

“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.
“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

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

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

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

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, That the secretary of each department and the commissioner of the bureau of commerce shall have the authority to transfer within the department or bureau those general revenue funds appropriated to the various agencies of the department or bureau: Provided, however, That no more than three percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department or bureau: Provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer
funds appropriated to "personal services" and "employee benefits" to other lines within the same account and no funds from other lines shall be transferred to the "personal services" line: And provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer general revenue funds appropriated to "annual increment" to other general revenue accounts within the same department, bureau or commission for the purpose of providing an annual increment in accordance with article five, chapter five of the code: And provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the state road fund for the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

Sec. 4. Method of expenditure.—Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of article three, chapter twelve of the code or according to any law detailing a procedure specifically limiting that article.
Sec. 5. Maximum expenditures.—No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.

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<thead>
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<th>Fund No.</th>
<th>Page</th>
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</thead>
<tbody>
<tr>
<td>Criminal Justice Services, Division of—Juvenile Accountability Incentive</td>
<td>8829</td>
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<tr>
<td>Criminal Justice Services, Division of—Local Law Enforcement</td>
<td>8833</td>
<td>237</td>
</tr>
<tr>
<td>Development Office, West Virginia—Community Development</td>
<td>8746</td>
<td>234</td>
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<tr>
<td>Development Office, West Virginia—Workforce Investment Act</td>
<td>8848</td>
<td>234</td>
</tr>
<tr>
<td>Education, State Department of—Education Grant</td>
<td>8748</td>
<td>234</td>
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<tr>
<td>Governor’s Office—Office of Economic Opportunity</td>
<td>8799</td>
<td>234</td>
</tr>
<tr>
<td>Health, Division of—Abstinence Education Program</td>
<td>8825</td>
<td>235</td>
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<tr>
<td>Health, Division of—Community Mental Health Services</td>
<td>8794</td>
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<td>Health, Division of—Maternal and Child Health</td>
<td>8750</td>
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<td>Health, Division of—Substance Abuse Prevention and Treatment</td>
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<td>Human Services, Division of—Child Care and Development</td>
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<td>Human Services, Division of—Energy Assistance</td>
<td>8755</td>
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<td>Human Services, Division of—Social Services—Fund No. 8757</td>
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<td>Human Services, Division of—Temporary Assistance Needy Families</td>
<td>8816</td>
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§9. Appropriations from surplus accrued.

<table>
<thead>
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<tbody>
<tr>
<td>West Virginia Development Office</td>
<td>0256</td>
<td>237</td>
</tr>
</tbody>
</table>

§10. Special revenue appropriations.

§11. State improvement fund appropriations.

§12. Specific funds and collection accounts.


§15. Appropriations for local governments.

§16. Total appropriations.

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

LEGISLATIVE

I—Senate

Fund 0165 FY 2003 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R)</td>
<td></td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers</td>
<td></td>
</tr>
<tr>
<td>and Employees (R)</td>
<td>003 $ 1,010,000</td>
</tr>
<tr>
<td>Employee Benefits (R)</td>
<td>010 597,712</td>
</tr>
<tr>
<td>Current Expenses and</td>
<td></td>
</tr>
<tr>
<td>Contingent Fund (R)</td>
<td>021 700,000</td>
</tr>
<tr>
<td>Repairs and Alterations (R)</td>
<td>064 450,000</td>
</tr>
<tr>
<td>Computer Supplies (R)</td>
<td>101 40,000</td>
</tr>
<tr>
<td>Computer Systems (R)</td>
<td>102 250,000</td>
</tr>
<tr>
<td>Printing Blue Book (R)</td>
<td>103 150,000</td>
</tr>
<tr>
<td>Expenses of Members (R)</td>
<td>399 700,000</td>
</tr>
<tr>
<td>BRIM Premium (R)</td>
<td>913 18,877</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$ 6,919,799</td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 2002 are to remain in full force and effect and are hereby reappropriated to June 30, 2003. Any balances so reappropriated may be transferred and credited to the fiscal year 2003 accounts.
Upon the written request of the clerk of the senate, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

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

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

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

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

2—House of Delegates

Fund 0170 FY 2003 Org 2200

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Appropriation</th>
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<tbody>
<tr>
<td>1</td>
<td>Compensation of Members (R)</td>
<td>$2,200,000</td>
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<tr>
<td>2</td>
<td>Compensation and Per Diem of Officers and Employees (R)</td>
<td>$600,000</td>
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<tr>
<td>3</td>
<td>Current Expenses and Contingent Fund (R)</td>
<td>$4,221,162</td>
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<tr>
<td>4</td>
<td>Expenses of Members (R)</td>
<td>$1,120,000</td>
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<tr>
<td>5</td>
<td>BRIM Premium (R)</td>
<td>$19,329</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$8,160,491</td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal year 2002 are to remain in full force and effect and are hereby reappropriated to June 30, 2003. Any balances so reappropriated may be transferred and credited to the fiscal year 2003 accounts.

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

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

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

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2003 Org 2300
The appropriations for the joint expenses for the fiscal year 2002 are to remain in full force and effect and are hereby reappropriated to June 30, 2003. Any balances so reappropriated may be transferred and credited to the fiscal year 2003 accounts.

Upon the written request of the clerk of the senate, with the approval of the president of the senate, and the clerk of the house of delegates, with the approval of the speaker of the house of delegates, and a copy to the legislative auditor, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (fund 0175, activity 642) is intended for possible general state tax reductions or the offsetting of any reductions in federal funding for state programs. It is not intended as a general appropriation for expenditure by the Legislature.
JUDICIAL

4—Supreme Court—

General Judicial

Fund 0180 FY 2003 Org 2400

<table>
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<th>Item</th>
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<tr>
<td>1</td>
<td>Personal Services (R)</td>
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<td>$40,723,078</td>
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<td>Annual Increment (R)</td>
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<td>559,571</td>
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<td>3</td>
<td>Social Security Matching (R)</td>
<td>011</td>
<td>3,153,566</td>
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<td>4</td>
<td>Public Employees’ Insurance</td>
<td></td>
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<tr>
<td>5</td>
<td>Matching (R)</td>
<td>012</td>
<td>4,800,000</td>
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<td>6</td>
<td>Public Employees’ Retirement</td>
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<td>7</td>
<td>Matching (R)</td>
<td>016</td>
<td>3,272,942</td>
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<td>8</td>
<td>Other Expenses (R)</td>
<td>029</td>
<td>7,239,482</td>
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<td>9</td>
<td>Judges’ Retirement System (R)</td>
<td>110</td>
<td>5,500,000</td>
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<td>10</td>
<td>Other Court Costs (R)</td>
<td>111</td>
<td>3,100,000</td>
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<td>11</td>
<td>Judicial Training Program (R)</td>
<td>112</td>
<td>523,000</td>
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<td>12</td>
<td>Mental Hygiene Fund (R)</td>
<td>113</td>
<td>990,000</td>
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<td>13</td>
<td>Guardian Ad Litem (R)</td>
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<td>14</td>
<td>Family Court Administration Fund</td>
<td>524</td>
<td>650,000</td>
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<td>15</td>
<td>Guardianship Attorney Fees (R)</td>
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<td>175,000</td>
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<td>Family Court Fund (R)</td>
<td>912</td>
<td>5,823,932</td>
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<td>17</td>
<td>BRIM Premium (R)</td>
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<td>231,608</td>
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<td>18</td>
<td>Total</td>
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<td>$76,752,179</td>
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</tbody>
</table>

The appropriations to the supreme court of appeals for the fiscal years 2000, 2001 and 2002 are to remain in full force and effect and are hereby reappropriated to June 30, 2003. Any balances so reappropriated may be transferred and credited to the fiscal year 2003 accounts.

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

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

**EXECUTIVE**

5—**Governor's Office**

(WV Code Chapter 5)

Fund 0101 FY 2003 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
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<th>FY 2003</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>000</td>
<td>2,619,523</td>
<td>$ 2,619,523</td>
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<td>2</td>
<td>Salary of Governor</td>
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<td>000</td>
<td>90,000</td>
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<td>3</td>
<td>Annual Increment</td>
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<td>000</td>
<td>18,595</td>
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<td>4</td>
<td>Employee Benefits</td>
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<td>000</td>
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<td>National Governors' Association</td>
<td>123</td>
<td>000</td>
<td>71,600</td>
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<td>7</td>
<td>Southern States Energy Board</td>
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<td>000</td>
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<td>Southern Growth Policies Board</td>
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<td>9</td>
<td>Southern Technology Council</td>
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<td>10</td>
<td>Southern Governors' Association</td>
<td>314</td>
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<td>11</td>
<td>National Governors' Association for State Budget Officers</td>
<td>315</td>
<td>000</td>
<td>12,700</td>
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<td>12</td>
<td>Office of Fiscal and Risk Management</td>
<td>361</td>
<td>000</td>
<td>251,884</td>
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<td>13</td>
<td>BRIM Premium</td>
<td>913</td>
<td>000</td>
<td>195,286</td>
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<td>14</td>
<td>Total</td>
<td></td>
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<td>$ 5,223,705</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, activity 099), and Publication of Papers and Transition Expenses (fund 0101, activity 465) at the
close of the fiscal year 2002 are hereby reappropriated for 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

To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

7—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 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 0
7 Total ........................................ $ 2,987,873

Any unexpended balances remaining in the appropriations for Unclassified (fund 0104, activity 099), Family Resource Networks (fund 0104, activity 274), Starting Points Centers and Parent Education Services (fund 0104, activity 316), and
Educare (fund 0104, activity 895) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal 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

Any unexpended balances remaining in the appropriations for Civil Contingent Fund—Total (fund 0105, activity 114), Civil Contingent Fund—Total—Surplus (fund 0105, activity 238), and Civil Contingent Fund—Surplus (fund 0105, activity 263) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

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

The above appropriation is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the governor's office.

9—Auditor's Office—

General Administration

(WV Code Chapter 12)
### APPROPRIATIONS

**Fund 0116 FY 2003 Org 1200**

<table>
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<th>Item</th>
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<tr>
<td>2</td>
<td>Salary of Auditor</td>
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<td>3</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>670,420</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>711,436</td>
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<tr>
<td>6</td>
<td>Office Automation (R)</td>
<td>117</td>
<td>763,770</td>
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<tr>
<td>7</td>
<td>Social Security Repayment</td>
<td>256</td>
<td>0</td>
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<td>8</td>
<td>Purchasing Card Program</td>
<td>711</td>
<td>0</td>
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<td>9</td>
<td>BRIM Premium</td>
<td>913</td>
<td>2,064</td>
</tr>
<tr>
<td>10</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,424,601</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0116, activity 099), Office Automation (fund 0116, activity 117), and Payroll System Acquisition (fund 0116, activity 594) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

**10—Treasurer’s Office**

(WV Code Chapter 12)

**Fund 0126 FY 2003 Org 1300**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,071,667</td>
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<tr>
<td>2</td>
<td>Salary of Treasurer</td>
<td>002</td>
<td>70,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>36,122</td>
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<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>599,149</td>
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<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,392,890</td>
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<tr>
<td>6</td>
<td>Abandoned Property Program</td>
<td>118</td>
<td>295,098</td>
</tr>
<tr>
<td>7</td>
<td>Tuition Trust Fund (R)</td>
<td>692</td>
<td>157,916</td>
</tr>
<tr>
<td>8</td>
<td>School Building Sinking Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Debt Service (R)</td>
<td>770</td>
<td>2,248,000</td>
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<tr>
<td>10</td>
<td>BRIM Premium</td>
<td>913</td>
<td>19,434</td>
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<tr>
<td>11</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$6,890,276</strong></td>
</tr>
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</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099), Tuition Trust Fund (fund 0126, activity 692), and School Building Sinking Fund Debt Service (fund 0126, activity 770) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

11—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2003 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>FY 2003 Org 1400</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$3,766,415*</td>
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<tr>
<td>Salary of Commissioner</td>
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<td>70,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>77,138</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>1,321,831</td>
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<tr>
<td>State Farm Museum</td>
<td>055</td>
<td>110,000</td>
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<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$1,440,020*</td>
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<tr>
<td>Gypsy Moth Program (R)</td>
<td>119</td>
<td>943,067</td>
</tr>
<tr>
<td>Huntington Farmers Market</td>
<td>128</td>
<td>50,000</td>
</tr>
<tr>
<td>Black Fly Control (R)</td>
<td>137</td>
<td>428,456</td>
</tr>
<tr>
<td>Mingo County Surface</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mine Project (R)</td>
<td>296</td>
<td>125,000</td>
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<tr>
<td>Tri-County Fair Association</td>
<td>343</td>
<td>125,000</td>
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<tr>
<td>Donated Foods Program</td>
<td>363</td>
<td>50,000</td>
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<tr>
<td>Predator Control</td>
<td>470</td>
<td>140,000</td>
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<tr>
<td>Charleston Farmers Market (R)</td>
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<tr>
<td>Bee Research</td>
<td>691</td>
<td>70,000</td>
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<tr>
<td>Microbiology Program (R)</td>
<td>785</td>
<td>152,680</td>
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<tr>
<td>Moorefield Agriculture Center (R)</td>
<td>786</td>
<td>772,621</td>
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<td>BRIM Premium</td>
<td>913</td>
<td>77,862</td>
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<td>Total</td>
<td></td>
<td>$9,178,094*</td>
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</table>

*CLERK'S NOTE: These line items were reduced by the Governor, but the total was left intact.
Any unexpended balances remaining in the appropriations for Unclassified (fund 0131, activity 099), Gypsy Moth Program (fund 0131, activity 119), Black Fly Control (fund 0131, activity 137), Mingo County Surface Mine Project (fund 0131, activity 296), Charleston Farmers Market (fund 0131, activity 476), Capital Improvements—Total—Surplus (fund 0131, activity 672), Microbiology Program (fund 0131, activity 785), and Moorefield Agriculture Center (fund 0131, activity 786) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

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

12—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 0132 FY 2003 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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</thead>
<tbody>
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<td>1</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>$7,900</td>
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<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified (R)</td>
<td>$347,960</td>
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<td>5</td>
<td>Soil Conservation Projects (R)</td>
<td>$3,310,798</td>
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<td>BRIM Premium</td>
<td>$3,444</td>
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<td>7</td>
<td>Maintenance of Flood</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Control Projects (R)</td>
<td>$1,819,863</td>
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<td>9</td>
<td>Total</td>
<td>$6,127,503</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Soil Conservation Projects (fund 0132, activity 120), Conservation Reserve Enhancement Program (fund 0132, activity 141), Soil Conser-
vation Projects—Surplus (fund 0132, activity 269), and Maintenance of Flood Control Projects (fund 0132, activity 522) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

13—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2003 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<td>Total</td>
<td></td>
<td>$615,747</td>
</tr>
</tbody>
</table>

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

14—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2003 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fairs and Festivals</td>
<td>122</td>
<td>$435,000</td>
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<tr>
<td>Commissioner’s Awards and Programs</td>
<td>737</td>
<td>87,300</td>
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<tr>
<td>Total</td>
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<td>$522,300</td>
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</tbody>
</table>

15—Attorney General

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

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 82,794
8 Total ..................................... $ 4,123,504

Any unexpended balance remaining in the above appropriation at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

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

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
Any unexpended balances remaining in the appropriations for Unclassified—Surplus (fund 0155, activity 097), Unclassified (fund 0155, activity 099), Technology Improvements (fund 0155, activity 599), and Administrative Law Division Improvements (fund 0155, activity 880) and at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the 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
Any unexpended balance remaining in the appropriation for Pay Equity Reserve (fund 0203, activity 364) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

The appropriation for Pay Equity Reserve shall be allocated by the Secretary of Administration in accordance with a collaborative methodology that will be developed and established by state agencies, the division of personnel, and the equal pay commission.

The appropriation for Lease Rental Payments shall be disbursed as provided by chapter thirty-one, article fifteen, section six-b of the code.

19—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2003 Org 0205

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

20—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2003 Org 0209
112

APPROPRIATIONS

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 58,889
7 Total .......................... $ 2,125,685

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during 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 Past Due Telephone Account (fund 0583, activity 262) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003 and redesignated as claims against the state (fund 0175, fiscal year 2003, activity 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
Ch. 13] APPROPRIATIONS

6 Capitol Complex—Capital Outlay (R) . . 417 $ 0
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 2,633
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 uniform state laws.

### 25—Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2003 Org 0218

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
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<td>1</td>
<td>001</td>
<td>Personal Services</td>
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<td>004</td>
<td>Annual Increment</td>
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<tr>
<td>3</td>
<td>010</td>
<td>Employee Benefits</td>
<td>215,373</td>
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<td>4</td>
<td>099</td>
<td>Unclassified</td>
<td>92,253</td>
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<tr>
<td>5</td>
<td>523</td>
<td>Retro Payments</td>
<td>1,907,904</td>
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<tr>
<td>6</td>
<td></td>
<td>Total</td>
<td>2,996,674</td>
</tr>
</tbody>
</table>

7. Any unexpended balance remaining in the appropriation for Premium Enhancement (fund 0217, activity 346) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

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

### 26—Education and State Employees' Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2003 Org 0219

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>001</td>
<td>Personal Services</td>
<td>659,973</td>
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</table>
Ch. 13]  

APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,200</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>168,421</td>
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<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>2,116</td>
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<td>6</td>
<td>Total</td>
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<td>1,011,955</td>
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</tbody>
</table>

27—Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2003 Org 0220

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$241,569</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>$365,095</td>
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</table>

28—Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2003 Org 0221

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>Unclassified (R)</td>
<td>099</td>
<td>417,932</td>
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<td>5</td>
<td>Appointed Counsel Fees and Public Defender Corporations (R)</td>
<td>127</td>
<td>22,834,444</td>
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<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>36,785</td>
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<td>7</td>
<td>Total</td>
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<td>23,993,593</td>
</tr>
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</table>

Any unexpended balances remaining in the above appropriations for Unclassified (fund 0226, activity 099), and Appointed Counsel Fees and Public Defender Corporations (fund 0226,
activity 127) at the close of the fiscal year 2002 are hereby 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

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$4,381</th>
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</thead>
</table>

30—Public Employees Insurance Agency (WV Code Chapter 5)

Fund 0200 FY 2003 Org 0225

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

31—West Virginia Prosecuting Attorneys’ Institute

Fund 0557 FY 2003 Org 0228

<table>
<thead>
<tr>
<th>Forensic Medical Examinations (R)</th>
<th>$185,723</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Funds/Grant Match (R)</td>
<td>$131,750</td>
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<tr>
<td>Total</td>
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</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, activity 683), and Federal Funds/Grant Match (fund 0557, activity 749) at the
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

Any unexpended balance remaining in the appropriation for
Unclassified—Total (fund 0588, activity 096) at the close of the
fiscal year 2002 is hereby reappropriated for expenditure during
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 1,746,341
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
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<tbody>
<tr>
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<td><strong>Total</strong></td>
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</tbody>
</table>

*35—State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2003 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$39,118</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$799,962</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$3,824,498</td>
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<tr>
<td>WV Education Information</td>
<td></td>
<td></td>
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<tr>
<td>System (WVEIS)</td>
<td>138</td>
<td>$3,832,798</td>
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<tr>
<td>34/1000 Waiver</td>
<td>139</td>
<td>$400,000</td>
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<tr>
<td>Increased Enrollment (R)</td>
<td>140</td>
<td>$1,204,196</td>
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<tr>
<td>National Science Foundation Match</td>
<td>142</td>
<td>$0</td>
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<tr>
<td>Teacher Mentor (R)</td>
<td>158</td>
<td>$60,000</td>
</tr>
<tr>
<td>National Teacher Certification (R)</td>
<td>161</td>
<td>$50,000</td>
</tr>
<tr>
<td>Partnership Development/Staff</td>
<td>171</td>
<td>$273,699</td>
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<tr>
<td>Virtual School on Internet</td>
<td>178</td>
<td>$0</td>
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<tr>
<td>Allowance for County Transfers</td>
<td>264</td>
<td>$91,748</td>
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<tr>
<td>Curriculum Technology</td>
<td></td>
<td></td>
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<tr>
<td>Resource Center</td>
<td>300</td>
<td>$256,370</td>
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<tr>
<td>HVAC Technicians</td>
<td>355</td>
<td>$408,513</td>
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<tr>
<td>Early Retirement</td>
<td></td>
<td></td>
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<td>Notification Incentive</td>
<td>366</td>
<td>$250,000</td>
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<tr>
<td>WV Literacy Council</td>
<td>370</td>
<td>$14,868</td>
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<tr>
<td>FBI Checks</td>
<td>372</td>
<td>$99,558</td>
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<tr>
<td>State Science Fair</td>
<td>374</td>
<td>$24,779</td>
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<tr>
<td>Governor’s Honors Academy</td>
<td>478</td>
<td>$188,322</td>
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<tr>
<td>Micro Computer Network</td>
<td>506</td>
<td>$0</td>
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</table>
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 .......................... 913 160,292
34 Total ................................... $ 15,726,752

The above appropriation includes the state board of
education and their executive office.

Any unexpended balances remaining in the appropriations
for Unclassified (fund 0313, activity 099), Increased Enroll-
ment (fund 0313, activity 140), Teacher Mentor (fund 0313,
activity 158), National Teacher Certification (fund 0313,
activity 161), and Foreign Student Education (fund 0313,
activity 636) at the close of the fiscal year 2002 are hereby
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
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education of Institutionalized</td>
<td></td>
<td>7,363,521</td>
</tr>
<tr>
<td>Juveniles and Adults</td>
<td></td>
<td>472</td>
</tr>
<tr>
<td>Potomac Center</td>
<td></td>
<td>810 808,275</td>
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<tr>
<td>Total</td>
<td></td>
<td>$ 19,737,554</td>
</tr>
</tbody>
</table>

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

37—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2003 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Other Current Expenses</td>
<td>022</td>
<td>$ 124,149,988</td>
</tr>
<tr>
<td>Professional Educators</td>
<td>151</td>
<td>754,409,044</td>
</tr>
<tr>
<td>Service Personnel</td>
<td>152</td>
<td>249,841,497</td>
</tr>
<tr>
<td>Fixed Charges</td>
<td>153</td>
<td>89,779,998</td>
</tr>
<tr>
<td>Transportation</td>
<td>154</td>
<td>37,027,065</td>
</tr>
<tr>
<td>Administration</td>
<td>155</td>
<td>7,868,417</td>
</tr>
<tr>
<td>Improve Instructional Programs</td>
<td>156</td>
<td>33,000,000</td>
</tr>
<tr>
<td>Basic Foundation Allowances</td>
<td></td>
<td>1,296,076,009</td>
</tr>
<tr>
<td>Less Local Share</td>
<td></td>
<td>(289,690,069)</td>
</tr>
<tr>
<td>Total Basic State Aid</td>
<td></td>
<td>1,006,385,940</td>
</tr>
<tr>
<td>Public Employees’ Insurance Matching</td>
<td>012</td>
<td>156,655,991</td>
</tr>
<tr>
<td>Teachers’ Retirement System</td>
<td>019</td>
<td>273,804,000</td>
</tr>
<tr>
<td>School Building Authority</td>
<td>453</td>
<td>23,352,220</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 1,460,198,151</td>
</tr>
</tbody>
</table>

38—State Board of Education—

Vocational Division
Ch. 13] **APPROPRIATIONS**

(WV Code Chapters 18 and 18A)

*Fund 0390 FY 2003 Org 0402*

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$936,510</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>14,737</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>294,430</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,110,000</td>
</tr>
<tr>
<td>5</td>
<td>Wood Products—Forestry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Vocational Program</td>
<td>146</td>
<td>62,467</td>
</tr>
<tr>
<td>7</td>
<td>Albert Yanni Vocational Program</td>
<td>147</td>
<td>138,070</td>
</tr>
<tr>
<td>8</td>
<td>Vocational Aid</td>
<td>148</td>
<td>14,267,020</td>
</tr>
<tr>
<td>9</td>
<td>Adult Basic Education</td>
<td>149</td>
<td>3,276,216</td>
</tr>
<tr>
<td>10</td>
<td>Program Modernization</td>
<td>305</td>
<td>0</td>
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<tr>
<td>11</td>
<td>Aquaculture Support</td>
<td>769</td>
<td>208,894</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td></td>
<td>$20,308,344</td>
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</tbody>
</table>

**39—State Board of Education—**

*Division of Educational Performance Audits*

(WV Code Chapters 18 and 18A)

*Fund 0573 FY 2003 Org 0402*

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$491,559</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,250</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>129,950</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>180,199</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$804,958</td>
</tr>
</tbody>
</table>

**40—West Virginia Schools for the Deaf and the Blind**

(WV Code Chapters 18 and 18A)

*Fund 0320 FY 2003 Org 0403*

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$6,691,692</td>
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</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Annual Increment</td>
<td>004</td>
<td>$5,350</td>
</tr>
<tr>
<td>2. Employee Benefits</td>
<td>010</td>
<td>$2,434,699</td>
</tr>
<tr>
<td>3. Unclassified</td>
<td>099</td>
<td>$1,613,470</td>
</tr>
<tr>
<td>4. BRIM Premium</td>
<td>913</td>
<td>$47,094</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$10,792,305</strong></td>
</tr>
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</table>

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment—Surplus (fund 0320, activity 677) at the close of the fiscal year 2002 is hereby 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1. Unclassified (R)</td>
<td>099</td>
<td>$793,568</td>
</tr>
<tr>
<td>2. Center for Professional Development (R)</td>
<td>115</td>
<td>$1,709,960</td>
</tr>
<tr>
<td>3. WV Humanities Council</td>
<td>168</td>
<td>0</td>
</tr>
<tr>
<td>4. Center for Professional Development—Principals’ Academy (R)</td>
<td>415</td>
<td>$485,460</td>
</tr>
<tr>
<td>5. College Readiness</td>
<td>579</td>
<td>0</td>
</tr>
<tr>
<td>6. Challenger Learning Center</td>
<td>862</td>
<td>0</td>
</tr>
<tr>
<td>7. BRIM Premium</td>
<td>913</td>
<td>$2,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,991,188</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294, activity 115), Center for Professional Development—Principals’ Academy (fund 0294, activity 415), and Community Schools/Mini Grants (fund 0294,
activity 530) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

42—Division of Culture and History

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2003</th>
<th>Org</th>
<th>0432</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,209,152</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>37,830</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>744,815</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>455,309</td>
</tr>
<tr>
<td>5</td>
<td>Culture and History Programming</td>
<td>732</td>
<td>275,000</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>34,436</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$3,756,542</td>
</tr>
</tbody>
</table>

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

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

43—Library Commission

(WV Code Chapter 10)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2003</th>
<th>Org</th>
<th>0433</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,153,194</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>001</td>
<td>004</td>
</tr>
<tr>
<td>----</td>
<td>------------------------------------------------</td>
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<td>-----</td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Star Schools</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

**45—State Board of Rehabilitation—**

**Division of Rehabilitation Services**

(WV Code Chapter 18)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>001</th>
<th>004</th>
<th>010</th>
<th>099</th>
<th>Total</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td></td>
<td></td>
<td></td>
<td>$6,488,519</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
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<td></td>
<td></td>
<td>134,049</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,623,325</td>
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</tbody>
</table>

*CLERK'S NOTE: The Governor reduced this line item by $100,000 but left the total intact.*
<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>4</td>
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<tr>
<td>5</td>
<td>Workshop Development</td>
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<td>6</td>
<td>Supported Employment</td>
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<td>7</td>
<td>Extended Services</td>
<td>206</td>
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<tr>
<td>8</td>
<td>Ron Yost Personal Assistance Fund</td>
<td>407</td>
</tr>
<tr>
<td>9</td>
<td>Traumatic Brain and</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Spinal Cord Injury</td>
<td>813</td>
</tr>
<tr>
<td>11</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td>$11,933,253</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Technology—Related Assistance Revolving Loan Fund for Individuals with Disabilities (fund 0310, activity 766) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003 and may be transferred 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>

47—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2003 Org 0506
126 APPROPRIATIONS

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 Radioactive Waste Commission ... 185 48,000
6 Safe Drinking Water Program ........ 187 524,753
7 Pet Scan Support ................... 209 200,000
8 Women, Infants and Children ...... 210 45,000
9 Basic Public Health Services Support ... 212 4,335,811
10 Early Intervention .................. 223 3,307,043
11 Cancer Registry .................... 225 279,199
12 CARDIAC Project ................... 375 220,000
13 State EMS Technical Assistance ... 379 1,413,020
14 EMS Agency Uncompensated Care Support .................. 380 250,000
15 EMS Program for Children ........... 381 50,804
16 Statewide EMS Program Support ...... 383 562,910
17 Primary Care Centers—
18 Mortgage Finance ................... 413 550,000
19 Black Lung Clinics ................... 467 200,000
20 Pediatric Dental Services .......... 550 150,000
21 Vaccine for Children ................ 551 434,019
22 Adult Influenza Vaccine ............ 552 65,000
23 Tuberculosis Control ............... 553 255,668
24 Maternal and Child Health Clinics, Clinicians and Medical Contracts
25 and Fees (R) .......................... 575 4,629,636
26 Epidemicology Support ............... 626 384,417
27 Primary Care Support ............... 628 7,269,762
28 State Aid to Local Health Departments . .. 702 9,257,684
29 Health Right Free Clinics .......... 727 2,200,042
30 Osteoporosis Prevention Fund ....... 729 308,879
31 Emergency Response Entities—
32 Special Projects .................... 822 1,000,000
33 Center for End of Life ............... 545 200,000
37  BRIM Premium ............................ 913 161,860
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 .......................... 913 875,704
14   Total ....................................... $ 58,468,848
Any unexpended balances remaining in the appropriations for Behavioral Health Program—Unclassified (fund 0525, activity 219), and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

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

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

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health—hospital services revenue account (fund 5156, activity 335) and tobacco settlement expenditure fund (fund 5124, activity 335), on July 1, 2002, the sum of two hundred thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.
Additional funds have been appropriated in fund 5124, fiscal year 2003, organization 0506 and fund 5156, fiscal year 2003, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

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

The above appropriation for Drinking Water Treatment Revolving Fund—Transfer shall be transferred to the West Virginia Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving—Administrative Expense Fund as provided by chapter 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 17,970
6 Total ................................ $ 1,200,866
130 APPROPRIATIONS

51—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2003 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$22,809,759</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>648,734</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>8,498,770</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>20,243,274</td>
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<td>5</td>
<td>Child Care Development</td>
<td>144</td>
<td>1,454,206</td>
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<tr>
<td>6</td>
<td>Medical Services Contracts and Office of Managed Care</td>
<td>183</td>
<td>2,337,706</td>
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<td>7</td>
<td>Medical Services</td>
<td>189</td>
<td>182,255,995</td>
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<td>8</td>
<td>Women’s Commission</td>
<td>191</td>
<td>133,271</td>
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<td>9</td>
<td>Social Services</td>
<td>195</td>
<td>60,105,425</td>
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<td>10</td>
<td>Family Preservation Program</td>
<td>196</td>
<td>1,565,000</td>
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<tr>
<td>11</td>
<td>Domestic Violence Legal Services Fund</td>
<td>384</td>
<td>150,000</td>
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<tr>
<td>12</td>
<td>James “Tiger” Morton Catastrophic Illness Fund</td>
<td>455</td>
<td>940,000</td>
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<td>13</td>
<td>Child Protective Services Case Workers</td>
<td>468</td>
<td>9,024,303</td>
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<td>14</td>
<td>Medical Services Trust Fund Transfer</td>
<td>512</td>
<td>5,000,000</td>
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<tr>
<td>15</td>
<td>OSCAR and RAPIDS</td>
<td>515</td>
<td>3,499,928</td>
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<tr>
<td>16</td>
<td>Child Welfare System</td>
<td>603</td>
<td>2,609,058</td>
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<tr>
<td>17</td>
<td>Commission for the Deaf and Hard of Hearing</td>
<td>704</td>
<td>269,046</td>
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<tr>
<td>18</td>
<td>Child Support Enforcement</td>
<td>705</td>
<td>2,803,180</td>
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<td>19</td>
<td>Medicaid Auditing</td>
<td>706</td>
<td>604,485</td>
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<td>20</td>
<td>Temporary Assistance for Needy Families/Maintenance of Effort</td>
<td>707</td>
<td>23,587,807</td>
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<td>21</td>
<td>Child Care—Maintenance of Effort and Match</td>
<td>708</td>
<td>4,409,643</td>
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<td>22</td>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
<td>750</td>
<td>1,000,000</td>
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</table>
Any unexpended balance remaining in the appropriation for Indigent Burials (fund 0403, activity 851) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

The above appropriation for James "Tiger" Morton Catastrophic Illness Fund (activity 455) shall be transferred to the James "Tiger" Morton Catastrophic Illness Fund (fund 5454) as provided by chapter sixteen, article five-q of the code.

The above appropriation for Domestic Violence Legal Services Fund (activity 384) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

The secretary shall have authority to expend funds for the educational costs of those children residing in out-of-state placements, excluding the costs of special education programs.

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

52—Department of Military Affairs and Public Safety—

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 2003 Org 0601

<table>
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<tr>
<td>1</td>
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<td>2</td>
<td>BRIM Premium</td>
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<td>4,816</td>
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3 Total ...................................... $ 707,633

Any unexpended balance remaining in the appropriation for Unclassified (fund 0430, activity 099) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the 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 15,904
6 Total .................................. $ 15,502,200

Any unexpended balance remaining in the appropriation for Unclassified (fund 0433, activity 099) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

From the above appropriation an amount approved by the adjutant general and the secretary of military affairs and public safety may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

54—West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2003 Org 0605
### APPROPRIATIONS

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 22,208
8. Total .................. $ 556,957

**55—Office of Emergency Services**

(WV Code Chapter 15)

Fund 0443 FY 2003 Org 0606

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 230,974</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,897</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>86,189</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>31,696</td>
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<td>5</td>
<td>Federal Emergency Management Agency Match (R)</td>
<td>188</td>
<td>210,937</td>
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<td>6</td>
<td>Early Warning Flood System</td>
<td>877</td>
<td>324,000</td>
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<td>7</td>
<td>Radiological Emergency Preparedness</td>
<td>554</td>
<td>25,600</td>
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<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
<td>6,680</td>
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<td>9</td>
<td>Total</td>
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<td>$ 921,973</td>
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Any unexpended balances remaining in the appropriations for Unclassified—Surplus (fund 0443, activity 097), Federal Emergency Management Agency Match (fund 0443, activity 188), and Flood Reparations (fund 0443, activity 400) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

**56—Division of Corrections—**

*Central Office*
### APPROPRIATIONS

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

Fund 0446 FY 2003 Org 0608

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
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<td>004</td>
<td>$5,475</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$116,910</td>
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<td>Unclassified</td>
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<td>$98,162</td>
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<td><strong>Total</strong></td>
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<td><strong>$605,428</strong></td>
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</table>

Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2002 is hereby reapportioned for 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

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$726,000</td>
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<tr>
<td>Payments to Counties and/or Regional Jails</td>
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<td>0</td>
</tr>
<tr>
<td>Regional Jails</td>
<td>555</td>
<td>$7,303,000</td>
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<tr>
<td>Charleston Work Release</td>
<td>456</td>
<td>$842,328</td>
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<tr>
<td>Beckley Correctional Center</td>
<td>490</td>
<td>$917,400</td>
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<tr>
<td>Huntington Work Release</td>
<td>495</td>
<td>$721,135</td>
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<tr>
<td>Anthony Center</td>
<td>504</td>
<td>$4,060,261</td>
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<tr>
<td>Bureau of Prisons -</td>
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<tr>
<td>Federal Prison Camp</td>
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<td>0</td>
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<tr>
<td>Huttonsville Correctional Center</td>
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<tr>
<td>Eastern Regional Correctional Facility</td>
<td>519</td>
<td>0</td>
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<tr>
<td>Line</td>
<td>Facility/Service</td>
<td>Appropriation</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>15</td>
<td>Northern Correctional Facility</td>
<td>534</td>
</tr>
<tr>
<td>16</td>
<td>Inmate Medical Expenses</td>
<td>535</td>
</tr>
<tr>
<td>17</td>
<td>Pruntytown Correctional Center</td>
<td>543</td>
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<tr>
<td>18</td>
<td>Corrections Academy</td>
<td>569</td>
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<tr>
<td>19</td>
<td>Parole Services</td>
<td>686</td>
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<tr>
<td>20</td>
<td>Special Services</td>
<td>687</td>
</tr>
<tr>
<td>21</td>
<td>St. Mary’s Correctional Facility</td>
<td>881</td>
</tr>
<tr>
<td>22</td>
<td>Denmar Correctional Facility</td>
<td>882</td>
</tr>
<tr>
<td>23</td>
<td>Ohio County Correctional Facility</td>
<td>883</td>
</tr>
<tr>
<td>24</td>
<td>Mt. Olive Correctional Facility</td>
<td>888</td>
</tr>
<tr>
<td>25</td>
<td>Lakin Correctional Facility</td>
<td>896</td>
</tr>
<tr>
<td>26</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>27</td>
<td>Total</td>
<td>94,104,593</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 0450, activity 511) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

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

From the above appropriation to Unclassified, on July 1, 2002, the sum of three hundred thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.
136

APPROPRIATIONS

[Ch. 13

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 3,351,098
19 Total .............................. $72,212,659

20 Any unexpended balances remaining in the appropriations
for Barracks Maintenance and Construction (fund 0453, activity
494), Communications and Other Equipment (fund 0453,
activity 558), and Debt Payment/Capital Outlay, Renovations,
Repairs to Barracks (fund 0453, activity 751) at the close of the
fiscal year 2002 are hereby reappropriated for expenditure
during the fiscal year 2003.

59—Division of Veterans’ Affairs

(WV Code Chapter 9A)
### APPROPRIATIONS

**Fund 0456 FY 2003 Org 0613**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>835,535</td>
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<tr>
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<td>22,630</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>363,055</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>50,000</td>
</tr>
<tr>
<td>5</td>
<td>Veterans’ Field Offices</td>
<td>228</td>
<td>129,692</td>
</tr>
<tr>
<td>6</td>
<td>Veterans’ Toll Free Assistance Line</td>
<td>328</td>
<td>5,000</td>
</tr>
<tr>
<td>7</td>
<td>Veterans’ Reeducation Assistance (R)</td>
<td>329</td>
<td>216,141</td>
</tr>
<tr>
<td>8</td>
<td>Veterans’ Field Office Improvements (R)</td>
<td>331</td>
<td>59,434</td>
</tr>
<tr>
<td>9</td>
<td>Women’s Veterans’ Monument (R)</td>
<td>385</td>
<td>100,000</td>
</tr>
<tr>
<td>10</td>
<td>Memorial Day Patriotic Exercise</td>
<td>697</td>
<td>20,000</td>
</tr>
<tr>
<td>11</td>
<td>BRIM Premium</td>
<td>913</td>
<td>23,741</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td></td>
<td>1,975,228</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Veterans’ Reeducation Assistance (fund 0456, activity 329), Veterans’ Field Office Improvements (fund 0456, activity 331), Veterans’ Grant Program (fund 0456, activity 342), Women’s Veterans’ Monument (fund 0456, activity 385), and Veterans’ Monuments (fund 0456, activity 817) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

60—Division of Veterans’ Affairs—

**Veterans’ Home**

(WV Code Chapter 9A)

**Fund 0460 FY 2003 Org 0618**

<table>
<thead>
<tr>
<th>Item</th>
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<th>Amount</th>
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</thead>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>$13,800</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>300,992</td>
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</table>
### 61—Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2003 Org 0619

<table>
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<td>1 Personal Services</td>
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<tr>
<td>2 Annual Increment</td>
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<td>3 Employee Benefits</td>
<td>222,360</td>
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<td>4 Unclassified</td>
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<td>5 State-Wide Hotline</td>
<td>347</td>
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<tr>
<td>6 Safe Schools Hotline</td>
<td>250,000</td>
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<td>7 BRIM Premium</td>
<td>$20,940</td>
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<td>8 Total</td>
<td>$1,264,787</td>
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</table>

### 62—Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 0546 FY 2003 Org 0620

<table>
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<tr>
<td>1 Personal Services</td>
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<td>2 Annual Increment</td>
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<td>3 Employee Benefits</td>
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<td>4 Unclassified</td>
<td>155,775</td>
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<tr>
<td>5 Statistical Analysis Program</td>
<td>52,837</td>
</tr>
<tr>
<td>6 Community Corrections</td>
<td>100,000</td>
</tr>
<tr>
<td>7 BRIM Premium</td>
<td>1,000</td>
</tr>
<tr>
<td>8 Total</td>
<td>$645,835</td>
</tr>
</tbody>
</table>

The above line item Community Corrections (fund 0546, activity 561) shall be used to supply grants for community corrections programs which are programs that provide criminal
sentencing options as alternatives to conventional sentences of probation or incarceration.

63—Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2003 Org 0621

<table>
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<th>Item Description</th>
<th>Amount</th>
</tr>
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<tr>
<td>Annual Increment</td>
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</tr>
<tr>
<td>Employee Benefits</td>
<td></td>
</tr>
<tr>
<td>Unclassified (R)</td>
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<tr>
<td>BRIM Premium</td>
<td></td>
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<tr>
<td>Total</td>
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</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0570, activity 099) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

From the above appropriation to Unclassified, on July 1, 2002, the sum of fifty thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

64—Division of Protective Services

(WV Code Chapter 15)

Fund 0585 FY 2003 Org 0622

<table>
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<th>Item Description</th>
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<tr>
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<td>Employee Benefits</td>
<td>330,260</td>
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<td>Equipment (R)</td>
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Any unexpended balances remaining in the appropriations for Equipment (fund 0585, activity 070), Unclassified—Surplus (fund 0585, activity 097), and Unclassified (fund 0585, activity 099) at the close of the fiscal year 2002 are hereby 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

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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<td>1</td>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>3,541,769</td>
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<td>4</td>
<td>Unclassified</td>
<td>7,690,365</td>
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<td>5</td>
<td>Property Tax Valuation and Assessment System</td>
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<td>6</td>
<td>Remittance Processor</td>
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<td>7</td>
<td>GIS Development Project</td>
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<td>8</td>
<td>BRIM Premium</td>
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Any unexpended balances remaining in the appropriations for Property Tax Valuation and Assessment System (fund 0470, activity 477), and Automation Project—Total—Surplus (fund 0470, activity 673) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

66—Division of Professional and Occupational Licenses—
State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2003 Org 0933

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<th>Item</th>
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DEPARTMENT OF TRANSPORTATION

67—State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2003 Org 0804

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68—Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2003 Org 0805

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<td>$1,294,162</td>
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<td>Grant Match (R)</td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 0510, activity 099), Grant Match (fund 0510, activity 388), and Federal Funds/Grant Match (fund 0510, activity 749) at the close of the fiscal year 2002 are hereby 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

Any unexpended balance remaining in the appropriation for
Unclassified—Total (fund 0581, activity 096) at the close of the
calendar year 2002 is hereby reappropriated for expenditure during
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

Any unexpended balances remaining in the appropriations
for Unclassified—Total (fund 0582, activity 096), and Unclas-
sified (fund 0582, activity 099) at the close of the calendar year
2002 are hereby reappropriated for expenditure during the fiscal
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
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### APPROPRIATIONS

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<td>5</td>
<td>Aerial Tanker Airplanes</td>
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Out of the above appropriation a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

#### 72—Geological and Economic Survey

(WV Code Chapter 29)

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<td>3 Employee Benefits</td>
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<tr>
<td>4 Unclassified</td>
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<tr>
<td>5 Mineral Mapping System (R)</td>
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<td>6 Geographic Information System (R)</td>
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<td>7 Computer Upgrade</td>
</tr>
<tr>
<td>8 BRIM Premium</td>
</tr>
<tr>
<td>9 Total</td>
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Any unexpended balances remaining in the appropriations for Mineral Mapping System (fund 0253, activity 207), Geographic Information System (fund 0253, activity 214), and Computer Upgrade—Surplus (fund 0253, activity 874), at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

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

73—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2003 Org 0307

| Personal Services                      | 001 | $2,432,093 |
| Annual Increment                       | 004 | 30,473     |
| Employee Benefits                      | 010 | 708,066    |
| Unclassified                           | 099 | 3,261,412  |
| Partnership Grants (R)                 | 131 | 4,000,000  |
| National Youth Science Camp            | 132 | 188,180    |
| Local Economic Development             |     |            |
| Partnership Grants (R)                 | 133 | 1,600,500  |
| ARC Assessment                         | 136 | 167,308    |
| Institute for Software Research        | 217 | 94,090     |
| West Virginia Steel Advisory           | 230 | 75,272     |
| Mid-Atlantic Aerospace Complex (R)     | 231 | 218,250    |
| Guaranteed Work Force Grant (R)        | 242 | 3,417,606  |
| Sunny Day Fund                         | 283 | 0          |
| Small Business                         |     |            |
| Financial Assistance (R)               | 360 | 407,142    |
| Robert C. Byrd Institute for Advanced/ |     |            |
| Flexible Manufacturing—Technology      |     |            |
| Outreach and Programs for              |     |            |
| Environmental and                      |     |            |
| Advanced Technologies                  | 367 | 679,000    |
| Advantage Valley                       | 389 | 97,000     |
| Chemical Alliance Zone                 | 390 | 48,500     |
| WV High Tech Consortium                | 391 | 197,000    |
| Charleston Farmers Market (R)          | 476 | 100,000    |
| Industrial Park Assistance (R)         | 480 | 558,000    |
| WV Film Development Office             | 498 | 0          |
28 Leverage Technology and Small Business Development
29 Program (R) .................................. 525 798,265
30 International Offices (R) .......................... 593 926,966
31 WV Manufacturing
32 Extension Partnership .............................. 731 188,180
33 Small Business Work Force (R) ................. 735 354,660
34 Polymer Alliance ................................. 754 94,090
35 National Institute
36 of Chemical Studies .............................. 805 94,090
37 Local Economic
38 Development Assistance (R) .................... 819 7,000,000
39 Community College
40 Workforce Development (R) ..................... 878 802,675
41 BRIM Premium .................................. 913 1,464
42 Total ........................................... $ 28,540,282
43
44 Any unexpended balances remaining in the appropriations
45 for Partnership Grants (fund 0256, activity 131), Local Economic Development Partnerships (fund 0256, activity 133), Mid Atlantic Aerospace Complex (fund 0256, activity 231), Guaranteed Work Force Grant (fund 0256, activity 242), Office of Coalfield Community Development (fund 0256, activity 326), Small Business Financial Assistance (fund 0256, activity 360), Industrial Park Assistance (fund 0256, activity 480), Leverage Technology and Small Business Development Program (fund 0256, activity 525), International Offices (fund 0256, activity 593), Small Business Work Force (fund 0256, activity 735), Local Economic Development Assistance (fund 0256, activity 819), Community College Workforce Development (fund 0256, activity 878), Economic Development Assistance (fund 0256, activity 900), and Technology Initiatives (fund 0256, activity 901) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.
The above appropriation to Local Economic Development Partnerships shall be used by the West Virginia development office for the award of funding assistance to county and regional economic development corporations or authorities participating in the certified development community program developed under the provisions of section three, article two, chapter five-b of the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed thirty thousand dollars per county served by an economic development corporation or authority.

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 40,058
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 ................................. 913 251,260
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 35,421
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
2 Annual Increment .................... 004 $ 700
3 Employee Benefits .................. 010 25,158
4 Unclassified ......................... 099 65,143
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 35,152
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 on Potomac River Basin—Total 134 $ 47,000

81—Ohio River Valley Water Sanitation Commission
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**APPROPRIATIONS**

(WV Code Chapter 29)

Fund 0264  FY 2003  Org 0313

<table>
<thead>
<tr>
<th></th>
<th>West Virginia's Contribution to the Ohio River Valley Water Sanitation Commission—Total</th>
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**82—Division of Environmental Protection**

(WV Code Chapter 22)

Fund 0273  FY 2003  Org 0313

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<th>Non-Enforcement Activity</th>
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10 Any unexpended balance remaining in the appropriation for Office of Water Resources—Equipment—Surplus (fund 0273, activity 875) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

**83—Air Quality Board**

(WV Code Chapter 16)

Fund 0550  FY 2003  Org 0325

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### APPROPRIATIONS [Ch. 13]

#### BUREAU OF SENIOR SERVICES

84—Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2003 Org 0508

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<td>Silver Haired Legislature</td>
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<td>Area Agencies Administration</td>
<td>87,428</td>
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<td>7</td>
<td>Alzheimers Respite Care</td>
<td>100,000</td>
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<td>BRIM Premium</td>
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#### HIGHER EDUCATION POLICY COMMISSION

85—Higher Education Policy Commission—

Administration—

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2003 Org 0441

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<th>Description</th>
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<tr>
<td>2</td>
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<td>3</td>
<td>Instrumentation Program</td>
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<td>Vice Chancellor for Health Sciences—</td>
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<td>6</td>
<td>Rural Health Initiative Program</td>
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<tr>
<td>7</td>
<td>and Site Support</td>
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</tr>
<tr>
<td>8</td>
<td>Vice Chancellor for Health Sciences—</td>
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Ch. 13]  

APPROPRIATIONS  

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<td>Restoration</td>
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Any unexpended balances remaining in the appropriations for Tuition Contract Program (fund 0589, activity 165), and West Virginia Council for Community and Technical Education (fund 0589, activity 392) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

86—Higher Education Policy Commission—

System—

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2003 Org 0442

<table>
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<td>Marshall Medical School</td>
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<td>34</td>
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<td>West Virginia University - Parkersburg</td>
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<tr>
<td>38</td>
<td>Potomac State College of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>West Virginia University</td>
<td>475 4,592,917</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>West Virginia University Institute</td>
<td></td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>for Technology</td>
<td>479 7,197,379</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>West Virginia University Institute</td>
<td></td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>for Technology Community and Technical College</td>
<td>486 3,303,009</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Primary Health Education Medical School</td>
<td></td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Program Support</td>
<td>177 2,200,000</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Total</td>
<td>$354,577,273</td>
<td></td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Marshall University—Southern WV Community and Technical College 2 + 2 Program (fund 0586, activity 170), Jackson's Mill (fund 0586, activity 461), Marshall University Forensic Lab (fund 0586, activity 572), Jackson’s Mill—Surplus (fund 0586, activity 842), and WVU College of Engineering and Mineral Resources—Diesel Study (fund 0586, activity 852) at the close of fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

Included in the above appropriation for West Virginia University Medical School and Marshall University Medical School are $1,015,590 and $339,500, respectively, for Graduate Medical Education which may be transferred to the Department of Health and Human Resources’ Medical Service Fund (fund 5084) for the purpose of matching federal or other funds to be used in support of graduate medical education, subject to the approval of the Vice-Chancellor for Health Sciences and the Secretary of the Department of Health and Human Resources. If approval is denied, the funds may be utilized by the respective institutions for expenditure.

Included in the above appropriation for West Virginia University Medical School is $511,105 for the WVU Charleston Division Poison Control Hotline, $34,500 for the Marshall and WVU Faculty and Course Development International Study Project, $246,429 for the WVU Law School—Skills Program, $147,857 for the WVU Coal and Energy Research Bureau, and $19,714 for the WVU College of Engineering and Mineral Resources—Diesel Training—Transfer.

Included in the above appropriation for Marshall University is $181,280 for the Marshall University—Southern West Virginia Community and Technical College 2+2 Program, $595,597 for the Marshall University Autism Training Center,
$466,286 for the Marshall University Forensic Lab, and $200,000 for the Marshall University Center for Rural Health.

Included in the above appropriation for Southern West Virginia Community and Technical College is $373,774 for the Marshall University—Southern West Virginia Community and Technical College 2+2 Program.

The institutions operating from special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

87—Higher Education Policy Commission—

Health Sciences—

Control Account

(WV Code Chapter 18B)

Fund 0590 FY 2003 Org 0477

Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (fund 0590, activity 177), Graduate Medical Education (fund 0590, activity 197), Marshall University—Center for Rural Health (fund 0590, activity 198), Correctional Telemedicine Project (fund 0590, activity 406), WVU Charleston Division—Poison Control Hot Line (fund 0590, activity 510), Capital Outlay and Equipment (fund 0590, activity 542), and Rural Health Initiative Site Support Program (fund 0590, activity 853) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

88—Higher Education Policy Commission—

Legislative—
Ch. 13]  

APPROPRIATIONS  

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  600,000  
7  Total ...................  $ 7,650,000  

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 .................  $ 2,929,317,582  

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**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$12,428,017</td>
<td>90-Division of Highways</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>151,000</td>
<td>(WV Code Chapters 17 and 17C)</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>4,542,395</td>
<td><strong>Fund 9017, FY 2003, Org 0803</strong></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>20,429,482</td>
<td></td>
</tr>
<tr>
<td>5 International Fuel Tax Agreement</td>
<td>536</td>
<td>560,644</td>
<td></td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
<td>$38,111,538</td>
<td></td>
</tr>
</tbody>
</table>

#### 90—Division of Highways

(WV Code Chapters 17 and 17C)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>040</td>
</tr>
<tr>
<td>2 Maintenance</td>
<td>237</td>
</tr>
<tr>
<td>3 Maintenance, Contract Paving and</td>
<td></td>
</tr>
<tr>
<td>4 Secondary Road Maintenance</td>
<td>272</td>
</tr>
<tr>
<td>5 Bridge Repair and Replacement</td>
<td>273</td>
</tr>
<tr>
<td>6 Inventory Revolving</td>
<td>275</td>
</tr>
<tr>
<td>7 Equipment Revolving</td>
<td>276</td>
</tr>
<tr>
<td>8 General Operations</td>
<td>277</td>
</tr>
<tr>
<td>9 Interstate Construction</td>
<td>278</td>
</tr>
<tr>
<td>10 Other Federal Aid Programs</td>
<td>279</td>
</tr>
<tr>
<td>11 Appalachian Programs</td>
<td>280</td>
</tr>
<tr>
<td>12 Nonfederal Aid Construction</td>
<td>281</td>
</tr>
</tbody>
</table>
The above appropriations are to be expended in accordance with the provisions of chapters seventeen and seventeen-c of the code.

The commissioner of highways shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

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

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

Total TITLE II, Section 2—

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highway Litter Control</td>
<td>1,490,000</td>
</tr>
<tr>
<td>Total</td>
<td>1,075,658.00</td>
</tr>
<tr>
<td>Sec. 3. Appropriations from other funds. —From the funds designated there are hereby appropriated conditionally</td>
<td></td>
</tr>
</tbody>
</table>
upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand three.

**LEGISLATIVE**

*91—Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2003 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$209,620 001</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$5,040 004</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$63,377 010</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$432,762 099</td>
</tr>
<tr>
<td>Economic Loss Claim</td>
<td></td>
</tr>
<tr>
<td>Payment Fund (R)</td>
<td>$1,941,500 334</td>
</tr>
<tr>
<td>Total</td>
<td>$2,652,299</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

**EXECUTIVE**

*92—Chief Technology Officer Administration Fund*

(WV Code Chapter 5)

Fund 1028 FY 2003 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$1,872,961 099</td>
</tr>
<tr>
<td>EPSCOR Undergraduate Scientific</td>
<td></td>
</tr>
</tbody>
</table>
93—Auditor’s Office—

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2003 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$188,705</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,400</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>42,787</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>195,416</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$431,308</td>
</tr>
</tbody>
</table>

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

The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.

94—Auditor’s Office—

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2003 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$723,298</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,722</td>
</tr>
</tbody>
</table>
3 Employee Benefits ..................... 010 199,985
4 Unclassified .......................... 099  515,873
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  430,261
5 Total .................................. $ 2,624,096

98—Treasurer’s Office—
## Technology Support and Acquisition

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2003</th>
<th>Org</th>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1329</td>
<td>FY 2003</td>
<td>1300</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

### 99—Department of Agriculture—

#### Agriculture Fees Fund

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2003</th>
<th>Org</th>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1401</td>
<td>FY 2003</td>
<td>1400</td>
<td>Personal Services</td>
<td>001</td>
<td>$826,844</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>$10,550</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>$235,361</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>$574,802</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td></td>
<td>$1,647,557</td>
</tr>
</tbody>
</table>

### 100—Department of Agriculture—

#### West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2003</th>
<th>Org</th>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1408</td>
<td>FY 2003</td>
<td>1400</td>
<td>Student and Farm Loans—Total</td>
<td>235</td>
<td>$541,538</td>
</tr>
</tbody>
</table>

### 101—Department of Agriculture—

#### General John McCausland Memorial Farm

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2003</th>
<th>Org</th>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1409</td>
<td>FY 2003</td>
<td>1400</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1 Unclassified—Total 096 $80,133

2 The above appropriation shall be expended in accordance 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 $178,285
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 1,080,525
5 Total .............................. $ 2,354,013

DEPARTMENT OF ADMINISTRATION

108—Office of the Secretary—

Tobacco Settlement Fund
Appropriations

(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 Fund—Transfer shall be transferred to the Division of Health (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 Fund—Transfer .................. 903 $ 6,000,000
3 The above appropriation for Public Employees Insurance Reserve Fund—Transfer shall be transferred to the Medical 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 2,559,969
5 Total .................. $ 12,012,895
6 The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the division of information services and communications as provided by law.

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

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

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 ..................... 099 669,438
5 Total .......................... $ 4,061,207

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

112—WV Prosecuting Attorneys Institute

(WV Code Chapter 7)
APPROPRIATIONS

Fund 2521 FY 2003 Org 0228

1 Unclassified—Total (R) .................. 096 $ 637,905

2 Any unexpended balance remaining in the appropriations for Unclassified-Total (fund 2521, activity 096) at the close of the fiscal year 2002 is hereby reappropriated for expenditure 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 Unclassified—Total (fund 3937, activity 096) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during 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 ......................... 099 264,549
The above appropriation for the administrative expenses of the school building authority shall be paid from the interest earnings on debt service reserve accounts maintained on behalf of said authority.

---

115—State Department of Education—

**FFA-FHA Camp and Conference Center**

(WV Code Chapter 18)

Fund 3960 FY 2003 Org 0402

<table>
<thead>
<tr>
<th>Personal Services</th>
<th>001</th>
<th>$770,861</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>9,900</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>249,705</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,022,776</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$2,053,242</td>
</tr>
</tbody>
</table>

DEPARTMENT OF EDUCATION AND THE ARTS

116—Office of the Secretary—

**Lottery Education Fund Interest Earnings—**

**Control Account**

(WV Code Chapter 29)

Fund 3508 FY 2003 Org 0431

<table>
<thead>
<tr>
<th>Interest Earnings</th>
<th>532</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPSCOR</td>
<td>571</td>
<td>300,000</td>
</tr>
<tr>
<td>Research Challenge</td>
<td>502</td>
<td>900,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,200,000</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 3508, activity 096) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during 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 50,000
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

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$235,246</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,861</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>79,353</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>124,738</td>
</tr>
</tbody>
</table>

Total: $444,198

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

### 120—Division of Health—

**Tobacco Settlement Expenditure Fund**

(WV Code Chapter 4)

## Fund 5124 FY 2003 Org 0506

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABCA Tobacco Retailer Education Program—Transfer</td>
<td>239</td>
<td>$200,000</td>
</tr>
<tr>
<td>Operations (R)</td>
<td>335</td>
<td>32,149,408</td>
</tr>
<tr>
<td>Tobacco Education Program (R)</td>
<td>906</td>
<td>$5,650,592</td>
</tr>
</tbody>
</table>

Total: $38,000,000

Any unexpended balances remaining in the above appropriations for Institutional Facilities Operations (fund 5124, activity 335), and Tobacco Education Program (fund 5124, activity 906) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

From the above appropriation for ABCA Tobacco Retailer Education Program—Transfer, $200,000 shall be transferred to the Alcohol Beverage Control Administration (fund 7352, org 0708) for expenditure.
The secretary of the department of health and human resources, prior to the beginning of the fiscal year, shall file with the legislative auditor and the department of administration an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation for Institutional Facilities Operations. The secretary shall also, within fifteen days after the close of the six-month period of said fiscal year, file with the legislative auditor and the department of administration an itemized report of expenditures made during the preceding six-month period.

Additional funds have been appropriated in fund 0525, fiscal year 2003, organization 0506, and fund 5156, fiscal year 2003, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health—hospital services revenue account (fund 5156, activity 335) and consolidated medical services fund (fund 0525, activity 335), on July 1, 2002, the sum of two hundred thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

121—Division of Health—

Vital Statistics

(WV Code Chapter 16)
### Hospital Services Revenue Account

**(Special Fund)**

_(Capital Improvement, Renovation and Operations)_

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Fund 5156 FY 2003 Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service (R) .......... 040</td>
</tr>
<tr>
<td>2 Institutional Facilities</td>
</tr>
<tr>
<td>3 Operations (R) ............. 335</td>
</tr>
<tr>
<td>4 Medical Services Trust Fund—</td>
</tr>
<tr>
<td>5 Transfer (R) ............... 512</td>
</tr>
<tr>
<td>6 Total .....................</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003, except for fund 5156, activity 512 (fiscal year 2001) which shall expire on June 30, 2002.

The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by section fifteen-a, article one, chapter sixteen of the code, and shall be used for operating expenses and for improvements in connection with existing facilities and bond payments.
The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations line to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 2003, organization 0506) and the tobacco settlement expenditure fund (fund 5124, fiscal year 2003, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335) and the tobacco settlement expenditure fund (fund 5124, activity 335), on July 1, 2002, the sum of two hundred thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

123—Division of Health—

Laboratory Services

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Fund 5163 FY 2003 Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>3</td>
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<td>4</td>
</tr>
<tr>
<td>5</td>
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</table>
### 124—Division of Health—
#### Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2003 Org 0506

<table>
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<th>Item</th>
<th>Description</th>
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<tbody>
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<td>1</td>
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<td>001</td>
<td>$201,430</td>
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<td>Annual Increment</td>
<td>004</td>
<td>2,800</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>79,197</td>
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<td>4</td>
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<td>89,585</td>
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<td>$373,012</td>
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</table>

### 125—Division of Health—
#### Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2003 Org 0506

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<th>Item</th>
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<td>1</td>
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### 126—Division of Health—
#### Lead Abatement Fund

(WV Code Chapter 16)

Fund 5204 FY 2003 Org 0506

<table>
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<th>Description</th>
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</table>

### 127—WV Board of Medicine
APPROPRIATIONS

(WV Code Chapter 30)

Fund 5106 FY 2003 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tr>
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<td>$1,170,080</td>
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</table>

128—West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 5375 FY 2003 Org 0507

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<th>Amount</th>
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<td>$4,731,290</td>
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</table>

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

129—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2003 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
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<tr>
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<td>$148,603,768</td>
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</table>

From the above appropriation, an amount not to exceed two hundred thousand dollars shall be transferred to a special revenue account in the treasury for use by the department of health and human resources for administrative purposes. The
remainder of all moneys deposited in the fund shall be transferred to the West Virginia medical services fund.

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

Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 5094, activity 096) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003, except for fund 5094, activity 096 (fiscal 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
  Reserve Fund- Transfer ............... 903 6,000,000
6 Match Drop ............................ 585 10,472,000
7 Total ................................... $ 39,896,996

The Match Drop line item above shall be used in conjunction with funds appropriated to the division of human services
in the Medical Services line item (fund 0403, activity 189).

The remainder of all moneys deposited in the fund shall be transferred to the division of human services accounts.

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)
<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Budget</th>
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</thead>
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<tr>
<td>6003</td>
<td>2003</td>
<td>0601</td>
<td>Unclassified—Total</td>
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<tr>
<td>6057</td>
<td>2003</td>
<td>0603</td>
<td>Unclassified—Total</td>
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<tr>
<td>6362</td>
<td>2003</td>
<td>0608</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
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<td></td>
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<td>Employee Benefits</td>
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<td></td>
<td></td>
<td>Unclassified</td>
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<tr>
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<td></td>
<td></td>
<td>Total</td>
<td>$305,267</td>
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<tr>
<td>6501</td>
<td>2003</td>
<td>0612</td>
<td>Personal Services</td>
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<td></td>
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<td>Annual Increment</td>
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<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>$342,327</td>
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</tbody>
</table>

135—State Armory Board—

General Armory Fund

(WV Code Chapter 15)

136—West Virginia Division of Corrections—

Parolee Supervision Fees

(WV Code Chapter 62)

137—West Virginia State Police—

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)
### Appropriations

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>595,036</td>
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<tr>
<td>2</td>
<td>BRIM Premium</td>
<td>913</td>
<td>99,054</td>
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<td>3</td>
<td>Total</td>
<td></td>
<td>$2,175,484</td>
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</tbody>
</table>

7. The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

#### 138—West Virginia State Police—

**Drunk Driving Prevention Fund**

(WV Code Chapter 15)

**Fund 6513 FY 2003 Org 0612**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>960,531</td>
</tr>
<tr>
<td>2</td>
<td>BRIM</td>
<td>913</td>
<td>50,586</td>
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<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$1,011,117</td>
</tr>
</tbody>
</table>

4. The total amount of this appropriation shall be paid from the special revenue fund out of receipts collected pursuant to sections nine-a and sixteen, article fifteen, chapter eleven of the code and paid into a revolving fund account in the state treasury.

#### 139—West Virginia State Police—

**Surplus Real Property Proceeds Fund**

(WV Code Chapter 15)

**Fund 6516 FY 2003 Org 0612**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>099</td>
<td>480,267</td>
</tr>
<tr>
<td>2</td>
<td>BRIM Premium</td>
<td>913</td>
<td>25,291</td>
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<tr>
<td>3</td>
<td>Total</td>
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<td>$505,558</td>
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</tbody>
</table>
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 17,706
3 Total ........................... $ 1,353,891

Any unexpended balances remaining in the appropriations for Unclassified—Total (fund 6519, activity 096), and Unclassified (fund 6519, activity 099) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal 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 6,066
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
### Appropriations

143—West Virginia State Police—

*State Police Academy Post Exchange*

(WV Code Chapter 15)

Fund 6535 FY 2003 Org 0612

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$45,000</td>
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</tbody>
</table>

144—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2003 Org 0615

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,215,646</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$11,700</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$379,530</td>
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<tr>
<td>Debt Service</td>
<td>040</td>
<td>$9,000,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$672,126</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$11,279,002</strong></td>
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</table>

145—Division of Veterans' Affairs—

*Veterans' Home*

(WV Code Chapter 19A)

Fund 6754 FY 2003 Org 0618

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
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<td>$466,000</td>
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</tbody>
</table>

146—Fire Commission—

*Fire Marshal Fees*

(WV Code Chapter 29)
### APPROPRIATIONS

**Fund 6152 FY 2003 Org 0619**

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1</td>
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<td><strong>Total</strong></td>
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Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2002 is hereby available for expenditure 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**

<table>
<thead>
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<th>Item</th>
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</thead>
<tbody>
<tr>
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<td>$2,000,000</td>
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### 148—Criminal Justice Services—

**Court Security Fund**

(Executive Order)

**Fund 6804 FY 2003 Org 0620**

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
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<td>$1,000,000</td>
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</table>

**DEPARTMENT OF TAX AND REVENUE**

### 149—Division of Banking—

**Lending and Credit Rate Board**

(WV Code Chapter 47A)
### 150—Division of Banking

(WV Code Chapter 31A)

<table>
<thead>
<tr>
<th>Fund 3040 FY 2003 Org 0303</th>
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<tr>
<td></td>
<td>2</td>
<td>Employee Benefits</td>
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151—Tax Division—

*Cemetery Company Account*

(WV Code Chapter 35)

<table>
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<tr>
<th>Fund 7071 FY 2003 Org 0702</th>
<th>1</th>
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<tbody>
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<td>100</td>
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<td>$</td>
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152—Tax Division—

*Special Audit and Investigative Unit*

(WV Code Chapter 11)
## Appropriations

### Fund 7073 FY 2003 Org 0702

<table>
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### Fund 7150 FY 2003 Org 0704

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<td>$2,500</td>
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### Fund 7151 FY 2003 Org 0704

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153—**Insurance Commissioner**—

**Examination Revolving Fund**

(WV Code Chapter 33)

154—**Insurance Commissioner**—

**Consumer Advocate**

(WV Code Chapter 33)
184 \textbf{APPROPRIATIONS} [Ch. 13

\textit{155—Insurance Commissioner}

(WV Code Chapter 33)

\textbf{Fund 7152 FY 2003 Org 0704}

1 Personal Services \hspace{1cm} 001 \hspace{1cm} $2,685,953
2 Annual Increment \hspace{1cm} 004 \hspace{1cm} 33,950
3 Employee Benefits \hspace{1cm} 010 \hspace{1cm} 766,382
4 Unclassified \hspace{1cm} 099 \hspace{1cm} 1,589,722
5 Total \hspace{1cm} \hspace{1cm} \hspace{1cm} $5,076,007

The total amount of this appropriation shall be paid from a special revenue fund out of collections of fees and charges as provided by law.

\textit{156—Racing Commission—Relief Fund}

(WV Code Chapter 19)

\textbf{Fund 7300 FY 2003 Org 0707}

1 Medical Expenses—Total \hspace{1cm} 245 \hspace{1cm} $57,000

The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

\textit{157—Racing Commission—Administration and Promotion}
### Ch. 13] APPROPRIATIONS 185

(WV Code Chapter 19)

Fund 7304 FY 2003 Org 0707

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<td>004</td>
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<td><strong>Total</strong></td>
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</table>

158—Racing Commission—

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2003 Org 0707

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<tr>
<td>Personal Services</td>
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<td><strong>Total</strong></td>
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159—Racing Commission—

Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2003 Org 0707

<table>
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<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Unclassified—Total</td>
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</tr>
</tbody>
</table>

160—Alcohol Beverage Control Administration—

Wine License Special Fund

(WV Code Chapter 60)
186

APPROPRIATIONS

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 ...................... 099 156,016
5 Total .......................... $ 462,790

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services line item for 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 2,144,074
5 Total (R) ......................... $ 7,222,081

Any unexpended balance remaining in Unclassified (fund 7352, activity 099) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

From the above appropriation an amount of $500,000 shall be used for the Tobacco/Alcohol Education Program. To the extent permitted by law, classified exempt positions shall be provided from Personal Services line item for the educator-inspector positions to be used in the education and enforcement activities relating to underage tobacco and alcohol use and sales.
The total amount of this appropriation shall be paid from a special revenue fund out of liquor revenues.

The above appropriation includes the salary of the commissioner and the salaries, expenses and equipment of administrative offices, warehouses and inspectors.

There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

162—Division of Motor Vehicles—

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Fund 8213 FY 2003 Org 0802

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<td>004</td>
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<td>Employee Benefits</td>
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163—Division of Motor Vehicles—

Driver Rehabilitation

(WV Code Chapter 17C)

Fund 8214 FY 2003 Org 0802

<table>
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<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>182,194</td>
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</table>
APPROPRIATIONS

164—Division of Motor Vehicles—

Insurance Certificate Fees

(WV Code Chapter 20)

Fund 8215 FY 2003 Org 0802

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>241,926</td>
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<td>4</td>
<td>Unclassified</td>
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<td>$943,461</td>
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</table>

165—Division of Motor Vehicles—

Motorboat Licenses

(WV Code Chapter 20)

Fund 8216 FY 2003 Org 0802

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
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</thead>
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<tr>
<td>1</td>
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</table>

166—Division of Motor Vehicles—

Returned Check Fees

(WV Code Chapter 17)

Fund 8217 FY 2003 Org 0802

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Budget</th>
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<tr>
<td>1</td>
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<td>$16,000</td>
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167—Division of Motor Vehicles—

Dealer Recovery Fund

(WV Code Chapter 17)
APPROPRIATIONS

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 .......................... 099 280,553
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 ....................... 099 176,925
5 Total .............................. $ 228,156

The above appropriation shall be used in accordance with 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 Energy Assistance—Total (fund 3144, activity 647) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

174—West Virginia Development Office—

Office of Coal Field Community Development
**APPROPRIATIONS**

(WV Code Chapter 5B)

**Fund 3162 FY 2003 Org 0307**

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<th>Description</th>
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<td>Any unexpended balance remaining in the above appropriation for Unclassified—Total (fund 3162, activity 096) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.</td>
<td></td>
<td></td>
</tr>
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</table>

**175—Division of Labor—**  
*Contractor Licensing Board Fund*

(WV Code Chapter 21)

**Fund 3187 FY 2003 Org 0308**

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$12,618</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
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<td>$595,112</td>
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<tr>
<td>5</td>
<td>Total</td>
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<td>$1,891,686</td>
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</table>

**176—Division of Labor—**  
*Elevator Safety Act*

(WV Code Chapter 21)

**Fund 3188 FY 2003 Org 0308**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$162,700</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$60,306</td>
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<td>4</td>
<td>Unclassified</td>
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</table>
### Appropriations

177—Division of Labor—

**Crane Operator Certification Fund**

(WV Code Chapter 21)

Fund 3191 FY 2003 Org 0308

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$77,834</td>
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</table>

178—Division of Labor—

**Amusement Rides/Amusement Attraction Safety Fund**

(WV Code Chapter 21)

Fund 3192 FY 2003 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$76,854</td>
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</table>

179—Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2003 Org 0310

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$8,197,420</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$140,856</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$2,825,193</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$2,141,370</td>
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<tr>
<td>5</td>
<td>Capital Improvements and</td>
<td>248</td>
<td>$2,337,986</td>
</tr>
<tr>
<td>6</td>
<td>Land Purchase (R)</td>
<td>248</td>
<td>$2,337,986</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
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<td>$15,642,825</td>
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</tbody>
</table>

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.
Any unexpended balance remaining in the appropriation for Capital Improvements and Land Purchase (fund 3200, activity 248) at the close of the fiscal year 2002 is hereby 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 099 100,540
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
<table>
<thead>
<tr>
<th>#</th>
<th>Appropriations</th>
<th>FY 2003 Org 0310</th>
</tr>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
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</table>

183—Division of Natural Resources—

Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2003 Org 0310

<table>
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<th>Appropriations</th>
<th>FY 2003 Org 0310</th>
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<tbody>
<tr>
<td>1</td>
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</table>

184—Division of Natural Resources—

Recycling Assistance Fund

(WV Code Chapter 20)

Fund 3254 FY 2003 Org 0310

<table>
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<tbody>
<tr>
<td>1</td>
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<td>001 $ 201,775</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010 76,480</td>
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<tr>
<td>4</td>
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<td>099 1,873,801</td>
</tr>
<tr>
<td>5</td>
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<td>$ 2,155,019</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 3254, activity 099) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003 with the exception of fund 3254, activity 099 (fiscal year 2000 and fiscal year 2001) which shall expire on June 30, 2002.

185—Division of Natural Resources—

Whitewater Advertising and Promotion Fund
BUREAU OF EMPLOYMENT PROGRAMS

Workers' Compensation Fund

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Solid Waste Management Board
### Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>004</td>
<td>3,700</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>1,933,789</td>
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#### 188—Division of Environmental Protection—

**Special Reclamation Fund**

(WV Code Chapter 22A)

Fund 3321 FY 2003 Org 0313

<table>
<thead>
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<th>Description</th>
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#### 189—Division of Environmental Protection—

**Oil and Gas Reclamation Trust**

(WV Code Chapter 22B)

Fund 3322 FY 2003 Org 0313

<table>
<thead>
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<th></th>
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<tr>
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<td>$300,000</td>
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#### 190—Division of Environmental Protection—

**Oil and Gas Operating Permits**

(WV Code Chapter 22B)

Fund 3323 FY 2003 Org 0313

<table>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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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 3,333,800
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 ..................... 099 130,370
5 Total ........................ $ 531,407

193—Division of Environmental Protection—

Hazardous Waste Emergency and Response Fund
### Fund 3331 FY 2003 Org 0313

<table>
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<td><strong>Total</strong></td>
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### 194—Division of Environmental Protection—

**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

### Fund 3332 FY 2003 Org 0313

<table>
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### 195—Division of Environmental Protection—

**Solid Waste Enforcement Fund**

(WV Code Chapter 20)

### Fund 3333 FY 2003 Org 0313

<table>
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<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,560,096</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$25,675</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$499,438</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$627,750</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,712,959</strong></td>
</tr>
</tbody>
</table>
### 196—Division of Environmental Protection—

**Fees and Operating Expenses**

*(WV Code Chapter 16)*

**Fund 3336 FY 2003 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$3,780,138</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>26,840</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>1,181,228</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>2,163,172</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$7,151,378</td>
</tr>
</tbody>
</table>

### 197—Division of Environmental Protection—

**Environmental Laboratory Certification Fund**

*(WV Code Chapter 22)*

**Fund 3340 FY 2003 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$119,559</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>1,850</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>43,190</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>61,252</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$225,851</td>
</tr>
</tbody>
</table>

### 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 | 47,362   |
| **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 |

Any unexpended balance remaining in the appropriation for the West Virginia University Health Sciences Center is hereby reappropriated for expenditure during the fiscal year 2003 with the exception of fiscal year 1997, fiscal year 1998 and fiscal year 1999 which shall expire on June 30, 2002.
Ch. 13]  

APPROPRIATIONS 201

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

<table>
<thead>
<tr>
<th></th>
<th>Debt Service (R) . . . . . . . . . . . . . . . . . .</th>
<th>040</th>
<th>$ 5,632,612</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>General Capital Expenditures (R) . . . . . . . . . .</td>
<td>306</td>
<td><strong>$5,362,197</strong></td>
</tr>
<tr>
<td>3</td>
<td>Total . . . . . . . . . . . . . . . . . . . . . . . . .</td>
<td></td>
<td><strong>$10,994,809</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations are hereby reappropriated for expenditure during the fiscal year 2003.

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

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at 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) .............. 386 387,975
5 Total ...................................... $ 29,009,883

Any unexpended balances remaining in the appropriations
are hereby reappropriated for expenditure during the fiscal year
2003.

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

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

204—Higher Education Policy Commission—

1977 State System Registration Fee Refund Revenue Const-
struction Fund

(WV Code Chapters 18 and 18B)

Fund 4905 FY 2003 Org 0442
Any unexpended balance remaining in the appropriation at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

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

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to section eight, article twelve-b, chapter eighteen of the code, which have since been refunded.
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 88,687
5 Total .............................. $ 151,164
The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by article twenty-nine-a, chapter sixteen of the code.

209—Municipal Bond Commission

(WV Code Chapter 13)

<table>
<thead>
<tr>
<th>Fund 7253 FY 2003 Org 0706</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ........ 001 $161,262</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004 2,950</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010 58,504</td>
</tr>
<tr>
<td>4 Unclassified .............. 099 77,990</td>
</tr>
<tr>
<td>5 Total ..................... $300,706</td>
</tr>
</tbody>
</table>

210—WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

<table>
<thead>
<tr>
<th>Fund 8517 FY 2003 Org 0906</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total .......... 096 $348,090</td>
</tr>
</tbody>
</table>

211—WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

<table>
<thead>
<tr>
<th>Fund 8520 FY 2003 Org 0907</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total .......... 096 $882,136</td>
</tr>
</tbody>
</table>

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 54,923
7 Total ................................ $ 13,238,552

The total amount of this appropriation shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to spend up to $250,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division account due to passage of enrolled house bill no. 2715, regular session, 1997.

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 89,378
5 Total ............................. $ 289,622

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.
214—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2003 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,582,433</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>34,723</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>512,650</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>615,301</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,745,107</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

215—Public Service Commission—

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2003 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$480,577</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,800</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>130,883</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>290,671</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>2,078</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$909,009</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the public service commission.
### 216—Real Estate Commission

(WV Code Chapter 47)

Fund 8635 FY 2003 Org 0927

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$340,695</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$4,900</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$102,816</td>
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<td>Unclassified</td>
<td>099</td>
<td>$237,335</td>
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<tr>
<td>Total</td>
<td></td>
<td>$685,746</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid out of 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$54,945</td>
</tr>
</tbody>
</table>

### 218—WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2003 Org 0935

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$114,642</td>
</tr>
</tbody>
</table>

### 219—WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2003 Org 0936

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$20,000</td>
</tr>
</tbody>
</table>
220—Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2003 Org 0938

1 Unclassified—Total .......................... 096 $ 41,553

2 Total TITLE II, Section 3—
3 Other Funds .......................... $ 690,662,462

Sec. 4. Appropriations from lottery net profits.—Net profits of the lottery are to be deposited by the director of the lottery to the following accounts in the amounts indicated. The director of the lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252 and Fund 3963 pursuant to section eighteen, article twenty-two, chapter twenty-nine of the code, the director of the lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which the appropriation is made for Fund 3167, and is authorized to transfer any such amounts to Fund 3167 for that purpose. Upon receipt of reimbursement of amounts so transferred, the director of the lottery shall deposit the reimbursement amounts to the following 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
## Lottery Funds Appropriations

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service—Total</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

### Division of Tourism

(WV Code Chapter 5B)

**Fund 3067 FY 2003 Org 0304**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism—Telemarketing Center</td>
<td>$100,000</td>
</tr>
<tr>
<td>Tourism—Advertising (R)</td>
<td>$5,000,942</td>
</tr>
<tr>
<td>State Parks and Recreation Advertising (R)</td>
<td>$760,000</td>
</tr>
<tr>
<td>Capitol Complex—Capital Outlay</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>WV Film Development Office</td>
<td>$104,215</td>
</tr>
<tr>
<td>Motor Sports Council</td>
<td>$100,000</td>
</tr>
<tr>
<td>Tourism—Special Projects</td>
<td>$1,700,000</td>
</tr>
<tr>
<td>Tourism—Unclassified (R)</td>
<td>$3,722,882</td>
</tr>
<tr>
<td>Total</td>
<td>$12,488,039</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Tourism—Advertising (fund 3067, activity 618), State Parks and Recreation Advertising (fund 3067, activity 619), Tourism—Unclassified (fund 3067, activity 662), Tourism—Special Projects (fund 3067, activity 859), and Tourism—Unclassified—Lottery Surplus (fund 3067, activity 773) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

### Division of Natural Resources

(WV Code Chapter 20)

**Fund 3267 FY 2003 Org 0310**
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$2,581,776</td>
</tr>
<tr>
<td>2</td>
<td>Pricketts Fort State Park</td>
<td>324</td>
<td>120,000</td>
</tr>
<tr>
<td>3</td>
<td>Non-Game Wildlife</td>
<td>527</td>
<td>550,000</td>
</tr>
<tr>
<td>4</td>
<td>Blackwater Falls State Park</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>—Land Acquisition</td>
<td>544</td>
<td>200,000</td>
</tr>
<tr>
<td>6</td>
<td>West Virginia Stream</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Partners Program</td>
<td>637</td>
<td>100,000</td>
</tr>
<tr>
<td>8</td>
<td>State Parks—Special Projects (R)</td>
<td>860</td>
<td>0</td>
</tr>
<tr>
<td>9</td>
<td>State Parks Repairs, Renovations, Maintenance and Life</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Safety Repairs (R)</td>
<td>911</td>
<td>0</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td></td>
<td>$3,551,776</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, activity 099), State Recreation Area Improvements (fund 3267, activity 307), Capital Outlay—Parks (fund 3267, activity 288), Parks Operations—Unclassified (fund 3267, activity 645), State Parks—Special Projects (fund 3267, activity 860), Computerized Lodging Reservation System (fund 3267, activity 910), and State Parks Repairs, Renovations, Maintenance and Life Safety Repairs (fund 3267, activity 911) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

Any unexpended balance remaining in the appropriation for Canaan Valley—Land Acquisition (fund 3267, activity 710) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003 and redesignated Blackwater Falls State Park—Land Acquisition (fund 3267, 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
   Modernization (R) ......................... 298 1,000,000
7 READS Program ............................... 365 300,000
8 MATH Program ............................... 368 300,000
9 Vocational Education
10 Equipment Replacement ................. 393 1,019,750
11 Bridges Program .............................. 394 300,000
12 Assessment Program ...................... 396 5,149,407
13 Employment Programs Rate Relief ....... 401 758,703
14 Technology and Telecommunications
15 Initiative (R) ............................... 596 2,013,733
16 Virtual Schools on the Internet ......... 178 450,000
17 Micro Computer Network ................. 506 148,675
18 Teacher Reimbursement ................... 573 150,000
19 Teacher Relocation ......................... 574 50,000
20 National Science Foundation Match/WV
21 Science ....................................... 578 300,000
22 Program Modernization .................... 305 725,000
23 Educational Developments ................ 823 1,500,000
24 Three-Tier Funding ......................... 411 1,000,000
25 Educational Enhancements ................. 695 2,427,000
26 Technology Demonstration
27 Project (R) ................................. 639 150,000
28 Total ........................................ $36,833,228

Any unexpended balances remaining in the appropriations
for Computer Basic Skills (fund 3951, activity 145),
S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair
and Modernization (fund 3951, activity 298), Computer Basic
Skills—Total (fund 3951, activity 567), Technology and
Telecommunications Initiative (fund 3951, activity 596),
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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
<table>
<thead>
<tr>
<th></th>
<th>Project</th>
<th>Code</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Hospitality Training</td>
<td>600</td>
<td>533,500</td>
</tr>
<tr>
<td>11</td>
<td>Energy Express</td>
<td>861</td>
<td>500,000</td>
</tr>
<tr>
<td>12</td>
<td>Teacher Education Partnerships</td>
<td>576</td>
<td>600,000</td>
</tr>
<tr>
<td>13</td>
<td>College Readiness</td>
<td>579</td>
<td>200,000</td>
</tr>
<tr>
<td>14</td>
<td>LATA Access</td>
<td>580</td>
<td>1,100,000</td>
</tr>
<tr>
<td>15</td>
<td>Challenger Learning Center</td>
<td>862</td>
<td>60,000</td>
</tr>
<tr>
<td>16</td>
<td>WV Humanities Council</td>
<td>168</td>
<td>350,000</td>
</tr>
<tr>
<td>17</td>
<td>Jobs for West Virginia Graduates</td>
<td>863</td>
<td>0</td>
</tr>
<tr>
<td>18</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 4,143,550</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3508, activity 099), Technical Preparation Program (fund 3508, activity 440), Arts Programs (fund 3508, activity 500), and WV2001 Project (fund 3508, activity 836) at the close of fiscal year 2002 are hereby reappropriated 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

<table>
<thead>
<tr>
<th></th>
<th>Project</th>
<th>Code</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Huntington Symphony</td>
<td>027</td>
<td>$ 75,000</td>
</tr>
<tr>
<td>2</td>
<td>Martin Luther King, Jr.</td>
<td>031</td>
<td>14,550</td>
</tr>
<tr>
<td>3</td>
<td>Holiday Celebration</td>
<td>122</td>
<td>2,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Fairs and Festivals</td>
<td>246</td>
<td>1,001,884</td>
</tr>
<tr>
<td>5</td>
<td>Archeological Curation/Capital</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Improvements (R)</td>
<td>311</td>
<td>500,000</td>
</tr>
<tr>
<td>7</td>
<td>Historic Preservation Grants (R)</td>
<td>312</td>
<td>300,000</td>
</tr>
<tr>
<td>8</td>
<td>West Virginia Public Theater</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>George Tyler Moore Center for the Study of the Civil War</td>
<td>397</td>
<td>70,000</td>
</tr>
<tr>
<td>10</td>
<td>Theater Arts of West Virginia</td>
<td>464</td>
<td>420,000</td>
</tr>
<tr>
<td>11</td>
<td>Grants for Competitive</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

| 13 | Arts Program (R) | 824 | 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 | 300,000 |
| 19 | Total | | 5,916,434 |

Any unexpended balances remaining in the appropriations for Archeological Curation/Capital Improvements (fund 3534, activity 246), Historic Preservation Grants (fund 3534, activity 311), Capital Outlay, Repairs and Equipment (fund 3534, activity 589), Grants for Competitive Arts Program (fund 3534, activity 624), Independence Hall (fund 3534, activity 812), and Project ACCESS (fund 3534, activity 865) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

### 228—Library Commission—

**Lottery Education Fund**

*(WV Code Chapter 10)*

Fund 3559 FY 2003 Org 0433

| Services to State Institutions | 180 | $0 |
| Books and Films | 179 | 150,000 |
| Grants to Public Libraries | 182 | 7,348,884 |
| Libraries—Special Projects | 625 | 1,100,000 |
| Infomine Network | 884 | 1,017,664 |
| Total | | $9,616,548 |

### 229—Educational Broadcasting Authority—

**Lottery Education Fund**
### Appropriations

**Fund 3587 FY 2003 Org 0439**

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Digital Conversion (R)</td>
<td>247</td>
<td>$2,400,000</td>
</tr>
<tr>
<td>Star Schools</td>
<td>509</td>
<td>242,500</td>
</tr>
<tr>
<td>Mountain Stage</td>
<td>249</td>
<td><strong>200,000</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,842,500</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Digital Conversion (fund 3587, activity 247) at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

### Bureau of Senior Services

**Fund 5405 FY 2003 Org 0508**

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Programs Service</td>
<td>200</td>
<td>$2,475,250</td>
</tr>
<tr>
<td>Delivery Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
<td>700,000</td>
</tr>
<tr>
<td>Nutrition Services for the Elderly</td>
<td>337</td>
<td>700,000</td>
</tr>
<tr>
<td>Senior Citizen Centers</td>
<td>462</td>
<td>4,500,000</td>
</tr>
<tr>
<td>and Programs (R)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct Services</td>
<td>481</td>
<td>2,800,000</td>
</tr>
<tr>
<td>Transfer to Division of Human Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>for Health Care and Title XIX Waiver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>for Senior Citizens</td>
<td>539</td>
<td>13,000,000</td>
</tr>
<tr>
<td>Senior Services Medicaid Transfer</td>
<td>871</td>
<td>10,300,000</td>
</tr>
<tr>
<td>Legislative Initiatives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>for the Elderly</td>
<td>904</td>
<td>2,700,000</td>
</tr>
<tr>
<td>Long Term Care Ombudsmen</td>
<td>905</td>
<td><strong>96,000</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$37,271,250</strong></td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Senior Citizen Centers and Programs (fund 5405, activity 462), Holly Grove Mansion Restoration (fund 5405, activity 685), and Senior Citizens Centers, Maintenance and Repairs (fund 5405, activity 848) at the close of the fiscal year 2002 are hereby reappropriated for expenditure during the fiscal year 2003.

The above appropriation for Health Care and Title XIX Waiver for Senior Citizens along with the federal monies generated thereby shall be used for reimbursement for services provided under the program. Further, the program shall be preserved within the aggregate of these funds.

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 Program—Student Awards (R) | 167 | 150,000 |
| 7 | School of Osteopathic Medicine (R) | 172 | 7,113,795 |
| 8 | School of Osteopathic Medicine BRIM Subsidy (R) | 403 | 100,277 |
| 10 | Rural Health Initiative - Medical Schools Support | 581 | 536,161 |
Vice Chancellor for Health Sciences -
Rural Health Initiative Program and
Site Support ............................ 595 868,000
Health Sciences Scholarship (R) ...... 176 148,500
Incentive for Institution Contribution
to State Priorities ...................... 404 550,000
Higher Education—
Special Projects (R) ..................... 488 3,884,800
MA Public Health Program and
Health Science Technology (R) ...... 623 75,443
HEAPS Grant Program (R) ............. 867 3,000,000
WV Engineering, Science, and
Technology Scholarship
Program (R) ............................. 868 500,000
Health Sciences Career
Opportunities Program (R) .......... 869 75,580
Research Challenge ...................... 502 800,000
HSTA Program (R) ...................... 870 1,154,379
Total ..................................... $ 41,418,849

Any unexpended balances remaining in the appropriations
at the close of fiscal year 2002 are hereby reappropriated for
expenditure during the fiscal year 2003.

Total TITLE II, Section 4—
Lottery Revenue ........................ $ 182,082,174

Sec. 5. Appropriations from state excess lottery revenue
fund.—In accordance with section eighteen-a, article twenty-
two, chapter twenty-nine of the code, the following appropria-
tions shall be deposited and disbursed by the director of the
lottery to the following accounts in this section in the amounts
indicated.

232—Lottery Commission—

General Purpose Account
Fund 7206 FY 2003 Org 0705

Activity          Funds

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
Scholarship Fund (fund 4296, org 0441) established by chapter eighteen-c, article seven, section seven.

235—School Building Authority

Fund 3514 FY 2003 Org 0402

Unclassified—Total—Transfer (R) . . . . 402 $ 20,000,000

Any unexpended balance remaining in the appropriation at the close of fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

The above appropriation for Unclassified—Total—Transfer (activity 402) shall be transferred to the School Building Debt Service Fund (fund 3515, org 0402) established by chapter eighteen, article nine-d, section six.

236—West Virginia Infrastructure Council

Fund 3390 FY 2003 Org 0316

Unclassified—Total—Transfer (R) . . . . 402 $ 40,000,000

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

The above appropriation for Unclassified—Total—Transfer (activity 402) shall be transferred to the West Virginia Infrastructure Fund (fund 3384, org 0316) created by chapter thirty-one, article fifteen-a, section nine of the code.

237—Higher Education Improvement Fund

Fund 4297 FY 2003 Org 0441

Unclassified—Total (R) . . . . . . . . . . . . . 096 $ 10,000,000
Any unexpended balance remaining in the appropriation at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

### 238—State Park Improvement Fund

**Fund 3277 FY 2003 Org 0310**

| Unclassified—Total (R) | 096 | $5,000,000 |

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2002 is hereby reappropriated for expenditure during the fiscal year 2003.

### 239—Governor’s Office—Civil Contingent Fund

*(WV Code Chapter 5)*

**Fund 1038 FY 2003 Org 0100**

<table>
<thead>
<tr>
<th>Civil Contingent Fund (R)</th>
<th>114</th>
<th>$3,500,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business and Economic Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stimulus</td>
<td>586</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$5,000,000</td>
</tr>
</tbody>
</table>

### 240—Lottery Commission—Refundable Credit

**Fund 7207 FY 2003 Org 0705**

| Unclassified—Total—Transfer | 402 | $0 |

The above appropriation for Unclassified—Total—Transfer (activity 402) shall be transferred to the General Revenue Fund to provide reimbursement for the refundable
credit allowable under chapter eleven, article twenty-two, section twenty-one of the code. The amount of the required transfer shall be determined solely by the state tax commissioner and shall be completed by the director of the lottery upon the commissioners request.

241—Lottery Commission—

Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2003 Org 0705

| Unclassified—Total—Transfer | 402 | $55,700,000 |

The above appropriation for Unclassified—Total—Transfer (activity 402) shall be transferred to the General Revenue Fund only after all funding required by chapter twenty-nine, article twenty-two, section eighteen-a of the code has been satisfied as determined by the director of the lottery.

Total TITLE II, Section 5—Excess Lottery Funds $229,700,000

Sec. 6. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfilment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand three.

LEGISLATIVE

242—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2003 Org 2300
## Executive

### 243—Governor’s Office—

**Governor’s Cabinet on Children and Families**

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total . . . . . . . . . . . . . . . . 096</td>
<td>$ 922,453</td>
</tr>
</tbody>
</table>

### 244—Governor’s Office—

**Office of Economic Opportunity**

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total . . . . . . . . . . . . . . . . 096</td>
<td>$ 450,000</td>
</tr>
</tbody>
</table>

### 245—Governor’s Office—

**Commission for National and Community Service**

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total . . . . . . . . . . . . . . . . 096</td>
<td>$ 5,000,000</td>
</tr>
</tbody>
</table>

### 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
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
259—Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2003 Org 0439

1 Unclassified—Total .................. 096 $ 1,932,637

260—State Board of Rehabilitation—

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2003 Org 0932

1 Unclassified—Total .................. 096 $ 2,955,000

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 $ 46,323,075

262—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2003 Org 0506
### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

#### 266—Adjutant General—State Militia

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2003</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8726</td>
<td></td>
<td>0603</td>
</tr>
</tbody>
</table>

1 Unclassified—Total .................... 096 $ 29,471,873
APPROPRIATIONS

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
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
APPROPRIATIONS

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 of the Social Security Act, as amended, and the provisions of section nine, article nine, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the above appropriation to Unclassified shall be used by the bureau of employment programs for the specific purpose of administration of the state’s unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

MISCELLANEOUS BOARDS AND COMMISSIONS

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)
Sec. 7. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 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
Ch. 13]  

APPROPRIATIONS  

235  

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

Sec. 8. Awards for claims against the state.—There are hereby appropriated for fiscal year 2003, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $3,987,764 special revenue fund in the amount of $83,548, state roads funds in the amount of $702,429 and non-general revenue funds in the amount of $1,896,887 for payment of claims against the state.

Sec. 9. Appropriations from surplus accrued. — The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2003 out of surplus funds only, accrued from the fiscal year ending the thirtieth day of June, two thousand two, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of the thirty-first day of July, two thousand two from the fiscal year ending the thirtieth day of June two thousand two.

303—West Virginia Development Office—

(WV Code Chapter 5B)
Sec. 10. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year two thousand three appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter five-a of the code, with due consideration to the digest of legislative intent of the budget bill prepared pursuant to article one, chapter four, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

Sec. 11. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year two thousand three, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.
There are hereby appropriated all moneys so deposited during the fiscal year two thousand three to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 12. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 13. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his or her warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 14. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state
agency for either general obligation or revenue bonds or any
local taxing district for general obligation bonds to remit funds
necessary for the payment of interest and sinking fund require-
ments. The governor is authorized to transfer from time to time
such amounts to the municipal bond commission as may be
necessary for these purposes.

The municipal bond commission shall reimburse the state
of West Virginia through the governor from the first remittance
collected from the West Virginia housing development fund or
from any state agency or local taxing district for which the
governor advanced funds, with interest at the rate carried by the
bonds for security or payment of which the advance was made.

Sec. 15. Appropriations for local governments.—There
are hereby appropriated for payment to counties, districts and
municipal corporations such amounts as will be necessary to
pay taxes due counties, districts and municipal corporations and
which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 16. Total appropriations.—Where only a total sum
is appropriated to a spending unit, the total sum shall include
personal services, annual increment, employee benefits, current
expenses, repairs and alterations, equipment and capital outlay,
where not otherwise specifically provided and except as
otherwise provided in TITLE I—GENERAL PROVISIONS,
Sec. 3.

Sec. 17. General school fund.—The balance of the
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is appropriated
for expenditure in accordance with section sixteen, article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.
§1. Appropriations conditional.
§2. Legislative intent.
§3. Constitutionality.

1 Section 1. Appropriations conditional.—The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article two, chapter five-a of the code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

Sec. 2. Legislative intent.—It is the intent of the Legislature that the duly appointed members of the conference committee on this bill may formulate and set forth in a budget digest recommendations for the expenditure of money appropriated by this bill after its enactment. It is the further intent of the Legislature that the recommendations set forth in the budget digest are an expression of legislative intent, do not have the force and effect of law, and may not be construed to alter the lawful enactment of this bill.

Sec. 3. Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.
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 Section 1. Appropriations from general revenue.

3 BUREAU OF SENIOR SERVICES

4 89—Bureau of Senior Services

5 (WV Code Chapter 29)

6 Fund 0420 FY 2002 Org 0508
And, that the items of the total appropriations from the state fund, general revenue, to the bureau of senior services, fund 0420, fiscal year 2002, organization 0508, be amended and increased in the line item as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF SENIOR SERVICES

89—Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2002 Org 0508

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The item for foster grandparent stipends and travel is reduced by fifty thousand dollars. The item for unclassified is increased by fifty thousand dollars for expenditure during the fiscal year two thousand two with no new money being appropriated.
CHAPTER 15

(S. B. 254 — By Senators Craig, 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
The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriations for personal services by one hundred thousand dollars and unclassified by one hundred thousand dollars for expenditure during the fiscal year 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. 

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for unclassified—total by two million six hundred eighty thousand seven hundred thirty-nine dollars for expenditure during fiscal year two thousand two.
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
286—Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2002 Org 0802

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<th>Activity</th>
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</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
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</tr>
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</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for unclassified—total by one million two thousand dollars for expenditure during fiscal year 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 Activity Federal Funds
9
10 1 Unclassified—Total ............. 096 $ 241,675

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

7 ivity

8 Federal

9 Funds

10 1 Unclassified—Total .......... 096 $4,216,411

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

CHAPTER 22

[S. B. 704 — 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 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 the fiscal year ending the thirtieth day of June, two thousand three, to the insurance commissioner—insurance commission fund, fund 7152, fiscal year 2003, organization 0704, be decreased by expiring the amount of seven hundred fifty thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during fiscal year two thousand three.

The purpose of this bill is to expire the sum of seven hundred fifty thousand dollars from the insurance commissioner—insurance commission fund, fund 7152, fiscal year 2003, organization 0704, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, to be available for 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 the fiscal year ending the thirtieth day of June, two thousand three, to the public service commission, fund 8623, fiscal year 2003, organization 0926, be decreased by expiring the amount of seven hundred fifty thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during fiscal year two thousand three.

The purpose of this bill is to expire the sum of seven hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2003, organization 0926, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, to be available for appropriation during fiscal year two thousand three.

CHAPTER 24

(S. B. 706 — By Senators Craigo, Sharpe, Jackson, Prezioso, Plymale, Love, Helmick, Bowman, Anderson, Edgell, Urger, 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 the fiscal year ending the thirtieth day of June, two thousand three, to the board of risk and insurance management—premium tax savings fund, fund 2367, fiscal year 2003, organization 0218, be decreased by expiring the amount of one million five hundred thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during fiscal year two thousand three.

9 The purpose of this bill is to expire the sum 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, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, to be available for appropriation during fiscal year two thousand three.
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
And, that the items of the total appropriations from the state road fund, fund 9017, fiscal year 2002, organization 0803, be amended and increased in the line items as follows:

TITLE II—APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

97-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2002 Org 0803

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase existing items in the aforesaid account for the designated spending unit. The item Bridge Repair and Replacement is reduced by two million dollars, General Operations is reduced by five million seven hundred eighty-four thousand dollars and Appalachian Pro-
grams is reduced by thirty million dollars. The item Maintenance is increased by seven million three hundred seventy-nine thousand dollars, Interstate Construction is increased by four million dollars and Nonfederal Aid Construction is increased by four million dollars, for expenditure during the fiscal year ending the thirtieth day of June, two thousand two.

CHAPTER 26

(S. B. 744 — By Senators Craigo, 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 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, be
decreased by expiring the above amount to the unappropriated surplus balance of the state fund, general revenue, to be available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two.

The purpose of this bill is to expire the sum 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, to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, to be available for appropriation during 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:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
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<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>

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

EXECUTIVE

4 111a—Department of Agriculture—

5 Donated Food Fund

6 (WV Code Chapter 19)

7 Fund 1446 FY 2002 Org 1400

8 Activity Other Funds

9 1 Unclassified—Total ............. 096 $ 757,000

11 The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for unclassified—total by seven hundred fifty-seven thousand dollars for expenditure during fiscal year 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.
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DEPARTMENT OF EDUCATION AND THE ARTS

127—Division of Culture and History—

Public Records and Preservation Revenue Fund

(WV Code Chapters 18 and 18B)

Fund 3542 FY 2002 Org 0432

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096 $ 100,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for unclassified—total by one hundred thousand dollars for expenditure during the fiscal year two 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 the fiscal year ending the thirtieth day of June, two thousand two, department of administration - board of risk and insurance management - state special insurance fund, fund 2360, fiscal year 2002, organization 0218, be decreased by expiring the amount of two hundred sixty-six thousand four hundred sixty dollars to the balance of the department of administration - board of risk and insurance management - medical liability fund, fund 2368, fiscal year 2002, organization 0218, during the fiscal year two thousand two.

The purpose of this bill is to expire the sum 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, to the balance of the department of the 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, to be available for expenditure during the fiscal year two thousand two.
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 development authority, fund 3148, fiscal year 2002, organization 0307, be increased by expiring to that fund one million five hundred thousand dollars from the Treasurer's Office - Abandoned Property Claims Trust Fund, fund 1324, fiscal year 2002, organization 1300 to be available for expenditure during the fiscal year two thousand two.

8 The purpose of this bill is to expire one million five hundred thousand dollars from the Treasurer's Office - Abandoned Property Claims Trust Fund, fund 1324, fiscal year 2002, organization 1300 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, to be available for expenditure during the fiscal year two thousand two.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand 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.
DEPARTMENT OF ADMINISTRATION

119—Division of Finance—

Public Employees Insurance Reserve Fund

(WV Code Chapter 5A)

Fund 2207 FY 2002 Org 0209

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Employees Insurance Reserve Fund—Transfer</td>
<td>$800,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for public employees insurance reserve fund—transfer by eight hundred thousand dollars for expenditure during the fiscal year two thousand two.

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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

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>$ 40,423</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>6,872</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>37,200</td>
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</table>
The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for personal services by forty thousand four hundred twenty-three dollars, employee benefits by six thousand eight hundred seventy-two dollars and unclassified by thirty-seven thousand two hundred dollars for expenditure 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 activity Other

10 1a Division of Rehabilitation

11 1b Services . . . . . . . . . . . . . . . . . . . . . XXX $269,483

13 The purpose of this supplementary appropriation bill is to
supplement this account in the budget act for the fiscal year
ending the thirtieth day of June, two thousand two, by adding
two hundred sixty-nine thousand four hundred eighty-three
dollars to a new line item of appropriation for division of
rehabilitation services for expenditure during the fiscal year two
thousand two.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand 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.
The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for unclassified—total by one hundred thousand dollars for expenditure during the fiscal year two 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.

(a) There may be paid to each commander of a brigade, regiment, air wing, army group or other corresponding type organization one hundred dollars per month and to each commander of a battalion, army squadron, air group or other equivalent type organization fifty dollars per month and to each commander of a company, air squadron or other equivalent type organization twenty-five dollars per month, payable quarterly, to be known as command pay.

(b) There shall be allowed to each headquarters of a brigade, regiment, air wing, army group or equivalent type organization the sum of one hundred dollars per month and each headquarters of a battalion, army squadron, air group or corresponding type organization the sum of fifty dollars per month for clerical services; and to each company air squadron or corresponding type unit the sum of twenty-five dollars per month for like services, payable quarterly. The commandant of the West Virginia military academy shall be allowed the sum of twenty-five dollars a month, payable quarterly, for like services.

(c) At the discretion of the adjutant general, there may be paid to the enlisted man or woman who is directly responsible for the care and custody of the federal and state property of each organization or unit the sum of ten dollars per month, payable quarterly, upon the certificate of his or her commanding officer that he or she has faithfully and satisfactorily performed the duties assigned him or her and accounted for all property entrusted to his or her care.
(d) The adjutant general shall determine the amount of entitlement to command pay and clerical pay, not to exceed the amounts set forth in subsections (a) and (b) of this section, using organizational charts showing chain of command and authorized strengths and defining other equivalent type organizations.

(e) Notwithstanding any other provision of this code, there shall be paid to the command administrative officer of the headquarters of the West Virginia army national guard and to the executive staff support officer of the headquarters of the West Virginia air national guard, or to the officer occupying a similar position, regardless of title, one hundred dollars per month, payable quarterly, to be known as an administrative allowance.

(f) The state command sergeant of the West Virginia army national guard and the command chief master sergeant of the West Virginia air national guard shall receive a monthly administrative allowance of one hundred dollars per month. The command sergeant major or command chief master sergeant of a unit authorized under the command of a commander in the rank of colonel shall receive a monthly administrative allowance of seventy-five dollars per month. The command sergeant major or command chief master sergeant of a unit authorized under the command of a commander in the rank of lieutenant colonel shall receive a monthly administrative allowance of 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, ESCHATEATED AND WASTE AND UNAPPROPRIATED LANDS.

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

(a) The auditor shall appoint for each county in the state a deputy commissioner of delinquent and nonentered lands. The auditor shall make new appointments, from time to time thereafter, whenever vacancies occur or when, in the auditor’s judgment, it is advisable. The auditor may promulgate rules respecting the tenure of deputy commissioners. In the absence of rules, the deputy commissioner for each county shall, so long as he or she satisfies the requirements of this section in respect to professional qualifications and bonding, continue to act without reappointment until the auditor designates his or her successor.

(b) The auditor shall appoint deputy commissioners in such numbers and to serve such counties as the auditor considers advisable to effect the purposes of this article. Appointments, other than an employee of the auditor’s office, shall be limited to persons duly licensed to practice law in this state. Except for an employee of the auditor’s office, any person appointed as deputy commissioner for a single county shall reside in that county. Any person appointed as deputy commissioner for more than one county shall reside in one of the counties for which he or she has been appointed.
(c) Whenever in respect to any land the deputy commissioner, in his or her own judgment or in the opinion of the auditor, is disqualified or otherwise unable to serve because of his or her personal interest, because of his or her representation of clients in matters affecting the land, because of vacancies or failure to act, or whenever the auditor considers it in the best interest of the state, the auditor may appoint an employee of his or her office to serve as a deputy commissioner relating to the land. When a deputy commissioner is an employee of the auditor, all compensation and commissions that would otherwise be paid to a deputy commissioner shall be credited by the sheriff to the auditor for deposit into the operating fund created pursuant to section thirty-six of this article.

(d) The deputy commissioner is subject to the orders and control of the auditor, is accountable to him or her and serves as the auditor's local agent in the county. The deputy commissioner shall do whatever is required by the auditor or by the provisions of this article. The deputy commissioner, before entering upon his or her duties, shall give a bond, with satisfactory corporate surety, conditioned upon the faithful performance of his or her duties and the payment of any forfeitures incurred. The penalty of the bond shall be at least twenty-five thousand dollars and not more than one hundred thousand dollars, as the auditor may direct. The premium for the bond shall be paid by the auditor out of the operating fund for the 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 licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.
§31-17-5. Refusal or issuance of license.
§31-17-6 Minimum net worth to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.
§31-17-7. Form of license; posting required; license not transferable or assignable; license may not be franchised; renewal of license.
§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.
§31-17-11. 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.

As used in this article:

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

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

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

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

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

(6) "Brokerage fee" means the fee or commission or other consideration charged by a broker or loan originator for the services described in subdivision (5) of this section;

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

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

(9) "Commissioner" means the commissioner of banking of this state;

(10) "Applicant" means a person who has applied for a lender's, broker's or loan originator's license;
(11) "Licensee" means any person duly licensed by the commissioner under the provisions of this article as a lender, broker or loan originator;

(12) "Amount financed" means the total of the following items to the extent that payment is deferred:

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

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

(c) If not included in the cash price:

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

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

(iii) Additional charges permitted by this article;

(13) "Affiliated" means persons under the same ownership or management control. As to corporations, limited liability companies or partnerships, where common owners manage or control a majority of the stock, membership interests or general partnership interests of one or more such corporations, limited liability companies or partnerships, those persons are considered affiliated. In addition, persons under the ownership or management control of the members of an immediate family shall be considered affiliated. For purposes of this section, "immediate family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child and grandchildren;
§31-17-2. License required for lender, broker or loan originator; exemptions.

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

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

(1) Federally insured depository institutions;

(2) Regulated consumer lender licensees;

(3) Insurance companies;

(4) Any other lender licensed by and under the regular supervision and examination for consumer compliance of any agency of the federal government;
(5) Any agency or instrumentality of this state, federal, county or municipal government or on behalf of the agency or instrumentality;

(6) By a nonprofit community development organization making mortgage loans to promote home ownership or improvements for the disadvantaged which loans are subject to federal, state, county or municipal government supervision and oversight; or

(7) Habitat for humanity international, inc. and its affiliates providing low-income housing within this state.

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

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

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

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

(a) Application for a lender’s or broker’s license shall each year be submitted in writing under oath, in the form prescribed by the commissioner, and shall contain the full name and address of the applicant and, if the applicant is a partnership, limited liability company or association, of every member thereof, and, if a corporation, of each officer, director and owner of ten percent or more of the capital stock thereof and further information as the commissioner may reasonably require. Any application shall also disclose the location at which the business of lender or broker is to be conducted. Application for a loan originator’s license shall be initially submitted prior to the first day of September, two thousand two, and thereafter in every fifth year beginning in two thousand five. If the loan originator changes sponsoring mortgage brokers, a new application must be submitted in accordance with this article.

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

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

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least two hundred fifty thousand dollars;
(3) File with the commissioner a bond in favor of the state for the benefit of consumers in the amount of one hundred thousand dollars, in a form and with conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

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

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

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

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

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least ten thousand dollars;
(3) File with the commissioner a bond in favor of the state for the benefit of consumers in the amount of fifty thousand dollars, in a form and with conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state: Provided, That the bond must be in the amount of one hundred thousand dollars before a broker may participate in a table-funded residential mortgage loan;

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

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

(d) Application for a loan originator license shall be submitted by the sponsoring mortgage broker prior to the loan originator engaging in mortgage activity, in writing under oath, on a form prescribed by the commissioner. At the time of making application for a loan originator license, the loan originator therefor shall:

(1) Submit a statement under oath that he or she originates loans exclusively for one broker, together with an acknowledgment of employment by the sponsoring mortgage broker;

(2) Pay to the commissioner a license fee of one hundred fifty dollars plus the actual cost of fingerprint processing;

(3) Disclose the location at which the business of the sponsoring mortgage broker is to be conducted by the licensed loan originator; and
(4) If at any time a loan originator ceases working for the sponsoring mortgage broker indicated on the license application, such loan originator and sponsoring mortgage broker shall notify the commissioner within fifteen business days and return the original loan originator license to the division of banking. The license of a loan originator is not effective during any period when that person is not employed by a sponsoring mortgage broker licensed under this article, and a loan originator shall not be employed simultaneously by more than one sponsoring mortgage broker.

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

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

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

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

§31-17-5. Refusal or issuance of license.

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

(1) The applicant does not have available the net worth required by the provisions of section four of this article, if applicable;

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

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

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

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

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

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

(a) It shall be stated on the license, whether it is a lender's, broker's or loan originator's license, the location at which the business is to be conducted and the full name of the licensee. A broker's license shall be conspicuously posted in the licensee's place of business in this state and a lender's license shall be conspicuously posted in the licensee's place of business if in this state. No license shall be transferable or assignable. No
licensee may offer a franchise under that license to another person. The commissioner may allow licensees to have branch offices without requiring additional licenses provided the location of all branch offices is registered with the division of banking by the licensee. Whenever a licensee changes his or her place of business to a location other than that set forth in his or her license and branch registration, he or she shall give written notice thirty days prior to such change to the commissioner.

(b) Every lender’s or broker’s license shall, unless sooner suspended or revoked, expire on the thirty-first day of December of each year and any license may be renewed each year in the same manner, for the same license fee or fees specified above and upon the same basis as an original license is issued in accordance with the provisions of section five of this article. Every loan originator’s license shall, unless sooner suspended or revoked, expire on the thirtieth day of June of every fifth year beginning in two thousand five, and any license may be renewed in the same manner, for the same license fee specified above and in accordance with section five of this article. All applications for the renewal of licenses shall be filed with the commissioner at least ninety days before the expiration thereof.

(c) Beginning with renewal applications in the year two thousand two, a broker’s license may not be renewed unless that licensee’s executive officer certifies to the commissioner on the renewal application that every loan originator employed by that licensed broker has received at least seven hours of continuing education in the prior year. Both the course of instruction and the entity providing such continuing education must receive prior approval from the commissioner as satisfying the continuing education requirement established herein before the commissioner may accept a certification from a licensee. The commissioner shall make available a list of entities and courses 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.

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

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

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

(d) Where loan origination fees, investigation fees or points have been charged by the licensee, the charges may not be imposed again in any refinancing of that loan or any additional loan on that property made within twenty-four months thereof, unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan and the borrower’s circumstances. The licensee shall document this benefit in writing on a form prescribed by the commissioner and maintain such documentation in the loan file. To the extent this subdivision overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository
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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
delinquent charge or “late charge” may be charged on any
installment made ten or more days after the regularly scheduled
due date in accordance with section one hundred twelve or one
hundred thirteen, article three, chapter forty-six-a of this code,
whichever is applicable. The charge may be made only once on
any one installment during the term of the primary or subordi-
nate mortgage loan.

39 (f) Hazard insurance may be required by the lender. The
charges for any insurance shall not exceed the standard rate
approved by the insurance commissioner for the insurance.
Proof of all insurance in connection with primary and subordi-
nate mortgage loans subject to this article shall be furnished to
the borrower within thirty days from and after the date of
application therefor by the borrower.

46 (g) Except for fees for services provided by unrelated third
parties for appraisals, inspections, title searches and credit
reports, no application fee may be allowed whether or not the
mortgage loan is consummated; however, the borrower may be
required to reimburse the licensee for actual expenses incurred
by the licensee in a purchase money transaction after accept-
tance and approval of a mortgage loan proposal made in
accordance with the provisions of this article which is not
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
material fact which prevents closing of the loan as proposed.
(h) No licensee shall make, offer to make, accept or offer to accept any primary or subordinate mortgage loan except on the terms and conditions authorized in this article.

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

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

(1) Any power of attorney to confess judgment;

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

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

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

(5) A requirement for compulsory arbitration which does not comply with federal law; or

(6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be given a copy of every signed document executed by the borrower at the time of closing.
(k) No licensee shall charge a borrower or receive from a borrower money or other valuable consideration as compensation before completing performance of all services the licensee has agreed to perform for the borrower unless the licensee also registers and complies with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of this code, including all additional bonding requirements as may be established therein.

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

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

(1) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess of the fee that has been or will be remitted to the attorney; collect a fee for a product or service where the product or service is not actually provided; misrepresent the amount charged by or paid to a third party for a product or service; or collect duplicate fee or points to act as both broker and lender for the same mortgage loan, however, fees and points may be divided between the broker and the lender as they agree, but may not exceed the total charges otherwise permitted under this article: Provided, That the fact of any fee, point or compensation is disclosed to the borrower consistent with the solicitation representation made to the borrower;

(2) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a deed of trust or is being
offered as security according to an application for a primary or subordinate mortgage loan;

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

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

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

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

(8) Secure a primary or subordinate mortgage loan in a principal amount that, when added to the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, duly licensed or certified by the West Virginia real estate appraiser licensing and certification board and prepared in compliance with the uniform standards of professional appraisal practice;

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

(10) Knowingly violate any provision of any other applicable state or federal law regulating primary or subordinate mortgage loans, including, without limitation, chapter forty-six-a of this code.
§31-17-11. Records and reports; examination of records; analysis.

(a) Every lender and broker licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state at his or her principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each lender and broker licensee shall file with the commissioner on or before the fifteenth day of March of each year a report under oath or affirmation concerning his or her business and operations in this state for the preceding license year in the form prescribed by the commissioner.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts and records of every lender or broker licensee pertaining to primary and subordinate mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each lender and broker licensee is complying with the provisions hereof and for the purpose of verifying each lender or broker licensee’s annual report. If the examination is made outside this state, the lender or broker licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.

(d) The commissioner shall publish annually an aggregate analysis of the information furnished in accordance with the provisions of subsection (b) or (c) of this section, but the
§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

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

1. Has knowingly violated any provision of this article or any order, decision or rule of the commissioner lawfully made pursuant to the authority of this article; or
2. Has knowingly made any material misstatement in the application for the license; or
3. Does not have available the net worth required by the provisions of section four of this article, if applicable; or
4. Has failed or refused to keep the bond required by section four of this article in full force and effect, if applicable; or
5. In the case of a foreign corporation, does not remain qualified to do business in this state; or
6. Has committed any fraud or engaged in any dishonest activities with respect to any mortgage loan business in this state or failed to disclose any of the material particulars of any mortgage loan transaction in this state to anyone entitled to the information; or
7. Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this
state has not been or will not be conducted honestly or fairly within the purpose of this article. It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt and the lender had the primary intent to acquire the property upon default rather than to derive profit from the loan. This section may not limit any right the consumer may have to bring an action for a violation of section one hundred four, article six, chapter forty-six-a of this code in an individual case.

The commissioner may also suspend or revoke the license of a licensee if he or she finds the existence of any ground upon which the license could have been refused or any ground which would be cause for refusing a license to the licensee were he or she then applying for the same. The commissioner may also suspend or revoke the license of a licensee pursuant to his or her authority under section thirteen, article two, chapter thirty-one-a of this code.

(b) The suspension or revocation of the license of any licensee shall not impair or affect the obligation of any preexisting lawful mortgage loan between the licensee and any obligor.

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

(d) In addition to the authority conferred under this section, the commissioner may impose a fine or penalty not exceeding one thousand dollars upon any lender or broker required to be licensed under this chapter who the commissioner determines has violated any of the provisions of this chapter. For the purposes of this section, each separate violation is subject to the
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
mortgage lenders and brokers, credit unions and all other persons now or hereafter made subject to his or her supervision or jurisdiction. All powers, duties, rights and privileges vested in the division are hereby vested in the commissioner. He or she shall be the chief executive officer of the division of banking and is responsible for the division’s organization, services and personnel and for the orderly and efficient administration, enforcement and execution of the provisions of this chapter and all laws vesting authority or powers in or prescribing duties or functions for the division or the commissioner.

(b) The commissioner shall:

(1) Maintain an office for the division and there keep a complete record of all the division’s transactions, of the financial conditions of all financial institutions and records of the activities of other persons as the commissioner considers important. Notwithstanding any other provision of this code, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained in the records shall be confidential for the use of the commissioner and authorized personnel of the division of banking. No person shall divulge any information contained in any records except as authorized in this subdivision in response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant records and information from the records for good cause, upon imposing terms and conditions considered necessary to protect the confidential nature of the records, the financial integrity of the financial institution or the person to which the records relate, and the legitimate privacy interests of any individual named in the records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner has and may
exercise reasonable discretion as to the time, manner and extent
the other records in his or her office and the information
contained in the records are available for public examination;

(2) Require all financial institutions to comply with all the
provisions of this chapter and other applicable laws, or any rule
promulgated or order issued thereunder;

(3) Investigate all alleged violations of this chapter and all
other laws which he or she is required to enforce and of any rule
promulgated or order issued thereunder; and

(4) Require a criminal background investigation, including
fingerprint checks, of each: (A) Applicant seeking approval to
charter and/or control a state bank, state credit union, or a
foreign bank state agency or representative office; (B) applicant
seeking a license to engage in the business of money transmis-
section, currency exchange, or other activity regulated under
article two, chapter thirty-two-a of this code; (C) applicant
subject to the commissioner’s supervision seeking a license to
engage in the business of regulated consumer lending, mortgage
lending or brokering; and (D) division of banking financial
institutions regulatory employee applicant, to be made through
the West Virginia state police and the federal bureau of
investigation. Provided, That where the applicant is a company
or entity already subject to supervision and regulation by the
federal reserve board or other federal bank, thrift or credit union
regulator, or is a direct or indirect subsidiary of a company or
entity subject to the supervision and regulation, or where the
applicant is a company subject to the supervision and regulation
of the federal securities and exchange commission whose stock
is publicly traded on a registered exchange or through the
national association of securities dealers automated quotation
system, or the applicant is a direct or indirect subsidiary of such
a company, the investigation into criminal background is not
required. The provisions of this subdivision are not applicable
to applicants seeking interim bank charters organized solely for
the purpose of facilitating the acquisition of another bank
pursuant to section five, article four of this chapter: Provided,
however, That where a nonexempt applicant under this subdivi-
sion is not a natural person, the principals of the applicant are
subject to the requirements of this subdivision. As used in this
subdivision, the term "principals" means the chief executive
officer, regardless of title, managing partner if a partnership,
members of the organizing group if no chief executive officer
has yet been appointed, trustee or other person controlling the
conduct of the affairs of a licensee. A person controlling ten
percent or more of the stock of any corporate applicant shall be
considered to be a principal under this provision.

(c) In addition to all other authority and powers vested in
the commissioner by provisions of this chapter and other
applicable laws, the commissioner may:

(1) Provide for the organization of the division and the
procedures and practices of the division and implement the
procedures and practices by the promulgation of rules and
forms as appropriate and the rules shall be promulgated in
accordance with article three, chapter twenty-nine-a of this
code;

(2) Employ, direct, discipline, discharge and establish
qualifications and duties for all personnel for the division,
including, but not limited to, examiners, assistant examiners,
conservators and receivers, establish the amount and condition
of bonds for the personnel he or she considers appropriate and
pay the premiums on the bonds and, if he or she elects, have all
personnel subject to and under the classified service of the state
personnel division;

(3) Cooperate with organizations, agencies, committees and
other representatives of financial institutions of the state in
connection with schools, seminars, conferences and other meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his or her opinion may warrant;

(5) Call for and require any data, reports and information from financial institutions under his or her jurisdiction, at such times and in such form, content and detail considered necessary by him or her in the faithful discharge of his or her duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, supervise the location, organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision of financial institutions, require financial institutions to:

(A) Maintain their accounts consistent with rules prescribed by the commissioner and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he or she may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his or her action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;
(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against other risks as he or she may determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take other action that in his or her judgment is required of the institution in order to maintain its stability, integrity and security as required by law and all rules promulgated by him or her; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by article three of this chapter, receive from any person or persons and consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act on the request, petition or application in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at a hearing may be accompanied by an attorney employed by him or her;
(9) Issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) Study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state and compile and keep current data thereon to aid and guide him or her in the administration of the duties of his or her office;

(11) Implement all of the provisions of this chapter, except the provisions of article three of this chapter, and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) Implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as long as the rules do not conflict with any rules promulgated by the state's attorney general;

(13) Foster and encourage a working relationship between the division of banking and financial institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

(14) Provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions and any other forms and printed materials found by
him or her to be helpful to financial institutions, their shareholders, depositors and patrons and make reasonable charges for the copies;

(15) Delegate the powers and duties of his or her office, other than the powers and duties excepted in this subdivision, to qualified division personnel who shall act under the direction and supervision of the commissioner and for whose acts he or she is responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other division personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner also is responsible. The commissioner shall:

(A) Order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule promulgated or order issued thereunder;

(B) Order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor of the financial institution;

(C) Revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article; and

(D) Accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms, the assurance is prima facie evidence that prior to this assurance the person engaged in conduct 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.

(a) In addition to Sundays and legal holidays any banking institution may remain closed on any one fixed weekday or portion of a day in each calendar week, or on any one fixed weekday and a portion of another weekday in each calendar week, or on portions of two weekdays in each calendar week, which day and/or portion or portions of the day or days when the institution is to remain closed shall be designated by a resolution adopted by the board of directors thereof. Prior to any such closing, the banking institution shall post a notice in a conspicuous place in its banking room stating that beginning on a day certain the banking institution will remain closed on a fixed weekday and/or portions thereof. Concurrently with the posting of the notice of closure, the banking institution shall cause a notice to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the principal office of the bank is located. The notice shall set forth the time or times on which the bank will remain closed and the date when the closing becomes effective. A certified copy of the resolution certified by the cashier or secretary of the banking institution, together with an affidavit of posting and proof of publication of the notice herein required, shall be filed with the commissioner of banking. Any banking institution may elect to operate branches that are open for business on the days and for the hours as determined appropriate by that banking institution.
(b) Any banking institution may close, without notice, during any period of actual or threatened enemy attack affecting the community in which the banking institution is located or during any period of other emergency including, but not limited to, fire, flood, hurricane, riot, snow or civil commotion: Provided, That the commissioner shall be notified of any closing made pursuant to this subsection as soon as practical thereafter.

(c) Any fixed weekday and/or portion of one or more weekdays on which any banking institution shall elect to close and any period during which the commissioner may permit it to close pursuant to the authority of this section shall constitute a legal holiday with respect to the banking institution and not a business day or banking day for the purposes of the law relating to negotiable instruments, and any act or contract authorized, required or permitted to be carried out or performed at, by or with respect to the banking institution may be performed on the next business or banking day, and no liability or loss of rights on the part of any person or banking institution shall result 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.

For every state-chartered banking institution there shall be a board of not less than five nor more than twenty-five directors, who shall meet at least once each month and who shall have power to do, or cause to be done, all things that are proper to be done by the banking institution; and a majority of whom shall at all times be United States citizens and residents of this state: Provided, That the commissioner of banking, upon application from banking institutions with deposits greater than five hundred million dollars, may issue a waiver from the minimum number of meeting requirements established by this section and allow no fewer than four quarterly meetings for such institutions: Provided, however, That at least four of the board of directors meetings of any state-chartered banking institution shall be held within the state of West Virginia. Every such director shall own capital stock in the banking institution of which he is a director. Said director must own shares in the aggregate par value of not less than five hundred dollars, an exception being that if a bank holding company has control of that banking institution, shares owned by a director of the subsidiary bank in the controlling bank holding company will satisfy the requirements of this section: Provided further, That the director owns, in his own right, common or preferred stock of the controlling bank holding company in an amount equal to or greater than any one of the following: (i) Aggregate par value of five hundred dollars; (ii) aggregate shareholders’ equity of five hundred dollars; or (iii) aggregate fair market value of five hundred dollars. Determination of the fair market value of the controlling bank holding company’s stock shall be
based upon the value of that stock on the date it was purchased or on the date the person became a director, whichever is greater. If a bank holding company controls more than one bank subsidiary, a director owning at least five hundred dollars of the shares of a bank holding company is qualified, if otherwise permitted by applicable law, to serve as a director of every bank subsidiary controlled by that bank holding company. Before entering on the discharge of his duties as such director, he shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the banking institution, and that he will not knowingly or willingly permit to be violated any of the provisions of the laws of this state relative to banking and banking institutions, and that the stock standing in his name upon the books of the banking institution is not hypothecated or pledged in any way as security for loans obtained from or debts owing to the banking institution of which he is a director, and that the number of shares necessary to qualify a stockholder to be a director are not now, and shall not at any time while he serves as a director be pledged or hypothecated in any manner for any debt or obligation of the director, or any other person; which oath subscribed by him and certified by the officer before whom it was taken shall be filed and preserved in the office of the commissioner of banking.

Should a director fail to subscribe to or renew the oath herein provided within sixty days after notice of his election or re-election, or at any time after qualifying as such, sell or dispose of, or in any manner hypothecate or pledge as security for a debt or obligation, such qualifying shares, or any number thereof, necessary for his qualification, thereupon the remaining directors shall elect another director in his stead. No person shall serve as a director of any banking institution who has evidenced personal dishonesty and unfitness to serve as such director by his conduct or practice with another financial institution which resulted in a substantial financial loss or damage thereto or who has been convicted of any crime involving personal dishonesty.
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-CHARTERED 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 authorized.

Any bank organized under the laws of the United States may, by a majority vote of the directors of the bank, convert into a state bank with any name approved by the board of
§31A-4A-2. Procedure for conversion of national bank into state bank.

(a) A national bank converting its charter to become a state bank shall file an application with the division on a form prescribed by the commissioner along with articles of incorporation, by-laws for the proposed state bank and a check for two thousand five hundred dollars. The application shall declare that a majority of the national bank's board of directors has authorized the representatives of the bank to make such application and to convert the national bank into a state bank.

(b) The application to convert to a state bank shall be subject to the same requirements and procedures as established for a newly organizing state bank at sections five, six and seven, article four of this chapter.

(c) The examination and investigation by the board of banking and financial institutions pursuant to section six, article four of this chapter shall include an examination of the safety and soundness of the applicant national bank. The scope of the examination shall be determined at the discretion of the commissioner.

§31A-4A-3. Effect of conversion of national bank into state bank.

(a) When the board of banking and financial institutions has given to the bank an order that the provisions of this article have been complied with, the bank and all its stockholders, officers and employees shall have the same powers and privileges and shall be subject to the same duties, liabilities and regulations, in all respects, as shall have been prescribed for banks originally organized as banking corporations under the laws of West Virginia.
(b) At the time when such conversion of the national bank into a state bank, under the charter of the latter, becomes effective, all the property of the national bank, including all its rights, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or appertaining to it or which would inure to it, shall immediately, by act of law and without any conveyance or transfer and without any further act or deed, be vested in and become the property of the state bank, which shall have, hold and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held and enjoyed by the national bank.

(c) Upon such conversion becoming effective, the state bank shall be considered to be a continuation of the entity and of the identity of the national bank and all the rights, obligations and relations of the national bank to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust shall remain unimpaired. The state bank, as of the time the conversion takes place, shall succeed to all such rights, obligations, relations and trusts and the duties and liabilities connected therewith and shall execute and perform each and every trust or relation in the same manner as if the state bank had itself originally assumed the trust or relation, including the obligations and liabilities connected therewith.

(d) Any reference to the national bank in any contract, will or document shall be considered a reference to the state bank unless expressly provided to the contrary in the contract, will or document.

§31A-4A-4. Filing of incorporation.

After the board of banking and financial institutions issues an order granting a state charter to the converting national bank,
the bank shall file in the office of the secretary of state a certificate of incorporation in compliance with the applicable provisions of chapter thirty-one of this code and section five, 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.

(a) The Legislature hereby finds and declares that:
(1) Changes in the permissible charges on loans, credit sales or transactions, forbearance or other similar transactions requires specialized knowledge of the needs of the citizens of West Virginia for credit for personal and commercial purposes and knowledge of the availability of such credit at reasonable rates to the citizens of this state while affording a competitive return to persons extending such credit;

(2) Maximum charges on loans, credit sales or transactions, forbearance or other similar transactions executed in this state should be prescribed from time to time to reflect changed economic conditions, current interest rates and finance charges throughout the United States and the availability of credit within the state in order to promote the making of such loans in this state; and

(3) The prescribing of such maximum interest rates and finance charges can be accomplished most effectively and flexibly by a board comprised of the heads of designated government agencies, university schools of business and administration and members of the public.

(b) In view of the foregoing findings, it is the purpose of this section to establish the West Virginia lending and credit rate board and authorize said board to prescribe semiannually the maximum interest rates and finance charges on loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders, sellers and other creditors to charge up to the maximum interest rates or finance charges so fixed. The rates prescribed by the board are alternative rates and any creditor may utilize either the rate or rates set by the board or any other rate or rates which the creditor is permitted to charge under any other provision of this code.
(c) The West Virginia lending and credit rate board shall be comprised of:

(1) The director of the governor's office of economic and community development;

(2) The West Virginia state treasurer;

(3) The West Virginia banking commissioner;

(4) The deans of the schools of business and administration at Marshall University and West Virginia University;

(5) The director of the division of consumer protection of the attorney general's office; and

(6) Three members of the public appointed by the governor with the advice and consent of the Senate. The members of the public shall be appointed for terms of six years each, and until their successors are appointed and qualified; except that of the members first appointed, one shall be appointed for a term of two years, one for a term of four years and one for a term of six years. A member who has served one full term of six years shall be ineligible for appointment for the next succeeding term. Vacancies shall be filled by appointment of the governor with the advice and consent of the Senate, or if any vacancy remains unfilled for three months, by a majority vote of the board. The West Virginia banking commissioner shall serve as chairperson of the board and the rate or rates set by the board shall be determined by a majority vote of those members of the board in attendance at the respective board meeting.

(d) The West Virginia lending and credit rate board is hereby authorized and directed to meet after the thirty-first day of December, one thousand nine hundred eighty-three, on the first Tuesday of April and on the first Tuesday of October of each year or more or less frequently as required by the circumstances and to prescribe by order a maximum rate of interest
and finance charge for the next succeeding six months, effective on the first day of June and on the first day of December, for any loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section. In fixing said maximum rates of interest and finance charge, the board shall take into consideration prevailing economic conditions, including the monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional commercial short-term loans and notes throughout West Virginia and throughout the United States and on corporate interest-bearing securities of high quality, the availability of credit at reasonable rates to the citizens of this state which afford a competitive return to persons extending such credit and such other factors as the board may determine.

(e) Any petition proposing a change in the prescribed maximum rates of interest and finance charges must be filed in the office of the banking commissioner no later than the fifteenth day of February in order to be voted on at the board meeting on the first Tuesday of April and no later than the fifteenth day of August in order to be voted on at the board meeting on the first Tuesday of October. Whenever any change in the prescribed maximum rates of interest and finance charges is proposed the board shall schedule a hearing, at least fifteen days prior to the board meeting at which the proposed rates of interest and finance charge will be voted on by the members of the board, and shall give all interested parties the opportunity to testify and to submit information at such public hearing that is relevant. Notice of the scheduled public hearing shall be issued and disseminated to the public at least twenty days prior to the scheduled date of the hearing.

(f) The board shall prescribe by order issued not later than the twentieth day of April and not later than the twentieth day of October, in accordance with the provisions of subsection (d)
of this section the maximum rates of interest and finance charge
for the next succeeding six months for any loan, credit sale,
forbearance or similar transaction made pursuant to this section
and shall cause such maximum rate of interest and finance
charge to be issued and disseminated to the public, such
maximum rate of interest and finance charge to be effective on
the first day of June and the first day of December for the next
succeeding six months.

(g) Notwithstanding the other provisions of this chapter, the
West Virginia lending and credit rate board shall not be
required to meet if no petition has been filed with the board
requesting a hearing and interest rates and economic conditions
have not changed sufficiently to indicate that any change in the
existing rate order would be required, and there are not at least
two board members who concur that a meeting of the board is
necessary. If the board does not meet, the maximum rates of
interest and finance charges prescribed by the board in the
existing rate order shall remain in full force and effect until the
next time the board meets and prescribes different maximum
rates of interest and finance charges.

(h) If circumstances and economic conditions require, the
chairperson or any three board members, at any time, may call
an emergency interim meeting of the West Virginia lending and
credit rate board, at which time the chairperson shall give ten
days’ notice of the scheduled emergency meeting to the public.
All interested parties shall have the opportunity to be heard and
to submit information at such emergency meeting that is
relevant. Any and all emergency rate board orders shall be
effective within thirty days from the date of such emergency
meeting.

(i) Each member of the board, except those whose regular
salary is paid by the state of West Virginia, shall receive
seventy-five dollars per diem while actually engaged in the
performance of the duties of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party the members shall not be reimbursed by the state. The reimbursement shall be paid out of the special revenue account of the division of banking upon a requisition upon the state auditor, properly certified by the banking commissioner.

(j) In setting the maximum interest rates and finance charges, the board may set varying rates based on the type of credit transaction, the term of transaction, the type of debtor, the type of creditor and other factors relevant to determination of such rates. In addition, the board may set varying rates for ranges of principal balances within a single category of credit transactions.

(k) Pursuant to the provisions of article ten, chapter four of this code, the West Virginia lending and credit rate board shall continue to exist until the first day of July, two thousand five.

§47A-1-2. Board staff, offices, funding.

Under the direction of the chairperson of the board, the board shall be entitled to utilize the staff of the West Virginia banking department and the offices of the board shall be those of the West Virginia banking department, in order to defray the cost of the board’s operations.

On or before the first day of July of each year, the commissioner of banking may charge and collect from each supervised financial organization and supervised lender a yearly fee of fifty dollars and pay it into the special revenue account of the division of banking. The fees paid into this account shall be utilized to pay the costs and expenses of the board and all incidental costs and expenses necessary for its operations.
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.

(a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. Capitalization of the company may be increased pursuant to rule of the authority.

(b)(1) The total credits authorized by the authority for all companies may not exceed a total of ten million dollars each fiscal year: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-nine, the total credits authorized for all companies may not exceed a total of six million dollars: Provided, however, That for the fiscal year beginning on the first day of July, two thousand, the total
credits authorized for all companies may not exceed a total of
four million dollars: \textit{Provided further}, That for the fiscal year
beginning on the first day of July, two thousand one, the total
credits authorized for all companies may not exceed a total of
four million dollars: \textit{And provided further}, That for the fiscal
year beginning on the first day of July, two thousand two, the
total credits authorized for all companies may not exceed a total
of three million dollars: \textit{And provided further}, That the capital
base of any qualified company shall be invested in accordance
with the provisions of this article. The authority shall allocate
these credits to qualified companies in the order that the
companies are qualified.

(2) Not more than two million dollars of the credits allowed
under subdivision (1) of this subsection may be allocated by the
authority during each fiscal year to one or more small business
investment companies described in this subdivision. The
remainder of the tax credits allowed during the fiscal year shall
be allocated by the authority under the provisions of section
four, article two of this chapter. The portion of the tax credits
allowed for small business investment companies described in
this subdivision shall be allowed only if allocated by the
authority during the first thirty days of the fiscal year, and may
only be allocated to companies that: (A) Were organized on or
after the first day of January, one thousand nine hundred ninety-nine; (B) are licensed by the small business administration as a
small business investment company under the small business
investment act; and (C) have certified in writing to the authority
on the application for credits under this act that the company
will diligently seek to obtain and thereafter diligently seek to
invest leverage available to the small business investment
companies under the small business investment act. These
credits shall be allocated by the authority in the order that the
companies are qualified. Any credits which have not been
allocated to qualified companies meeting the requirements of
this subdivision relating to small business investment companies during the first thirty days of the fiscal year shall be made available and allocated by the authority under the provisions of section four, article two of this chapter.

(c) Any investor, including an individual, partnership, limited liability company, corporation or other entity who makes a capital investment in a qualified West Virginia capital company, is entitled to a tax credit equal to fifty percent of the investment, except as otherwise provided in this section or in this article. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), inclusive, section five, article thirteen-c, chapter eleven of this code. The credit for investments by a partnership, limited liability company, a corporation electing to be treated as a subchapter S corporation or any other entity which is treated as a pass through entity under federal and state income tax laws may be divided pursuant to election of the entity’s partners, members, shareholders or owners.

(d) The tax credit allowed under this section is to be credited against the taxpayer’s tax liability for the taxable year in which the investment in a qualified West Virginia capital company is made. If the amount of the tax credit exceeds the taxpayer’s tax liability for the taxable year, the amount of the credit which exceeds the tax liability for the taxable year may be carried to succeeding taxable years until used in full, or until forfeited: Provided, That: (i) Tax credits may not be carried forward beyond fifteen years; and (ii) tax credits may not be carried back to prior taxable years. Any tax credit remaining after the fifteenth taxable year is forfeited.

(e) The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West
Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.

(f) The tax credit allowed under this section may not be used against any liability the taxpayer may have for interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer and the amount, by category, of any credit asserted under this article. The categories by dollar amount of credit received are as follows:

1. More than $1.00, but not more than $50,000;
2. More than $50,000, but not more than $100,000;
3. More than $100,000, but not more than $250,000;
4. More than $250,000, but not more than $500,000;
5. More than $500,000, but not more than $1,000,000; and
6. More than $1,000,000.

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.

(a) The Legislature finds:

(1) That preserving heritage is essential to promoting the education, prosperity and general welfare of the people of this state;

(2) That the town of Cass, in Pocahontas County, is one of the few remaining historical logging towns in the United States and has been recognized as such by the national registry of historic places;

(3) That the town of Cass is richly endowed with numerous historic buildings, structures and sites, both public and private, which are representative of the historical and cultural heritage of the state of West Virginia;

(4) That historic buildings, structures and sites in the town of Cass should be identified, studied, preserved and protected
for the general welfare of the residents of this state and this nation;

(5) That preserving and protecting the historical buildings, structures and sites in the town of Cass will aid economic development in Pocahontas County and surrounding areas, lead to the improvement of property values, enhance this state’s attraction of tourists and visitors and contribute to education in this state by preserving such heritage for future generations; and

(6) That it is in the public policy and the public interest of this state to engage in a comprehensive program of historic preservation within the area designated as the town of Cass by the national registry of historic places and to promote the use and preservation of such heritage for the education and general welfare of the people of this state.

Accordingly, this section shall be broadly construed in order to accomplish the purposes herein set forth.

(b) To carry out the purposes of this section within the jurisdictional limits of the town of Cass as designated by the national registry of historic places, the director may:

(1) Make a survey of buildings, structures and sites and designate as historic landmarks those principal buildings, structures and sites that are of local, regional, statewide or national historical or architectural significance;

(2) Mark buildings, structures and sites with appropriately designated markers with the consent of the property owners;

(3) Acquire by purchase, gift or lease and administer historic landmarks, buildings, structures and sites;
42 (4) Review applications for certificates of appropriateness and grant or deny the same in accordance with the provisions of this section;

45 (5) Establish standards for the care and management of designated historic landmarks, buildings, structures and sites and, for failure of the owner to maintain the standards as prescribed, withdraw any certificate of appropriateness;

49 (6) Seek the advice and assistance of individuals, groups and government entities that are conducting historical preservation programs and coordinate the same insofar as possible;

52 (7) Seek and accept grants, gifts, bequests, endowments or other funds to accomplish the purposes of this section; and

54 (8) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the protection of the historic integrity of the town of Cass and to effectuate the purposes of this section with regard to the use of lands both public and private within the town of Cass.

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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 commence upon privately owned lands on which a cemetery or graves are located if such improvement, construction or development would destroy or otherwise physically disturb the cemetery or graves located on the land unless the owner first files a petition in accordance with the provisions of section two of this article and an order is entered pursuant to section five of 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 shall be cumulative and in addition to other existing rights. The right of eminent domain and the remedy of condemnation of
lands shall not be affected hereby. This article shall not apply to burial grounds governed by the provisions of article five, chapter thirty-five of this code or by the provisions of section 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.

(a) Every charitable organization, except as provided in section six of this article, which intends to solicit contributions within this state or to have funds solicited on its behalf shall, prior to any solicitation, file a registration statement with the secretary of state upon forms prescribed by him or her which shall be good for one full year and which shall be refiled in the next and each following year in which the charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it shall file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. It is the duty of the president, chairman or principal officer of the charitable organization to file the statements required under this article. The statements shall be sworn to and shall contain the following information:

  (1) The name of the organization and the purpose for which it was organized;

  (2) The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

  (3) The names and addresses of any chapters, branches or affiliates in this state;

  (4) The place where and the date when the organization was legally established and the form of its organization;

  (5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;
(6) A copy of a balance sheet and a statement or report of income and expenses for the organization’s immediately preceding fiscal year or a financial statement reporting information showing the kind and amount of funds raised during the preceding fiscal year, the costs and expenses incidental to the fund raising and showing how the funds were disbursed or allocated for the same fiscal year: Provided, That for organizations raising more than one hundred thousand dollars per year in contributions excluding grants from governmental agencies or private foundations, the balance sheet and income and expense statement, or financial statement provided, shall be audited by an independent public accountant. Organizations are required to report the amount of money raised in the state and the amount spent in the state for charitable purposes;

(7) A copy of any determination of the organization’s tax exempt status under the provisions of 26 U.S.C. §501(c)(3) and a copy of the last filed Internal Revenue Service form 990 and Schedule A for every charitable organization and any parent organization;

(8) Whether the organization intends to solicit contributions from the public directly or have other solicitation done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

(10) The general purpose or purposes for which the contributions to be solicited shall be used;

(11) The name or names under which it intends to solicit contributions;
(12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions; and

(14) Copies of all contract documentation from professional fund-raising counsels and professional solicitors as provided for in subsection (d), section seven of this article.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, may separately report the information required by this section or report the information to its parent organization which shall then furnish the information regarding its West Virginia affiliates, chapters and branches in a consolidated form to the secretary of state. An independent member agency of a federated fund-raising organization, as defined in section two of this article, shall comply with the provisions of this article independently. Each organization shall file a separate registration form for each name under which funds will be solicited.

(c) The registration forms and any other documents prescribed by the secretary of state shall be signed by an authorized officer or by an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(d) Every charitable organization collecting less than one million dollars during any year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifteen dollars; every charitable organization collecting more than one million dollars during one year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifty dollars; and a parent
organization filing on behalf of one or more chapters, branches or affiliates or a single organization filing under different names shall pay a single annual registration fee of fifty dollars for itself and the chapters, branches or affiliates included in the registration statement. All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the services fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(e) For good cause shown, the secretary of state may extend the due date for the annual filing of a registration statement or report by a charitable organization or a professional fund-raiser for a period not to exceed ninety days. During that period, the previously filed registration statement or report of the charitable organization which has been granted the extension remains in effect.

(f) In addition to the registration fee required by this section, a charitable organization and/or professional fund-raiser, which fails to file a registration statement or report by the original or extended due date for filing as required by this section shall, for each month or part of the month thereafter in which the registration statement or report is not filed, pay an additional fee of twenty-five dollars: Provided, That the total amount of the additional fees for a registration statement or report required to be filed in any one year shall not exceed five hundred dollars. All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state general revenue fund and one-half shall
be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. Any balance remaining on the thirtieth day of June, two thousand one, in the existing special revenue account entitled "charitable organization fund" as established by chapter thirty-four, acts of the Legislature, regular session, one thousand nine hundred ninety-two, shall be transferred to the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

§29-19-6. Certain persons and organizations exempt from registration.

The following charitable organizations shall not be required to file an annual registration statement with the secretary of state:

(1) Educational institutions, the curriculums of which, in whole or in part, are registered or approved by the state board of education, either directly or by acceptance of accreditation by an accrediting body recognized by the state board of education; and any auxiliary associations, foundations and support groups which are directly responsible to any such educational institutions;

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his or her use;

(3) Hospitals which are nonprofit and charitable;
(4) Organizations which solicit only within the membership of the organization by the members thereof: Provided, That the term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation. For the purpose of this section, "member" means a person having membership in a nonprofit corporation, or other organization, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization, such as the right to vote, to elect officers, directors and issues, to hold office or otherwise as ordinarily conferred on members of such organizations;

(5) Churches, synagogues, associations or conventions of churches, religious orders or religious organizations that are an integral part of a church which qualifies as tax exempt under the provisions of 26 U.S.C. §501(c)(3) and which qualifies as being exempt from filing an annual return under the provisions of 26 U.S.C. §6033;

(6) Any person, firm, corporation or organization that sponsors a single fund-raising event for the benefit of a named charitable organization where all or part of the funds collected are donated to the named charitable organization: Provided, That the named charitable organization receiving the funds is registered pursuant to this article, reports each of these donations individually, and certifies that no funds were withheld by the organization that solicited the funds;

(7) Any charitable organization that does not employ a professional solicitor or fund-raiser and does not intend to solicit and receive and does not actually raise or receive contributions from the public in excess of twenty-five thousand dollars during a calendar year.
Charitable organizations which do not intend to solicit and receive in excess of twenty-five thousand dollars, but do receive in excess of that amount from the public, shall file the annual registration statement within thirty days after contributions are 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.

Except as permitted and authorized by the provisions of this article, a child under fourteen years of age shall only be employed or permitted to work the following jobs:

1. Agriculture and horticulture activities which have not been declared hazardous by the secretary of the United States department of labor;

2. Domestic services within the residence of the employer;

3. Work for parents or legal guardian in their solely owned business, except those jobs set out in section two of this article;

4. As actors or performers in motion pictures, theatrical, radio or television productions; and

5. Newspaper delivery.

§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.

§21-6-6. Hours and days of labor by minors.

§21-6-7. Supervision permits.

§21-6-8. Blanket work permits.

§21-6-9. Enforcement of article.

§21-6-10. Offenses; penalties.

§21-6-11. Rules.
(a) No child under eighteen years of age may be employed, permitted or suffered to work in, about, or in connection with any of the following occupations:

(1) Motor vehicle driver and outside helper whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivery of goods;

(2) The manufacture, storage, handling or transportation of explosives or highly flammable substances;

(3) Ore reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops, or in any other place in which the heating, melting or heat treatment of metals is carried on;

(4) Logging and saw milling occupations;

(5) Power-driven woodworking machine occupations;

(6) Occupations involving exposure to radioactive substances and ionizing radiations;

(7) Power-driven hoisting apparatus occupations;

(8) Power-driven metal-forming, punching, and shearing machine occupations;

(9) Mining, including coal mining;

(10) Occupations involving slaughtering, meat-packing, or processing or rendering;

(11) Power-driven bakery machines;

(12) Power-driven paper-products machine occupations;
(13) Occupations involved in the manufacturing of brick, tile, and kindred products;

(14) Occupations involved in the operation of power-driven circular saws, band saws, and guillotine shears;

(15) Occupations involved in wrecking, demolition, and ship-breaking operations;

(16) Roofing operations above ground level; and

(17) Excavation operations.

(b) No child under eighteen years of age may be employed or permitted to work in a bar, or be permitted, employed or suffered to sell, dispense or serve alcoholic beverages in any place or establishment where the consumption of alcoholic beverages is permitted by law.

(c) No child under eighteen years of age may be employed or permitted to work in any occupation prohibited by law or determined by the commissioner to be dangerous or injurious: Provided, That a child between the ages of sixteen and eighteen years who has completed the minimum training requirements of the West Virginia University fire service extension firefighter training section one, or its equivalent, and who has the written consent of his or her parents or guardian may be employed by or elected as a member of a volunteer fire department to perform fire-fighting functions: Provided, however, That no child may be permitted to operate any fire-fighting vehicles, enter a burning building in the course of his or her employment or work or enter into any area determined by the fire chief or fireman in charge at the scene of a fire or other emergency to be an area of danger exposing the child to physical harm by reason of impending collapse of a building or explosion, unless the child is under the immediate supervision of a fire line officer.
§21-6-3. Issuance of work permit.

(a) A child fourteen or fifteen years of age may be employed or permitted to work in any gainful occupation, except as provided in section two of this article, when the person, firm or corporation by whom the child is employed or permitted to work, obtains and keeps on file and accessible to officers charged with the enforcement of this article, a work permit issued by the superintendent of schools of the county in which the child resides, or by some person authorized by him or her in writing. Whenever a work permit has been issued, or wherever an age certificate has been issued under the provisions of section five of this article, it shall be conclusive as to the age of the child on whose behalf the work permit or age certificate was issued.

(b) The superintendent of schools, or person authorized by him or her in writing, shall issue the work permit only upon receipt of the following documents:

(1) A written statement, signed by the person for whom the child expects to work, that he or she intends legally to employ the child;

(2) A brief written description of the job the child is expected to perform;

(3) A birth certificate, or attested transcript thereof, issued by the registrar of vital statistics or other officer charged with the duty of recording births;

(4) A certificate signed by the principal or registrar of the school attended showing that the child is attending school; and

(5) The written consent of the parent or parents, guardian or custodian of the child.
§21-6-4. Contents of work permit; forms; filing; records; revocation.

(a) A work permit issued under this article shall set forth the full name and the date and place of birth of the child, with the name and address of his or her parents or parent, guardian or custodian. It shall certify that the child has appeared before the officer issuing the permit and submitted proofs of age, school attendance, prospective employment, brief description of job and parental or other consent required in section three.

(b) The state commissioner of labor shall prepare printed forms for work permits and furnish them to the superintendents of schools in the counties of the state. A copy of each permit issued shall be forwarded to the state commissioner of labor within four days after its issuance. A record of all permits granted and of all applications denied as well as all certificates of age, and documents evidencing school attendance, prospective employment, brief description of job and parental or other consent submitted by the applicants for permits shall be kept in the office of the issuing officer.

(c) The state commissioner of labor may at any time revoke a permit if in his or her judgment it was improperly issued, and for this purpose he or she is authorized to investigate the true age of any child employed, to hear evidence, and to require the production of relevant books and documents. If a permit is revoked, the issuing officer shall be notified of the action, and the child may not thereafter be employed or permitted to labor until a new permit has been legally obtained or until the child 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.
(a) Upon request of any employer who is desirous of employing a child who represents his or her age to be sixteen years or over, the officer charged with the issuance of work permits shall require of the child the proof of age specified in section three of this article, and, upon receipt thereof, if it be found that the child is actually sixteen years of age or over, shall issue to the employer a certificate showing the age and date and place of birth of the child. The age certificate, when filed in the office of the employer, must be accepted by an officer charged with the enforcement of this article as evidence of the age of the child in whose name it was issued.

(b) Any officer charged with the enforcement of this article may inquire into the true age of a child apparently under the age of sixteen years who is employed or permitted to work in any gainful occupation and for whom no work permit or age certificate is on file; and if the age of the child is found to be actually under sixteen years, the employment of the child shall be considered a violation of the provisions of this article.

(c) The state commissioner of labor may at any time revoke any age certificate if in his or her judgment it was improperly issued, and for this purpose he or she is authorized to investigate the true age of any child employed as in the case of work permits.

(d) The issuance of work permits and of age certificates shall be under the supervision of the state superintendent of schools.

§21-6-7. Hours and days of labor by minors.

(a) No child under the age of sixteen who is employed or permitted to work in accordance with the provisions of this article shall work:
(1) During school hours, except as provided in work experience and career exploration programs approved by the United States Secretary of Labor;

(2) Before seven o’clock antemeridian or after seven o’clock postmeridian: Provided, That a child under the age of sixteen may work until nine o’clock postmeridian from the first day of June through Labor Day;

(3) More than three hours per day, on days in which public schools are in session;

(4) More than eighteen hours per week, in weeks in which public schools are in session;

(5) More than eight hours, on days in which public schools are not in session;

(6) More than forty hours per week, in weeks in which public schools are not in session; or

(7) More than five hours continuously without an interval of at least thirty minutes for a lunch period.

(b) The provisions of subsection (a) of this section do not apply to children under sixteen performing the jobs set out in section one of this article.

§21-6-8. Supervision permits.

(a) The commissioner is authorized to prescribe and issue supervision permits to meet special circumstances, and to prescribe the terms and conditions thereof.

(b) The provisions of sections two, three and seven of this article do not apply to a child’s employment under a supervision permit issued by the commissioner under this section. The
commissioner shall issue a supervision permit only if he or she finds, after careful investigation, as follows:

(1) That the child, in performance of the work contemplated, will be supervised by a responsible party;

(2) That the employer for whom the child will be employed is not subject to federal regulation regarding child labor; and

(3) That the issuance of the supervision permit will promote the best interests of the child.

A supervision permit is valid only so long as the employment is in compliance with the terms and conditions prescribed by the commissioner and contained therein.

§21-6-8a. Blanket work permits.

(a) Blanket work permits are authorized when twenty-five or more minors are to be employed for a period of ninety days or less by an employer.

The employer, or person authorized by him or her in writing, shall forward to the commissioner of labor the following information:

(1) A letter from the employer stating that he or she is familiar with the child labor law of West Virginia and will abide by the law.

(2) A list containing the names, birthdates, ages, and job classifications of each minor.

(b) The minors to be covered by the blanket work permit may not be employed until the employer receives the permit from the commissioner of labor.
The commissioner of labor shall acknowledge the receipt of the information with a letter which shall be retained on file by the employer for the duration of the minors’ employment. The commissioner of labor, after making proper inquiry, may issue a blanket work permit for an employer for a period not to exceed ninety days.

§21-6-9. Enforcement of article.

It is the duty of the state commissioner of labor, and of his or her authorized representatives within the division of labor, to enforce the provisions of this article. To aid in enforcement, the commissioner and his or her representatives are authorized to enter and inspect any place or establishment covered by this article, and to have access to all files and records of employers the inspection of which is pertinent to the objects and purposes of this article. School officials, including truancy officers, shall lend to the commissioner all possible assistance toward effectuating such objects and purposes.

§21-6-10. Offenses; penalties.

(a) Any person who violates a provision of this article, or any parent, guardian or custodian of a child, who permits the child to work in violation of the provisions of this article, or any school official who illegally issues a work permit, or any person who furnishes false evidence in reference to the age, birthplace, job description, consent or educational qualifications of a child under this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than fifty nor more than two hundred dollars.

(b) For the second or subsequent offense, a person convicted of violating a provision of this article shall be fined not less than two hundred nor more than one thousand dollars, or confined in the county or regional jail for not more than six months, or both fined and imprisoned.
§21-6-11. Rules.

1 The commissioner of the division of labor may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this article. The rules may include provisions prohibiting the employment of children in occupations determined 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.


1 This section shall be known as the "Minor Settlement Proceedings Reform Act".

3 (a) If a minor suffers injury to his or her person or property, the parent, guardian or next friend of the minor may negotiate
a settlement of the minor's claim for damages prior to or
subsequent to the filing of an action for damages.

(b) **Filing of petition or motion.** — In order to secure a
release of the party or parties allegedly responsible for the
injury or loss, the parent, next friend or guardian of the minor
shall file a verified petition in the circuit court of the county in
which the minor resides or in which an action for damages may
be filed in accordance with the provisions of section one, article
one, chapter fifty-six of this code: *Provided*, That if an action
for damages of the minor is pending in circuit court, the petition
shall be filed, verified and served as a motion in the pending
action and may be filed by a parent, guardian or next friend.

(c) **Contents of petition or motion.** — The petition or
motion shall request approval by the court of the terms of the
proposed settlement, the release of liability and the manner of
distribution of settlement proceeds. The petition or motion
shall also state the following:

(1) The name, gender and age of the minor;

(2) The facts of the injury and damages of the minor relied
upon in requesting the court to consider and approve the
proposed settlement and release;

(3) The circumstances and events leading to the injury or
loss at issue and the identities of the persons or entities alleged
to be responsible for the injury or loss;

(4) The identities of the persons or entities to be released;

(5) The circumstances of the minor at the time of the
petition or motion;

(6) The relationship of the petitioner or moving party to the
minor;
(7) The nature and effect of the injury;

(8) The sum of expenses expended for the treatment and care of the minor for the injuries at issue;

(9) An estimate of future expenses for the treatment and care of the minor related to the injury and how such expenses would be satisfied from the settlement proceeds;

(10) A proposal as to how the costs and expenses of processing the settlement and release are to be satisfied;

(11) A proposal for distribution of other settlement proceeds; and

(12) A request for such other relief as the court may determine is appropriate in the best interests of the child.

(d) Guardian ad litem. — Upon the filing of a petition or motion, the court shall appoint a guardian ad litem to:

(1) Review and confirm the facts set forth in the petition and the facts and circumstances of the minor, including the injuries and losses of the minor alleged to have been caused by the party or parties to be released as alleged in the petition or motion; the treatment and conditions past, present and in the foreseeable future of the minor as a result of the injuries and losses at issue; the proposed amounts and procedures for distribution of settlement proceeds; and other relevant information appearing in the petition or motion or otherwise; and

(2) File an answer to the petition or motion on behalf of the minor, stating the opinion of the guardian ad litem as to whether or not the proposed settlement and release and the proposed distribution of proceeds are in the best interest of the minor.

(e) Hearing. — A hearing shall be conducted on the petition or motion, at which time the court shall take testimony and
consider arguments regarding the alleged injuries or losses and the proposals for the settlement, release, initial payment of expenses and the distribution of settlement proceeds: Provided, That the court may order that the minor appear and testify if the court finds that his or her appearance or testimony is appropriate for consideration by the court of the proposed settlement.

(f) Release form. — If the court grants the requested relief, a release of the claim of the minor against the persons or entities alleged to be responsible for the injuries or losses and who are identified in the petition or motion to be released from liability, any other persons or entities making payment on behalf of those persons or entities and any subsidiaries or successor persons or entities shall be executed by a party authorized by the court to execute the release. The release shall be in form or effect as follows:

I, ........, the [guardian or other person authorized to execute the release] of ..........., a minor, in consideration of the sum of $..........., and under authority of an order of the Circuit Court of ........ County, entered on the ........ day of ........, 20...., pursuant to West Virginia Code 44-10-14, do hereby release ........... from all claims and demands on account of injuries allegedly inflicted upon the minor and any property of the minor on the ........... day of ..........., ........, at .........................................

(Signature)

[Guardian or other person authorized by the court to execute the release] of ........................................

(g) Order approving or rejecting settlement. — The court shall enter an order with findings of fact and granting or rejecting the proposed settlement, release and distribution of settlement proceeds. If the requested relief is granted, the court shall provide by order that an attorney appearing in the proceed-
ing or other responsible person shall negotiate, satisfy and pay initial expense payments from settlement proceeds, the costs and fees incurred for the settlement and any bond required therefor, expenses for treatment of the minor related to the injury at issue, payments to satisfy any liens on settlement proceeds, if any, and such other directives as the court finds appropriate to complete the settlement and secure the proceeds for the minor.

(1) In allowing the payment of settlement proceeds for attorney fees, legal expenses, court costs and other costs of securing the settlement in such reasonable amounts as the court finds in its discretion to be appropriate, the court shall consider the amount to be paid as damages, the age and necessities of the minor, the nature of the injury, the difficulties involved in effecting the settlement, legal expenses and fees paid to attorneys in similar cases and any other matters which the court determines should be considered in achieving a proper and equitable distribution of settlement proceeds.

(2) In allowing any sums to be paid to the minor or to another person to be used for the immediate personal benefit of the minor, the court shall state further the terms under which such payments shall be made, including the use for which such sums may be expended and the times on which such payments shall be made: Provided, That such payments shall be made no later than twenty-four months after entry of the order.

(3) The order shall provide that settlement proceeds remaining after the initial payment of expenses shall be deemed net settlement trust proceeds.

(4) If the net settlement proceeds are less than twenty-five thousand dollars, the court may order that the person authorized to pay the initial expenses deposit net settlement trust proceeds into a regulated financial institution or institutions with a
principal place of business in this state, in interest bearing
certificates of deposit or accounts or securities that are fully
insured by federal deposit insurance, in the name of the minor
and payable by the financial institution only to the minor upon
presentation of proper identification after the minor attains the
age of majority: Provided, That such person may be authorized
by the court to transfer funds to a substitute qualified institution
or institutions from the financial institution or institutions
initially selected: Provided, however, That any substitution
shall be reported to any fiduciary commissioner or supervisor
of the county that the court has designated to review of the
status of the investment and security of net settlement trust
proceeds: Provided further, That whenever net settlement trust
proceeds are deposited into a bank pursuant to the provisions of
this paragraph, such bank shall, within ten days of receipt of
such funds, file with the clerk of the court an acknowledgment
that the funds have been received and that such funds may be
withdrawn only by the minor upon his or her reaching the age
of majority or upon order of the court.

(5) The order shall provide that within sixty days of the
entry of the order, a statement of initial expense payments and
an inventory of net settlement trust proceeds and any income
earned thereon shall be filed by the person authorized to pay
initial expenses with the fiduciary commissioner or supervisor
of the county commission designated by the court to review the
status of settlement proceeds for the minor.

(6) The order shall direct that a certified copy of the order
of the court approving the settlement be provided by the clerk
of the circuit court to the fiduciary commissioner or supervisor
designated by the court to review the status of settlement
proceeds.

(h) Appointment of conservator and reports to fiduciary
officers. — The court may appoint a conservator to serve as the
person responsible for investment and control of net settlement trust proceeds until the minor attains the age of majority or at such later time as the court may order upon terms the court finds to be in the best interest of the minor, taking into consideration any special needs of the minor at any age. The conservator may be a guardian appointed pursuant to section three of this article or other responsible person.

(1) Neither the corpus nor income accumulated on net settlement trust proceeds shall be used for the maintenance or care of the minor during his or her minority, absent unusual circumstances or special needs of the minor specified in the order approving the settlement. The corpus or income earned thereon may not be invaded, revised or subjected to assignment, levy, garnishment or other order, except as shall be first approved by order of the court approving the settlement.

(2) The court shall determine the amount and necessity for bond of the conservator and for any surety of the bond of the conservator, payable on behalf of the minor in an amount sufficient to protect the principal of net settlement trust proceeds, unless the court finds the conservator is already under bond and surety of bond sufficient for the purpose. The bond of the conservator and surety for the bond of the conservator shall be in form and type acceptable to the fiduciary commissioner or supervisor of the county commission designated by the court to review the reports of the conservator and shall be conditioned to account for and pay over the amount of net settlement trust proceeds as provided for by the order of the court. The clerk of the circuit court shall provide to the office of such fiduciary commissioner or supervisor a certified copy of the court’s order approving the settlement and distribution of proceeds and such fiduciary commissioner or supervisor shall file and record the order with any bond of the conservator that may be required by the court approving the settlement and distribution of proceeds.
(3) A report of net settlement trust proceeds and income earned thereon for each calendar year shall be filed by the conservator by the first day of February next following the end of the calendar year in the order approving the settlement is entered and every year thereafter in accordance with the terms of the court order.

(4) If the amount of net settlement trust proceeds is less than twenty-five thousand dollars, the court may include in the order approving the settlement a waiver of any or all of the requirements regarding reference to a fiduciary officer, the filing of the order or of any other reports or statements of accounts with a fiduciary commissioner or supervisor of the county commission designated by the court, the posting of bond and corporate or other surety of bond of the conservator and any 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.


(a) The state department may temporarily remove a child from a foster home based on an allegation of abuse or neglect, including sexual abuse, that occurred while the child resided in the home. If the department determines that reasonable cause exists to support the allegation, the department shall remove all foster children from the arrangement and preclude contact between the children and the foster parents. If, after investigation, the allegation is determined to be true by the department or after a judicial proceeding a court finds the allegation to be true or if the foster parents fail to contest the allegation in writing within twenty calendar days of receiving written notice of said allegations, the department shall permanently terminate all foster care arrangements with said foster parents: Provided, That if the state department determines that the abuse occurred due to no act or failure to act on the part of the foster parents and that continuation of the foster care arrangement is in the best interests of the child, the department may, in its discretion, elect not to terminate the foster care arrangement or arrangements.

(b) When a child has been placed in a foster care arrangement for a period in excess of eighteen consecutive months and the state department determines that the placement is a fit and proper place for the child to reside, the foster care arrangement may not be terminated unless such termination is in the best interest of the child and:
(1) The foster care arrangement is terminated pursuant to subsection (a) of this section;

(2) The foster care arrangement is terminated due to the child being returned to his or her parent or parents;

(3) The foster care arrangement is terminated due to the child being united or reunited with a sibling or siblings;

(4) The foster parent or parents agree to the termination in writing;

(5) The foster care arrangement is terminated at the written request of a foster child who has attained the age of fourteen; or

(6) A circuit court orders the termination upon a finding that the state department has developed a more suitable long-term placement for the child upon hearing evidence in a proceeding brought by the department seeking removal and transfer.

(c) When a child has been residing in a foster home for a period in excess of six consecutive months in total and for a period in excess of thirty days after the parental rights of the child’s biological parents have been terminated and the foster parents have not made an application to the department to establish an intent to adopt the child within thirty days of parental rights being terminated, the state department may terminate the foster care arrangement if another, more beneficial, long-term placement of the child is developed: Provided, That if the child is twelve years of age or older, the child shall be provided the option of remaining in the existing foster care arrangement if the child so desires and if continuation of the existing arrangement is in the best interest of the child.
(d) When a child is placed into foster care or becomes eligible for adoption and a sibling or siblings have previously been placed in foster care or have been adopted, the department shall notify the foster parents or adoptive parents of the previously placed or adopted sibling or siblings of the child’s availability for foster care placement or adoption to determine if the foster parents or adoptive parents are desirous of seeking a foster care arrangement or adoption of the child. Where a sibling or siblings have previously been adopted, the department shall also notify the adoptive parents of a sibling of the child’s availability for foster care placement in that home and a foster care arrangement entered into to place the child in the home if the adoptive parents of the sibling are otherwise qualified or can become qualified to enter into a foster care arrangement with the department and if such arrangement is in the best interests of the child: Provided, That the department may petition the court to waive notification to the foster parents or adoptive parents of the child’s siblings. This waiver may be granted, ex parte, upon a showing of compelling circumstances.

(e) When a child is in a foster care arrangement and is residing separately from a sibling or siblings who are in another foster home or who have been adopted by another family and the parents with whom the placed or adopted sibling or siblings reside have made application to the department to establish an intent to adopt or to enter into a foster care arrangement regarding a child so that said child may be united or reunited with a sibling or siblings, the state department shall upon a determination of the fitness of the persons and household seeking to enter into a foster care arrangement or seek an adoption which would unite or reunite siblings, and if termination and new placement are in the best interests of the children, terminate the foster care arrangement and place the child in the household with the sibling or siblings: Provided, That if the
department is of the opinion based upon available evidence that residing in the same home would have a harmful physical, mental or psychological effect on one or more of the sibling children or if the child has a physical or mental disability which the existing foster home can better accommodate, or if the department can document that the reunification of the siblings would not be in the best interest of one or all of the children, the state department may petition the circuit court for an order allowing the separation of the siblings to continue: Provided, however, That if the child is twelve years of age or older, the state department shall provide the child the option of remaining in the existing foster care arrangement if remaining is in the best interests of the child. In any proceeding brought by the department to maintain separation of siblings, such separation may be ordered only if the court determines that clear and convincing evidence supports the department’s determination. In any proceeding brought by the department seeking to maintain separation of siblings, notice shall be afforded, in addition to any other persons required by any provision of this code to receive notice, to the persons seeking to adopt a sibling or siblings of a previously placed or adopted child and said persons may be parties to any such action.

(f) Where two or more siblings have been placed in separate foster care arrangements and the foster parents of the siblings have made application to the department to enter into a foster care arrangement regarding the sibling or siblings not in their home or where two or more adoptive parents seek to adopt a sibling or siblings of a child they have previously adopted, the department’s determination as to placing the child in a foster care arrangement or in an adoptive home shall be based solely upon the best interests of the siblings.
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.


(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the court shall, upon request of the court, make an investigation of the environment of the juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order a psychological examination of the juvenile. The report of such examination and other investigative and social reports shall not be made available to the court until after the adjudicatory hearing. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than seventy-two hours prior to the dispositional hearing.
(b) Following the adjudication, the court shall conduct the dispositional proceeding, giving all parties an opportunity to be heard. In disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the juvenile and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile’s parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile’s activities under terms which are reasonable and within the child’s ability to perform, including participation in the litter control program established pursuant to section twenty-five, article seven, chapter twenty of this code, or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his parent or custodian, or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement
or that the emergency situation made such efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter and guidelines promulgated by the supreme court of appeals;

(5) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency pursuant to subdivision (1), section four, article one of this chapter, the court may commit the juvenile to the custody of the director of the division of juvenile services for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles: Provided, That the court maintains discretion to consider alternative sentencing arrangements. Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile’s best interests or required by the public welfare to place the juvenile in the custody of the division of juvenile services, the court shall provide the division of juvenile services with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to school records, psychological reports and evaluations, medical reports and evaluations or any other such records as may be in the court’s possession as would enable the division of juvenile services to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender. Commitments shall not exceed the maximum term for which an adult could have been sentenced for the same offense and any such maximum allowable sentence to be served in a juvenile correctional facility may take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why;
and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in subsections (c) and (d), section four, article five, chapter twenty-seven of this code, commit the juvenile to a mental health facility in accordance with the juvenile’s treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible.

(c) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the supreme court of appeals.

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

(e) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing such person as an adult.
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 has been adjudicated delinquent, the court may, upon its own motion or upon request of counsel, order the juvenile to be delivered into the custody of the director of the division of juvenile services, who shall cause the juvenile to be transferred to a juvenile diagnostic center for a period not to exceed sixty days. During this period, the juvenile shall undergo examination, diagnosis, classification and a complete medical examination and shall at all times be kept apart from the general
juvenile inmate population in the director’s custody. Not later than sixty days after commitment pursuant to this section the juvenile shall be remanded and delivered to the custody of the director, an appropriate agency or any other person that the court by its order directs. Within ten days after the end of the examination, diagnosis and classification, the director of the division of juvenile services shall make or cause to be made a report to the court containing the results, findings, conclusions and recommendations of the director with respect to that 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.

(a) There is hereby created the division of juvenile services within the department of military affairs and public safety. The director shall be appointed by the governor with the advice and consent of the Senate and shall be responsible for the control and supervision of each of its offices. The director may appoint deputy directors and assign them duties as may be necessary for the efficient management and operation of the division.

(b) The division of juvenile services shall consist of two subdivisions:

(1) The office of juvenile detention, which shall assume responsibility for operating and maintaining centers for the predispositional detention of juveniles, including juveniles who have been transferred to adult criminal jurisdiction under section ten, article five of this chapter and juveniles who are awaiting transfer to a juvenile corrections facility; and

(2) The office of juvenile corrections, which shall assume responsibility for operating and maintaining juvenile corrections facilities.

(c) Notwithstanding any provisions of this code to the contrary, whenever a juvenile is ordered into the custody of the division of juvenile services, the director shall have the authority to place the juvenile while he or she is in the division’s custody at whichever facility operated by the division is deemed by the director to be most appropriate considering the juvenile’s well-being and any recommendations of the court placing the juvenile in the division’s custody.
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.

(a) Following a determination pursuant to section two of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term case plan means a written document that includes, where applicable, the requirements of the family case plan as provided for in section three, article six-d of this chapter and that also includes at least the following: A description of the
type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parent(s) home; facilitate return of the child to his or her own home or the permanent placement of the child; and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child. The term "permanency plan" refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time reasonable efforts are made to prevent removal or to make it possible for a child to safely return home. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child’s case plan shall be sent to the child’s attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent or other family members to a community agency for needed assistance and dismiss the petition;
(3) Return the child to his or her own home under supervision of the department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or parents are presently unwilling or unable to provide adequately for the child’s needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state: (A) That continuation in the home is contrary to the best interests of the child and why; (B) whether or not the department has made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family and to prevent or eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home; (C) what efforts were made or that the emergency situation made such efforts unreasonable or impossible; and (D) the specific circumstances of the situation which made such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child’s commitment to the department shall continue. Considerations pertinent to the determination include whether the child should: (i) Be continued in foster care for a specified period; (ii) be considered for adoption; (iii) be considered for legal guardianship; (iv) be considered for permanent placement with a fit and willing relative; or (v) be placed in another planned permanent living arrangement, but only in cases where the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i), (ii),
(iii) or (iv) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial or guardianship rights and/or responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors: (A) The child’s need for continuity of care and caretakers; (B) the amount of time required for the child to be integrated into a stable and permanent home environment; and (C) other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state: (i) That continuation in the home is not in the best interest of the child and why; (ii) why reunification is not in the best interests of the child; (iii) whether or not the department made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family and to prevent the placement or
to eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home, or that the emergency situation made such efforts unreasonable or impossible; and (iv) whether or not the department made reasonable efforts to preserve and reunify the family including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to the provisions of this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of another child of the parent;

(ii) Committed voluntary manslaughter of another child of the parent;

(iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or

(iv) Committed a felonious assault that results in serious bodily injury to the child or to another child of the parent; or

(C) The parental rights of the parent to a sibling have been terminated involuntarily.

(b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected"
shall mean that, based upon the evidence before the court, the
abusing adult or adults have demonstrated an inadequate
capacity to solve the problems of abuse or neglect on their own
or with help. Such conditions shall be considered to exist in the
following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or
are addicted to alcohol, controlled substances or drugs, to the
extent that proper parenting skills have been seriously impaired
and such person or persons have not responded to or followed
through the recommended and appropriate treatment which
could have improved the capacity for adequate parental
functioning;

(2) The abusing parent or parents have willfully refused or
are presently unwilling to cooperate in the development of a
reasonable family case plan designed to lead to the child’s
return to their care, custody and control;

(3) The abusing parent or parents have not responded to or
followed through with a reasonable family case plan or other
rehabilitative efforts of social, medical, mental health or other
rehabilitative agencies designed to reduce or prevent the abuse
or neglect of the child, as evidenced by the continuation or
insubstantial diminution of conditions which threatened the
health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or
seriously injured the child physically or emotionally, or have
sexually abused or sexually exploited the child, and the degree
of family stress and the potential for further abuse and neglect
are so great as to preclude the use of resources to mitigate or
resolve family problems or assist the abusing parent or parents
in fulfilling their responsibilities to the child; or

(6) The abusing parent or parents have incurred emotional
illness, mental illness or mental deficiency of such duration or
nature as to render such parent or parents incapable of exercis-
ing proper parenting skills or sufficiently improving the
adequacy of such skills.

(c) The court may, as an alternative disposition, allow the
parents or custodians an improvement period not to exceed six
months. During this period the court shall require the parent to
rectify the conditions upon which the determination was based.
The court may order the child to be placed with the parents, or
any person found to be a fit and proper person, for the tempo-
rary care of the child during the period. At the end of the
period, the court shall hold a hearing to determine whether the
conditions have been adequately improved and at the conclu-
sion of the hearing shall make a further dispositional order in
accordance with this section.

§49-6-8. Foster care review; annual reports to the court.

(a) If, twelve months after receipt by the department or its
authorized agent of physical custody of a child either by a court
ordered placement or by a voluntary agreement, the department
has not placed a child in an adoptive home or placed the child
with a natural parent or placed the child in legal guardianship
or permanently placed the child with a fit and willing relative,
the department shall file with the court a petition for review of
the case. The department shall also file with the court a report
detailing the efforts that have been made to place the child in a
permanent home and copies of the child’s case plan, including
the permanency plan as defined in section five, article six of
this chapter. Copies of the report shall be sent to the child’s
attorney and be made available to the child’s parent(s) or
guardian. The court shall schedule a hearing in chambers,
giving notice and the right to be present to: The child’s attor-
ney; the child, if twelve years of age or older; the child’s
parents; the child’s guardians; the child’s foster parents; any
preadoptive parent or any relative providing care for the child;
and such other persons as the court may, in its discretion, direct.
The child’s presence may be waived by the child’s attorney at
the request of the child or if the child would suffer emotional
harm. The purpose of the hearing is to review the child’s case,
to determine whether and under what conditions the child’s
commitment to the department shall continue and to determine
what efforts are necessary to provide the child with a permanent
home. At the conclusion of the hearing the court shall, in
accordance with the best interests of the child, enter an appro-
priate order of disposition. The court order shall state: (1)
Whether or not the department made reasonable efforts to
preserve the family and to prevent out-of-home placement or
that the specific situation made such effort unreasonable; (2) the
permanency plan for the child; and (3) services required to meet
the child’s needs: Provided, That the department is not required
to make reasonable efforts to preserve the family if the court
determines any of the conditions set forth in subdivision (7),
subsection (a), section five of this article exist. The court shall
possess continuing jurisdiction over cases reviewed under this
section for so long as a child remains in temporary foster care
or, when a child is returned to his or her natural parents subject
to conditions imposed by the court, for so long as the conditions
are effective.

(b) The state department shall file a supplementary petition
for review with the court within twelve months and every
twelve months thereafter for every child that remains in the
physical or legal custody of the state department until the child
is placed in an adoptive home or returned to his or her parents
or placed in legal guardianship or permanently placed with a fit and willing relative.

(c) The state department shall annually report to the court the current status of the placements of children in permanent care and custody of the state department who have not been adopted.

(d) The state department shall file a report with the court in any case where any child in the temporary or permanent custody of the state receives more than three placements in one year no later than thirty days after the third placement. This report shall be provided to all parties and their counsel. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a stable foster or temporary home: Provided, That no report shall be provided to any parent or parent’s attorney whose parental rights have been terminated pursuant to this article.

(e) The state department shall notify, in writing, the court, the child, if over the age of twelve, the child’s attorney, the parents and the parents’ attorney forty-eight hours prior to the move if this is a planned move, or within forty-eight hours of the next business day after the move if this is an emergency move, except where such notification would endanger the child or the foster family. This notice shall not be required in any case where the child is in imminent danger in the child’s current placement. The location of the child need not be disclosed, but the purpose of the move should be. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice shall be provided pursuant to this provision to any parent or parent’s attorney whose parental rights have been terminated pursuant to this article.
Nothing in this article precludes any party from petitioning the court for review of the child’s case at any time. The court shall grant such petition upon a showing that there is a change in circumstance or needs of the child that warrants court 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.
The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Adjutant General:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation .................. $178.83
(2) Verizon West Virginia, Inc........... $352.48

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(3) AT&T Corporation .................. $6,644.47
(4) Citizens Communications Company of West Virginia .................. $8,133.32
(5) Verizon West Virginia, Inc........... $30,264.07

(b) Claim against the Air Quality Board:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc........... $6.68

(c) Claims against the Alcohol Beverage Control Administration:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation .................. $1,545.33
(2) Verizon West Virginia, Inc........... $10,053.99
(TO BE PAID FROM SPECIAL REVENUE FUND)

30 (3) Division of Highways .............. $ 1,179.38
31 (4) Gordon W. Lewis, Jr.,
and Lilly M. Lewis ................ $ 58,750.75

(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

(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

(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

(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

(h) Claim against the Board of Coal Mine Health and Safety:

51 (TO BE PAID FROM GENERAL REVENUE FUND)
(i) Claims against the Board of Embalmers and Funeral Directors:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 68.67
(2) Verizon West Virginia, Inc. ........... $ 137.87

(j) Claims against the Board of Architects:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 128.22
(2) Verizon West Virginia, Inc. ........... $ 295.63

(k) Claims against the West Virginia Board of Examiners for Licensed Practical Nurses:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 112.76
(2) Verizon West Virginia, Inc. ........... $ 268.36

(l) Claims against the Board of Optometry:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 157.19
(2) Verizon West Virginia, Inc. ........... $ 379.67

(m) Claims against the Board of Pharmacy:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 302.86
(2) Verizon West Virginia, Inc. ........... $ 657.50
384 CLAIMS [Ch. 56

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 Registered Professional Nurses:

93 (TO BE PAID FROM NON GENERAL REVENUE FUND)

94 (1) AT&T Corporation ................. $ 321.74
95 (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)
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<td>123 (2) Verizon West Virginia, Inc.</td>
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386 CLAIMS [Ch. 56

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)
(1) AT&T Corporation ................ $ 10,863.10
(2) Verizon West Virginia, Inc. .......... $ 22,706.66

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(3) AT&T Corporation ................ $ 8,780.14
(4) Verizon West Virginia, Inc. .......... $ 17,874.40

Claims against the Department of Education and the Arts:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 35.59
(2) Verizon West Virginia, Inc. .......... $ 784.52

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(3) Verizon West Virginia, Inc. .......... $ 11,629.00

Claims against the Department of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 51,414.02
(2) Citizens Communications Company
   of West Virginia ..................... $ 71,548.86
(3) Verizon West Virginia, Inc. .......... $137,654.01

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(4) AT&T Corporation ................ $ 12,418.07
(5) Citizens Communications Company
   of West Virginia ..................... $ 20,941.12
(6) Verizon West Virginia, Inc. .......... $ 35,031.44

Claims against the Department of Military Affairs and Public Safety:
388 CLAIMS [Ch. 56

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:
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(25) John F. Godbey $106.00
(26) Robert W. Golden and Linda L. Golden $250.00
(27) Silas Thomas Hall $911.69
(28) Patty L. Harrington and Paul K. Harrington $286.96
(29) Peter D. Hopper and Kathleen F. Hopper $272.39
(30) Eleanor Jacob $450.00
(31) Ramesh Jain $423.81
(32) Tony L. Jeffrey $225.00
(33) Arthur J. Karlen, Jr. $347.36
(34) William D. Kelley and Janet Kelley $39,220.00
(35) James Lamont $3,714.06
(36) Martha Leatherman $2,000.00
(37) Steven D. Leftwich $339.84
(38) Drusilla Marie Lemley $1,254.09
(39) David Joseph Marino $182.27
(40) Brenda K. Marshall $198.18
(41) Violet Maynard $500.00
(42) David Ryan Mick $862.70
(43) Stanley D. Miller $67.43
(44) Rose Anna Morris $500.00
(45) Renee L. Myers and Galen R. Myers $708.45
(46) Mary Katherine O’Neal $3,000.00
(47) Morris H. Pettus $167.48
(48) Katy L. Prichard and Charles E. Prichard $6,000.00
(49) Ann R. Roberts $89.04
(50) Ralph Sprigle and Cheryl Sprigle $813.86
(51) Rebecca Stalnaker-Jones $181.26
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<td>(55) Truth Ministries, Inc., dba Faith Mission</td>
<td>$505.30</td>
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<tr>
<td>325</td>
<td>(56) William E. Ullum and Loretta Ullum</td>
<td>$3,680.00</td>
</tr>
<tr>
<td>326</td>
<td>(57) Verizon West Virginia, Inc.</td>
<td>$252,363.62</td>
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<tr>
<td>327</td>
<td>(58) Gerald J. Warner</td>
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<tr>
<td>328</td>
<td>(59) Mindy Weasenforth</td>
<td>$858.44</td>
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<td>329</td>
<td>(60) Henry S. Williams</td>
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<td>330</td>
<td>(61) Steven G. Woodall</td>
<td>$3,551.22</td>
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<tr>
<td>331</td>
<td>(62) Thomas L. Young</td>
<td>$180.00</td>
</tr>
</tbody>
</table>

(58) Claims against the Division of Juvenile Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

<table>
<thead>
<tr>
<th>#</th>
<th>Claimant</th>
<th>Amount</th>
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<tbody>
<tr>
<td>336</td>
<td>(1) Alltel Corporation</td>
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<tr>
<td>337</td>
<td>(2) AT&amp;T Corporation</td>
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<td>338</td>
<td>(3) Brewer &amp; Company of West Virginia, Inc.</td>
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<tr>
<td>340</td>
<td>(4) Charleston Psychiatric Group, Inc.</td>
<td>$1,300.00</td>
</tr>
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<td>341</td>
<td>(5) Department of Administration</td>
<td>$7,649.73</td>
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<tr>
<td>342</td>
<td>(6) Division of Lifelong Learning - Ohio University</td>
<td>$3,700.00</td>
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<td>344</td>
<td>(7) EMP of Kanawha County</td>
<td>$930.30</td>
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<td>345</td>
<td>(8) Emergency Medicine Physicians of Ohio County, PLLC</td>
<td>$1,346.40</td>
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<td>347</td>
<td>(9) Kanawha Valley Radiologists, Inc.</td>
<td>$116.00</td>
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<td>348</td>
<td>(10) Carlos Naranjo, M.D.</td>
<td>$185.00</td>
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<td>349</td>
<td>(11) Ohio Valley Medical Center</td>
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<td>350</td>
<td>(12) Patterson’s Drug Store, Inc.</td>
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<td>351</td>
<td>(13) Pitney Bowes Credit Corporation</td>
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<td>352</td>
<td>(14) Verizon West Virginia, Inc.</td>
<td>$13,922.05</td>
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<td>353</td>
<td>(15) West Virginia Correctional Industries</td>
<td>$320.00</td>
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(qq) Claims against the Division of Labor:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 7,427.59
(2) Ralph O. Smith .................... $ 1,000.00
(3) Verizon West Virginia, Inc. ........ $ 12,151.65

(rr) Claims against the Division of Motor Vehicles:

(TO BE PAID FROM STATE ROAD FUND)

(1) AT&T Corporation ................ $ 11,291.61
(2) Citizens Communications Company of West Virginia ................ $ 53,990.29
(3) Myra K. Rine ....................... $ 120.00
(4) Jose Antonio Santiago .............. $ 1,200.00
(5) Verizon West Virginia, Inc. ........ $ 40,461.30

(ss) Claims against the Division of Natural Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Alltel Corporation ................ $ 6,916.59

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(2) AT&T Corporation ................ $ 20,437.25
(3) Verizon West Virginia, Inc. ........ $ 46,991.75

(tt) Claims against the Division of Personnel:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 1,559.13
(2) Verizon West Virginia, Inc. ........ $ 3,302.08

(uu) Claims against the Division of Protective Services:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 164.33
(2) Verizon West Virginia, Inc. ........ $ 166.74

Claims against the West Virginia Development Office-Division of Tourism:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 2,856.77
(2) Citizens Communications Company of West Virginia ................ $ 5,163.50
(3) Verizon West Virginia, Inc. ........ $ 6,280.75

Claims against Educational Broadcasting Authority:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 1,371.66
(2) Verizon West Virginia, Inc. ........ $ 31,299.68

Claims against the Environmental Quality Board:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 130.47
(2) Verizon West Virginia, Inc. ........ $ 321.47

Claims against the Fire Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 2,349.07
(2) Verizon West Virginia, Inc. ........ $ 5,110.03

Claims against the Division of General Services:

(TO BE PAID FROM NON GENERAL REVENUE FUND)
CLAIMS

(1) AT&T Corporation ................ $ 426.84
(2) Verizon West Virginia, Inc. ........ $ 1,087.71

(aaa) Claims against Geological and Economic Survey:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 662.01
(2) Verizon West Virginia, Inc. ........ $ 1,640.64

(bbb) Claims against the Governor’s Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 9,338.87
(2) Verizon West Virginia, Inc. ........ $ 27,197.22

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(3) AT&T Corporation ................ $ 2,004.91
(4) Verizon West Virginia, Inc. ........ $ 1,755.72

(ccc) Claims against the Education and State Employees’ Grievance Board:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 1,556.40
(2) Verizon West Virginia, Inc. ........ $ 4,360.70

(ddd) Claims against West Virginia Health Care Authority:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 907.67
(2) Verizon West Virginia, Inc. ........ $ 1,775.11

(eee) Claims against the Higher Education Policy Commission:
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<thead>
<tr>
<th>Claim Type</th>
<th>Entity</th>
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<tr>
<td>(TO BE PAID FROM NON GENERAL REVENUE FUND)</td>
<td>AT&amp;T Corporation</td>
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<tr>
<td>(TO BE PAID FROM SPECIAL REVENUE FUND)</td>
<td>Citizens Communications Company of West Virginia</td>
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<td>(TO BE PAID FROM NON GENERAL REVENUE FUND)</td>
<td>Verizon West Virginia, Inc.</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td>Grant Kevins</td>
<td>$350.00</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td>Jon Scragg</td>
<td>$300.00</td>
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<td>(TO BE PAID FROM NON GENERAL REVENUE FUND)</td>
<td>AT&amp;T Corporation</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td>Verizon West Virginia, Inc.</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td>AT&amp;T Corporation</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td>Verizon West Virginia, Inc.</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td>Citizens Communications Company of West Virginia</td>
<td>$190,136.63</td>
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<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td>Verizon West Virginia, Inc.</td>
<td>$267,613.58</td>
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<tr>
<td>(TO BE PAID FROM NON GENERAL REVENUE FUND)</td>
<td>AT&amp;T Corporation</td>
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<tr>
<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td>Citizens Communications Company of West Virginia</td>
<td>$190,136.63</td>
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<tr>
<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td>Verizon West Virginia, Inc.</td>
<td>$267,613.58</td>
</tr>
</tbody>
</table>
398 CLAIMS [Ch. 56

451 (1) AT&T Corporation ................ $ 1,545.55
452 (2) Verizon West Virginia, Inc. ......... $ 38,825.02

453 (jjj) Claims against the Insurance Commissioner:

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 (kkk) Claims against Joint Expenses:

458 (TO BE PAID FROM GENERAL REVENUE FUND)

459 (1) AT&T Corporation ................ $ 326.93
460 (2) Verizon West Virginia, Inc. ......... $ 727.42

461 (lll) Claims against the Library Commission:

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 (mmm) Claims against the Lottery Commission:

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 (nnn) Claims against the Massage Therapy Licensure Board:

474 (TO BE PAID FROM NON GENERAL REVENUE FUND)
Ch. 56] CLAIMS

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 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 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:

497  (TO BE PAID FROM GENERAL REVENUE FUND)

498 (1) AT&T Corporation ................ $ 1,707.43
499 (2) Verizon West Virginia, Inc. .......... $ 5,077.05
**Claims against the Public Employees Insurance Agency:**

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<th>Amount</th>
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<td>1</td>
<td>AT&amp;T Corporation</td>
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<tr>
<td>2</td>
<td>Verizon West Virginia, Inc.</td>
<td>$10,848.87</td>
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**Claims against the Public Service Commission:**

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<tr>
<th></th>
<th>Claimant</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Allegheny Voice &amp; Data, Inc.</td>
<td>$1,031.86</td>
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<tr>
<td>2</td>
<td>Division of Highways</td>
<td>$100.72</td>
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<tr>
<td>3</td>
<td>Johnson Controls, Inc.</td>
<td>$2,504.25</td>
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**Claims against Division of Public Transit:**

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<th></th>
<th>Claimant</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>AT&amp;T Corporation</td>
<td>$419.18</td>
</tr>
<tr>
<td>2</td>
<td>Verizon West Virginia, Inc.</td>
<td>$852.95</td>
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</table>

**Claims against the Racing Commission:**

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<tr>
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<tr>
<td>1</td>
<td>AT&amp;T Corporation</td>
<td>$700.73</td>
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<tr>
<td>2</td>
<td>Verizon West Virginia, Inc.</td>
<td>$1,323.61</td>
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<table>
<thead>
<tr>
<th></th>
<th>Claimant</th>
<th>Amount</th>
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<tbody>
<tr>
<td>3</td>
<td>Jon Day, DVM</td>
<td>$8,280.00</td>
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<td>4</td>
<td>Mark Dunnett</td>
<td>$2,125.00</td>
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</table>
Claims against the Real Estate Commission:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation $ 275.73
(2) Verizon West Virginia, Inc. $ 564.75

Claims against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation $ 6,808.40
(2) Citizens Communications Company of West Virginia $ 1,026.68
(3) Verizon West Virginia, Inc. $ 16,131.31

(TO BE PAID FROM SPECIAL REVENUE FUND)

(4) Harold Billingsley $ 123.00
(5) Mark E. Ingram $ 79.50
(6) Lawrence Morris $ 200.00
(7) Sonya Simms $ 23.90

Claim against Division of Rehabilitation Services:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation $ 22,846.04
(2) Citizens Communications Company of West Virginia $ 25,264.82
(3) Verizon West Virginia, Inc. $ 95,481.05

Claims against the Secretary of State:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation $ 2,658.90
(2) Verizon West Virginia, Inc. $ 4,699.93
Claims against the Solid Waste Management Board:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 283.50
(2) Verizon West Virginia, Inc. ........ $ 12,229.38

Claims against the Supreme Court:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 5,298.15
(2) Verizon West Virginia, Inc. ........ $ 10,632.84

Claims against the Treasurer's Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 1,275.32
(2) Verizon West Virginia, Inc. ........ $ 20,560.22

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(3) AT&T Corporation ................ $ 2,564.33
(4) Verizon West Virginia, Inc. ........ $ 5,234.34

Claims against Division of Veterans' Affairs:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation ................ $ 1,489.00
(2) Verizon West Virginia, Inc. ........ $ 3,524.84

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(3) Verizon West Virginia, Inc. ........ $ 2,373.15

Claims against Veterans' Home:

(TO BE PAID FROM GENERAL REVENUE FUND)
Claims against the Water Development Authority:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation .......................... $ 485.82
(2) Verizon West Virginia, Inc. ........... $ 2,896.07

Claims against Workers' Compensation:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation .......................... $ 45,801.44
(2) Verizon West Virginia, Inc. ........... $108,005.93

Claims against the Ethics Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation .......................... $ 248.16
(2) Verizon West Virginia, Inc. ........... $ 486.19

Claims against the WV Network:

(TO BE PAID FROM NON GENERAL REVENUE FUND)

(1) AT&T Corporation .......................... $ 167.75
(2) Verizon West Virginia, Inc. ........... $ 46,368.11

Claims against the WV Parole Board:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT&T Corporation .......................... $ 666.12
(2) Verizon West Virginia, Inc. ........... $ 1,268.63

Claims against the WV State Police:
CLAIMS AGAINST THE STATE.

(to be paid from General Revenue Fund)

1. AT&T Corporation ........................................ $25,967.08
2. Citizens Communications Company of West Virginia ..................... $3,255.22
3. Verizon West Virginia, Inc. .................................. $59,346.45

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.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Division of Corrections:

<table>
<thead>
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<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
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<tbody>
<tr>
<td>1 (1) American Medical Billing/Rose</td>
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<tr>
<td>Associated Radiologists ................ $ 553.00</td>
</tr>
<tr>
<td>2 (2) Anthony Creek Rescue Squad ........ $ 276.50</td>
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<tr>
<td>3 (3) Aramak Correctional Food Service .......... $ 6,646.18</td>
</tr>
<tr>
<td>4 (4) Associated Emergency Physicians, Inc. ... $ 99.00</td>
</tr>
<tr>
<td>5 (5) Associated Radiologists, Inc. ........ $ 13,664.00</td>
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## CLAIMS

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<th>No.</th>
<th>Description</th>
<th>Amount</th>
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<td>68</td>
<td>(39) Monongalia Emergency Medical Services</td>
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<tr>
<td>70</td>
<td>(40) Montgomery General Hospital</td>
<td>$236,206.44</td>
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<td>71</td>
<td>(41) Montgomery Med Corp. Inc.</td>
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<td>72</td>
<td>(42) Montgomery Radiologists, Inc.</td>
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<td>73</td>
<td>(43) Nephrology Associates, Inc.</td>
<td>$515.00</td>
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<td>74</td>
<td>(44) Ohio Valley Anesthesiologists</td>
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<td>75</td>
<td>(45) Oncology Hematology Associates</td>
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<td>(46) Herbert P. Oye, D.O.</td>
<td>$7,360.00</td>
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<td>77</td>
<td>(47) Parkersburg Pathology, MFC Corporation</td>
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<td>78</td>
<td>Corporation</td>
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<td>(48) Parkersburg Radiology Services, Inc.</td>
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<td>(49) Pocahontas Memorial Hospital</td>
<td>$13,400.40</td>
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<td>(50) Premier Medical Group</td>
<td>$108.00</td>
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<td>82</td>
<td>(51) Professional Anesthesia Services</td>
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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-8. Determining and developing needed community assets.
§5B-2A-12. Rulemaking.


1 The office has and may exercise the following duties, powers and responsibilities:
(1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;

(2) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in section eight of this article and to administer the procedure so established;

(3) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in section nine of this article and to administer the procedure so established;

(4) To establish a procedure to develop action reports and annual updates as provided in section ten of this article and to administer the procedure so established;

(5) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

(6) To establish a procedure to assist property owners in the sale of their property as provided in section eleven of this article and to administer the procedure so established;

(7) In conjunction with the division, to maintain and operate a system to receive and address questions, concerns and complaints relating to surface mining; and

(8) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance may include the preparation of a master land use plan pursuant to the provisions of section nine of this article.
§5B-2A-8. Determining and developing needed community assets.

1. The office shall determine the community assets that may be developed by the community, county or region to foster its viability when surface mining operations are completed.

2. Community assets to be identified pursuant to subsection (a) of this section may include the following:

   (1) Water and wastewater services;
   (2) Developable land for housing, commercial development or other community purposes;
   (3) Recreation facilities and opportunities; and
   (4) Education facilities and opportunities.

3. The operator shall be required to prepare and submit to the office the information set forth in this subsection as follows:

   (1) A map of the area for which a permit under article three, chapter twenty-two of this code is being sought or has been obtained;
   (2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and
   (3) A statement of the post-mining land use for all land which may be affected by the mining operations.

4. In determining the nature and extent of the needed community assets, the office shall consider at least the following:

   (1) An evaluation of the future of the community once mining operations are completed;
(2) The prospects for the long-term viability of any asset
developed under this section;

(3) The desirability of foregoing some or all of the asset
development required by this section in lieu of the requirements
of section nine of this article; and

(4) The extent to which the community, local, state or the
federal government may participate in the development of
assets the community needs to assure its viability.


(a) The office shall determine the land and infrastructure
needs in the general area of the surface mining operations.

(b) For the purposes of this section, the term “general area”
shall mean the county or counties in which the mining oper-
ations are being conducted or any adjacent county.

(c) To assist the office the operator shall be required to
prepare and submit to the office the information set forth in this
subsection as follows:

(1) A map of the area for which a permit under article three,
chapter twenty-two of this code is being sought or has been
obtained;

(2) The names of the surface and mineral owners of the
property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land
which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure
needs in the general area of the mining operations, the office
shall consider at least the following:
(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature and cost to develop and maintain the community assets identified in section eight of this article; and

(6) The availability of federal, state and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a development office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of section ten, article three, chapter twenty-two of this code. No provision of this section may be construed to modify requirements of article three of said chapter. Participation in a master land use plan is voluntary.

(1) State, local, county or regional development or redevelopment authorities may determine land and infrastructure needs within their jurisdictions through the development of a master
(2) A master land use plan must be reviewed by the office of coalfield community development and approved by the division of environmental protection pursuant to section ten, article three, chapter twenty-two of this code before the master land use plan can be implemented.

(3) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in subdivision one of this subsection shall be developed by the relevant state, local, county or regional development or redevelopment authority. These standards must be in place before the respective state, local, county or regional development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a state, local, county or regional development or redevelopment authority may not occur unless it is determined that: (a) The property use is compatible with adjacent land uses; (b) the use satisfies the relevant development or redevelopment authority’s anticipated need and market use; (c) the property has in place necessary infrastructure components needed to achieve the anticipated use; (d) the use is supported by all other appropriate public agencies; (e) the property is eligible for bond release in accordance with section twenty-three, article three, chapter twenty-two of this code; and (f) the use is feasible. Required infrastructure component standards require approval of the relevant county commission or commissions before such standards are accepted. County commission approval may be rendered only after a reasonable public comment period.

(4) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to paragraph
§5B-2A-12. Rulemaking.

(a) The office shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to establish, implement and enforce the provisions of this article, which rules shall include, but not be limited to:

(1) The development of standards for establishing the value of property by the office; and

(2) Criteria for the development of a master plan by local, county, regional or redevelopment authorities which coordinates the permitting and reclamation requirements of the division of environmental protection with these authorities.

(b) The office is authorized to promulgate emergency rules, prior to the first day of July, two thousand two, to incorporate the revisions to this article enacted during the two thousand two 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; appoint-
ment 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.

The West Virginia Legislature finds that there is a signifi-
cant need for a public body to promote and enhance historic
preservation, tourism and economic development activities that
relate to the state’s history as a coal producing state within the
counties of Boone, Cabell, Fayette, Logan, McDowell, Mercer,
Mingo, Raleigh, Summers, Wayne and Wyoming.

The Legislature further finds that the creation and empow-
ering of a statutory corporation to work with the landowners,
county officials and community leaders, state and federal
government agencies, and other interested parties to enable and
facilitate the development of the national coal heritage area will
greatly assist in the realization of these potential benefits.

1 Unless the context clearly requires a different meaning, the terms used in this article have the following meanings:

2 (a) "Authority" means the national coal heritage area authority;

3 (b) "Board" means the board of the national coal heritage area authority; and

4 (c) "National coal heritage area" means and is comprised of the counties of Boone, Cabell, Fayette, Logan, McDowell, 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 authority" which is a public corporation and a government instrumentality existing for the purposes of providing direction to and assistance with state and federal historic preservation, economic development, and tourism projects in the national coal heritage area and aiding in the development and implementation of integrated cultural, historical, and land resource management policies and programs in order to retain, enhance, and interpret the significant values of the lands, waters and structures in the national coal heritage area.

2 (b) The authority board shall be comprised of seventeen members. The following six persons shall be non-voting members and shall serve by virtue of their offices and may be represented at meetings of the board by designees: The secretary of the department of education and the arts, the commissioner of the bureau of the environment, the commissioner of the division of tourism, the commissioner of the division of culture and history, the director of the division of natural
resources and the executive director of the West Virginia
development office. The remaining eleven members shall be
appointed for terms of four years by the governor with the
advice and consent of the Senate. Of the eleven members
appointed by the governor, one member must reside in Boone
County; one member must reside in Cabell County; one mem-
ber must reside in Fayette County; one member must reside in
Logan County; one member must reside in McDowell County;
one member must reside in Mercer County; one member must
reside in Mingo County; one member must reside in Raleigh
County; one member must reside in Summers County; one
member must reside in Wayne County; one member must
reside in Wyoming County; and the appointees must be
representative of the tourism industry, the coal industry, the
united mine workers of America, economic development
activity, historic preservation activity and higher education.

(c) Of the eleven members first appointed to the board, two
shall be appointed for a term ending the thirtieth day of June,
two thousand three, and three members for terms ending one,
two and three years thereafter as the governor shall designate at
the time of the appointments. Thereafter, the terms of office
shall be four years. No appointed member may serve more than
two consecutive full terms. A member shall continue to serve
until his or her successor has been appointed and qualified.

(d) If an appointed member is unable to complete a term,
the governor shall appoint a person to complete the unexpired
term. Each vacancy occurring on the board must be filled
within sixty days after the vacancy is created.

(e) Any appointed member of the board shall immediately
and automatically forfeit his or her membership on the board if
he or she becomes a nonresident of the county from which he
or she was appointed.
(f) Each member of the board shall serve without compensation, but shall receive expense reimbursement for all reasonable and necessary expenses actually incurred in the performance of the duties of the office, in the same amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law: Provided, That no member shall be reimbursed for expenses paid by a third party.

(g) The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and may appoint staff for the authority and retain such temporary consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers. The executive director shall prepare annually a budget to be submitted to the board for its review and approval.

§29-27-4. Board; quorum; chairperson; bylaws.

(a) The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article.

(b) A chairperson shall be appointed by and shall serve at the will and pleasure of the governor, with the advice and consent of the Senate. The authority shall meet at such times as shall be specified by the chairperson, but in no case less than once each three months. Notice of the meeting must be given in accordance with the provisions of section three, article nine-a, chapter six of this code. A majority of the members may also call a meeting upon such notice as provided in this section. Six appointed members shall constitute a quorum for the transac-
tion of business. The chairperson of the board shall appoint
from the membership of the authority certain members to serve
as secretary and as treasurer.

(c) The board shall prescribe, amend and repeal bylaws and
rules governing the manner in which the business of the
authority is conducted, shall keep a record of its proceedings,
and shall review and approve an annual budget.


The authority, as a public corporation and governmental
instrumentality exercising public powers of the state, may
exercise all powers necessary or appropriate to carry out the
purposes of this article, including, but not limited to, the power:

(1) To assist in the development and implementation of
integrated cultural, historical and land resource management
policies and programs in the national coal heritage area;

(2) To advise the executive director of the national coal
heritage authority in retaining, enhancing and interpreting the
significant values of the lands, waters and structures of the area;

(3) To enter into partnerships with various preservation
groups, landmark commissions, certified local governments,
county commissions and other entities to undertake the preser-
vation, restoration, maintenance, operation, development,
interpretation and promotion of lands and structures that
possess unique and significant historic, architectural and
cultural value associated with the coal mining heritage of the
national coal heritage area;

(4) To make, amend, repeal and adopt bylaws for the
management and regulation of its affairs;
(5) To appoint officers, agents and employees, and to contract for and engage the services of consultants;

(6) To execute contracts necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article;

(7) Without in any way limiting any other subdivision of this section, to accept grants and loans from and enter into contracts and other transactions with any federal agency;

(8) To maintain an office at such places within the state as it may designate;

(9) To accept gifts or grants of property, funds, money, materials, labor, supplies or services from the federal government or from any governmental unit or any person, firm or corporation;

(10) To construct, reconstruct, improve, maintain, repair, operate and manage certain facilities in the national coal heritage area as may be determined by the authority;

(11) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for public recreation or growing out of the public activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

(12) To assess and collect a reasonable fee from those 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
thereunto 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; establish-
ing 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.

The Legislature finds that the creation and empowering of a statutory corporation to work with landowners, county and municipal officials and community leaders, state and federal government agencies, recreational user groups, persons interested in historic preservation and other interested parties to enable and facilitate acquisition, development, preservation and enhancement of facilities and resources proximate to or associated with the coal heritage trail, a national scenic byway in West Virginia, will greatly assist in the economic development of the state through increased tourism.

Unless the context clearly requires a different meaning, the terms used in this article have the following meanings:

(1) "Authority" means the coal heritage highway authority.

(2) "Board" means the board of the coal heritage highway authority.

(3) "Coal heritage trail" means that part of West Virginia route 16 connecting Beckley and Welch, and United States route 52, connecting Bluefield and Welch, all designated as a national scenic byway, and existing within the counties of Mercer, McDowell, Raleigh and Wyoming, and those routes that comprise the National Coal Heritage Trail Scenic Byway, as designated by the United States department of transportation, traversing the counties of Fayette, Mercer, McDowell, Raleigh and Wyoming.

§29-28-3. Authority created.

(a) There is hereby created the "Coal Heritage Highway Authority" which is a public corporation and a government instrumentality to promote economic development and tourism in areas along the national scenic byway, designated the coal heritage trail, and aid in the development, preservation, restoration or enhancement of roads, trails, lands and structures, including areas or structures associated with surface transportation, which have unique and significant historic, architectural or cultural importance associated with the area's heritage of coal production and which are located in one or more of the counties of Fayette, Mercer, McDowell, Raleigh and Wyoming.

(b) The authority shall cooperate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals
for the purpose of planning, assisting and establishing recre-
ational, tourism, industrial, economic and community develop-
ment of the coal heritage trail for the benefit of West Virginia.

§29-28-4. Appointment of board; terms.

(a) The authority shall be governed by a board of six
members. All members shall be appointed before the first day
of July, two thousand two.

(b) Each of the county commissions of the counties of
Fayette, Mercer, McDowell, Raleigh and Wyoming shall
appoint one member each to the board. The appointees must be
affiliated with or knowledgeable in tourism, economic develop-
ment or heritage preservation. The sixth member shall be
appointed by the secretary of education and the arts and shall be
the chair. Of the members first appointed by the county
commissions, the members representing Fayette, Mercer and
Raleigh counties shall be appointed to terms ending the thirtieth
day of June, two thousand three, and the members representing
McDowell and Wyoming counties shall be appointed to terms
ending the thirtieth day of June, two thousand four. Thereafter,
persons appointed or reappointed to the board, by the county
commissions or the secretary of education and the arts, shall be
appointed for terms of two years.

(c) Any appointed member whose term has expired shall
serve until his or her successor has been duly appointed. Should
a vacancy occur, the person appointed to fill the vacancy shall
serve only for the unexpired portion thereof. All members are
eligible for reappointment.

(d) Any appointed member of the board shall immediately
and automatically forfeit his or her membership on the board if
he or she becomes a nonresident of the county from which he
or she was appointed.
(e) Each member of the board shall serve without compensation, but shall receive expense reimbursement for all reasonable and necessary expenses actually incurred in the performance of the duties of the office, in the same amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law: Provided, That no member shall be reimbursed for expenses paid by a third party.

§29-28-5. Board; quorum; bylaws.

(a) The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article. The board shall meet at least quarterly.

(b) A majority of the members of the board constitutes a quorum and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

(c) The board shall adopt bylaws and rules, as may be necessary for its operation and management, governing the manner in which the business of the authority is conducted and shall review and approve an annual budget.

§29-28-6. Executive director; powers and duties.

(a) The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The executive director may be employed on a full-time or part-time basis. The board, in consultation with its executive director, may employ any other necessary personnel. The board shall set the compensation of authority employees.

(b) The executive director shall carry out plans to implement the provisions of this article and exercise those powers enumerated in the bylaws. The executive director shall prepare

(a) Unless otherwise prohibited by law, the board may appoint counsel and legal staff for the authority and retain temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article.

(b) All costs incidental to the administration of the authority, including office expenses, personal services expense and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(c) All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.


The authority, as a public corporation and governmental instrumentality exercising public powers of the state, may exercise all powers necessary or appropriate to carry out the purposes of this article, except the power of eminent domain. Powers of the authority include, but are not limited to, the power:

(1) To undertake promotion and advocacy of projects, programs or facilities related to the coal heritage highway and the purposes of this article and to make grants consistent with the purposes and goals of the board;
(2) To directly operate and manage historic, cultural, architectural and recreational activities and facilities consistent with the purposes of the authority and this article;

(3) To cooperate with the state of Virginia and appropriate state and local officials and community leaders in Virginia to enhance the effectiveness of trails or other authority projects or facilities which may be located on the border which may connect to similar projects across the state border;

(4) To sue and be sued, implead and be impleaded and complain and defend in any court;

(5) Unless otherwise prohibited by law, to contract for the provision of legal services by private counsel and, notwithstanding the provisions of article three, chapter five of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements and provide other legal services requested by the authority;

(6) To adopt, use and alter at will a corporate seal;

(7) To make, amend, repeal and adopt bylaws for the management and regulation of its affairs;

(8) To appoint an executive director and other employees or agents and to contract for and engage the services of consultants;

(9) To execute contracts necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article;
(10) Without in any way limiting any other subdivision of this section, to accept grants and loans from and enter into contracts and other transactions with any federal agency;

(11) To maintain an office at such places within the state as it may designate;

(12) To accept gifts or grants of property, funds, money, materials, labor, supplies or services from the federal government or from any governmental unit or any person, firm or corporation;

(13) To propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law;

(14) To construct, reconstruct, improve, maintain, repair, operate and manage certain facilities on the coal heritage trail, as determined by the authority;

(15) To develop, maintain and operate or to contract for the development, maintenance and operation of projects appropriate to the authority;

(16) To enter into contract with landowners and other persons holding an interest in the land being used for its historic, cultural or tourist facilities and to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for public tourism or growing out of the tourism activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;
(17) To assess and collect a reasonable fee from those persons who use trails, parking facilities, visitor centers or other facilities operated by the authority and to retain and use that revenue for any purposes consistent with this article;

(18) To enter into contracts or other appropriate legal arrangements with landowners under which their land is made available for use consistent with the purposes of the authority and this article; and

(19) To make funds in excess of current needs available for investment in accordance with the provisions of article six, chapter twelve of this code.

§29-28-9. Limiting liability; insurance exemption for certain horsemen.

(a) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen of this code, an owner of land used by or for the stated purposes of the authority, whether with or without charge, owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous or hazardous condition, use, structure or activity on the premises to persons entering for those purposes.

(b) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen of this code, the landowner or lessor of the property used by the authority for purposes of this article does not thereby:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon persons the legal status of an invitee or licensee to whom a duty of care is owed; or
(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of these persons.

(c) Unless otherwise agreed in writing, an owner who grants a license of land to the authority for purposes provided in this article owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon.

(d) An owner who grants a license of land to the authority for recreational purposes does not by giving a lease, easement or license:

(1) Extend any assurance to any person using the land that the premises are safe for any purpose;

(2) Confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the land.

(e) The provisions of this section apply whether the person entering upon the land is an invitee, licensee, trespasser or otherwise.

(f) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful or malicious infliction of injury to persons or property: Provided, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself: Provided, however, That
horsemen, as defined in section two, article four, chapter twenty of this code, who are using land or facilities held or operated pursuant to this article for equestrian activities and who are in compliance with rules proposed by the authority and approved by the Legislature, but who are not engaged in a commercial profit-making venture are exempt from the provisions of subsection (d), section five of said article.

§29-28-10. Insurance policies.

Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any owner of lands covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing the policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of the policy within the policy limits, the immunity from liability of the insured by reason of the use of the insured’s land for recreational purposes, unless the provision or endorsement is rejected in writing by the named insured.


Revenues, properties, operations and activities of the authority are exempt from the payment of any taxes or fees to the state or any of its political subdivisions.

§29-28-12. Fund established; authorized expenditures; annual report.

(a) There is established in the state treasury a special revenue fund designated the “Coal Heritage Highway Authority Fund”, which shall be administered by the coal heritage highway authority board.
(b) All funds accruing to the authority pursuant to the provisions of this article shall be deposited into the fund and expended in accordance with provisions of this article.

(c) Any remaining balance, including accrued interest, in the fund at the end of the fiscal year shall not revert to the general revenue fund, but shall remain in the account.

(d) On or before the first day of January of each year, the board shall submit to the Legislature an annual fiscal year report on the funds and the activities of the authority including, but not limited to, the previous fiscal year’s receipts and expenditures and projected receipts and expenditures for the current and next fiscal years. The board shall send the report to the legislative librarian.


Nothing in this article shall be deemed as superseding, amending, modifying or repealing any contract or agreement entered into for the benefit of the coal heritage trail prior to the effective date of this article.
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.

Section thirty-two, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, 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.

Article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
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.
In addition to all other powers now conferred by law upon county commissions, the commissions are hereby authorized to require owners, residents or occupants of factory-built homes situated in a factory-built home rental community with at least ten factory-built homes to visibly post the specific numeric portion of the address of each factory-built home on the immediate premises of the factory-built home of sufficient size to be visible from the adjoining street: Provided, That if no numeric or other specific designation of an address exists for a factory-built home subject to the authorization granted by this section, the commission has the authority to provide a numeric or other specific designation of an address for the factory-built home and require that it be posted in accordance with the 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 EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by: (i) The constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks,
drains and gutters, for the use of the public, and to improve and
light the same, and have them kept free from obstructions on or
over them which have not been authorized pursuant to the
succeeding provisions of this subdivision; and, subject to such
terms and conditions as the governing body shall prescribe, to
permit, without in any way limiting the power and authority
granted by the provisions of article sixteen of this chapter, any
person to construct and maintain a passageway, building or
other structure overhanging or crossing the airspace above a
public street, avenue, road, alley, way, sidewalk or crosswalk,
but before any permission for any person to construct and
maintain a passageway, building or other structure overhanging
or crossing any airspace is granted, a public hearing thereon
shall be held by the governing body after publication of a notice
of the date, time, place and purpose of the public hearing has
been published as a Class I legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of this
code and the publication area for the publication shall be the
municipality: Provided, That any permit so granted shall
automatically cease and terminate in the event of abandonment
and non-use thereof for the purposes intended for a period of
ninety days, and all rights therein or thereto shall revert to the
municipality for its use and benefit;

(2) To provide for the opening and excavation of streets,
avenues, roads, alleys, ways, sidewalks, crosswalks and public
places belonging to the municipality and regulate the conditions
under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing
or permitting to remain on any street, avenue, road, alley, way,
sidewalk, square or other public place any glass, scrap iron,
nails, tacks, wire, other litter or any offensive matter or any-
thing likely to injure the feet of individuals or animals or the
tires of vehicles;
(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, including the naming or renaming thereof, and to consult with local postal authorities, the division of highways and the directors of county emergency communications centers to assure uniform, nonduplicative addressing on a permanent basis;

(5) To regulate the width of streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property: Provided, That, in the event the municipality annexes an area which has been receiving solid waste collection services from a certifi-
cated solid waste motor carrier, the municipality and the solid
waste motor carrier may negotiate an agreement for continua-
tion of the private solid waste motor carrier services for a
period of time, not to exceed three years, during which time the
certificated solid waste motor carrier may continue to provide
exclusive solid waste collection services in the annexed
territory;

(11) To construct, establish, acquire, equip, maintain and
operate incinerator plants and equipment and all other facilities
for the efficient removal and destruction of garbage, refuse,
wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles
intended for human use or consumption which are unfit for use
or consumption, or which may be contaminated or otherwise
unsanitary;

(13) To prevent injury or annoyance to the public or
individuals from anything dangerous, offensive or unwhole-
some;

(14) To regulate the keeping of gunpowder and other
combustibles;

(15) To make regulations guarding against danger or
damage by fire;

(16) To arrest, convict and punish any individual for
carrying about his or her person any revolver or other pistol,
dirk, bowie knife, razor, slingshot, billy, metallic or other false
knuckles or any other dangerous or other deadly weapon of like
kind or character;

(17) To arrest, convict and punish any person for importing,
printing, publishing, selling or distributing any pornographic
publications;
(18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or her or under his or her control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or for frequenting same;

(19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;

(20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of
section four, article thirteen of this chapter; and when the
municipality, in the exercise of its discretion, refuses to grant a
license to operate a pool or billiard room, mandamus may not
lie to compel the municipality to grant the license unless it shall
clearly appear that the refusal of the municipality to grant a
license is discriminatory or arbitrary; and in the event that the
municipality determines to license any business, the municipality
has plenary power and authority and it shall be the duty of
its governing body to make and enforce reasonable ordinances
regulating the licensing and operation of the businesses;

(25) To protect places of divine worship and to preserve
peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls
and to provide for the impounding, sale or destruction of
animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly,
unnecessarily or needlessly beating, torturing, mutilating,
killing, or overloading or overdriving or willfully depriving of
necessary sustenance any domestic animal;

(28) To provide for the regular building of houses or other
structures, for the making of division fences by the owners of
adjacent premises and for the drainage of lots by proper drains
and ditches;

(29) To provide for the protection and conservation of
shade or ornamental trees, whether on public or private prop-
erty, and for the removal of trees or limbs of trees in a danger-
ous condition;

(30) To prohibit with or without zoning the location of
occupied house trailers or mobile homes in certain residential
areas;
167 (31) To regulate the location and placing of signs, billboards, posters and similar advertising;

169 (32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in articles nineteen and twenty), within or without the corporate limits of the municipality, except that the municipality may not erect any system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed and where the system is by the municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the municipality, the municipality has the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality and to prevent injury to the system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

189 (33) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of articles nineteen and twenty of this chapter;

195 (34) To establish, construct, acquire, maintain and operate and regulate markets and prescribe the time of holding the same;
(35) To regulate and provide for the weighing of articles sold or for sale;

(36) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots or any other public works;

(37) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;

(38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

(40) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia board of health and state bureau for public health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitaria and dispensaries;

(42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon terms and conditions as to price and otherwise as may be determined by the governing body and, in
order to carry into effect the authority, the governing body may acquire any cemetery or cemeteries already established;

(43) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;

(44) To protect and promote the public morals, safety, health, welfare and good order;

(45) To adopt rules for the transaction of business and the government and regulation of its governing body;

(46) Except as otherwise provided, to require and take bonds from any officers, when considered necessary, payable to the municipality, in its corporate name, with such sureties and in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

(47) To require and take from the employees and contractors such bonds in a penalty, with such sureties and with such conditions, as the governing body may see fit;

(48) To investigate and inquire into all matters of concern to the municipality or its inhabitants;

(49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality’s inhabitants as the governing body may consider necessary or appropriate for the public interest;

(50) To create, maintain and operate a system for the enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes thereof as may be considered advisable;
(51) To require owners, residents or occupants of factory-built homes situated in a factory-built rental home community with at least ten factory-built homes, to visibly post the specific numeric portion of the address of each factory-built home on the immediate premises of the factory-built home of sufficient size to be visible from the adjoining street: Provided, That in the event no numeric or other specific designation of an address exists for a factory-built home subject to the authorization granted by this subdivision, the municipality has the authority to provide a numeric or other specific designation of an address for the factory-built home and require that it be posted in accordance with the authority otherwise granted by this section.

(52) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(53) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(54) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by the applicants in traveling to and from the municipality to be interviewed;

(55) To provide revenue for the municipality and appropriate the same to its expenses;

(56) To create and maintain an employee benefits fund which may not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which is set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs and to expend moneys from the fund for these purposes;

(57) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border
for the protection of people and property from fire and for
emergency medical services and for the reciprocal use of
equipment and personnel for these purposes; and

(58) To provide penalties for the offenses and violations of
law mentioned in this section, subject to the provisions of
section one, article eleven of this chapter, and such penalties
may not exceed any penalties provided in this chapter and
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 organiza-
tions 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, telecommunications
6 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
Rather than break down the equipment for spare parts or send obsolete machines to the surplus property unit of the state purchasing division where they may languish with lack of use, it would be in the best interest of the state that any obsolete computers, telecommunications devices or technological equipment be donated by the state auditor’s office to educational facilities, nonprofit organizations, juvenile detention centers, municipal and county public safety offices and other public, charitable or educational enterprises or organizations.

§12-4B-2. Computer donation program created.

(a) Notwithstanding any other provision of this code to the contrary, the state auditor is hereby authorized within his or her agency to create a computer donation program to donate equipment, which would otherwise be transferred to the surplus property unit of the purchasing division, to educational facilities, nonprofit organizations, juvenile detention centers, municipal and county public safety offices and other public, charitable or educational enterprises or organizations in this state. This program authorizes the state auditor’s office to donate surplus equipment.

(b) The program shall be administered by a director as appointed or employed by the state auditor. The auditor may either appoint the director from existing staff from his or her office or may employ a director from existing funds.

(c) The director shall keep records and accounts that indicate the equipment donated, the age of the equipment, the reasons for declaring it obsolete and to which educational facility, nonprofit organization, juvenile detention center, municipal or county public safety office or other public, charitable or educational enterprise or organization the equipment was donated.
§12-4B-3. Legislative rules.

The state auditor shall propose legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code which shall detail the regulations for implementing the program. The rules shall provide for fair and 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.

All references in this code to supervised loans, supervised lenders, industrial loans, industrial loan companies and licensees thereof, as well as to article seven, chapter thirty-one of this
code, shall, after the operative date of this chapter and despite
the repeal of said statute, be read, construed and understood to
mean and to have reference, respectively, to regulated consumer
loans, regulated consumer lenders, regulated consumer lender
licensees and to this article.

All authority vested by this chapter in the commissioner
shall be considered to be in addition to, and not in limitation of,
the authority vested in the commissioner of banking by provi-
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
thereo 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-4. Notification by the secretary of state; registry.

§46A-6J-5. Penalties, remedies and enforcement.


The Legislature hereby finds that during emergencies and major disasters, including, but not limited to, tornadoes, earthquakes, fires, floods, storms or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods or services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this article to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital and necessary for the health, safety and welfare of consumers. Further, it is the intent of the Legislature that this article be liberally construed so that its beneficial purposes may be served.

(a) "Building materials" means lumber, construction tools, windows and any other item used in the building or rebuilding of property.

(b) "Consumer food item" means any article that is used or intended for use for food or drink by a person or animal.

(c) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action.

(d) "Essential consumer item" means any article that is necessary to the health, safety and welfare of consumers, including, but not limited to, clothing, diapers, soap, cleaning supplies and toiletries.

(e) "Emergency supplies" includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, generators, heaters and temporary shelters.

(f) "Medical supplies" includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol and antibacterial products.

(g) "Repair or reconstruction services" means any services performed by any person for repairs to residential, commercial or public property of any type that is damaged as a result of a disaster.

(h) "Gasoline" means any fuel used to power any motor vehicle or power tool.
(i) "Transportation, freight and storage services" means any service that is performed by any company that contracts to move, store or transport personal or business property or rents equipment or storage space for those purposes.

(j) "Housing" means any rental housing leased on a month-to-month term or the sale of manufactured homes, as that term is defined in section two, article nine, chapter twenty-one of this code.

(k) "State of emergency" means the situation existing after the occurrence of a disaster in which a state of emergency has been declared by the governor or by the Legislature pursuant to the provisions of section six, article five, chapter fifteen of this code, or in which a major disaster declaration or emergency declaration has been issued by the president of the United States.


(a) Upon the declaration of a state of emergency, and continuing for the existence of the state of emergency or for thirty days following the declaration, whichever period is longer, it is unlawful for any person, contractor, business, or other entity to sell or offer to sell to any person in the area subject to the declaration any consumer food items, essential consumer items, goods used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight and storage services, or gasoline or other motor fuels for a price greater than ten percent above the price charged by that person for those goods or services on the tenth day immediately preceding the declaration of emergency, unless the increase in price was directly attributable to additional costs imposed on the seller by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: Provided, That in those
situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency, the price is no greater than ten percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business on the tenth day immediately preceding the declaration.

(b) Upon the declaration of a state of emergency, and for a period of one hundred eighty days following that declaration, it is unlawful for any contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup in the area subject to the declaration for a price greater than ten percent above the price charged by that person for those services on the tenth day immediately preceding the declaration, unless the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: Provided, That in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service, the price is no greater than ten percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business on the tenth day immediately preceding to the declaration of the state of emergency.

(c) Any business offering an item for sale at a reduced price ten days immediately prior to the declaration of the state of emergency may use the price at which it usually sells the item to calculate the price pursuant to subsection (a) or (b) of this section.

(d) The price restrictions imposed by this article may be 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 system by which any person, corporation, trade association or partnership may register to receive notification that a state of emergency has been declared and that the provisions of this article are in effect. The rules promulgated pursuant to the authority conferred by this section may include a requirement of the payment of fees for registration.

§46A-6J-5. Penalties, remedies and enforcement.

(a) A violation of this article is an unfair or deceptive act or practice within the meaning of section one hundred two, article six of this chapter and is subject to the enforcement provisions and remedies provided by this chapter.

(b) Any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in the county or regional jail not more than one year, or both.

(c) The remedies and penalties provided by this article are cumulative, and do not prohibit any other remedy or punishment available under the laws of this state.


Nothing in this section preempts any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited in this section.
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.

1 (a) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

4 (b) Substances, vegetable origin or chemical synthesis.— Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin,
or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts, but including the following:

(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethylmorphine;
(I) Etorphine hydrochloride;
(J) Hydrocodone;
(K) Hydromorphone;
(L) Metopon;
(M) Morphine;
(N) Oxycodone;
(O) Oxymorphone;
30 (P) Thebaine;

31 (2) Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

36 (3) Opium poppy and poppy straw;

37 (4) Coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

45 (5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

48 (c) Opiates. — Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

54 (1) Alfentanil;

55 (2) Alphaprodine;

56 (3) Anileridine;

57 (4) Bezitramide;
(5) Bulk dextropropoxyphene (nondosage forms);
(6) Carfentanil;
(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Isomethadone;
(11) Levo-alphacetylmethadol; some other names: levo-
alpha-acetylmethadol, levomethadyl acetate, LAAM;
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone;
(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,
4-diphenyl butane;
(17) Moramide-Intermediate, 2-methyl-3-morpholino-1,
1-diphenylpropane-carboxylic acid;
(18) Pethidine; (meperidine);
(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
phenylpiperidine;
(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-
carboxylate;
(21) Pethidine - Intermediate - C,1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Remifentanil;

(26) Sufentanil.

(d) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers and salts of its optical isomers;

(2) Methamphetamine, its salts, isomers and salts of its isomers;

(3) Methylphenidate;

(4) Phenmetrazine and its salts.

(e) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
(1) Amobarbital;
(2) Glutethimide;
(3) Pentobarbital;
(4) Phencyclidine;
(5) Secobarbital.

(f) Hallucinogenic substances:

Nabilone: [Another name for nabilone: (+-)-trans-3-(1,1-
dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-
dimethyl-9H-dibenzo[b,d]pyran-9-one].

(g) Immediate precursors.— Unless specifically excepted
or unless listed in another schedule, any material, compound,
mixture, or preparation which contains any quantity of the
following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone;

Some trade or other names: phenyl-2-propanone; P2P;
benzyl methyl ketone; methyl benzyl ketone;

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine;

(B) 1-piperidinocyclohexanecarbonitrile (PCC).

§60A-2-208. Schedule III.
(a) Schedule III consists of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

(b) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric), and salts of such isomers whenever the existence of the salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures or preparations were listed on the twenty-fifth day of August, one thousand nine hundred seventy-one, as excepted compounds under 21 CFR §1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine;

(6) Hydrocodone.

(c) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:
(1) Any compound, mixture or preparation containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of pentobarbital and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(4) Chlorhexadol;

(5) Lysergic acid;

(6) Lysergic acid amide;

(7) Methyprylon;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane;

(11) Tiletamine and zolazepam or any salt of tiletamine and 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)-
cyclohexanone; some trade or other names for zolazepam:
55 4-(2-flurophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e]
56 [1,4]-diazepin-7(1H)-one, flupyrazapon;
58
59 (12) Human growth hormones or anabolic steroids.
60 Ketamine, its salts, isomers and salts of isomers, including
61 ketamine hydrochloride.
61
62 (d) Nalorphine.
62
63 (e) Narcotic drugs. — Unless specifically excepted or
64 unless listed in another schedule, any material, compound,
mixture or preparation containing any of the following narcotic
drugs, or their salts calculated as the free anhydrous base or
66 alkaloid, in limited quantities as set forth below:
67
68 (1) Not more than 1.8 grams of codeine per 100 milliliters
69 and not more than 90 milligrams per dosage unit, with an equal
70 or greater quantity of an isoquinoline alkaloid of opium;
70
71 (2) Not more than 1.8 grams of codeine per 100 milliliters
72 or not more than 90 milligrams per dosage unit, with one or
73 more active, nonnarcotic ingredients in recognized therapeutic
74 amounts;
74
75 (3) Not more than 300 milligrams of dihydrocodeinone
76 (hydrocodone) per 100 milliliters or not more than 15 milli-
77 grams per dosage unit, with a fourfold or greater quantity of an
78 isoquinoline alkaloid of opium;
78
79 (4) Not more than 300 milligrams of dihydrocodeinone
80 (hydrocodone) per 100 milliliters or not more than 15 milli-
81 grams per dosage unit, with one or more active, nonnarcotic
81 ingredients in recognized therapeutic amounts;
(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters and not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids.— Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of anabolic steroids, including its salts, isomers and salts of isomers whenever the existence of the salts of isomers is possible within the specific chemical designation..

(g) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).
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.

(a) It is unlawful for a patient, with the intent to deceive and obtain a prescription for a controlled substance, to withhold information from a practitioner that the patient has obtained a prescription for a controlled substance of a similar therapeutic use in a concurrent time period from another practitioner.

(b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in the county or regional jail for not more than six months, or fined not more than one thousand dollars, or both fined and imprisoned.

(c) The offense established by this section is in addition to and a separate and distinct offense from any other offense set 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.

This article shall be referred to as the West Virginia controlled substances monitoring act.

§60A-9-2. Establishment of program; purpose.
There is hereby established a West Virginia controlled substances monitoring act the purpose of which is to require the recordation and retention in a single repository of information regarding the prescribing, dispensing and consumption of certain controlled substances.

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

(a) On or before the first day of September, two thousand two, the board of pharmacy shall implement a program wherein a central repository is established and maintained which shall contain such information as is required by the provisions of this article regarding Schedule II, III and IV controlled substance prescriptions written or filled in this state. In implementing this program, the board of pharmacy shall consult with the West Virginia state police, the licensing boards of practitioners affected by this article and affected practitioners.

(b) The program authorized by subsection (a) of this section shall be designed to minimize inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection and storage of the required information. The state board of pharmacy shall allow reporting of the required information by electronic data transfer where feasible, and where not feasible, on reporting forms promulgated by the board of pharmacy. The information required to be submitted by the provisions of this article shall be required to be filed no more frequently than once a week.

(c)(1) The state board of pharmacy shall provide for the electronic transmission of the information required to be provided by this article by and through the use of a toll-free telephone line.

(2) A dispenser, who does not have an automated recordkeeping system capable of producing an electronic report
in the established format may request a waiver from electronic reporting. The request for a waiver shall be made to the state board of pharmacy in writing and shall be granted if the dispenser agrees in writing to report the data by submitting a completed "Pharmacy Universal Claim Form" as defined by legislative rule.

§60A-9-4. Required information.

(a) Whenever a medical services provider dispenses a controlled substance listed in the provisions of section two hundred six, article two of this chapter, or whenever a prescription for the controlled substance is filled by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for out-patient use; or (iii) a pharmacy or pharmacist, licensed by the board of pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the board of pharmacy under this article, report the following information, as applicable:

(1) The name, address, pharmacy prescription number and DEA controlled substance registration number of the dispensing pharmacy;

(2) The name, address and birth date of the person for whom the prescription is written;

(3) The name, address and drug enforcement administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug code number of the Schedule II, III and IV controlled substance dispensed;
(5) The quantity and dosage of the Schedule II, III and IV controlled substance dispensed;

(6) The date the prescription was filled; and

(7) The number of refills, if any, authorized by the prescription.

(b) The board of pharmacy may prescribe by rule promulgated under this article the form to be used in prescribing a Schedule II, III and IV substance if, in the determination of the board, the administration of the requirements of this section would be facilitated.

(c) Reporting required by this section is not required for a drug administered directly to a patient or a drug dispensed by a practitioner at a facility licensed by the state: Provided, That the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of seventy-two hours with no greater than two seventy-two hour cycles in any fifteen day period of time.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

The information required by this article to be kept by the state board of pharmacy is confidential and is open to inspection only by inspectors and agents of the state board of pharmacy, members of the West Virginia state police expressly authorized by the superintendent of the West Virginia state police, to have access to the information, authorized agents of the federal drug enforcement agency, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedule II, III and IV controlled substances, prescribing practitioners and pharmacists and persons with an enforceable court order or regulatory agency administrative subpoena: Provided, That all information released by the state board of pharmacy must be related to a
specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe controlled substances may request specific data related to their drug enforcement administration controlled substance registration number or for the purpose of providing treatment to a patient. The board shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly or statistical purposes as long as the identities of persons or entities remain confidential. No individual or entity required to report under section four of this article may be subject to a claim for civil damages or other civil relief for the reporting of information to the board of pharmacy as required under and in accordance with the provisions of this article.

§60A-9-6. Promulgation of rules.

The state board of pharmacy shall promulgate legislative rules to effectuate the purposes of this article in accordance with the provisions of chapter twenty-nine-a of this code.

§60A-9-7. Criminal penalties.

(a) Any person who is required to submit information to the state board of pharmacy pursuant to the provisions of this article who fails to do so as directed by the board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars.

(b) Any person who is required to submit information to the state board of pharmacy pursuant to the provisions of this article who knowingly and willfully refuses to submit the information required by this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a
(c) Any person who is required by the provisions of this article to submit information to the state board of pharmacy who knowingly submits thereto information known to that person to be false or fraudulent shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year or fined not more than five thousand dollars, or both.

(d) Any person granted access to the information required by the provisions of this article to be maintained by the state board of pharmacy, who shall willfully disclose the information required to be maintained by this article in a manner inconsistent with a legitimate law-enforcement purpose, a legitimate professional regulatory purpose, the terms of a court order or as otherwise expressly authorized by the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months or fined not more than one 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
2. Incorporation.
4. Name.
5. Office and Agent.
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-1-125. Filing duty of secretary of state.
§31E-1-126. Appeal from secretary of state’s refusal to file document.
§31E-1-128. Certificate of existence.
§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.

This chapter is and may be cited as the "West Virginia Nonprofit Corporation Act."

§31E-1-101a. Legislative acknowledgment.

The Legislature acknowledges the work and contribution to the drafting of this chapter of the late Ann Maxey, Professor of Law at the West Virginia University College of Law.

§31E-1-102. Reservation of powers.

The West Virginia Legislature has power to amend or repeal all or part of this act at any time and all domestic and foreign corporations subject to this act are governed by the amendment or repeal.

§31E-1-103. Construction of chapter.

In the event of any inconsistency between any of the provisions of this chapter and the provisions made for particular classes of corporations by chapters thirty-one, thirty-one-a or thirty-three of this code, the provisions contained in chapter thirty-one, thirty-one-a or thirty-three prevail to the extent of the inconsistency.

PART 2. FILING DOCUMENTS.

§31E-1-120. Filing requirements.

(a) A document must satisfy the requirements of this section and any other provision of this code that adds to or varies these requirements to be entitled to filing by the secretary of state.
(b) The document to be filed must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(c) The document to be filed must be in the English language: Provided, That a corporate name is not required to be in the English language if it is written in English letters or Arabic or Roman numerals: Provided, however, That the certificate of existence required of foreign corporations is not required to be in the English language if it is accompanied by a reasonably authenticated English translation.

(d) The document to be filed must be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(e) The person executing the document to be filed shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may contain a corporate seal, attestation, acknowledgment or verification.

(f) The document to be filed must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission as permitted by the secretary of state. The secretary of state may require one exact or conformed copy to be delivered with the document to be filed if the document is filed in typewritten or printed form and not transmitted electronically: Provided, That a document filed pursuant to section
five hundred three, article five of this chapter and section one
thousand four hundred nine, article fourteen of this chapter
concerning the resignation of a registered agent must be
accompanied by two exact or conformed copies as required by
those sections.

(g) When a document is delivered to the office of the
secretary of state for filing, the correct filing fee, and any
franchise tax, license fee, or penalty required by this chapter or
any other provision of this code must be paid or provision for
payment made in a manner permitted by the secretary of state.

(h) In the case of service of notice and process as permitted
by subsection (c), section five hundred four, article five and
subsections (d) and (e), section one thousand four hundred ten,
article fourteen of this chapter, the notice and process must be
filed with the secretary of state as one original, plus two copies
for each person to be served or noticed.

§31E-1-121. Forms.

(a) The secretary of state may prescribe and, upon request,
furnish forms for documents required or permitted to be filed
by this chapter. Use of these forms is not mandatory.

(b) The secretary of state may adopt procedural rules in
accordance with the provisions of this article governing the
form for filing with and delivery of documents to the office of
the secretary of state under this chapter by electronic means,
including facsimile and computer transmission.

§31E-1-122. Filing, service and copying fees.

The secretary of state shall collect all fees required to be
charged and collected in accordance with the provisions of
section two, article one, chapter fifty-nine, and section one,
article twelve-c, chapter eleven of this code.
§31E-1-123. Effective time and date of document.

(a) Except as provided in subsection (b) of this section and subsection (c), section one hundred twenty-four of this article, a document accepted for filing is effective:

1. At the date and time of filing, as evidenced by means the secretary of state may use for the purpose of recording the date and time of filing; or

2. At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.


(a) A domestic or foreign corporation may correct a document filed by the secretary of state if:

1. The document contains an inaccuracy;

2. The document was defectively executed, attested, sealed, verified or acknowledged; or

3. The electronic transmission was defective.

(b) A document is corrected:

1. By preparing articles of correction that:

   (A) Describe the document, including its filing date, or attach a copy of the document to the articles;
(B) Specify the inaccuracy or defect to be corrected; and

(C) Correct the inaccuracy or defect; and

(2) By delivering the articles to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct: Provided, That articles of correction are effective when filed as to persons who have relied on the uncorrected document and have been adversely affected by the correction.

§31E-1-125. Filing duty of secretary of state.

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section one hundred twenty of this article, the secretary of state shall file it.

(b) The secretary of state files a document by recording it as filed on the date and time of receipt, unless a delayed effective time is specified in the document. After filing a document, except as provided in section five hundred three, article five of this chapter and section one thousand four hundred nine, article fourteen of this chapter, the secretary of state shall deliver to the domestic or foreign corporation or its representative a receipt for the record and the fees. Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

(c) If the secretary of state refuses to file a document, he or she shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for his or her refusal.
(d) The secretary of state's duty to file documents under this section is ministerial. His or her filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§31E-1-126. Appeal from secretary of state's refusal to file document.

(a) If the secretary of state refuses to file a document delivered to his or her office for filing, the domestic or foreign corporation may appeal the refusal to the circuit court within thirty days after the return of the document to the corporation. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his or her refusal to file.

(b) The circuit court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The circuit court's final decision may be appealed to the West Virginia supreme court of appeals as in other civil proceedings.

All courts, public offices and official bodies shall take and receive copies of documents filed in the office of the secretary of state and certified by him or her, in accordance with the provisions of this article, as conclusive evidence that the original document is on file with the secretary of state.

§31E-1-128. Certificate of existence.

(a) Any person may request a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation from the secretary of state.

(b) A certificate of existence or authorization provides the following information:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state; and

(2) If the corporation is a domestic corporation, that the corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if it is less than perpetual;

(3) If the corporation is a foreign corporation, that the corporation is authorized to transact business in this state; and

(4) If payment is reflected in the records of the secretary of state and if nonpayment affects the existence or authorization of the domestic or foreign corporation, whether all fees, taxes, and penalties owed to this state have been paid.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Any person who signs a document he or she knows is false in any material respect and knows that the document is to be delivered to the secretary of state for filing is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in the county or regional jail not more than one year, or both.

PART 3. SECRETARY OF STATE.

§31E-1-130. Powers.

The secretary of state has the power reasonably necessary to perform the duties required of him or her by this chapter. The secretary of state has the power and authority to propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code in order to carry out and implement the provisions of this chapter.

PART 4. VENUE.

§31E-1-140. Venue.

Unless otherwise provided by any provision of this code, any civil action or other proceeding brought pursuant to this chapter may be initiated in the circuit court of any county of this state as provided in section one, article one, chapter fifty-six of this code.

PART 5. DEFINITIONS.

§31E-1-150. Chapter definitions.

As used in this chapter, unless the context otherwise requires a different meaning, the term:
(1) "Articles of incorporation" includes, but is not limited to, amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Board" or "board of directors" means the group of persons vested with management of the affairs of the corporation irrespective of the name by which the group is designated.

(4) "Business corporation" means a corporation with capital stock or shares incorporated for profit.

(5) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed including, but not limited to, printing in italics or boldface or contrasting color, or typing in capitals or underlined.

(6) "Corporation" or "domestic corporation" means a corporation without capital stock or shares, which is not a foreign corporation, incorporated under the laws of this state: Provided, That "corporation" or "domestic corporation" does not include towns, cities, boroughs or any municipal corporation or any department of any town, city, borough or municipal corporation.

(7) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery, and electronic transmission.

(8) "Distribution" means a direct or indirect transfer of money or other property, or incurrence of indebtedness by a corporation to or for the benefit of its members in respect of any of its membership interests, or to or for the benefit of its
officers or directors: Provided, That the payment of reasonable compensation for services rendered, the reimbursement of reasonable expenses, the granting of benefits to members in conformity with the corporation's nonprofit purposes and the making of distributions upon dissolution or final liquidation as provided by article thirteen of this chapter may not be deemed a distribution.

(9) "Effective date of notice" means the date as determined pursuant to section one hundred fifty-one of this article.

(10) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(11) "Employee" includes an officer and may include a director: Provided, That the director has accepted duties that make him or her also an employee.

(12) "Entity" includes corporation and foreign corporations; business corporations and foreign business corporations; profit and nonprofit unincorporated associations; limited liability companies and foreign limited liability companies; business trusts, estates, partnerships, trusts, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

(13) "Foreign corporation" means any nonprofit corporation which is incorporated under a law other than the laws of this state.

(14) "Governmental subdivision" includes, but is not limited to, authorities, counties, districts, and municipalities.
(15) "Individual" includes, but is not limited to, the estate of an incompetent or deceased individual.

(16) "Member" means a person having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or bylaws.

(17) "Nonprofit corporation" means a corporation which may not make distributions to its members, directors or officers.

(18) "Person" includes, but is not limited to, an individual and an entity.

(19) "Principal office" means the office so designated in the return required pursuant to section three, article twelve-c, chapter eleven of this code where the principal executive offices of a domestic or foreign corporation are located.

(20) "Proceeding" includes, but is not limited to, civil suits and criminal, administrative, and investigatory actions.

(21) "Record date" means the date established under article six or seven of this chapter on which a corporation determines the identity of its members and their interests. The determinations are to be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(22) "Registered agent" means the agent identified by the corporation pursuant to section five hundred one, article five of this chapter.

(23) "Registered office" means the address of the registered agent for the corporation, as provided in section five hundred one, article five of this chapter.
(24) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under subsection (c), section eight hundred forty, article eight of this chapter for custody of the minutes of the meetings of the board of directors and the meetings of the members and for authenticating records of the corporation.

(25) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature.

(26) "State," when referring to a part of the United States, includes a state, commonwealth and a territory and insular possession of the United States and their agencies and governmental subdivisions.

(27) "United States" includes, but is not limited to, districts, authorities, bureaus, commissions, departments, and any other agency of the United States.

§31E-1-151. Notice.

(a) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is to be considered written notice.

(b) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective: (1) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members; or (2) when electroni-
cally transmitted to the member in a manner authorized by the member.

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent return required pursuant to section three, article twelve-c, chapter eleven of this code or, in the case of a foreign corporation that has not yet delivered a return, in its application for a certificate of authority.

(e) Except as provided in subsection (c) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States mail, if mailed postpaid and correctly addressed; or

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated, if communicated in a comprehensible manner.

(g) If other provisions of this chapter prescribe notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

§31E-1-152. Number of members.
(a) For purposes of this chapter, the following identified as a member in a corporation’s current record of members constitutes one member:

1. Three or fewer co-owners;
2. A corporation, partnership, trust, estate, or other entity;
3. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this chapter, interests registered in substantially similar names constitute one member if it is reasonable to believe that the names represent the same person.

ARTICLE 2. INCORPORATION.

§31E-2-201. Incorporators.
One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

(a) The articles of incorporation must set forth:
1. A corporate name for the corporation that satisfies the requirements of section four hundred one, article four of this chapter;
(2) A statement that the corporation is nonprofit and that the corporation may not have or issue shares of stock or make distributions;

(3) Whether the corporation is to have members and, if it is to have members, the provisions required by section six hundred one, article six of this chapter to be set forth in the certificate of incorporation;

(4) The mailing address of the corporation’s initial registered office, if any, and the name of its initial registered agent at that office, if any; and

(5) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(A) Managing and regulating the affairs of the corporation; or

(B) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members, or any class of members;

(3) Any provision that under this chapter is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the personal liability of a director to the corporation or its members for monetary damages for any action taken, or any failure to take any action, as a director or member, except liability for: (A) The amount of a financial benefit received by a director or member to which he or she is not entitled; (B) an intentional infliction of harm on
the corporation or the members; (C) a violation of section eight hundred thirty-three, article eight of this chapter regarding unlawful distributions; or (D) an intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability as that term is defined in section eight hundred fifty, article eight of this chapter, to any person for any action taken, or any failure to take any action, as a director, except liability for: (A) Receipt of a financial benefit to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or its members; (C) a violation of section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) an intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

§31E-2-203. Incorporation.

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The secretary of state’s filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

§31E-2-204. Organization of corporation.

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting,
at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(A) To elect directors and complete the organization of the corporation; or

(B) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state.

§31E-2-205. Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.


(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be
effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the corporation during the emergency, including:

1. Procedures for calling a meeting of the board of directors;
2. Quorum requirements for the meeting; and
3. Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:
1. Binds the corporation; and
2. May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation’s directors cannot readily be 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.
(a) Corporations may be organized under this chapter for any lawful purpose, including any one or more of the following purposes: Charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional commercial, industrial or trade association.

(b) No charters or certificates of incorporation may be granted or issued to any church or religious denomination.

§31E-3-302. General powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power:

(1) To sue and be sued, complain and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing and regulating the affairs of the corporation;

(4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
(6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(7) To make contracts and guarantees; incur liabilities; borrow money; issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation; and secure any of its obligations by mortgage, deed of trust, or pledge of any of its property, franchises, or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) To conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes, and for other purposes that further the corporate interest;

(14) To transact any lawful activity that will aid governmental policy;
(15) To impose or levy fines, penalties, dues, assessments, admission and transfer fees upon its members;

(16) To establish conditions for admission of members, admit members and issue memberships and certificates evidencing membership;

(17) To carry on one or more businesses; and

(18) To make payments or donations, or do any other act, not inconsistent with law, that furthers the affairs of the corporation.

§31E-3-303. Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.
(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

§31E-3-304. Ultra vires.

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a member or director against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the attorney general to dissolve the corporation or to enjoin the corporation from the conduct of unauthorized affairs.

(c) In a member's or director's proceeding under subdivision (1), subsection (b) of this section to enjoin an unauthorized corporate act, the circuit court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, except loss of
anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

(d) The attorney general may, upon his or her own information or upon complaint of an interested party, bring an action in the name of the state to restrain any person from purporting to 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"; prohibitions; penalties.

§31E-4-403. Reserved name.

§31E-4-404. Registered name.

§31E-4-401. Corporate name.

(a) A corporate name:

(1) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.,” or “ltd.,” or words or abbreviations of like import in another language; and

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section three hundred one, article three of this chapter and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name must be distinguishable upon the records of the secretary of state from:

(1) The corporate name of a corporation or business corporation incorporated or authorized to transact business in this state;
(2) A corporate name reserved or registered under section four hundred three or four hundred four, article four of this chapter;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(4) The corporate name of any foreign corporation authorized to transact business or conduct affairs in this state; and

(5) The name of any other entity whose name is carried upon the records of the secretary of state.

c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon his or her records from one or more of the names described in subsection (b) of this section. The secretary of state shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change the name so that it is distinguishable upon the records of the secretary of state from the name applied for; or

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state.

d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(1) Has merged with the other corporation;
(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) This chapter does not control the use of fictitious names.

(f) Notwithstanding the provisions of subsection (a) of this section, any domestic nonprofit corporation and any foreign nonprofit corporation, if permitted by the law of the state of its incorporation, may include in its name the word “foundation” in lieu of or in addition to the word “corporation”, “company”, “incorporated” or “limited” or an abbreviation of these words.

§31E-4-402. Use of the words “corporation”, “incorporated” or “limited”; prohibitions; penalties.

(a) No person may use the word “corporation” or “incorporated” or any abbreviation of these words, in any trade name, business or other organization name unless the name is used by a domestic or foreign corporation authorized by the secretary of state to transact business in West Virginia under the provisions of this chapter or chapter thirty-one-d of this code.

(b) No person may use the word “limited” or any abbreviation of the word “limited” in any trade name, business or other organization name unless the name is used by a domestic or foreign corporation authorized by the secretary of state to transact business in West Virginia under the provisions of this chapter, chapters thirty-one-b, thirty-one-d or forty-seven of this code.

(c) The tax commissioner may not issue any business registration certificate under the provisions of article twelve, chapter eleven of this code to any business if the business name includes any of the words or their abbreviations as set forth in
subsection (a) or (b) of this section unless the business is a
domestic or foreign corporation or domestic or foreign business
corporation.

(d) Any person who unlawfully uses any one or more of the
prescribed words or their abbreviations as set forth in subsec-
tion (a) or (b) of this section is to be deemed to be acting as a
corporation without authority of law and subject to an action in
quo warranto as provided in article two, chapter fifty-three of
this code.

(e) Any person who violates the provisions of this section
is guilty of a misdemeanor and, upon conviction thereof, shall
be fined not less than five hundred dollars nor more than one
thousand dollars, or confined in the county or regional jail not
more than thirty days, or both.

(f) The provisions of this section do not apply to businesses
in existence prior to the first day of July, one thousand nine
hundred eighty-eight.

§31E-4-403. Reserved name.

(a) A person may reserve the exclusive use of a corporate
name, including a fictitious name for a foreign corporation
whose corporate name is not available, by delivering an
application to the secretary of state for filing. The application
must set forth the name and address of the applicant and the
name proposed to be reserved. If the secretary of state finds that
the corporate name applied for is available, he or she shall.reserve the name for the applicant's exclusive use for a
nonrenewable one hundred twenty-day period.

(b) The owner of a reserved corporate name may transfer
the reservation to another person by delivering to the secretary
of state a signed notice of the transfer that states the name and
address of the transferee.
§31E-4-404. Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any addition required by section one thousand four hundred six, article fourteen of this chapter, if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under subsection (b), section four hundred one of this article.

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by section one thousand four hundred six, article fourteen of this chapter, by delivering to the secretary of state for filing an application:

(1) Setting forth its corporate name, or its corporate name with any addition required by section one thousand four hundred six, article fourteen of this chapter, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (b) of this section, between the first day of October and the thirty-first day of December of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may qualify as a foreign corporation under the registered name
or consent in writing to the use of that name by a corporation
incorporated under this chapter or by another foreign corpora-
tion authorized to transact business in this state. The registra-
tion terminates when the domestic corporation is incorporated
or the foreign corporation qualifies or consents to the qualifica-
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.

Each corporation may continuously maintain in this state:

(1) A registered office that may be the same as any of its
places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this state and whose
business office is identical with the registered office;

(B) A domestic corporation or domestic business corpora-
tion whose business office is identical with the registered
office;

(C) A foreign corporation or foreign business corporation
authorized to transact business in this state whose business
office is identical with the registered office; or

(D) A foreign limited liability company or domestic limited
liability company authorized to transact business in this state
whose business office is identical with the registered office.
§31E-5-502. Change of registered office or registered agent.

(a) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

1. The name of the corporation;

2. The mailing address or description of physical location of its current registered office;

3. If the current registered office is to be changed, the street address or description of physical location of the new registered office;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent and the new agent’s written consent to the appointment either printed on the statement or attached to it; and

6. That after the change or changes are made, the mailing addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the mailing address of his or her business office, he or she may change the mailing address of the registered office of any corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.
§31E-5-503. Resignation of registered agent.

(a) A registered agent may resign his or her agency appointment by signing and delivering to the secretary of state for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the secretary of state shall mail one copy to the registered office if the registered office is not discontinued and the other copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office is discontinued if provision for its discontinuation is made, on the thirty-first day after the date on which the statement was filed.

§31E-5-504. Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or
(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) In addition to the methods of service on a corporation provided in subsections (a) and (b) of this section, the secretary of state is hereby constituted the attorney-in-fact for and on behalf of each corporation created pursuant to the provisions of this chapter. The secretary of state has the authority to accept service of notice and process on behalf of each corporation and is an agent of the corporation upon whom service of notice and process may be made in this state for and upon each corporation. No act of a corporation appointing the secretary of state as attorney-in-fact is necessary. Service of any process, notice or demand on the secretary of state may be made by delivering to and leaving with the secretary of state the original process, notice or demand for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. Immediately after being served with or accepting any process or notice, the secretary of state shall: (1) File in his or her office a copy of the process or notice, endorsed as of the time of service, or acceptance; and (2) transmit one copy of the process or notice by registered or certified mail, return receipt requested, to: (A) The corporation's registered agent; or (B) if there is no registered agent, to the individual whose name and address was last given to the secretary of state's office as the person to whom notice and process are to be sent, and if no person has been named, to the principal office of the corporation as that address was last given to the secretary of state's office. Service or acceptance of process or notice is sufficient if return receipt is signed by an agent or employee of the corporation, or the registered or certified mail sent by the secretary of state is refused by the addressee and the registered or certified mail is returned to the secretary of state, or to his or her office, showing the stamp of the United States postal service that delivery has
been refused, and the return receipt or registered or certified
mail is appended to the original process or notice and filed in
the clerk’s office of the court from which the process or notice
was issued. No process or notice may be served on the secretary
of state or accepted by him or her less than ten days before the
return day of the process or notice. The court may order
continuances as may be reasonable to afford each defendant
opportunity to defend the action or proceedings.

(d) This section does not prescribe the only means, or
necessarily the required means of serving a corporation.

ARTICLE 6. MEMBERS – MEMBERSHIP RIGHTS AND LIABILITIES.

§31E-6-601. Classes of members.

A corporation may have one or more classes of members or
may have no members. If the corporation has one or more
classes of members, the designation of a class or classes is to be
set forth in the articles of incorporation and the manner of
election or appointment and the qualifications and rights of the
members of each class is to be set forth in the articles of
incorporation or bylaws. If the corporation has no members, or
only members not entitled to vote, that is to be set forth in the
articles of incorporation and the corporation is to operate under
the management of its board of directors. A corporation may
issue articles evidencing membership.

§31E-6-602. Rules for membership.

(a) Membership is to be governed by rules of admission,
retention, withdrawal and expulsion as the bylaws prescribe,
provided all bylaws are to be reasonable, germane to the
purposes of the corporation, and equally enforced as to all members.

(b) Unless otherwise provided in the articles of incorporation or the bylaws, another entity, foreign or domestic, may become a member of a corporation.

(c) Membership may be limited to persons who are members in good standing of another corporation, organization or association, if provided for in the articles of incorporation. If membership is limited, the articles of incorporation may provide that failure on the part of any member to keep in good standing with the other corporation, organization or association is sufficient cause for expulsion.

(d) Unless otherwise provided in the articles of incorporation or bylaws, a member may not voluntarily or involuntarily transfer his or her membership or any rights arising from his or her membership.

(e) Unless otherwise provided in the articles of incorporation or bylaws, membership is terminated by death, voluntary withdrawal or expulsion, and all rights and privileges of the member in the corporation and its property cease.

§31E-6-603. Imposition of fines and penalties; levy of dues and assessments.

(a) A corporation may impose fines or penalties on members if provided in bylaws duly adopted by a two-thirds vote of members entitled to vote and, if the fine or penalty applies to members not entitled to vote, by a two-thirds vote as a class of the members not otherwise entitled to vote. The fine or penalty may not exceed the higher of the: (1) Annual dues or assessment; or (2) initiation fee, if any.
(b) A corporation may levy dues or assessments against members if provided in a bylaw provision duly adopted: (1) By the affirmative vote of at least two thirds of the members of each class of members, voting as a class, to which the levy applies, even though a class of members is not otherwise entitled to vote; or (2) by the directors if the directors are authorized by a bylaw provision adopted by the affirmative vote of at least two thirds of the members of each class of members, voting as a class, to which a levy may apply, even though a class of members is not otherwise entitled to vote.

(c) For purposes of this section, the corporation's initial bylaws adopted by: (1) The incorporators; or (2) the board of directors is deemed to have been adopted by all the members entitled to vote thereon, if any.

(d) Notwithstanding any limitation on the amount of a fine or penalty set forth in subsection (a) of this section, a corporation organized under this chapter, or any predecessor statutes, that is a trade association or other professional organization exempt from taxation under Section 501(c)(6) of the Internal Revenue Code may impose a fine on a member, not to exceed the amount set forth in the bylaws, for the violation of a code of ethics or other code of conduct upon majority vote of its board of directors in accordance with its bylaws, provided the articles of corporation or bylaws of the corporation contain a written provision whereby members agree to be bound by a code of ethics or code of conduct as a condition of membership.

§31E-6-604. Liability of members.

(a) A member of a corporation is not liable to the corporation or its creditors with respect to his or her membership except for the obligation to pay in full any fines or penalties duly imposed against him or her and any dues and assessments levied against him or her to which he or she has assented, or
imposed or levied against him or her in accordance with the provisions of section six hundred three of this article.

(b) Any member who receives any distribution of income or assets from a corporation in violation of this chapter or of the articles of incorporation, whether by dividend, in liquidation or otherwise, and who accepted or received the distribution knowing it to be improper, is liable for the amount so received: (1) To any creditors existing at the time of the distribution who obtain a judgment against the corporation on which execution 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.

(a) A corporation that has members entitled to vote for the election of directors must hold a meeting of these members
annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings are to be held at the corporation’s principal office.

(c) A corporation that has members entitled to vote may hold regular meetings of these members in or out of this state at the places and times stated in or fixed in accordance with the bylaws.

(d) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with a corporation’s bylaws does not affect the validity of any corporate action.

§31E-7-702. Special meeting.

(a) A corporation that has members entitled to vote must hold a special meeting of members entitled to vote at the meeting: (1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or the bylaws; or (2) if the members holding at least five percent, or other number or proportion as is provided in the bylaws, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held. If a call for a special meeting is not issued within fifteen days after receipt of a members’ request, members may call the meeting.

(b) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for
determining members entitled to demand a special meeting is the date the first member signs the demand.

(c) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings are to be held at the corporation’s principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by subsection (c), section seven hundred five of this article may be conducted at a special meeting of members.

§31E-7-703. Court-ordered meeting.

(a) The circuit court may summarily order a meeting to be held:

(1) On application of any member entitled to vote at an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation’s fiscal year or fifteen months after its last annual meeting; or

(2) On application of a member who signed a demand for a special meeting valid under section seven hundred two of this article, if:

(A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation’s secretary; or

(B) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting; determine the members entitled to vote at the meeting; specify
a record date for determining members entitled to notice of and
to vote at the meeting; prescribe the form and content of the
meeting notice; fix the quorum required for specific matters to
be considered at the meeting, or direct that the votes repre-
sentated at the meeting constitute a quorum for action on those
matters; and enter other orders necessary to accomplish the
purpose or purposes of the meeting.

§31E-7-704. Action without meeting; validity of actions at meet-
ings not properly called.

(a) Any action which, under any provision of this chapter,
may be taken at a meeting of members may be taken without a
meeting if one or more members consents in writing, setting
forth the action taken or to be taken, signed by all of the persons
who would be entitled to vote upon the action at a meeting, or
by their duly authorized attorneys which action for purposes of
this subsection is to be referred to as “unanimous written
consent”. The secretary shall file the consent or consents, or
certify the tabulation of the consents and file the articles, with
the minutes of the meetings of the members. A unanimous
written consent must have the same force and effect as a vote
of the members at a meeting duly held, and may be stated as
having the same force and effect as a vote of the members in
any articles or document filed under this chapter.

(b) Where directors or officers are to be elected by mem-
ers or any other action is to be voted upon by members, the
articles of incorporation or bylaws may provide that the
elections may be conducted and the actions voted upon by mail
or electronic means in a manner provided in the articles of
incorporation or bylaws. The vote of members, or of the
members of any particular class, is to be determined from the
total number of members who actually vote by mail, rather than
from the total number of members entitled to vote, unless the
articles of incorporation otherwise provide. A ballot signed
under this section has the same force and effect as a vote of the
member who signed it at a meeting duly held, and may be
stated as having the same force and effect in any certificate or
document filed under this chapter.

(c) If not otherwise fixed under section seven hundred three
or seven hundred seven of this article, the record date for
determining members entitled to take action without a meeting
is the date the first member signs the consent or ballot under
subsection (a) or (b) of this section.

(d) The absence from the minutes of any indication that a
member objected to holding the meeting prima facie establishes
that no objection was made.

§31E-7-705. Notice of meeting.

(a) A corporation is to notify members entitled to vote of
the date, time and place of each annual, regular and special
meeting no fewer than ten nor more than sixty days before the
meeting date. Unless this chapter, or the articles of incorpora-
tion require otherwise, the corporation is required to give notice
only to members entitled to vote at the meeting.

(b) Unless this chapter, the articles of incorporation or
bylaws require otherwise, notice of an annual or regular
meeting need not include a description of the purpose or
purposes for which the meeting is called, except that, unless
stated in a written notice of the meeting: (1) No bylaw may be
brought up for adoption, amendment or repeal; and (2) no
matter, other than the election of directors at an annual meeting,
may be brought up which expressly requires the vote of
members.

(c) Notice of a special meeting of members must include a
description of the purpose or purposes for which the meeting is
called.
If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining members entitled to notice of and to vote at an annual, regular or special meeting is the day before the first notice is delivered to members.

(e) Unless the bylaws require otherwise, if an annual, regular or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section seven hundred seven of this article, notice of the adjourned meeting must be given under this section to persons who are members entitled to vote as of the new record date.

(f) Unless the articles of incorporation or bylaws provide otherwise, any member may participate in a regular or special meeting by any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

§31E-7-706. Waiver of notice.

(a) A member may waive any notice required by this chapter, the articles of incorporation or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member’s attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting
§31E-7-707. Record date.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more classes of members in order to determine the members entitled to notice of a meeting of members, to demand a special meeting, to vote or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members.

(c) A determination of members entitled to notice of or to vote at a meeting of members is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

§31E-7-708. Conduct of the meeting.
(a) At each meeting of members, a chair must preside. The chair is to be appointed as provided in the bylaws or, in the absence of a provision in the bylaws, by the board of directors.

(b) The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and has the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting are to be fair to members.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls are to be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes to a ballot, proxy or vote, may be accepted.

(e) If the articles of incorporation or bylaws authorize the use of electronic communication for members' meetings, any or all of the members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members may simultaneously hear each other during the meeting.

PART 2. VOTING.

§31E-7-720. Members' list for meeting.

(a) After fixing a record date for a meeting, a corporation must prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must be arranged by classes of members, if any, and show the address of and number of votes to which each member is entitled.
(b) The members’ list must be available for inspection by any member entitled to vote at the meeting, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation’s principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member entitled to vote at the meeting or his or her agent or attorney is entitled on written demand to inspect and, subject to the requirements of section one thousand five hundred two, article fifteen of this chapter, to copy the list, during regular business hours and at his or her expense, during the period it is available for inspection.

(c) The corporation must make the members’ list available at the meeting, and any member entitled to vote at the meeting or his or her agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member entitled to vote at the meeting or his or her agent or attorney to inspect the members’ list before or at the meeting, or copy the list as permitted by subsection (b) of this section, the circuit court, on application of the member, may summarily order the inspection or copying at the corporation’s expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the members’ list does not affect the validity of action taken at the meeting.

§31E-7-721. Members’ voting rights.

(a) Unless the articles of incorporation provide otherwise, each member, regardless of class, is entitled to one vote on each matter voted on at a meeting of members. Voting rights of
members of any class may be increased, limited or denied by the articles of incorporation.

(b) Members otherwise entitled to vote, but disqualified from voting for any reason, may not be considered for the purpose of a quorum or of computing the voting power of the corporation or of members of any class.

(c) A corporate member's vote may be cast by the president of the member corporation or by any other officer of the corporation in the absence of express notice of the designation of some other person by the board of directors or bylaws of the member corporation.

§31E-7-722. Proxies.

(a) Unless the articles of incorporation or bylaws provide otherwise, a member entitled to vote may vote in person or by proxy.

(b) A member entitled to vote by proxy or his or her agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission of the appointment. An electronic transmission must contain or be accompanied by information from which one can determine that the member, the member's agent or the member's attorney-in-fact authorized the electronic transmission.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. A photographic or similar reproduction of an appointment, or a telegram, cablegram, facsimile transmission, wireless or similar transmission of an appointment received by the inspector of election or the officer or agent of the corporation authorized to
tabulate votes is sufficient to effect an appointment. An
appointment is valid for eleven months unless a longer period
is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the member.

(e) The death or incapacity of the member appointing a
proxy does not affect the right of the corporation to accept the
proxy’s authority unless notice of the death or incapacity is
received by the secretary or other officer or agent authorized to
tabulate votes before the proxy exercises his or her authority
under the appointment.

(f) Subject to section seven hundred twenty-three of this
article and to any express limitation on the proxy’s authority
stated in the appointment form or electronic transmission of the
appointment, a corporation is entitled to accept the proxy’s vote
or other action as that of the member making the appointment.

§31E-7-723. Corporation’s acceptance or rejection of votes.

(a) If the name signed on a vote, consent, waiver or proxy
appointment corresponds to the name of a member, the corpora-
tion if acting in good faith is entitled to accept the vote,
consent, waiver or proxy appointment and give it effect as the
act of the member.

(b) If the name signed on a vote, consent, waiver or proxy
appointment does not correspond to the name of a member, the
corporation if acting in good faith is entitled to accept the vote,
consent, waiver or proxy appointment and give it effect as the
act of the member if:

(1) The member is an entity and the name signed purports
to be that of an officer or agent of the entity;
(2) The name signed purports to be that of an attorney-in-fact, administrator, executor, guardian or conservator representing the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment; or

(4) Two or more persons are co-members or fiduciaries and the name signed purports to be the name of at least one of the co-members or fiduciaries and the person signing appears to be acting on behalf of all of the co-members or fiduciaries.

(c) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section or subsection (b), section seven hundred twenty-two of this article are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section or subsection (b), section seven hundred twenty-two of this article is valid unless a court of competent jurisdiction determines otherwise.

§31E-7-724. Quorum and voting requirements.
(a) Members entitled to vote on a matter may take action on the matter at a meeting only if a quorum of those members exists with respect to that matter. If there are no members entitled to vote as a separate class, unless this chapter, the articles of incorporation or bylaws provide otherwise, the members entitled to vote on the matter who are present at the meeting, either in person or by proxy, if voting by proxy is permitted pursuant to section seven hundred twenty-two of this article, constitute a quorum for action on the matter. If there are members entitled to vote on a matter as a separate class, the members entitled to vote as a separate class may take action on the matter at a meeting only if a quorum of that class exists with respect to that matter. Unless this chapter, the articles of incorporation or bylaws provide otherwise, the members of a class entitled to vote on the matter who are present at the meeting, either in person or by proxy, if voting by proxy is permitted pursuant to section seven hundred twenty-two of this article constitute a quorum of that class for action on that matter.

(b) Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) Where any of this chapter, requires for any purpose the vote of a designated proportion of the voting power of members entitled to vote on a matter, or of the members of any particular class entitled to vote on a matter as a class, if a quorum exists, action on the matter, other than the election of directors, by these members or by the members of a class, is approved if the votes cast favoring the action by the members voting or by the members of a class voting, are in a designated proportion of the total votes cast by the members or by the members of a class, unless the articles of incorporation require a greater vote.
(d) Where subsection (c) of this section is not applicable, if a quorum exists, action on a matter, other than the election of directors, by the members entitled to vote on the matter, or by the members of any particular class entitled to vote on the matter as a class, is approved if the votes cast by the members voting, or by the members of a class voting, favoring the action exceed the votes cast by the members, or by the members of a class, opposing the action, unless the articles of incorporation require a greater vote.

(e) An amendment of the articles of incorporation adding, changing or deleting a voting requirement is governed by section seven hundred twenty-six of this article. An amendment of the articles of incorporation or bylaws adding, changing or deleting a quorum requirement is governed by section seven hundred twenty-six of this article.

(f) The election of directors is governed by section seven hundred twenty-seven of this article.

§31E-7-725. Action by single and multiple classes of members.

(a) If the articles of incorporation or this chapter, provide for voting by a single class on a matter, action on that matter is taken when voted upon by that class as provided in section seven hundred twenty-four of this article.

(b) If the articles of incorporation or this chapter, provide for voting by two or more classes on a matter, action on that matter is taken only when voted upon by each of those classes counted separately as provided in section seven hundred twenty-four of this article. Action may be taken by one class on a matter even though no action is taken by another class entitled to vote on the matter.

§31E-7-726. Other quorum or voting requirement.
(a) The articles of incorporation may provide for a greater voting requirement for members, or classes of members, than is provided by this chapter. The articles of incorporation or the bylaws may provide for a greater quorum requirement for members, or classes of members, than is provided by this chapter.

(b) The articles of incorporation may, except where expressly prohibited by this chapter, or where action is required by this chapter to be unanimous, provide for a lesser voting requirement, but unless expressly permitted by a particular section of this chapter, not less than a majority of the votes cast by the members, or by the members of a particular class, entitled to vote on the matter.

(c) An amendment to the articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and classes required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

§31E-7-727. Voting for directors; cumulative voting.

(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present, or if voting by mail is permitted pursuant to section seven hundred four of this article in an election in which the total number of members who vote is not less than the number required for a quorum.

(b) Members do not have a right to cumulate their votes for directors unless this is provided for in the articles of incorporation.
(c) A statement included in the articles of incorporation that "all or a designated class of members are entitled to cumulate their votes for directors", or words of similar import, means that the members designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

(d) Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless: (1) The meeting notice states conspicuously that cumulative voting is authorized; (2) a member who has the right to cumulate his or her votes gives notice to the corporation not less than forty-eight hours before the time set for the meeting of his or her intent to cumulate his or her votes during the meeting, and if one member gives this notice all other members in the same class participating in the election are entitled to cumulate their votes without giving further notice; or (3) if voting is to be by mail or electronic means pursuant to section seven hundred four of this article: (A) The bylaws specify how election of directors are to be conducted if members vote cumulatively by mail; (B) the notice of the meeting states conspicuously that cumulative voting is authorized and how the election is to be conducted; and (C) the mail ballot provides for cumulative voting.

§31E-7-728. Inspectors of election.

(a) A corporation may appoint one or more inspectors to act at a meeting of members and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall: (1) Ascertain the number of members entitled to vote and the voting power of each; (2)
determine the members represented at a meeting; (3) determine
the validity of proxies and ballots; (4) count all votes; and (5)
determine the result.

c (c) An inspector may be an officer or employee of the
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]
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PART 1. BOARD OF DIRECTORS.

§31E-8-801. Requirement for and duties of board of directors.

(a) Each corporation must have a board of directors.

(b) All corporate powers are to be exercised by or under the authority of, and the activities, property and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

§31E-8-802. Qualifications of directors.

(a) The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the articles of incorporation or bylaws require he or she to be a member.

(b) The directors and board of directors may be designated by other names as may be provided in the articles of incorporation or bylaws.

§31E-8-803. Number and election of directors.

(a) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or bylaws.
(c) The initial board of directors is to be designated in the articles of incorporation or elected at the organizational meeting of the corporation. Thereafter, if the corporation has members entitled to vote for directors, directors are to be elected at the first meeting of the members held for that purpose and at each subsequent annual meeting, except as provided in section eight hundred four of this article.

§31E-8-804. Special provisions regarding directors.

(a) The articles of incorporation may provide that the entire membership, or a certain class of members, shall constitute the board of directors.

(b) The articles of incorporation may provide that persons occupying certain positions within or without the corporation are ex officio directors, but, unless otherwise provided in the articles of incorporation or bylaws, ex officio directors may not be counted in determining a quorum nor may they be entitled to a vote. An ex officio director shall continue to be a director so long as he or she continues to hold the office from which his or her ex officio status derives, and shall cease to be an ex officio director immediately and automatically upon ceasing to hold the office, without the need for any action by the corporation, its directors or its members. The provisions of sections eight hundred six and eight hundred eight of this article do not apply to ex officio directors.

(c) In the cases of corporations without members and corporations without members entitled to vote for directors, the articles of incorporation may provide for a self-perpetuating board of directors.

§31E-8-805. Election of directors by certain classes of members.

If the articles of incorporation authorize classes of members, the articles may also authorize the election of all or a
specified number of directors by members in one or more authorized classes of members.

§31E-8-806. Terms of directors generally.

(a) The terms of the initial directors of a corporation expire at the first members’ meeting at which directors are elected or, in the case of a corporation without members entitled to vote for directors, at the first annual meeting of the board of directors, unless their terms are staggered pursuant to section eight hundred seven of this article.

(b) The terms of all other directors expire at the next annual meeting of members or the annual meeting of the directors if the corporation does not have members entitled to vote for directors, as the case may be, following their election unless their terms are staggered under section eight hundred seven of this article.

(c) A decrease in the number of directors does not shorten an incumbent director’s term.

(d) The term of a director elected to fill a vacancy expires at the next meeting at which directors are elected.

(e) Despite the expiration of a director’s term, he or she continues to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

§31E-8-807. Staggered terms for directors.

(a) The articles of incorporation may provide for staggering the terms of directors, other than ex officio directors, by dividing the total number of directors, other than ex officio directors, into up to five groups, with each group containing approximately the same percentage of the total number of directors, as possible. In that event, the terms of directors in the
first group expire at the first annual meeting of members or, in the case of a corporation without members entitled to vote for directors, at the first annual meeting of the board of directors, after their election, the terms of the second group expire at the second annual meeting of members or directors after their election, the terms of the third group, if any, expire at the third annual meeting of members or directors after their election, the terms of the fourth group, if any, expire at the fourth annual meeting of members or directors after their election, and the terms of the fifth group, if any, expire at the fifth annual meeting of members or directors after their election. At each annual meeting thereafter, directors are to be chosen for a term of two years, three years, four years or five years, as the case may be, to succeed those whose terms expire.

(b) If a corporation has cumulative voting pursuant to section seven hundred twenty-seven, article seven of this chapter, this section applies only if there are at least three directors in each group.

§31E-8-808. Resignation of directors.

(a) A director may resign at any time by delivering written notice to the board of directors, the chair of the board of directors or the corporation.

(b) A resignation is effective when the notice is delivered unless the board of directors agree to a later effective date.

§31E-8-809. Removal of directors by members or directors.

(a) The members entitled to vote for the election of directors or, if there are no members entitled to vote for the election of directors, the directors, may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
(b) If a director is elected by a class of members only the
members of that class may participate in the vote to remove him
or her.

(c) If cumulative voting is authorized, a director may not be
removed if the number of votes sufficient to elect him or her
under cumulative voting is voted against his or her removal. If
cumulative voting is not authorized, a director may be removed
only if the number of votes cast to remove him or her exceeds
the number of votes cast not to remove him or her.

(d) A director may be removed by the members entitled to
vote for directors or, if there are no members entitled to vote for
directors, the directors, only at a meeting called for the purpose
of removing him or her and the meeting notice must state that
the purpose, or one of the purposes, of the meeting is removal
of the director.

§31E-8-810. Removal of directors by judicial proceeding.

(a) The circuit court may remove a director of the corpora-
tion from office in a proceeding commenced either by the
corporation or by its members holding at least ten percent of the
voting power of any class if the court finds that: (1) The
director engaged in fraudulent or dishonest conduct or gross
abuse of authority or discretion, with respect to the corporation;
and (2) removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director
from serving on the board for a period prescribed by the court.

(c) If members commence a proceeding under subsection
(a) of this section, they must make the corporation a party
defendant.

§31E-8-811. Vacancy on board.
(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The members entitled to vote for directors may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a class of members and if the vacancy is to be filled by the members entitled to vote for directors as provided in subdivision (1), subsection (a) of this section, only the members of that class are entitled to vote to fill the vacancy.

(c) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection (b), section eight hundred eight of this article or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

(d) If the board of directors ceases to exist and there are no members having the right to vote for the election of directors, members not entitled to vote are entitled to elect a new board of directors.

§31E-8-812. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors, including reasonable allowance for expenses actually incurred in connection with their duties.
PART 2. MEETINGS AND ACTION OF THE BOARD.

§31E-8-820. Meetings.

(a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

§31E-8-821. Action without meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors’ meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as having the effect of a meeting vote in any document.

§31E-8-822. Notice of meeting.
(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

§31E-8-823. Waiver of notice.

(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the director at the beginning of the meeting or promptly upon his or her arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

§31E-8-824. Quorum and voting.

(a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or
(2) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one third of the fixed or prescribed number of directors determined under subsection (a) of this section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) He or she objects at the beginning of the meeting or promptly upon his or her arrival to holding it or transacting business at the meeting; (2) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

§31E-8-825. Committees.

(a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have two or more members, who serve at the pleasure of the board of directors.
(b) The creation of a committee and appointment of members to it must be approved by the greater of: (1) A majority of all the directors in office when the action is taken; or (2) the number of directors required by the articles of incorporation or bylaws to take action under section eight hundred twenty-four of this article.

(c) Sections eight hundred twenty, eight hundred twenty-one, eight hundred twenty-two, eight hundred twenty-three and eight hundred twenty-four of this article, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section eight hundred one of this article.

(e) A committee may not, however:

(1) Approve or propose to members action that this chapter requires be approved by members;

(2) Fill vacancies on the board of directors or on any of its committees;

(3) Amend articles of incorporation pursuant to section one thousand two, article ten of this chapter;

(4) Adopt, amend, or repeal bylaws;

(5) Approve a plan of merger;

(6) Approve a sale, lease, exchange or other disposition of all, or substantially all, of the property of a corporation; or

(7) Approve a proposal to dissolve.
The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section eight hundred thirty of this article.

§31E-8-826. Court-ordered meeting of directors.

(a) The circuit court of the county where a corporation’s principal office is located or, if none, where its registered office is located, or if the corporation has no principal or registered office in this state, the circuit court satisfying the venue requirements found in section one, article one, chapter fifty-six of this code, may summarily order a meeting of the board of directors to be held: (1) On application of any director of the corporation if no meeting of the board of directors has been held for a period of twelve months or more; or (2) on application of a director who signed a demand for a special meeting valid under the bylaws if: (A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation’s secretary; or (B) the special meeting was not held in accordance with the notice.

(b) The circuit court may fix the time and place of the meeting, determine the directors entitled to participate in the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

PART 3. DIRECTORS.

§31E-8-830. Standards of conduct for directors.

(a) Each member of the board of directors, when discharging the duties of a director, shall act: (1) In good faith; and (2)
in a manner the director reasonably believes to be in the best interests of the corporation.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on the performance by any of the persons specified in subdivisions (1) or (3), subsection (e) of this section to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board’s functions that are delegable under applicable law.

(d) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (e) of this section.

(e) A director is entitled to rely, in accordance with subsection (c) or (d) of this section, on:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters: (A)
Within the particular person’s professional or expert competence; or (B) as to which the particular person merits confidence; or

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

§31E-8-831. Standards of liability for directors.

(a) A director is not liable to the corporation or its members for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) Any provision in the articles of incorporation authorized by subdivision (4), subsection (b), section two hundred two, article two of this chapter or the protections afforded by section eight hundred sixty of this article or article seven-c, chapter fifty-five of this code, if interposed as a bar to the proceeding by the director, does not preclude liability; and

(2) The challenged conduct consisted or was the result of:

(A) Action not in good faith; or

(B) A decision: (i) Which the director did not reasonably believe to be in the best interests of the corporation; or (ii) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(C) A lack of objectivity due to the director’s familial, financial or business relationship with, or a lack of independence due to the director’s domination or control by, another person having a material interest in the challenged conduct: (i) Which relationship or which domination or control could reasonably be expected to have affected the director’s judgment...
respecting the challenged conduct in a manner adverse to the
corporation; and (ii) after a reasonable expectation has been
established, the director does not establish that the challenged
conduct was reasonably believed by the director to be in the
best interests of the corporation; or

(D) A sustained failure of the director to devote attention to
ongoing oversight of the affairs of the corporation, or a failure
to devote timely attention, by making or causing to be made
appropriate inquiry, when particular facts and circumstances of
significant concern materialize that would alert a reasonably
attentive director to the need to make inquiry; or

(E) Receipt of a financial benefit to which the director was
not entitled or any other breach of the director’s duties to deal
fairly with the corporation and its members that is actionable
under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, has the burden of establishing that:

(A) Harm to the corporation or its members has been
suffered; and

(B) The harm suffered was proximately caused by the
director’s challenged conduct; or

(2) For other money payment under a legal remedy,
including compensation for the unauthorized use of corporate
assets, has whatever persuasion burden may be called for to
establish that the payment sought is appropriate in the circum-
stances; or

(3) For other money payment under an equitable remedy,
including profit recovery by or disgorgement to the corporation,
has whatever persuasion burden may be called for to establish
that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section may: (1) In any instance where fairness is at issue, including consideration of the fairness of a transaction to the corporation under section eight hundred sixty of this article, alter the burden of proving the fact or lack of fairness otherwise applicable; (2) alter the fact or lack of liability of a director under another section of this chapter, including the provisions governing the consequences of an unlawful distribution under section eight hundred thirty-three of this article or a transactional interest under section eight hundred sixty of this article; or (3) affect any rights to which the corporation or a member may be entitled under another provision of this code or the United States code.

§31E-8-832. [RESERVED]

§31E-8-833. Directors' liability for unlawful distributions.

(a) A director who votes for or assents to a distribution in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter if the party asserting liability establishes that when taking the action the director did not comply with section eight hundred thirty of this article.

(b) A director held liable under subsection (a) of this section for an unlawful distribution is entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) of this section for the unlawful distribution; and

(2) Recoupment from each recipient for the amount the recipient accepted, knowing the distribution was made in violation of this chapter or the articles of incorporation.
(c) A proceeding to enforce the liability of a director under subsection (a) of this section is barred unless it is commenced within two years after the date on which the distribution was made.

(d) For purposes of this section, a director is deemed to have voted for a distribution if the director was present at the meeting of the board of directors at the time the distribution was authorized and did not vote in dissent, or if the director consented to the vote pursuant to section eight hundred twenty-one of this article.

PART 4. OFFICERS.

§31E-8-840. Required officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors must delegate to one of the officers responsibility for preparing minutes of the directors’ and members’ meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

§31E-8-841. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by
direction of an officer authorized by the board of directors to prescribe the duties of other officers.

§31E-8-842. Standards of conduct for officers.

(a) An officer, when performing in his or her official capacity, shall act:

(1) In good faith;

(2) With the care that a person in a like position would reasonably exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

§31E-8-843. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the board of directors agree to a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.


(a) The appointment of an officer does not itself create contract rights.
(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

PART 5. INDEMNIFICATION AND ADVANCE FOR EXPENSES.

§31E-8-850. Part definitions.

In this part:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if his or her duties to the corporation also impose duties on, or otherwise involve services by, him or her to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Disinterested director" means a director who, at the time of a vote referred to in subsection (c), section eight hundred fifty-three of this article or a vote or selection referred to in subsection (b) or (c), section eight hundred fifty-five of this article, is not: (A) A party to the proceeding; or (B) an individual having a familial, financial, professional or employment relationship with the director whose indemnification or
advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director’s judgment when voting on the decision being made.

(4) “Expenses” includes counsel fees.

(5) “Liability” means the obligation to pay a judgment; settlement; penalty; fine, including an excise tax assessed with respect to an employee benefit plan; or reasonable expenses incurred with respect to a proceeding.

(6) “Official capacity” means:

(A) When used with respect to a director, the office of director in a corporation; and

(B) When used with respect to an officer, as contemplated in section eight hundred fifty-six of this article, the office in a corporation held by the officer. “Official capacity” does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

(7) “Party” means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

(8) “Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

§31E-8-851. Permissible indemnification.
(a) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because he or she is a director against liability incurred in the proceeding if:

(1) (A) He or she conducted himself or herself in good faith; and

(B) He or she reasonably believed: (i) In the case of conduct in his or her official capacity, that his or her conduct was in the best interests of the corporation; and (ii) in all other cases, that his or her conduct was at least not opposed to the best interests of the corporation; and

(C) In the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful; or

(2) He or she engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by subdivision (5), subsection (b), section two hundred two, article two of this chapter.

(b) A director's conduct with respect to an employee benefit plan for a purpose he or she reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subparagraph (ii), paragraph (B), subdivision (1), subsection (a) of this section.

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not, determinative that the director did not meet the relevant standard of conduct described in this section.
Unless ordered by a circuit court under subdivision (3), subsection (a), section eight hundred fifty-four of this article, a corporation may not indemnify a director:

(1) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or

(2) In connection with any proceeding with respect to conduct for which he or she was adjudged liable on the basis that he or she received a financial benefit to which he or she was not entitled, whether or not involving action in his or her official capacity.

§31E-8-852. Mandatory indemnification.

A corporation must indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she was a director of the corporation against reasonable expenses incurred by him or her in connection with the proceeding.

§31E-8-853. Advance for expenses.

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because he or she is a director if he or she delivers to the corporation:

(1) A written affirmation of his or her good faith belief that he or she has met the relevant standard of conduct described in section eight hundred fifty-one of this article or that the
proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by subdivision (4), subsection (b), section two hundred two, article two of this chapter; and

(2) His or her written undertaking to repay any funds advanced if he or she is not entitled to mandatory indemnification under section eight hundred fifty-two of this article and it is ultimately determined under sections eight hundred fifty-four or eight hundred fifty-five of this article that he or she has not met the relevant standard of conduct described in section eight hundred fifty-one of this article.

(b) The undertaking required by subdivision (2), subsection (a) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section are to be made:

(1) By the board of directors:

(A) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom constitute a quorum for this purpose, or by a majority of the members of a committee of two or more disinterested directors appointed by a vote; or

(B) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection (c), section eight hundred twenty-four of this article, in which authorization directors who do not qualify as disinterested directors may participate; or
(2) By special legal counsel:

(A) Selected in the manner prescribed in subdivision (1) of this subsection;

(B) If there are fewer than two disinterested directors, selected by the board of directors in which selection directors who do not qualify as disinterested directors may participate; or

(3) By the members, if the members have a right to vote.

§31E-8-854. Circuit court-ordered indemnification and advance for expenses.

(a) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the circuit court conducting the proceeding or to another circuit court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the circuit court shall:

(1) Order indemnification if the circuit court determines that the director is entitled to mandatory indemnification under section eight hundred fifty-two of this article;

(2) Order indemnification or advance for expenses if the circuit court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by subsection (a), section eight hundred fifty-eight of this article; or

(3) Order indemnification or advance for expenses if the circuit court determines, in view of all the relevant circumstances, that it is fair and reasonable:
(A) To indemnify the director; or

(B) To advance expenses to the director, even if he or she has not met the relevant standard of conduct set forth in subsection (a), section eight hundred fifty-one of this article, failed to comply with section eight hundred fifty-three of this article or was adjudged liable in a proceeding referred to in subdivisions (1) or (2), subsection (d), section eight hundred fifty-one of this article, but if he or she was adjudged so liable his or her indemnification is to be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the circuit court determines that the director is entitled to indemnification under subdivision (1), subsection (a) of this section or to indemnification or advance for expenses under subdivision (2), subsection (a) of this section, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining circuit court-ordered indemnification or advance for expenses. If the circuit court determines that the director is entitled to indemnification or advance for expenses under subdivision (3), subsection (a) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain circuit court-ordered indemnification or advance for expenses.

§31E-8-855. Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under section eight hundred fifty-one of this article unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because he or she has met the relevant standard of conduct set forth in section eight hundred fifty-one of this article.

(b) The determination is to be made:
(1) If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom constitute a quorum for this purpose, or by a majority of the members of a committee of two or more disinterested directors appointed by a vote;

(2) By special legal counsel:

   (A) Selected in the manner prescribed in subdivision (1) of this subsection; or

   (B) If there are fewer than two disinterested directors, selected by the board of directors in which selection directors who do not qualify as disinterested directors may participate; or

(3) By the members, if the members have a right to vote.

(c) Authorization of indemnification is to be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification is to be made by those entitled under paragraph (B), subdivision (2), subsection (b) of this section to select special legal counsel.

§31E-8-856. Indemnification of officers.

(a) A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(1) To the same extent as a director; and

(2) If he or she is an officer but not a director, to a further extent as may be provided by the articles of incorporation, the
bylaws, a resolution of the board of directors, or contract except for:

(A) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(B) Liability arising out of conduct that constitutes:

(i) Receipt by him or her of a financial benefit to which he or she is not entitled;

(ii) An intentional infliction of harm on the corporation or the members; or

(iii) An intentional violation of criminal law.

(b) The provisions of subdivision (2), subsection (a) of this section apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under section eight hundred fifty-two of this article, and may apply to a circuit court under section eight hundred fifty-four of this article for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

§31E-8-857. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corpora-
tion, serves at the corporation’s request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to him or her against the same liability under this part.

§31E-8-858. Variation by corporate action; application of part.

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section eight hundred fifty-one of this article or advance funds to pay for or reimburse expenses in accordance with section eight hundred fifty-three of this article. Any obligatory provision is deemed to satisfy the requirements for authorization referred to in subsection (c), section eight hundred fifty-three and in subsection (c), section eight hundred fifty-five of this article. Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law is deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section eight hundred fifty-three of this article to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) of this section may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnifica-
tion or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or members of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, is to be governed by section one thousand one hundred and three, article eleven of this chapter.

(c) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

(d) This part does not limit a corporation’s power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

(e) This part does not limit a corporation’s power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

§31E-8-859. Exclusivity of part.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this part.

PART 6. DIRECTORS’ CONFLICTING INTEREST TRANSACTIONS.

§31E-8-860. Directors’ conflicting interest transactions.

(a) No contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, is void or
voidable solely for this reason, or solely because the director or
officer is present at or participates in the meeting of the board
or committee thereof which authorizes the contract or transac-
tion, or solely because any director’s or officer’s votes are
counted for the purpose, if:

(1) The material facts as to the director’s or officer’s
relationship or interest and as to the contract or transaction are
disclosed or are known to the board of directors or the commit-
tee, and the board or committee in good faith authorizes the
contract or transaction by the affirmative votes of a majority of
the disinterested directors, even though the disinterested
directors be less than a quorum; or

(2) The material facts as to the director’s or officer’s
relationship or interest and as to the contract or transaction are
disclosed or are known to the members entitled to vote on the
contract or transaction, and the contract or transaction is
specifically approved in good faith by vote of the members
entitled to vote; or

(3) The contract or transaction is fair as to the corporation
as of the time it is authorized, approved or ratified, by the board
of directors, a committee of the board of directors, or the
members.

(b) Common or interested directors may be counted in
determining the presence of a quorum at a meeting of the board
of directors or of a committee which authorizes the contract or
transaction.

ARTICLE 9. RESERVED.

ARTICLE 10. AMENDMENT OF ARTICLES OF INCORPORATION AND
BYLAWS.
§31E-10-1001. Authority to amend.

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(b) A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, purpose or duration of the corporation.

§31E-10-1002. Certain amendments by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if any, if a statement of change is on file with the secretary of state;

(4) To change the corporate name by substituting the word "corporation," "incorporated" or "company", or the abbreviation "corp.", "inc." or "co.", for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or

(5) To make any other change expressly permitted by this chapter to be made without member action.

§31E-10-1003. Amendment by board of directors and members.

(a) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to those members who are entitled to vote on amendments, if any.

(b) For the amendment to be adopted: (1) The board of directors must approve the amendment; (2) the board of directors must recommend the amendment to the members entitled to vote on the amendment, if any, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members entitled to vote on the amendment with the submission of the amendment; and (3) the members entitled to vote on the amendment must approve the amendment, either before or after the actions required in subdivisions (1) and (2) of this subsection, as provided in subsection (e) of this section.
(c) The board of directors may condition its submission of
the proposed amendment on any basis.

(d) The corporation shall notify each member entitled to
vote on the amendment, if any, of the proposed meeting of
members in accordance with section seven hundred five, article
seven of this chapter. The notice of meeting must also state that
the purpose, or one of the purposes, of the meeting is to
consider the proposed amendment and contain or be accompa-
nied by a copy or summary of the amendment.

(e) Unless this chapter, the articles of incorporation or the
board of directors acting pursuant to subsection (c) of this
section requires a greater vote or a vote by class of members,
the amendment to be adopted must be approved by: (1) If no
class of members is entitled to vote separately on the amend-
ment as a class, at least two thirds of the votes cast by the
members entitled to vote on the amendment; and (2) if any class
of members is entitled to vote on the amendment separately as
a class, at least two thirds of the votes cast by the members of
each class.

(f) If the corporation has no members, or no members
entitled to vote, the proposed amendment must be adopted by
vote of at least two thirds of the directors present at a meeting
of the board of directors at which a quorum is present.

§31E-10-1004. Amendment by incorporators.

If a corporation has no members entitled to vote on the
proposed amendment to the articles of incorporation, the
incorporators may, at any time and from time to time, before
the corporation has directors amend the articles of incorporation
by resolution adopted by a vote of at least two thirds of the
incorporators.

§31E-10-1005. Articles of amendment.
A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

1. The name of the corporation;
2. The text of each amendment adopted;
3. The date of each amendment's adoption;
4. A statement that the amendment was approved by the board of directors as required under section one thousand three of this article or, if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of either: (A) The incorporators, if the vote was before the corporation had directors; or (B) the board of directors, in either case in accordance with section one thousand two or one thousand four of this article; and
5. If approval by members was required: (A) The designation of each class of members entitled to vote separately on the amendment; and (B) the total number of votes cast for and against the amendment by each class of members entitled to vote separately on the amendment and a statement that the number cast for the amendment by each class was sufficient for approval by that class.

§31E-10-1006. Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without member action.

(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring member approval, it must be adopted as provided in section one thousand three of this article. If the restatement
includes an amendment which does not require member approval, it must be adopted as provided in section one thousand two or one thousand four of this article.

(c) If the board of directors submits a restatement for member action, the corporation shall notify each member entitled to vote on the proposed amendment of the proposed members’ meeting in accordance with section seven hundred five, article seven of this chapter. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a statement setting forth: (1) Whether the restatement contains an amendment to the articles of incorporation requiring member approval and, if it does not, that the board of directors, or the incorporators before the corporation had directors, adopted the restatement; or (2) if the restatement contains an amendment to the articles of incorporation requiring member approval, the information required by section one thousand five of this article.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to it.

(f) The secretary of state may certify a restated articles of incorporation, as the articles of incorporation currently in effect, without including the statement information required by subsection (d) of this section.

§31E-10-1007. Amendment pursuant to reorganization.
(a) A corporation's articles of incorporation may be amended without action by the board of directors or the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by section two hundred two, article two of this chapter.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal law.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§31E-10-1008. Effect of amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name
6 does not abate a proceeding brought by or against the corporation 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 repeal the corporation’s bylaws.

3 (b) A corporation’s board of directors may amend or repeal the corporation’s bylaws, unless:

5 (1) The articles of incorporation or section one thousand twenty-one of this article reserve that power exclusively to the members in whole or part; or

8 (2) The members in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not 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 for the board of directors may be amended or repealed:

3 (1) If adopted by the members, only by the members, unless the bylaw otherwise provides; or

5 (2) If adopted by the board of directors, either by the members or by the board of directors.

7 (b) A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the members or the board of directors.
(c) Action by the board of directors under subsection (a) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

§31E-10-1022. Bylaw increasing quorum or voting requirement for members.

(a) If authorized by the articles of incorporation, the members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for members or classes of members than is required by this chapter. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum requirement for members must meet the same quorum requirement and be adopted by the same vote and classes of members required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for members under subsection (a) of this section may not 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.

(a) One or more domestic corporations may merge with a domestic or foreign corporation or other entity pursuant to a plan of merger.
(b) A foreign corporation, or a domestic or foreign other entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if:

1. The merger is permitted by the laws under which the corporation or other entity is organized or by which it is governed; and

2. In effecting the merger, the corporation or other entity complies with the laws under which the corporation or other entity is organized or by which it is governed and with its articles of incorporation or organizational documents.

(c) The plan of merger must include:

1. The name of each corporation or other entity that will merge and the name of the corporation or other entity that will be the survivor of the merger;

2. The terms and conditions of the merger;

3. The manner and basis of converting the memberships, if any, of each merging corporation and interests of each merging entity, interests, obligations, cash, other property, or any combination of the foregoing;

4. The articles of incorporation of any corporation, or the organizational documents of any other entity, to be created by the merger, or if a new corporation or other entity is not to be created by the merger, any amendments to the survivor’s articles of incorporation or organizational documents; and

5. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any party to the merger.
(d) The terms described in subdivisions (2) and (3), subsection (c) of this section may be made dependent on facts ascertainable outside the plan of merger, provided that those facts are objectively ascertainable. The term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(e) The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the secretary of state: Provided, That if the members of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by the members the plan may not be amended to:

(1) Change the manner and basis of converting the memberships, if any;

(2) Change the articles of incorporation of any corporation, or the organizational documents of any other entity, that will survive or be created as a result of the merger, except for changes permitted by section one thousand five, article ten of this chapter or by comparable provisions of the laws under which the foreign corporation or other entity is organized or governed; or

(3) Change any of the other terms or conditions of the plan if the change would adversely affect the members in any material respect.

§31E-11-1102. Action on plan of merger.

(a) After adopting a plan of merger, the board of directors of each corporation party to the merger shall submit the plan of merger, except as provided in subsection (h) of this section, for
approval by those members who are entitled to vote on a plan of merger, if any.

(b) For a plan of merger to be approved: (1) The board of directors must approve the plan of merger; (2) the board of directors must recommend the plan of merger to the members entitled to vote on the plan of merger, if any, unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members entitled to vote on the plan of merger with the submission of the plan; and (3) the members entitled to vote on the plan must approve the plan, either before or after the actions required in subdivisions (1) and (2) of this subsection, as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposed merger on any basis.

(d) The corporation shall notify each member, entitled to vote on the plan, if any, of the proposed members’ meeting in accordance with section seven hundred five, article seven of this chapter. The notice is also to state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a vote by class of members, the plan of merger to be adopted must be approved by: (1) If no class of members is entitled to vote separately on the plan as a class, at least two thirds of the votes cast by the members entitled to vote; and (2) if any class of members is entitled to vote on the plan separately as a class, at least two thirds of the
votes cast by the members of each class whose members are entitled to vote.

(f) Separate voting by class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate classes of members on the proposed amendment under the articles of incorporation of the corporation.

(g) Approval of the plan of merger by the corporation requires a greater or additional vote if:

(1) In the case of the surviving corporation, a plan of merger contains any provision which, if contained in a proposed amendment to its articles of incorporation would require a greater vote than, or additional vote to, that otherwise required to approve the plan of merger; or

(2) In the case of any terminating corporation, a sale of all or substantially all assets, or dissolution, would under the circumstances require a greater vote than, or additional vote to, that otherwise required to approve the plan of merger.

(h) Action by the members of the surviving corporation on a plan of merger is not required if:

(1) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section one thousand two, article ten of this chapter from its articles of incorporation before the merger; and

(2) Each member of the surviving corporation immediately before the effective date of the merger will be a member with identical designations, qualifications, privileges and rights immediately after the merger.
(i) After a merger is authorized, and at any time before the articles of merger is filed, the planned merger may be abandoned, subject to any contractual rights, without further member action, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

(j) If any merging corporation has no members, or no members entitled to vote on the merger, a plan of merger is to be adopted by the board of directors.

§31E-11-1103. Articles of merger.

(a) After a plan of merger is approved as required by section one thousand one hundred two of this article, the surviving corporation shall deliver to the secretary of state for filing articles of merger setting forth: (1) The plan of merger; (2) a statement to the effect that the plan of merger was adopted by the board of directors of each corporation party to the merger; (3) if member approval was not required, a statement to that effect; and (4) if approval of members of one or more corporations party to the merger was required: (A) The designation of each class of members entitled to vote separately on the plan as to each corporation; and (B) the total number of votes cast for and against the plan by each class of members entitled to vote separately on the plan as to each corporation and a statement that the number cast for the plan by each class of members was sufficient for approval by that class.

(b) A merger takes effect upon issuance by the secretary of state of a certificate of merger to the survivor corporation.

(c) The secretary of state shall withhold the issuance of any certificate of merger in the case where the new or surviving corporation will be a foreign corporation which has not qualified to conduct affairs or do or transact business or hold property in this state until the receipt by the secretary of state of
a notice from the tax commissioner and bureau of employment programs to the effect that all taxes due from said corporation under the provisions of chapter eleven of this code, including, but not limited to, taxes withheld under the provisions of section seventy-one, article twenty-one, chapter eleven of this code, all business and occupation taxes, motor carrier and transportation privilege taxes, gasoline taxes, consumer sales taxes and any and all license franchise or other excise taxes and corporate net income taxes, and employment security payments levied or assessed against the corporation seeking to dissolve have been paid or that the payment has been provided for, or until the secretary of state received a notice from the tax commissioner or bureau of employment programs stating that the corporation in question is not subject to payment of any taxes or to the making of any employment security payments or assessments.

§31E-11-1104. Effect of merger.

When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) All property owned by, and every contract right possessed by, each corporation or other entity that merges into the survivor is vested in the survivor without reversion or impairment;

(3) All real property located in the state owned by each corporation or other entity that merges into the survivor passes by operation of law and the transfer is evidenced by recording a confirmation deed in each county in which the real property is located. No transfer or excise taxes may be assessed for the recording of the confirmation deeds.
(4) The surviving corporation has all liabilities of each corporation party to the merger;

(5) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(6) The articles of incorporation of the surviving corporation is amended to the extent provided in the plan of merger;

(7) The memberships, if any, of each corporation party to the merger that are to be converted into memberships of the surviving corporation are converted, and the former members in the membership classes are entitled only to the designation, qualifications, privileges and rights of the class of members to which they are converted, as provided in the articles of incorporation of the surviving corporation as the articles may be amended by the plan of merger; and

(8) Any devise, bequest, gift or grant, contained in any will or in any other instrument, made before or after the merger, to or for the benefit of any of the merging corporations inures to the benefit of the surviving corporation, and so far as is necessary for that purpose, the existence of each merging corporation is deemed to continue in and through the surviving 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.

No approval of the members of a corporation is required, unless the articles of incorporation otherwise provide:
(1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation’s assets in the usual and regular course of business;

(2) To mortgage, pledge, dedicate to the repayment of indebtedness with or without recourse, or otherwise encumber any or all of the corporation’s assets, whether or not in the usual and regular course of business; or

(3) To transfer any or all of the corporation’s assets to one or more corporations or other entities all of the shares or interests of which are owned by the corporation.

§31E-12-1202. Member approval of certain dispositions.

(a) If the corporation has members entitled to vote on the transaction, a sale, lease, exchange, or other disposition of assets, other than a disposition described in section one thousand two hundred one of this article, requires approval of the corporation’s members if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains an activity that represented at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing activity.

(b) A disposition that requires approval of the members under subsection (a) of this section must be initiated by a resolution by the board of directors authorizing the disposition. After adoption of a resolution, the board of directors shall submit the proposed disposition to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the
proposed disposition, unless the board of directors makes a
determination that because of conflicts of interest or other
special circumstances it should not make a recommendation
that the members approve the disposition, in which case the
board of directors shall transmit to the members the basis for
that determination.

(c) The board of directors may condition its submission of
a disposition to the members under subsection (b) of this
section on any basis.

(d) If a disposition is required to be approved by the
members under subsection (a) of this section, and if the
approval is to be given at a meeting, the corporation shall notify
each member entitled to vote of the meeting of members at
which the disposition is to be submitted for approval. The
notice must state that the purpose, or one of the purposes, of the
meeting is to consider the disposition and is to contain a
description of the disposition, including the terms and condi-
tions of the disposition and the consideration to be received by
the corporation.

(e) Unless this chapter or the articles of incorporation or the
board of directors acting pursuant to subsection (c) of this
section requires a greater vote, or a greater number of votes to
be present, the approval of a disposition by the members
requires the approval of the members at a meeting at which a
quorum consisting of at least a majority of the votes entitled to
be cast on the disposition exists.

(f) After a disposition has been approved by the members
under subsection (b) of this section, and at any time before the
disposition has been consummated, it may be abandoned by the
corporation without action by the members, subject to any
contractual rights of other parties to the disposition.
(g) A disposition of assets in the course of dissolution under article thirteen of this chapter is not governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary are to be deemed the assets of the parent corporation for the 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.


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PART 1. VOLUNTARY DISSOLUTION.

§31E-13-1301. Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not commenced activities may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

1 (1) The name of the corporation;

2 (2) The date of its incorporation;
(3) That the corporation has no member entitled to vote;
(4) That the corporation has not commenced the activities for which it was incorporated;
(5) That no debt of the corporation remains unpaid;
(6) That the net assets of the corporation remaining after winding up have been distributed as required by this chapter; and
(7) That a majority of the incorporators or initial directors authorized the dissolution.

§31E-13-1302. Dissolution by board of directors and members.

(a) A corporation's board of directors may propose dissolution for submission to those members entitled to vote on the dissolution.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and

(2) The members entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each member entitled to vote of the proposed members' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.
(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section require a greater vote, adoption of the proposal to dissolve requires the approval of the members at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

(f) If the corporation has no members, or no members entitled to vote upon dissolution, dissolution must be authorized by resolution of the board of directors.

§31E-13-1303. Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized; and

(3) If dissolution was approved by the members, a statement that the proposal to dissolve was duly approved by the members in the manner required by this chapter and by the articles of incorporation.

(b) A corporation is dissolved upon the receipt by the corporation of a certificate of dissolution from the secretary of state.

(c) The secretary of state shall issue a certificate of dissolution to the corporation delivering articles of dissolution upon receipt by the secretary of state of a notice from the tax commissioner and bureau of employment programs to the effect that all taxes due from the corporation under the provisions of chapter eleven of this code, including, but not limited to, taxes withheld under the provisions of section seventy-one, article
twenty-one of said chapter eleven of this code, all business and occupation taxes, motor carrier and transportation privilege taxes, gasoline taxes, consumer sales taxes and any and all license franchise or other excise taxes and corporate net income taxes, and employment security payments levied or assessed against the corporation seeking to dissolve have been paid or that the payment has been provided for, or until the secretary of state received a notice from the tax commissioner or bureau of employment programs, as the case may be, stating that the corporation in question is not subject to payment of any taxes or to the making of any employment security payments or assessments.

§31E-13-1304. Revocation of dissolution.

(a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;
If the corporation’s board of directors or incorporators revoked the dissolution, a statement to that effect;

(5) If the corporation’s board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If member action was required to revoke the dissolution, the information required by subdivision (3), subsection (a), section one thousand three hundred three of this article.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

§31E-13-1305. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its activities and affairs, including:

(1) Adopting a plan providing for the distribution of assets under section one thousand three hundred eight of this article.

(2) Collecting its assets;

(3) Disposing of its properties that will not be distributed in kind pursuant to the plan of distribution consistent with the requirements of section one thousand three hundred eight of this article;

(4) Discharging or making provision for discharging its liabilities;
(5) Distributing its remaining assets in accordance with sections one thousand three hundred eight and one thousand three hundred nine of this article; and

(6) Doing every other act necessary to wind up and liquidate its activities and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation’s property;

(2) Prevent transfer of its transferable membership interests, if any, although the authorization to dissolve may provide for closing the corporation’s membership records;

(3) Subject its directors or officers to standards of conduct different from those prescribed in article eight of this chapter;

(4) Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(5) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;

(7) Terminate the authority of the registered agent of the corporation; or

(8) Of itself, render the members liable for any liability or other obligations of the corporation or vest title to the property of the corporation in the members.

§31E-13-1306. Known claims against dissolved corporation.
(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(d) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

§31E-13-1307. Unknown claims against dissolved corporation.
(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or if the corporation had no principal office in this state, in any county where it conducts its affairs;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section one thousand three hundred six of this article;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:
(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of his or her pro rata share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a member’s total liability for all claims under this section may not exceed the total amount of assets distributed to him or her.

§31E-13-1308. Adoption of plan for distribution of assets.

A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter is to be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which section one thousand three hundred nine of this article requires a plan of distribution, in the following manner:

(1) Where there are members of any class entitled to vote on dissolution, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission of the plan to a vote of each class of members entitled to vote. Written notice setting forth the proposed plan of distribution or a summary of the plan is to be given to each member entitled to vote in accordance with section seven hundred five, article seven of this chapter. The plan of distribution is to be adopted upon receiving the approval of a majority of the votes cast by each class of members voting as a class.

(2) Where there are no members entitled to vote on dissolution, a plan of distribution is to be adopted by resolution of the board of directors, or, if directors have not yet been appointed, by resolution approved by a majority of the incorporators.

§31E-13-1309. Liquidating distribution of assets.
(a) The assets of a corporation in the process of dissolution are to be applied and distributed as follows: (1) All liabilities and other obligations of the corporation are to be paid, satisfied and discharged, or adequate provision made for their payment, satisfaction and discharge; (2) assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, are to be returned, transferred or conveyed in accordance with the conditions; (3) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, are to be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in section one thousand three hundred eight of this article; (4) other assets, if any, are to be distributed pro rata among the members of the corporation except to the extent that the articles of incorporation determines the distributive rights of members, or any class or classes of members, or provides for distribution to others; and (5) any remaining assets may be distributed to persons, societies, organizations or domestic or foreign corporations, whether for profit or non-profit, as may be specified in a plan of distribution adopted as provided in section one thousand three hundred eight of this article.

(b) No final liquidating distribution of assets may be made by a dissolved corporation until the corporation has obtained a current statement or statements from the tax commissioner and bureau of employment programs to the effect that all taxes due from the corporation under the provisions of chapter eleven of this code, including, but not limited to, taxes withheld under the provisions of section seventy-one, article twenty-one of said 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.


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
the corporation with written notice of his or her determination pursuant to section five hundred four, article five of this chapter.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section five hundred four, article five of this chapter, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation pursuant to section five hundred four, article five of this chapter.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except that necessary to wind up and liquidate its business and affairs under section one thousand three hundred five of this article and notify claimants pursuant to sections one thousand three hundred six and one thousand three hundred seven of this article.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

§31E-13-1322. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under section one thousand three hundred twenty-one of this article may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:
(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation’s name satisfies the requirements of section four hundred one, article four of this chapter; and

(4) Contain a certificate from the tax commissioner reciting that all taxes owed by the corporation have been paid.

(b) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the information is correct, he or she shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation pursuant to section five hundred four, article five of this chapter.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its activities as if the administrative dissolution had never occurred.

§31E-13-1323. Appeal from denial of reinstatement.

(a) If the secretary of state denies a corporation’s application for reinstatement following administrative dissolution, he or she shall serve the corporation pursuant to section five hundred four, article five of this chapter with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court within thirty days after service of the notice.
of denial is perfected. The corporation appeals by petitioning the circuit court to set aside the dissolution and attaching to the petition copies of the secretary of state’s certificate of dissolution, the corporation’s application for reinstatement, and the secretary of state’s notice of denial.

(c) The circuit court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the circuit court considers appropriate.

(d) The circuit court’s final decision may be appealed as in other civil proceedings.

PART 3. JUDICIAL DISSOLUTION.


The circuit court may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:

(A) The corporation obtained its articles of incorporation through fraud; or

(B) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a member or director if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the members are unable to break the deadlock, and irreparable injury to the corporation is threatened or suffered, or the activities and affairs of the corporation can no longer be conducted in accordance with the corporation’s purpose, because of the deadlock;
(B) The directors or those in control of the corporation have
acted, are acting, or will act in a manner that is illegal, oppres-
sive, or fraudulent; or

(C) The corporate assets are being misapplied or wasted;

(3) In a proceeding by a creditor if it is established that:

(A) The creditor’s claim has been reduced to judgment, the
execution on the judgment returned unsatisfied, and the
corporation is insolvent; or

(B) The corporation has admitted in writing that the
creditor’s claim is due and owing and the corporation is
insolvent; or

(4) In a proceeding by the corporation to have its voluntary
dissolution continued under circuit court supervision.


(a) It is not necessary to make members or directors parties
to a proceeding to dissolve a corporation unless relief is sought
against them individually.

(b) A circuit court in a proceeding brought to dissolve a
corporation may issue injunctions, appoint a receiver or
custodian pendente lite with all powers and duties the circuit
court directs, take other action required to preserve the corpo-
rate assets wherever located, and carry on the activities of the
corporation until a full hearing can be held.

§31E-13-1332. Receivership or custodianship.

(a) A circuit court in a judicial proceeding brought to
dissolve a corporation may appoint one or more receivers to
wind up and liquidate, or one or more custodians to manage, the
activities and affairs of the corporation. The circuit court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the circuit court, before appointing a receiver or custodian. The circuit court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The circuit court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The circuit court may require the receiver or custodian to post bond, with or without sureties, in an amount the circuit court directs.

(c) The circuit court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver: (A) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the circuit court; and (B) may sue and defend in his or her own name as receiver of the corporation in all circuit courts of this state; and

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The circuit court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing it is in the best interests of the corporation, its members, if any, and creditors.

(e) The circuit court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver
or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

§31E-13-1333. Decree of dissolution.

(a) If after a hearing the circuit court determines that one or more grounds for judicial dissolution described in section one thousand three hundred thirty of this article exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the circuit court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(b) After entering the decree of dissolution, the circuit court shall direct the winding up and liquidation of the corporation’s activities and affairs in accordance with section one thousand three hundred five of this article and the notification of claimants in accordance with sections one thousand three hundred six and one thousand three hundred seven of this article.

PART 4. MISCELLANEOUS.

§31E-13-1340. Deposit with state treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them are to be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay him or her or his or her representative that amount.

ARTICLE 14. FOREIGN CORPORATIONS.
PART 1. CERTIFICATE OF AUTHORITY.

§31E-14-1401. Authority to conduct affairs required.

(a) A foreign corporation may not conduct affairs in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (a) of this section:

(1) Maintaining, defending, or settling any proceeding;

(2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(3) Maintaining bank accounts;

(4) Selling through independent contractors;
(5) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(6) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(7) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(8) Owning, without more, real or personal property;

(9) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(10) Conducting affairs in interstate commerce;

(11) Granting funds or other gifts;

(12) Distributing information to its shareholders or members;

(13) Effecting sales through independent contractors;

(14) The acquisition by purchase of lands secured by mortgage or deeds;

(15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia; and

(16) The management, rental, maintenance and sale; or the operating, maintaining, renting or otherwise, dealing with
selling or disposing of property acquired under foreclosure sale
or by agreement in lieu of foreclosure sale.

(c) The list of activities in subsection (b) of this section is
not exhaustive.

(d) A foreign corporation is to be deemed to be conducting
affairs in this state if:

(1) The corporation makes a contract to be performed, in
whole or in part, by any party thereto, in this state;

(2) The corporation commits a tort in whole or in part in
this state; or

(3) The corporation manufactures, sells, offers for sale or
supplies any product in a defective condition and that product
causes injury to any person or property within this state
notwithstanding the fact that the corporation had no agents,
 servants or employees or contacts within this state at the time
of the injury.

(e) A foreign corporation's making of a contract, the
committing of a manufacture or sale, offer of sale or supply of
defective product as described in subsection (d) of this section
is deemed to be the agreement of that foreign corporation that
any notice or process served upon, or accepted by, the secretary
of state in a proceeding against that foreign corporation arising
from, or growing out of, contract, tort, or manufacture or sale,
offer of sale or supply of the defective product has the same
legal force and validity as process duly served on that corpora-
tion in this state.

§31E-14-1402. Consequences of conducting affairs without au-
thority.
(a) A foreign corporation conducting affairs in this state without a certificate of authority may not maintain a proceeding in any circuit court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that conducted affairs in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any circuit court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A circuit court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the circuit court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation which conducts affairs or does or transacts business in this state without a certificate of authority is liable to this state, for the years or parts of years during which it conducted affairs or did or transacted business in this state without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by this chapter, or by any other provision of this code, upon the corporation had it duly applied for and received a certificate of authority to conduct affairs or do or transact business in this state as required by this article and had filed all reports, statements or returns required by this chapter or by any other chapter of this code, plus all penalties imposed for failure to pay any fees and taxes.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of
authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

(f) A foreign corporation conducting affairs in this state without a certificate of authority is conclusively presumed to have appointed the secretary of state as its attorney-in-fact to accept service of process and notice on behalf of the foreign corporation as provided in subsection (d), section one thousand four hundred ten of this article.

§31E-14-1403. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to conduct affairs in this state by delivering an application to the secretary of state for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section one thousand four hundred six of this article;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The mailing address of its principal office;

(5) The address of its registered office in this state, if any, and the name of its registered agent at that office, if any;

(6) The names and usual addresses of its current directors and officers; and

(7) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs or doing or transacting 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.
CORPORATIONS

§31E-14-1406. Corporate name of foreign corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section four hundred one, article four of this chapter, the foreign corporation to obtain or maintain a certificate of authority to conduct affairs in this state:

(1) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in this state; or

(2) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the secretary of state from:

(1) The corporate name of a corporation incorporated or authorized to conduct affairs in this state;

(2) A corporate name reserved or registered under sections four hundred three or four hundred four, article four of this chapter;

(3) The fictitious name of another foreign corporation authorized to transact business in this state;
(4) The corporate name of a business corporation incorporated or authorized to transact business in this state; and

(5) The name of any other entity whose name is carried in the records of the secretary of state.

(c) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this state that is not distinguishable upon his or her records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change the name so that it is distinguishable upon the records of the secretary of state from the name applied for; or

(2) The applicant delivers to the secretary of state a certified copy of a final judgment of a circuit court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to conduct affairs in this state and the foreign corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.
(e) If a foreign corporation authorized to conduct affairs in this state changes its corporate name to one that does not satisfy the requirements of section four hundred one, article four of this chapter, it may not conduct affairs in this state under the changed name until it adopts a name satisfying the requirements of section four hundred one, article four of this chapter and obtains an amended certificate of authority under section one thousand four hundred four of this article.

§31E-14-1407. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to conduct affairs in this state may continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this state and whose business office is identical with the registered office;

(B) A domestic corporation or domestic business corporation whose business office is identical with the registered office; or

(C) A foreign corporation or foreign business corporation authorized to transact business in this state whose business office is identical with the registered office.

§31E-14-1408. Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation authorized to conduct affairs in this state may change its registered office or registered agent by
delivering to the secretary of state for filing a statement of change that sets forth:

(1) Its name;

(2) The mailing address of its current registered office;

(3) If the current registered office is to be changed, the mailing address of its new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent’s written consent, either on the statement or attached to it, to the appointment; and

(6) That after the change or changes are made, the mailing addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the mailing address of his or her business office, he or she may change the mailing address of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

§31E-14-1409. Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the secretary of state for filing the original and two exact or
conformed copies of a statement of resignation. The statement
of resignation may include a statement that the registered office
is also discontinued.

(b) After filing the statement, the secretary of state shall
attach the filing receipt to one copy and mail the copy and
receipt to the registered office if not discontinued. The secretary
of state shall mail the other copy to the foreign corporation at
its principal office address shown in its most recent return
required pursuant to section three, article twelve-c, chapter
eleven of this code.

(c) The agency appointment is terminated, and the regis-
tered office discontinued if provided in the statement of
registration, on the thirty-first day after the date on which the
statement was filed.

§31E-14-1410. Service on foreign corporation.

(a) The registered agent of a foreign corporation authorized
to conduct activities in this state is the corporation’s agent for
service of process, notice, or demand required or permitted by
law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or
certified mail, return receipt requested, addressed to the
secretary of the foreign corporation at its principal office shown
in its application for a certificate of authority or in its most
recent return required pursuant to section three, article twelve-c,
chapter eleven of this code if the foreign corporation:

(1) Has no registered agent or its registered agent cannot
with reasonable diligence be served;

(2) Has withdrawn from conducting activities in this state
under section one thousand four hundred twenty of this article;
or
(3) Has had its certificate of authority revoked under section one thousand four hundred thirty-one of this article.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) In addition to the methods of service on a foreign corporation provided in subsections (a) and (b) of this section, the secretary of state is hereby constituted the attorney-in-fact for and on behalf of each foreign corporation authorized to conduct affairs in this state pursuant to the provisions of this chapter. The secretary of state has the authority to accept service of notice and process on behalf of each corporation and is an agent of the corporation upon whom service of notice and process may be made in this state for and upon each corporation. No act of a corporation appointing the secretary of state as attorney-in-fact is necessary. Service of any process, notice or demand on the secretary of state may be made by delivering to and leaving with the secretary of state the original process, notice or demand and two copies of the process, notice or demand for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. Immediately after being served with or accepting any process or notice, the secretary of state shall: (1) file in his or her office a copy of the process or notice, endorsed as of the time of service, or acceptance, and (2) transmit one copy of the process or notice by registered or certified mail, return receipt requested, to (A) the foreign corporation's registered agent; or (B) if there is no
registered agent, to the individual whose name and address was
last given to the secretary of state's office as the person to
whom notice and process are to be sent, and if no person has
been named, to the principal office of the foreign corporation as
that address was last given to the secretary of state's office.
Service or acceptance of process or notice is sufficient if return
receipt is signed by an agent or employee of the corporation, or
the registered or certified mail sent by the secretary of state is
refused by the addressee and the registered or certified mail is
returned to the secretary of state, or to his or her office, showing
the stamp of the United States postal service that delivery has
been refused, and the return receipt or registered or certified
mail is appended to the original process or notice and filed in
the clerk's office of the court from which the process or notice
was issued. No process or notice may be served on the secretary
of state or accepted by him or her less than ten days before the
return day of the process or notice. The court may order
continuances as may be reasonable to afford each defendant
opportunity to defend the action or proceedings.

(e) Any foreign corporation conducting affairs in this state
without having been authorized to do so pursuant to the
provisions of this chapter is conclusively presumed to have
appointed the secretary of state as its attorney-in-fact with
authority to accept service of notice and process on behalf of
the corporation and upon whom service of notice and process
may be made in this state for and upon the corporation in any
action or proceeding arising from activities described in section
one thousand four hundred one of this article. No act of a
corporation appointing the secretary of state as its attorney-in-

fact is necessary. Immediately after being served with or
accepting any process or notice, of which process or notice two
copies for each defendant are to be furnished to the secretary of
state with the original notice or process, together with the fee
required by section two, article one, chapter fifty-nine of this
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:
(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not conducting activities in this state and that it surrenders its authority to conduct activities in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to conduct activities in this state;

(4) A mailing address to which the secretary of state may mail a copy of any process served on him or her under subdivision (3) of this subsection; and

(5) A commitment to notify the secretary of state in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b) of this section.

(d) The secretary of state shall withhold the issuance of any certificate of withdrawal until the receipt by the secretary of state of a notice from the tax commissioner and bureau of employment programs to the effect that all taxes due from the corporation under the provisions of chapter eleven of this code, including, but not limited to, taxes withheld under the provisions of section seventy-one, article twenty-one, chapter eleven of this code, all business and occupation taxes, motor carrier and transportation privilege taxes, gasoline taxes, consumer sales taxes and any and all license franchise or other excise taxes and corporate net income taxes, and employment security
39 payments levied or assessed against the corporation seeking to
dissolve have been paid or that payment has been provided for,
or until the secretary of state received a notice from the tax
commissioner or bureau of employment programs, as the case
may be, stating that the corporation in question is not subject to
payment of any taxes or to the making of any employment
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
corporation signed a document he or she knew was false in any
material respect with intent that the document be delivered to
the secretary of state for filing; or

18 (4) The secretary of state receives a duly authenticated
certificate from the secretary of state or other official having
custody of corporate records in the state or country under whose
law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

§31E-14-1431. Procedure for and effect of revocation.

(a) If the secretary of state determines that one or more grounds exist under section one thousand four hundred thirty of this article for revocation of a certificate of authority, he or she shall serve the foreign corporation with written notice of his or her determination pursuant to section one thousand four hundred ten of this article.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected pursuant to section one thousand four hundred ten of this article, the secretary of state may revoke the foreign corporation’s certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation pursuant to section one thousand four hundred ten of this article.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state’s revocation of a foreign corporation’s certificate of authority appoints the secretary of state the foreign corporation’s agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon 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.


(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members, if any, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors;
(4) The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

(5) All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section one thousand five hundred twenty of this article; and

(6) A list of the names and business addresses of its current directors and officers.


(a) A member of a corporation is entitled to inspect, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (e), section one thousand five hundred one of this article if he or she gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect.

(b) A member of a corporation is entitled to inspect, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board
of directors without a meeting, to the extent not subject to
inspection under subsection (a), of this section;

(2) Accounting records of the corporation; and

(3) The record of members.

(c) A member may inspect and copy the records described
in subdivisions (1) and (2), subsection (b) of this section and
may inspect the records described in subdivision (3), subsection
(b) of this section only if:

(1) His or her demand is made in good faith and for a
proper purpose;

(2) He or she describes with reasonable particularity his or
her purpose and the records he or she desires to inspect; and

(3) The records are directly connected with his or her
purpose.

(d) A member may not copy the records described in
subdivision (3), subsection (b) of this section unless provided
for in the corporation's articles of incorporation or bylaws.

(e) The right of inspection granted by this section may not
be abolished or limited by a corporation's articles of incorpora-
tion or bylaws.

(f) This section does not affect:

(1) The right of a member to inspect records under section
seven hundred twenty, article seven of this chapter or, if the
member is in litigation with the corporation, to the same extent
as any other litigant; or
(2) The power of a circuit court, independently of this chapter, to compel the production of corporate records for examination.


(a) A member’s agent or attorney has the same inspection and copying rights as the member represented.

(b) The right to copy records under section one thousand five hundred two of this article includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and requested by the member.

The term “inspect” for purposes of section one thousand five hundred two of this article includes the making of extracts from the records reviewed.

(c) The corporation may comply at its expense with a member’s demand to inspect the record of members under subdivision (3), subsection (b), section one thousand five hundred two of this article by providing the member with a list of members that was compiled no earlier than the date of the member’s demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.


(a) If a corporation does not allow a member who complies with subsection (a), section one thousand five hundred two of this article to inspect and copy any records required by that
subsection to be available for inspection, the circuit court may summarily order inspection and copying of the records demanded at the corporation’s expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections (b) and (c), section one thousand five hundred two of this article may apply to the circuit court for an order to permit inspection and copying of the records demanded. The circuit court shall dispose of an application under this subsection on an expedited basis.

(c) If the circuit court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member’s costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the circuit court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.


(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director’s duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The circuit court may order inspection and copying of the books, records and documents at the corporation’s expense,
upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to inspection rights. The circuit court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the circuit court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

§31E-15-1506. Exception to notice requirement.

(a) Whenever notice is required to be given under any provision of this chapter to any member, notice may not be required to be given if notice of two consecutive annual meetings, and all notices of meetings during the period between two consecutive annual meetings, have been sent to the member at the member's address as shown on the records of the corporation and have been returned undeliverable.

(b) If a member delivers to the corporation a written notice setting forth the member's then-current address, the requirement that notice be given to the member is to be reinstated.

PART 2. CORPORATE RECORDS.


(a) A corporation shall furnish its members annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, and an income statement for that year. If financial
6 statements are prepared for the corporation on the basis of
generally accepted accounting principles, the annual financial
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.
A foreign corporation authorized to transact business in this state on the effective date of this chapter is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

§31E-16-1603. Effective date.

This chapter takes effect on the first day of October, two 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:
§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.

(a) No person arrested upon a warrant shall be delivered over to the agent whom the executive authority demanding him or her shall have appointed to receive him or her unless he or she shall first be taken forthwith before a judge of a court of record in this state, who shall inform him or her of the demand made for his or her surrender and of the crime with which he or she is charged, and that he or she has the right to demand and procure legal counsel and if the prisoner or his or her counsel shall state that he or they desire to test the legality of his or her arrest, the judge of the court of record shall fix a reasonable time to be allowed him or her within which to apply for a writ of habeas corpus. When a writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state.

(b) Any officer who delivers to the agent for extradition of the demanding state a person in his or her custody under the governor's warrant, in willful disobedience to subdivision (a)
of this section, shall be guilty of a misdemeanor and, on conviction thereof shall be fined not more than one thousand dollars or be imprisoned not more than six months, or both.

(c) The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in any city, county or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or person having charge of him or her is ready to proceed on his or her route, the officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in the other state, and who is passing through this state with such a prisoner for the purpose of immediately returning the prisoner to the demanding state may, when necessary, confine the prisoner in any city, county or regional jail; and the keeper of the jail shall receive and safely keep the prisoner until the officer or agent having charge of him or her is ready to proceed on his or her route, the officer or agent, however, being chargeable with the expense of keeping: Provided, That the officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he or she is actually transporting a prisoner to the demanding state after a requisition by the executive authority of the demanding state. The prisoner may not be entitled to demand a new requisition while in this state.

(d) Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under subdivision (g), section seven of this article, with having fled from justice, or with having been convicted of a crime in that state and having
escaped from confinement, or having broken the terms of his or her bail, probation or parole, or whenever complaint has been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in the state and that the accused has been charged in the state with the commission of the crime, and, except in cases arising under subdivision (g), section seven of this article, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him or her to apprehend the person named therein, wherever he or she may be found in this state, and to bring him or her before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(e) The arrest of a person may be lawfully made also by any peace officer, or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or by imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him or her under oath setting forth the ground for the arrest as in the preceding section and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant. Correctional officers may, additionally, make complaint against persons in their custody for whom they have a reasonable belief stand accused of crimes, punishable by death or confinement for a term exceeding one year, in the courts of another state.
(f) If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under subdivision (g), section seven of this article, that he or she has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him or her to the county or regional jail for a time not exceeding thirty days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in subdivision (g) of this section, or until he or she shall be legally discharged.

(g) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in a sum as he or she considers proper, conditioned for his or her appearance before him or her at a time specified in the bond, and for his or her surrender, to be arrested upon the warrant of the governor of this state.

(h) If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or her or may recommit him or her for a further period not to exceed sixty days, or a judge or magistrate may again take bail for his or her appearance and surrender as provided in subdivision (g) of this section, but within a period not to exceed sixty days after the date of the new bond.

(i) If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her bond, the judge, or magistrate, by proper order, shall declare the bond forfeited and order his or her immediate arrest without warrant if he or she is within this state. Recovery may
be had on a bond in the name of the state as in the case of other
bonds given by the accused in criminal proceedings within this
state.

(j) If a criminal prosecution has been instituted against the
person under the laws of this state and is still pending, the
governor, in his or her discretion, either may surrender him or
her on demand of the executive authority of another state or
hold him or her until he or she has been tried and discharged or
convicted and punished in this state: Provided, That any person
under recognizance to appear as a witness in any criminal
proceeding pending in this state may in the discretion of the
governor be surrendered on demand of the executive authority
of another state or be held until criminal proceeding pending in
this state has been determined: Provided however, That any
person who was in custody upon any execution, or upon process
in any suit, at the time of being apprehended for a crime
charged to have been committed without the jurisdiction of this
state, may not be delivered up without the consent of the
plaintiff in an execution or suit, until the amount of the execu-
tion has been paid, or until the person shall be otherwise
discharged from the execution or process.

(k) The guilt or innocence of the accused as to the crime for
which he or she is charged may not be inquired into by the
governor or in any proceeding after the demand for extradition
accompanied by a charge of crime in legal form as provided in
this article has been presented to the governor, except as it may
be involved in identifying the person held as the person charged
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.
Sheriffs and each of their deputies are hereby authorized and empowered within their respective counties to make arrests for any crime for which a warrant has been issued in violation of any laws of the United States or of this state, and to make arrests without warrant for all violations of any of the criminal laws of the United States, or of this state, when committed in their presence. A correctional officer may execute a warrant, issued for the arrest of a person, only when the person named in the warrant is already in the custody of the officer or when the person voluntarily surrenders to the correctional officer at the county or regional jail or a state correctional facility at 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.

The county commission of every county is authorized to establish, operate and maintain a county work farm to be operated in connection with the county jail and to be used for the confinement of prisoners assigned thereto as hereinafter provided. The county commission is authorized to purchase land and other property in connection with the establishment of a work farm and to construct buildings, fences and other facilities and to acquire any personal property necessary to maintain and operate the work farm. The cost of the farm shall be paid out of the general county fund or out of any other funds available to the county commission for that purpose.

The county commission is authorized to make needed improvements and repairs for the proper upkeep of the work farm and provide for the necessary food, medical treatment and safekeeping of the prisoners. The work farm shall be operated in conjunction with the county jail. The sheriff of the county shall be responsible for and have the same control of the prisoners assigned to the work farm as he or she has over the prisoners confined in the county jail and shall make any rules necessary for the care and treatment of prisoners assigned thereto, and shall take proper care for their discipline, diet, clothing and safety. He or she shall also determine the type and amount of labor each prisoner performs, and shall perform all other duties with regard to the prisoners confined at the work farm as he or she is required to perform with regard to prisoners in the county jail. He or she may assign deputies, correctional officers or home incarceration supervisors as guards as may be necessary to supervise and insure the safekeeping of the prisoners. Prisoners committed to the work farm shall be required to perform those duties and labor as are reasonably permitted by their physical and mental condition. Provision shall be made for truck and vegetable gardens to be tended by the prisoners, and for the raising of fruit, hogs, poultry and
other farm products as can be economically and profitably produced. All food products produced on the work farm shall be used first for feeding prisoners at the work farm or county jail, and any surplus may be used at any other county institution.

The county commission shall employ a superintendent for the county work farm, whose duty will be to supervise the work done and to care for and maintain the property and equipment used in connection therewith and who shall serve until his or her successor is employed as hereinafter provided. The superintendent shall also keep an accurate record of the number of prisoners confined at the county work farm and an accurate record of the cost of operating the work farm and shall make a report thereof to the county commission as the court may require, but at least twice each year. He or she shall also keep a record of the farm products produced on the farm and of the disposition of the products. The superintendent and his or her assistants shall be employed by the county commission on the written recommendation of the sheriff: Provided, That the county commission may not employ any superintendent or assistant superintendent unless it is satisfied that he or she possesses the high character, appropriate ability and energy suitable for that employment.

The judge of the circuit court or other court having jurisdiction for the trial of felony cases in the county may, upon his or her own motion or upon application of any prisoner confined in the county jail either in term time or in vacation, transfer any prisoner confined in the county jail except those under conviction for a felony to the work farm or transfer any prisoner confined at the work farm to the county jail. Proper order shall be entered in the order book of the court of the action. In sentencing any person to the county jail the judge may stipulate in the order of sentence whether the person shall be confined in the county jail or confined at the work farm. This provision, however, may not be construed to give authority to magistrates, judges of police courts or mayors of municipalities to sentence
persons to the work farm or to transfer persons from the county jail to the work farm.

Any inmate of the work farm who escapes therefrom shall be punished under the same provisions of law as if he or she 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.

(a) The commissioner of corrections is authorized to establish at each institution under his or her jurisdiction a "trustee fund". The warden or administrator of each institution
shall receive and take charge of the money and personal property, as defined by policy, of all inmates in his or her institution and all money or personal property, as defined by policy, sent to the inmates or earned by the inmates as compensation for work performed while they are domiciled there. The warden or administrator shall credit the money and earnings to the inmate entitled to it and shall keep an accurate account of all the money and personal property so received, which account is subject to examination by the state commissioner of corrections. The warden or administrator shall deposit the moneys in one or more responsible banks in accounts to be designated a "trustee fund".

(b) For all inmates, except those serving life without mercy and those the warden determines are likely to serve the remainder of their natural lives in the custody of the division of corrections due to their age and the length of their sentences, the warden or administrator shall keep in an account at least ten percent of all money earned during the inmate’s incarceration and pay the money to the inmate at the time of the inmate’s release.

(c) The commissioner of corrections may direct that offenders who work in community work programs, including work release inmates who have obtained employment, make reimbursement to the state toward the cost of his or her incarceration.

(d)(1) Prior to ordering an incarcerated offender to make reimbursement toward the costs of his or her incarceration, the commissioner, or his or her designee, shall consider the following:

(A) The offender’s ability to pay;

(B) The nature and extent of the offender’s responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court’s sentence; and
(D) The effect, if any, that reimbursement might have on the offender's rehabilitation.

(2) No order of reimbursement entered pursuant to this section may exceed five hundred dollars per month unless the offender gives his or her express consent.

(3) The commissioner of corrections shall, prior to the beginning of each fiscal year, prepare a report that details the average cost per inmate incurred by the division for the care and supervision of those individuals in his or her custody.

e) The chief executive officer of any correctional institution, on request of an inmate, may expend up to one half of the money earned by the inmate on behalf of the family of the inmate if the ten percent mandatory savings has first been set aside and other fees owed by the inmate have been paid. The remainder of the money earned, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate and be paid to the inmate at times as may be prescribed by rules. The funds so accumulated on behalf of inmates shall be held by the chief executive officer of each institution, under a bond approved by the attorney general.

(f) The warden or administrator shall deliver to the inmate at the time he or she leaves the institution, or as soon as practicable after departure, all personal property, moneys and earnings then credited to the inmate, or in case of the death of the inmate before authorized release from the institution, the warden or administrator shall deliver the property to the inmate's personal representative. In case a conservator is appointed for the inmate while he or she is domiciled at the institution, the warden or administrator shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the inmate that are in the custody of the warden or administrator.
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.

(a) The commissioner of corrections shall establish an inmate benefit fund for each of the institutions under his or her jurisdiction. The inmate benefit fund is a fund held by the institutions for the benefit and welfare of inmates incarcerated in state correctional facilities and for the benefit of victims.

(b) There is hereby created a special revenue account in the state treasury for each inmate benefit fund established by the commissioner. Moneys received by an institution for deposit in an inmate benefit fund shall be deposited with the state trea-
surer to be credited to the special revenue account created for the institution's inmate benefit fund. Moneys in a special revenue account established for an inmate benefit fund may be expended by the institution for the purposes set forth in this section. Moneys to be deposited into an inmate benefit fund consist of:

(1) All profit from the exchange or commissary operation;

(2) All net proceeds from vending machines used for inmate visitation;

(3) All proceeds from contracted inmate telephone commissions;

(4) Any funds that may be assigned by inmates or donated to the institution by the general public or an inmate service organization on behalf of all inmates;

(5) Any funds confiscated considered contraband; and

(6) Any unexpended balances in individual inmate trustee funds if designated by the inmate upon his or her discharge from the institution.

c) The inmate benefit fund may only be used for the following purposes at correctional facilities:

(1) Open-house visitation functions or other nonroutine inmate functions;

(2) Holiday functions which may include decorations and gifts for children of inmates;

(3) Cable television service;

(4) Rental of video cassettes;
(5) Payment of video license;

(6) Recreational supplies, equipment or area surfacing;

(7) Reimbursement of employee wages for overtime incurred during open-house visitations and holiday functions;

(8) Postsecondary education classes;

(9) Reimbursement of a pro rata share of inmate work compensation;

(10) Household equipment and supplies in day rooms or units as approved by chief executive officers of institutions, excluding supplies used in the daily maintenance and sanitation of the unit;

(11) Christmas or other holidays gift certificates for each inmate to be used at the exchange or commissary;

(12) Any expense associated with the operation of the fund;

(13) Expenditures necessary to properly operate an automated inmate family and victim information notification system;

(14) Any expense for improvement of the facility which will benefit the inmate population that is not otherwise funded; and

(15) Any expense related to the installation, operation and maintenance of the inmate telephone system.

(d) The institution shall compile a monthly report that specifically documents inmate benefit fund receipts and expenditures and a yearly report for the previous fiscal year by the first day of September of each year and submit the reports to the commissioner.
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 division of corrections from the sale or disposition of articles and products manufactured or produced by convict labor in accordance with the provisions of this article shall be immediately deposited with the state treasurer to be kept and main-
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6 contained in a special revolving account designated the “prison  
industries account”.

8 (b) Except as provided in subsection (c) of this section,  
moneys collected and deposited may only be used for the  
purchase of manufacturing supplies, equipment, machinery and  
materials used to carry out the purposes of this article, as well  
as for the payment of the necessary personnel in charge thereof  
and to otherwise defray the necessary expenses incident thereto,  
all of which are under the direction and subject to the approval  
of the commissioner.

(c) Moneys in the account may also 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. The account  
shall be reimbursed within twenty-four hours of receipt of the  
amounts due under the contract from the state spending unit,  
political subdivision or other governmental entity.

(d) The “prison industries account” may never be main-  
tained in excess of the amount necessary to efficiently and  
properly carry out the intentions of this article and in no event  
may the “prison industries account” be maintained in excess of  
the sum of one million five hundred thousand dollars. When, in  
the opinion of the governor, the “prison industries account” has  
reached a sum in excess of the requirements of this article, the  
excess shall be transferred by the commissioner of the division  
of corrections to the state general revenue fund and if the  
governor does not make that determination, any amount above  
one million five hundred thousand dollars shall be transferred  
to the state fund, general revenue, by the commissioner of the  
division of corrections at the end of each fiscal year.
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 to monitor, intercept, record and disclose telephone calls to or from inmates housed in regional jails in accordance with the following provisions:

2 (1) All inmates housed in regional jails shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded and disclosed;
(2) Only the executive director and his or her designee shall have access to recordings of inmates' telephone calls unless disclosed pursuant to subdivision (4) of this subsection;

(3) Notice shall be prominently placed on or immediately near every telephone that may be monitored;

(4) The contents of inmates' telephone calls may be disclosed to the appropriate law-enforcement agency only if the disclosure is:

(A) Necessary to safeguard the orderly operation of the regional jails;

(B) Necessary for the investigation of a crime;

(C) Necessary for the prevention of a crime;

(D) Necessary for the prosecution of a crime;

(E) Required by an order of a court of competent jurisdiction; or

(F) Necessary to protect persons from physical harm or the threat of physical harm;

(5) Recordings of telephone calls may be destroyed after twelve months unless further retention is required for disclosure pursuant to subdivision (4) of this subsection or, in the discretion of the executive secretary, for other good cause; and

(6) To safeguard the sanctity of the attorney-client privilege, an adequate number of telephone lines that are not monitored shall be made available for telephone calls between inmates and their attorneys. Such calls shall not be monitored, intercepted, recorded or disclosed in any matter.
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.
(a) Every circuit court shall assess, in every felony criminal matter as a cost to the defendant, an assessment in the sum of seventy-five dollars for each felony count of conviction. The assessment referred to herein shall be paid upon adjudication of guilt unless the court determines that the defendant is unable to pay in such a manner in which case payment of the assessment shall be paid prior to final disposition. If the circuit court determines that a defendant is financially unable to pay the assessment prior to final disposition, payment of the assessment shall be a mandatory condition of probation or parole.

(b) The clerk of the circuit court wherein the assessment is imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received pursuant to this section to the state treasurer for deposit as follows: Fifty dollars to the credit of the crime victims compensation fund created by the provisions of section four, article two-a, chapter fourteen of this code and twenty-five dollars to the credit of the West Virginia community corrections fund created by the provisions of section four, article eleven-c of this chapter.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-3. Duties of the governor’s committee and the community corrections subcommittee.
§62-11C-4. Special revenue account.
§62-11C-7. Supervision or participation fee.


(a) A community corrections subcommittee of the governor’s committee on crime, delinquency and correction is hereby created and assigned responsibility for screening community corrections programs submitted by community criminal justice boards or from other entities authorized by the provisions of this article to do so for approval for funding by the governor’s
committee and for making recommendations as to the disbursement of funds for approved community corrections programs. The subcommittee is to be comprised of fifteen members of the governor's committee including: A representative of the division of corrections, a representative of the regional jail and correctional facility authority, a person representing the interests of victims of crime, an attorney employed by a public defender corporation, an attorney who practices criminal law, a prosecutor and a representative of the West Virginia coalition against domestic violence. At the discretion of the West Virginia supreme court of appeals, the administrator of the supreme court of appeals, a probation officer and a circuit judge may serve on the subcommittee as ex officio, nonvoting members.

(b) The subcommittee shall elect a chairperson and a vice chairperson. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitute a quorum.

(c) A working group of the community corrections subcommittee is hereby created to study safe and effective pretrial diversion programs for persons charged with domestic violence offenses and to recommend, based upon its findings, programs considered to be safe and effective in reducing incidences of domestic violence and educating persons charged with a domestic violence offense. The working group is to be comprised of the following members of the subcommittee: (1) If approved by the West Virginia supreme court of appeals, the circuit judge; (2) the prosecuting attorney; (3) the public defender or the criminal defense attorney; (4) the probation officer; and (5) the representative of the West Virginia coalition against domestic violence. The working group is to report its findings and recommendations to the subcommittee on or before the first day of July, two thousand two.

§62-11C-3. Duties of the governor's committee and the community corrections subcommittee.
(a) Upon recommendation of the community corrections subcommittee, the governor's committee shall propose for legislative promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, emergency and legislative rules to:

1. Establish standards for approval of community corrections programs submitted by community criminal justice boards or other entities authorized by the provisions of this article to do so;

2. Establish minimum standards for community corrections programs to be funded, including requiring annual program evaluations;

3. Make any necessary adjustments to the fees established in section four of this article;

4. Establish reporting requirements for community corrections programs; and

5. Carry out the purpose and intent of this article.

(b) Upon recommendation of the community corrections subcommittee, the governor's committee shall:

1. Maintain records of community corrections programs including the corresponding community criminal justice board or other entity contact information and annual program evaluations, when available;

2. Seek funding for approved community corrections programs from sources other than the fees collected pursuant to section four of this article; and

3. Provide funding for approved community corrections programs, as available.
(c) The governor's committee shall submit, on or before the thirtieth day of September of each year, to the governor, the speaker of the House of Delegates, the president of the Senate and, upon request, to any individual member of the Legislature a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article.

§62-11C-4. Special revenue account.

(a) There is hereby created in the state treasury a special revenue account to be known as the "West Virginia community corrections fund". Expenditures from the fund are for the purposes set forth in subsection (d) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand two, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. The West Virginia community corrections fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) Beginning on the effective date of this article, in addition to the fee required in section nine, article twelve of this chapter, a fee not to exceed thirty dollars per month, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on probation. This fee is to be based upon the person's ability to pay. The magistrate or circuit judge shall conduct a hearing prior to imposition of probation and make a determination on the record that the offender is able to pay the fee without undue hardship.
25 The magistrate clerk or circuit clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the magistrate clerk or circuit clerk shall forward the amount deposited to the state treasurer to be credited to the West Virginia community corrections fund.

31 (c) Beginning on the effective date of this article, in addition to the fee required in section five, article eleven-b of this chapter, a fee not to exceed five dollars per day, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on home incarceration. The circuit judge, magistrate or municipal court judge shall consider the person's ability to pay in determining the imposition and amount of the fee. The circuit clerk, magistrate clerk or municipal court clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk or municipal court clerk shall forward the amount deposited to the state treasurer to be credited to the West Virginia community corrections fund.

46 (d) Beginning on the first day of July, two thousand two, in addition to the usual court costs in any criminal case taxed against any defendant convicted in a municipal, magistrate or circuit court, excluding municipal parking ordinances, a three-dollar fee shall be added. The circuit clerk, magistrate clerk or municipal court clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate court clerk and the municipal court clerk shall forward the amount deposited to the state treasurer to be credited to the West Virginia community corrections fund.
(e) The moneys of the West Virginia community corrections fund are to be disbursed by the governor's committee on crime, delinquency and correction, upon recommendation by the community corrections subcommittee, for the funding of community corrections programs and to pay expenses of the governor's committee in administering the provisions of this article, which expenses may not in any fiscal year exceed ten percent of the funds deposited to the special revenue account during that fiscal year.

(f) Any disbursements from the West Virginia community corrections fund allocated for community corrections programs by the governor's committee may be made contingent upon local appropriations or gifts in money or in kind for the support of the programs. Any county commission of any county or the governing body of a municipality may appropriate and expend money for establishing and maintaining community corrections programs.

(g) Nothing in this article may be construed to mandate funding for the West Virginia community corrections fund or to require any appropriation by the Legislature.


(a) Each county or combination of counties or a county or counties and a Class I or II municipality that seek to establish community-based corrections services shall establish a community criminal justice board: Provided, That if a county has not established a community criminal justice board by the first day of July, two thousand two, the chief probation officer of such county, with the approval of the chief judge of the circuit, may apply for and receive approval and funding from the governor's committee for such programs as are authorized by the provisions of section five of this article. Any county which chooses to operate without a community criminal justice board shall be
subject to the regulations and requirements established by the
community corrections subcommittee and the governor's
committee.

(b) The community criminal justice board is to consist of no
more than fifteen voting members.

c) All members of the community criminal justice board
are to be residents of the county or counties represented.

d) The community criminal justice board is to consist of
the following members:

(1) The sheriff or chief of police or, if the board represents
more than one county or municipality, at least one sheriff or
chief of police from the counties represented;

(2) The prosecutor or, if the board represents more than one
county, at least one prosecutor from the counties represented;

(3) If a public defender corporation exists in the county or
counties represented, at least one attorney employed by any
public defender corporation existing in the counties represented
or, if no public defender office exists, one criminal defense
attorney from the counties represented;

(4) One member to be appointed by the local board of
education or, if the board represents more than one county, at
least one member appointed by a board of education of the
counties represented;

(5) One member with a background in mental health care
and services to be appointed by the commission or commissions
of the county or counties represented by the board;

(6) Two members who can represent organizations or
programs advocating for the rights of victims of crimes with
preference given to organizations or programs advocating for
the rights of victims of the crimes of domestic violence or
driving under the influence; and

(7) Three at-large members to be appointed by the commis-
sion or commissions of the county or counties represented by
the board.

(e) At the discretion of the West Virginia supreme court of
appeals, any or all of the following people may serve on a
community criminal justice board as ex officio, nonvoting
members:

(1) A circuit judge from the county or counties represented;

(2) A magistrate from the county or counties represented;
or

(3) A probation officer from the county or counties repre-
sented.

(f) Community criminal justice boards may:

(1) Provide for the purchase, development and operation of
community corrections services;

(2) Coordinate with local probation departments in estab-
lishing and modifying programs and services for offenders;

(3) Evaluate and monitor community corrections programs,
services and facilities to determine their impact on offenders;
and

(4) Develop and apply for approval of community correc-
tions programs by the governor’s committee on crime, delin-
quency and correction.
(g) If a community criminal justice board represents more than one county, the appointed membership of the board, excluding any ex officio members, shall include an equal number of members from each county, unless the county commission of each county agrees in writing otherwise.

(h) If a community criminal justice board represents more than one county, the board shall, in consultation with the county commission of each county represented, designate one county commission as the fiscal agent of the board.

(i) Any political subdivision of this state operating a community corrections program shall, regardless of whether or not the program has been approved by the governor’s committee on crime, delinquency and correction, provide to the governor’s committee required information regarding the program’s operations as required by legislative rule.

§62-11C-7. Supervision or participation fee.

(a) A circuit judge, magistrate, municipal court judge or community criminal justice board may require the payment of a supervision or participation fee from any person required to be supervised by or participate in a community corrections program. The circuit judge, magistrate, municipal court judge or community criminal justice board shall consider the person’s ability to pay in determining the imposition and amount of the fee.

(b) All fees ordered by the circuit court or community criminal justice board pursuant to this section are to be paid to the circuit clerk, who shall monthly remit the fees to the treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article. All fees ordered by the magistrate court pursuant to this section are to be paid to the magistrate clerk, who shall monthly remit the fees to the treasurer of the county designated as the fiscal agent for the
board pursuant to said section. All fees ordered by the munici-
pal court judge pursuant to this section are to be paid to the
municipal court clerk who shall monthly remit the fees to the
treasurer of the county designated as the fiscal agent for the
board pursuant to section six of this article.

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) When a defendant is sentenced or committed for a term of one year or less by a court of record having criminal jurisdiction, such court may in its order grant to such defendant the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

(a) To work at his or her employment;

(b) To seek employment;

(c) To conduct his or her own business or to engage in other self-employment, including housekeeping and attending to the needs of his or her family;

(d) To attend an educational institution;

(e) To obtain medical treatment;

(f) To devote time to any other purpose approved of or ordered by the court, including participation in the litter control program of the county unless the court specifically finds that this alternative service would be inappropriate.

(2) Whenever an inmate who has been granted the privilege of leaving the jail under this section is not engaged in the activity for which such leave is granted, he or she shall be confined in jail.

(3) An inmate sentenced to ordinary confinement may petition the court at any time after sentence for the privilege of leaving jail under this section and may renew his or her petition in the discretion of the court. The court may withdraw the privilege at any time by order entered with or without notice.

(4) If the inmate has been granted permission to leave the jail to seek or take employment, the court's probation officers, or if none, the jail shall assist him or her in obtaining suitable
employment and in making certain that employment already obtained is suitable. Employment shall not be deemed suitable if the wages or working conditions or other circumstances present a danger of exploitation or of interference in a labor dispute in the establishment in which the inmate would be employed.

(5) If an inmate is employed for wages or salary, the clerk of the court shall collect the same or shall require the inmate to turn over his or her wages or salary in full when received, and shall deposit the same in a trust account and shall keep a ledger showing the status of the account of each inmate. Earnings levied upon pursuant to writ of attachment or execution or in other lawful manner shall be collected from the employer and shall not be collected hereunder, but when the clerk has requested transmittal of earnings prior to levy, such request shall have priority. When an employer transmits such earnings to the clerk pursuant to this subsection he or she shall have no liability to the inmate for such earnings. From such earnings the clerk shall pay the inmate’s board and personal expenses inside the jail and shall deduct installments on fines, if any, and, to the extent directed by the court, shall pay the balance to the person designated by the inmate to receive the balance for the support of the inmate’s dependents: Provided, That at least twenty-five percent of the earnings collected by the clerk on behalf of an inmate shall be paid to the person designated by the inmate as the person to receive funds being paid for the support of such inmate’s dependents, if any. Any undistributed balance shall be paid to the inmate at the time of his or her discharge.

Except as specifically provided herein, nothing in this section may be construed to require the clerk to undertake disbursement and payment of an inmate’s expenses, debts or bills.
(6) An inmate who is serving his or her sentence pursuant to this section shall be eligible for a reduction of his or her term for good behavior and faithful performance of duties in the same manner as if he or she had served his or her term in ordinary confinement.

(7) The court shall not make an order granting the privilege of leaving the institution under this section unless it is satisfied that there are adequate facilities for the administration of such privilege in the jail or other institution in which the defendant will be confined.

(8) In every case wherein the defendant has been convicted of an offense, defined in section twelve, article eight, chapter sixty-one, or in article eight-b or eight-d of said chapter against a child, the defendant shall not live in the same residence as any minor child, nor exercise visitation with any minor child and shall have no contact with the victim of the offense: Provided, That the defendant may petition the court of the circuit wherein he or she was so convicted for a modification of this term and condition of this probation and the burden shall rest upon the defendant to demonstrate that a modification is in the best 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.


(a) If at any time during the period of parole there shall be reasonable cause to believe that the parolee has violated any of the conditions of his or her release on parole, the parole officer may arrest him or her with or without an order or warrant, or the commissioner of corrections may issue its written order or warrant for his or her arrest, which written order or warrant shall be sufficient for his or her arrest by any officer charged with the duty of executing an ordinary criminal process. The commissioner’s written order or warrant delivered to the sheriff against the paroled prisoner shall be a command to keep custody of the parolee for the jurisdiction of the division of corrections and during the period of custody, the parolee may be admitted to bail by the court before which the parolee was sentenced. If the parolee is not released on a bond, the costs of confining the paroled prisoner shall be paid out of the funds appropriated for the division of corrections.

(b) When a parolee is under arrest for violation of the conditions of his or her parole, he or she shall be given a prompt and summary hearing, at which the parolee and his or her counsel shall be given an opportunity to attend. If at the hearing it shall appear to the satisfaction of the board that the parolee has violated any condition of his or her release on
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.

(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.

(d) Whenever the parole of a paroled prisoner has been
57 revoked, the commissioner shall upon receipt of the board’s
written order of revocation, convey and transport the paroled
prisoner to a state correctional institution. A paroled prisoner
whose parole has been revoked shall remain in custody of the
sheriff until delivery to a corrections officer sent and duly
authorized by the commissioner for the removal of the paroled
prisoner to a state penal institution; the cost of confining such
paroled prisoner shall be paid out of the funds appropriated for
the division of corrections.

(e) When a paroled prisoner is convicted of, or confesses to,
any one of the crimes enumerated in section eighteen of this
article, it shall be the duty of the board to cause him or her to be
returned to this state for a summary hearing as provided by this
article. Whenever a parolee has absconded supervision, the
commissioner shall issue a warrant for his or her apprehension
and return to this state for the hearing provided for in this
article: Provided, That the board may, if it be of opinion the
best interests of justice do not require revocation, cause the
paroled absconder to be reinstated to parole.

(f) A warrant filed by the commissioner shall stay the
running of his or her sentence until the parolee is returned to the
custody of the division of corrections and physically in the state
of West Virginia.

(g) Whenever a parolee who has absconded supervision or
has been transferred out of this state for supervision pursuant to
section one, article six, chapter twenty-eight of this code is
returned to West Virginia due to a violation of parole and costs
are incurred by the division of corrections, the commissioner
may assess reasonable costs from the parolee’s inmate funds or
the parolee as reimbursement to the division of corrections for
the costs of returning him or her to the state of West Virginia.

(h) Conviction of a felony for conduct occurring during the
period of parole constitutes proof of violation of the conditions
of parole and the hearing procedures required by the provisions
of this section are inapplicable.
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 law upon county commissions, commissions are hereby authorized to enact ordinances, issue orders and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance. The ordinances may provide for a misdemeanor penalty for its violation. The ordinances may further be applicable to the county in its entirety or to any portion of the 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.

The prosecuting attorney of any county, with the approval of the county commission, or of the governor, or of the court of the county vested with authority to try criminal offenses, or of the judge thereof in vacation, may, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the detection of crime. Any money expended under this section shall, when approved by the prosecuting attorney, be paid out of the county fund, in the same manner as other county expenses are paid: Provided, That the prosecuting attorneys of the several counties of the state may, with the approval of the county commissions of their
respective counties, entered of record, appoint to assist them in
the discharge of their official duties, trained and qualified full-
time or part-time investigators of crime. Such full-time investi-
gators shall accept no other public employment or employment
in a private police or investigative capacity during the term of
their appointment without prior approval of the county commis-
sion and county prosecuting attorney and shall be paid such
salary and expenses as may be fixed by the county commission.
Such expenses shall be itemized and sworn to by the investiga-
tor upon presentation to the county commission.

Notwithstanding any other provision of this code to the
contrary, the prosecuting attorney of any county, with the
consent of the judge of the court of competent jurisdiction and
the county commission, may appoint an investigator of crime
who need not be a resident of this state.

CHAPTER 81

(H. B. 4366 — By Delegates Manuel, C. White,
Armstead, Spencer, Pethel, 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 days after the first session held after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner, and cause to be published a statement revealing: (1) The receipts and expenditures of the county during the previous fiscal year arranged under descriptive headings; (2) the name of each firm, corporation, and person who received more than fifty dollars from any fund during the previous fiscal year, together with the amount received and the purpose for which paid; and (3) all debts of the county, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid. The statement shall be published as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county: Provided, That all salaries, receipts and expenditures to all county employees by office or department may be published in the aggregate.

(b) The county commission shall transmit to any resident of the county requesting the same a copy of the published state-
ment for the fiscal year designated, supplemented by a list of
the names of each firm, corporation and person who received
less than fifty dollars from any fund during such fiscal year
showing the amount paid to each, the purpose for which paid
and an itemization of the salaries, receipts and expenditures to
all county employees by office or department otherwise
published in the aggregate.

(c) If a county commission willfully fails or refuses to
perform the duties hereinbefore named, every member of the
commission, concurring in such failure or refusal, shall be
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not less than fifty nor more than one hundred dollars; and
the prosecuting attorney of any county shall, when the failure
or refusal shall come to his knowledge, immediately present the
evidence thereof to the grand jury if in session, and if not in
session, he shall institute proper criminal proceedings before a
magistrate against any offender, and cause the failure or refusal
to be investigated by the next succeeding grand jury.

(d) Where in subsections (a) and (b), salaries, receipts and
expenditures are published in the aggregate, the county com-
mission shall, upon written request, provide to any resident of
the county an itemized accounting of such salaries, receipts and
expenditures.

CHAPTER 11A. COLLECTION AND ENFORCEMENT
OF PROPERTY TAXES.

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

§11A-3-26. Certificate of redemption issued by clerk;
recordation; disposition of redemption money.

(a) Upon payment of the sum necessary to redeem, the clerk
shall execute a certificate of redemption in duplicate, which
certificate shall specify the real estate redeemed, or the part thereof or the interest therein, as the case may be, together with any changes in respect thereto which were made in the landbook and in the record of delinquent lands; shall specify the year or years for which payment was made; and shall state that it is a receipt for the money paid and a release of the tax lien on the real estate redeemed. The original certificate shall be retained in the files in the clerk’s office and one copy shall be delivered to the person redeeming. The clerk shall make any necessary changes in his record of delinquent lands and shall note the fact of redemption on such record, and shall record the certificate in a separate volume provided for the purpose.

The fee for issuing the certificate of redemption shall be twenty-five dollars.

(b) All certificates of redemption issued by the clerk in each year shall be numbered consecutively and shall be filed by the clerk in numerical order. Reference to the year and number of the certificate shall be included in the notation of redemption required herein. No fee shall be charged by the clerk for any 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.

(a) The Legislature finds that it has, since the first day of January, one thousand nine hundred ninety-seven, consistently and annually imposed upon the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys in each county board, new and additional duties by the enactment of new provisions and amendments to this code. The new and additional duties imposed upon the aforesaid county officials by these enactments are such that they would justify the increases in compensation as provided in section four of this article, without violating the provisions of section thirty-eight, article VI of the constitution of West Virginia.

(b) The Legislature further finds that there are, from time to time, additional duties imposed upon all county officials through the acts of the congress of the United States and that such acts constitute new and additional duties for county officials and, as such, justify the increases in compensation as provided by section four of this article, without violating the provisions of section thirty-eight, article VI of the constitution of West Virginia.
(c) The Legislature further finds that there is a direct correlation between the total assessed property valuations of a county on which the salary levels of the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys are based, and the new and additional duties that each of these officials is required to perform as they serve the best interests of their respective counties. Inasmuch as the reappraisal of the property valuations in each county has now been accomplished, the Legislature finds that a change in classification of counties by virtue of increased property valuations will occur on an infrequent basis. However, it is the further finding of the Legislature that when such change in classification of counties does occur, that new and additional programs, economic developments, requirements of public safety and the need for new services provided by county officials all increase, that the same constitute new and additional duties for county officials as their respective counties reach greater heights of economic development, as exemplified by the substantial increases in property valuations and, as such, justify the increases in compensation provided in section four of this article, without violating the provisions of section thirty-eight, article VI of the constitution of West Virginia.

(d) The Legislature further finds and declares that the amendments enacted to this article are intended to modify the provisions of this article so as to cause the same to be in full compliance with the provisions of the constitution of West Virginia and to be in full compliance with the decisions of the 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.

(a)(1) All county commissioners shall be paid compensation out of the county treasury in amounts and according to the
(2) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
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(3) The compensation, set out in subdivision (2) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each county commissioner. Within each county, every county commissioner whose term of office commenced prior to the first day of January, one thousand nine hundred eighty-five, shall receive the same annual compensation as commissioners commencing a term of office on or after that date by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

(4) For the purpose of determining the compensation to be paid to the elected county officials of each county, the compensations for each office by class, set out in subdivision (5) of this subsection, are established and shall be used by each county commission in determining the compensation of each of their county officials other than compensation of members of the county commission.
(5) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
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</table>

(6) Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I county, any assessor of a Class II and Class III county, any sheriff of a Class II and Class III county and any prosecuting attorney of a Class II county shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected. The compensation, set out in subdivision (5) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each elected county official.

(7) In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(8) The Legislature finds that the duties imposed upon county clerks by the provisions of chapter sixty-four, acts of the Legislature, regular session, one thousand nine hundred eighty-two, and by chapter fifteen, acts of the Legislature, first
extraordinary session, one thousand nine hundred eighty-three, constitute new and additional duties for county clerks and as such justify the additional compensation provided in this section without violating the provisions of section thirty-eight, article VI of the constitution of West Virginia.

(9) The Legislature further finds that the duties imposed upon circuit clerks by the provisions of chapters sixty-one and one hundred eighty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-one, and by chapter sixty, acts of the Legislature, regular session, one thousand nine hundred eighty-three, constitute new and additional duties for circuit clerks and as such justify the additional compensation provided by this section without violating the provisions of section thirty-eight, article VI of the constitution of West Virginia.

(b)(1) Prior to the primary election in the year one thousand nine hundred ninety-two, and for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-two, or for any subsequent fiscal year if the approval, set out in subdivision (2) of this subsection, is not granted for any fiscal year, and at least thirty days prior to the meeting to approve the county budget, the commission shall provide notice to the public of the date and time of the meeting and that the purpose of the meeting of the county commission is to decide upon their budget certification to the auditor.

(2) Upon submission by the county commission to the auditor of a proposed annual budget which contains anticipated receipts into the county’s general revenue fund, less anticipated moneys from the unencumbered fund balance, equal to anticipated receipts into the county’s general revenue fund, less anticipated moneys from the unencumbered fund balance and any federal or state special grants, for the immediately preceding fiscal year, plus such additional amount as is necessary for
payment of the increases in the salaries set out in subdivisions (3) and (5) of this subsection, and related employment taxes over that paid for the immediately preceding fiscal year, and upon approval thereof by the auditor, which approval shall not be granted for any proposed annual budget containing anticipated receipts which are unreasonably greater or lesser than that of the immediately preceding fiscal year, for the purpose of determining the compensation to be paid to the elected county officials of each county office by class are established and shall be used by each county commission in determining the compensation of each of their county officials: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of the county.

(3) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
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<td>Class II</td>
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<tr>
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</table>

(4) If the approval, set out in subdivision (2) of this subsection, is granted, the compensation, set out in subdivision (3) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-three, to each county commissioner. Within each county, every county commissioner shall receive the same annual compensation by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter one hundred seventy-two, acts of the Legislature, second regular session, one thousand nine hundred ninety and chapter five, acts of the Legislature, third extraordinary session, one thousand nine hundred ninety.
(5) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
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</table>

(6) Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I county, any assessor of a Class II and Class III county, any sheriff of a Class II and Class III county and any prosecuting attorney of a Class II county shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected. If the approval, set out in subdivision (2) of this subsection, is granted, the compensation, set out in subdivision (5) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-three, to each elected county official.

(7) In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(8) Prior to the primary election in the year one thousand 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 county commission may find that such facts and circumstances exist that require the prosecuting attorney to devote full-time to his or her public duties for the four-year term, beginning the first day of January, one thousand nine hundred ninety-three. If the county commission makes such a finding, it may by proper order adopted and entered, require the prosecuting attorney who takes office on the first day of January, one thousand nine hundred ninety-three, to devote full-time to his or her public duties and the county commission shall then compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class II county.

(9) For any county: (A) Which on and after the first day of July, one thousand nine hundred ninety-four, is classified as a Class II county; and (B) which prior to such date was classified as a Class III, Class IV or Class V county and maintained a part-time prosecuting attorney, the county commission may elect to maintain the prosecuting attorney as a part-time prosecuting attorney: Provided, That prior to the first day of January, one thousand nine hundred ninety-six, the county commission shall make a finding, by proper order and entered, whether to maintain a full-time or part-time prosecuting attorney. The part-time prosecuting attorney shall be compensated at the same rate of compensation as that of a prosecuting attorney in the class for the county prior to being classified as a Class II county.

(c)(1) Prior to the primary election in the year one thousand nine hundred ninety-six, and for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-six, or for any subsequent fiscal year if the approval, set out in subdivision (2) of this subsection, is not granted for any fiscal year, and at least thirty days prior to the meeting to approve the county budget, the commission shall provide notice to the public of the date and time of the meeting and that the purpose of the
COUNTIES

meeting of the county commission is to decide upon their
budget certification to the auditor.

(2) Upon submission by the county commission to the
auditor of a proposed annual budget which contains anticipated
receipts into the county’s general revenue fund, less anticipated
moneys from the unencumbered fund balance, equal to antici-
pated receipts into the county’s general revenue fund, less
anticipated moneys from the unencumbered fund balance and
any federal or state special grants, for the fiscal year beginning
the first day of July, one thousand nine hundred ninety-six, plus
such additional amount as is necessary for payment of the
increases in the salaries set out in subdivisions (3) and (6) of
this subsection, and related employment taxes over that paid for
the immediately preceding fiscal year, and upon approval
thereof by the auditor, which approval shall not be granted for
any proposed annual budget containing anticipated receipts
which are unreasonably greater or lesser than that of the
immediately preceding fiscal year for the purpose of determin-
ing the compensation to be paid to the elected county officials
of each county office by class are established and shall be used
by each county commission in determining whether county
revenues are sufficient to pay the compensation mandated
herein for their county officials: Provided, That as to any
county having a tribunal in lieu of a county commission, the
county commissioners of the county may be paid less than the
minimum compensation limits of the county commission for
the particular class of the county: Provided, however, That
should there be an insufficient projected increase in revenues to
pay the increased compensation and related employment taxes,
then the compensation of that county’s elected officials shall
remain at the level in effect at the time certification was sought.

(3) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$28,000</td>
</tr>
<tr>
<td>Class II</td>
<td>$27,500</td>
</tr>
</tbody>
</table>
(4) The compensation, set out in subdivision (3) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-seven, to each county commissioner. Every county commissioner in each county, whose term of office commenced prior to or on or after the first day of January, one thousand nine hundred ninety-seven, shall receive the same annual compensation by virtue of legislative findings of extra duties as set forth in section one of this article.

(5) For the purpose of determining the compensation to be paid to the elected county officials of each county, the compensations for each county office by class, set out in subdivision (6) of this subsection, are established and shall be used by each county commission in determining the compensation of each of their county officials other than compensation of members of the county commission:

(6) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$34,000</td>
<td>$42,000</td>
<td>$42,000</td>
<td>$34,000</td>
<td>$76,000</td>
</tr>
<tr>
<td>Class II</td>
<td>$33,500</td>
<td>$41,500</td>
<td>$41,500</td>
<td>$33,500</td>
<td>$74,000</td>
</tr>
<tr>
<td>Class III</td>
<td>$33,250</td>
<td>$40,500</td>
<td>$40,500</td>
<td>$33,250</td>
<td>$72,000</td>
</tr>
<tr>
<td>Class IV</td>
<td>$33,000</td>
<td>$40,250</td>
<td>$40,250</td>
<td>$33,000</td>
<td>$70,000</td>
</tr>
<tr>
<td>Class V</td>
<td>$32,750</td>
<td>$40,000</td>
<td>$40,000</td>
<td>$32,750</td>
<td>$68,000</td>
</tr>
<tr>
<td>Class VI</td>
<td>$32,500</td>
<td>$37,500</td>
<td>$37,500</td>
<td>$32,500</td>
<td>$45,000</td>
</tr>
</tbody>
</table>
(7) The compensation, set out in subdivision (6) of this subsection, shall be paid on and after the first day of January, one thousand nine hundred ninety-seven, to each elected county official. Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

(8) In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(9) Any prosecuting attorney of a Class I through Class V county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any county which under the prior provisions of this section was classified as a Class II county and elected to maintain a part-time prosecutor may continue to maintain a part-time prosecutor, until such time as the county commission, on request of the part-time prosecutor, approves and makes a finding, by proper order entered, that the prosecuting attorney shall devote full-time to his or her public duties. The county commission shall then compensate said prosecuting attorney at
the same rate of compensation as that of a prosecuting attorney in a Class V county: Provided, however, That any county which under the prior provisions of this section was classified as a Class II county and which did not elect to maintain a part-time prosecutor shall maintain a full-time prosecuting attorney and shall compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class V county: Provided further, That, until the first day of January, two thousand one, when a vacancy occurs in the office of prosecuting attorney prior to the end of a term, the county commission of a Class IV or Class V county may elect to allow the position to become part-time for the end of that term, and thereafter the position of prosecuting attorney shall become full-time.

(d)(1) The increased salaries to be paid to the county commissioners and the other elected county officials described in this subsection on and after the first day of July, two thousand two, are set out in subdivisions (5) and (7) of this subsection. Every county commissioner and elected county official in each county, whose term of office commenced prior to or on or after the first day of July, two thousand two, shall receive the same annual salary by virtue of legislative findings of extra duties as set forth in section one of this article.

(2) Before the increased salaries, as set out in subdivisions (5) and (7) of this subsection, are paid to the county commissioners and the elected county officials, the following requirements must be met:

(A) The auditor has certified that the proposed annual county budget for the fiscal year beginning the first days of July, two thousand two, has increased over the previous fiscal year in an amount sufficient for the payment of the increase in the salaries, set out in subdivisions (5) and (7) of this subsection, and the related employment taxes: Provided, That the
auditor may not approve the budget certification for any proposed annual county budget containing anticipated receipts which are unreasonably greater or lesser than that of the previous year. For purposes of this subdivision, the term “receipts” does not include unencumbered fund balance or federal or state grants; and

(B) Each county commissioner or other elected official described in this subsection in office on the effective date of the increased salaries provided by this subsection who desires to receive the increased salary has prior to that date filed in the office of the clerk of the county commission his or her written agreement to accept the salary increase. The salary for the person who holds the office of county commissioner or other elected official described in this subsection who fails to file the written agreement as required by this paragraph shall be the salary for that office in effect immediately prior to the effective date of the increased salaries provided by this subsection until the person vacates the office or his or her term of office expires, whichever first occurs.

(3) If there is an insufficient projected increase in revenues to pay the increased salaries and the related employment taxes, then the salaries of that county’s elected officials and commissioners shall remain at the level in effect at the time certification was sought.

(4) In any county having a tribunal in lieu of a county commission, the county commissioners of that county may be paid less than the minimum salary limits of the county commission for that particular class of the county.

(5) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$30,800</td>
</tr>
<tr>
<td>Class II</td>
<td>$30,250</td>
</tr>
<tr>
<td>Class III</td>
<td>$29,700</td>
</tr>
</tbody>
</table>
(6) For the purpose of determining the salaries to be paid to the elected county officials of each county, the salaries for each county office by class, set out in subdivision (7) of this subsection, are established and shall be used by each county commission in determining the salaries of each of their county officials other than salaries of members of the county commission.

(7) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$37,400</td>
<td>$46,200</td>
<td>$46,200</td>
<td>$37,400</td>
<td>$83,600</td>
</tr>
<tr>
<td>II</td>
<td>$36,850</td>
<td>$45,650</td>
<td>$45,650</td>
<td>$36,850</td>
<td>$81,400</td>
</tr>
<tr>
<td>III</td>
<td>$36,575</td>
<td>$44,550</td>
<td>$44,550</td>
<td>$36,575</td>
<td>$79,200</td>
</tr>
<tr>
<td>IV</td>
<td>$36,300</td>
<td>$44,295</td>
<td>$44,295</td>
<td>$36,300</td>
<td>$77,000</td>
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<tr>
<td>V</td>
<td>$36,025</td>
<td>$44,000</td>
<td>$44,000</td>
<td>$36,025</td>
<td>$74,800</td>
</tr>
<tr>
<td>VI</td>
<td>$35,750</td>
<td>$41,250</td>
<td>$41,250</td>
<td>$35,750</td>
<td>$49,500</td>
</tr>
<tr>
<td>VII</td>
<td>$35,475</td>
<td>$40,700</td>
<td>$40,700</td>
<td>$35,475</td>
<td>$47,300</td>
</tr>
<tr>
<td>VIII</td>
<td>$35,200</td>
<td>$40,150</td>
<td>$40,150</td>
<td>$35,200</td>
<td>$45,100</td>
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<td>IX</td>
<td>$34,925</td>
<td>$39,600</td>
<td>$39,600</td>
<td>$34,925</td>
<td>$41,800</td>
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<tr>
<td>X</td>
<td>$31,900</td>
<td>$35,200</td>
<td>$35,200</td>
<td>$31,900</td>
<td>$38,500</td>
</tr>
</tbody>
</table>

(8) Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official,
whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, may not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

(9) In the case of a county that has a joint clerk of the county commission and circuit court, the salary of the joint clerk shall be fixed in an amount twenty-five percent higher than the salary would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

(10) Any prosecuting attorney of a Class I through Class V county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any county which under the prior provisions of this section was classified as a Class II county and elected to maintain a part-time prosecutor may continue to maintain a part-time prosecutor, until such time as the county commission, on request of the part-time prosecutor, approves and makes a finding, by proper order entered, that the prosecuting attorney shall devote full-time to his or her public duties. The county commission shall then compensate said prosecutor at the same salary as that of a prosecuting attorney in a Class V county: Provided, however, That any county which under the prior provisions of this section was classified as a Class II county and which did not elect to maintain a part-time prosecutor shall maintain a full-time prosecuting attorney and shall compensate said prosecuting attorney at the same salary as that of a prosecuting attorney in a Class V county: Provided further, That, until the first day of January, two thousand three, when a vacancy occurs in the office of prosecuting attorney prior to the end of a term, the county commission of a Class IV or Class V county may elect to allow the position to become part-time for the end of that term and thereafter the position of prosecuting 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 calendar 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.

(a) No county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, sheriff, county assessor or prosecuting attorney may, without the approval of the county commission, spend or obligate, before the end of the calendar year, more than fifty percent of the funds allocated for his or her office in the fiscal year budget, in any fiscal year where the
person holding the office is leaving office due to either resignation or the results of an election.

(b) As used in subsection (a) of this section, "spend or obligate" includes, but is not limited to, increasing employee salaries to a level that would create a deficit in the budget if paid during the remainder of the fiscal year in addition to other 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:

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.

(a) A municipal court may accept credit cards in payment of all costs, fines, forfeitures or penalties. A municipal court may collect a substantial portion of all costs, fines, forfeitures or penalties at the time such amount is imposed by the court so long as the court requires the balance to be paid within one hundred eighty days and in accordance with a payment plan which specifies: (1) The number of additional payments to be made; (2) the dates on which such payments and amounts shall be made; and (3) amounts due on such dates.

(b) If costs, fines, forfeitures or penalties imposed by the municipal court for motor vehicle violations as described in section three-a, article three, chapter seventeen-b of this code are not paid within one hundred eighty days, or if a person who committed any such violation defaults on a payment plan as described in subsection (a) of this section, or if a person fails to appear or otherwise respond in court when charged with a motor vehicle violation as defined in section three-a, article three, chapter seventeen-b of this code, the municipal court
must notify the commissioner of the division of motor vehicles 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.

(a) If costs, fines, forfeitures or penalties imposed by the municipal court upon conviction of a person for a criminal offense as defined in section three-c, article three, chapter seventeen-b of this code are not paid in full within one hundred eighty days of the judgment, the municipal court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the division of motor vehicles of such failure to pay: Provided, That at the time the judgment is imposed, the judge shall provide the person with written notice that failure to pay the same as ordered shall result in the suspension of such person's license or privilege to operate a motor vehicle in this state and that such suspension could result in the cancellation of, the failure to renew or the failure to issue an automobile insurance policy providing coverage for such person or such person's family: Provided, however, That the failure of the judge to provide such notice shall not affect the validity of any suspension of such person's license or privilege to operate a motor vehicle in this state. For purposes of this section, payment shall be stayed during any period an appeal from the conviction which resulted in the imposition of such costs, fines, forfeitures or penalties is pending.

Upon such notice, the division of motor vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid.

(b) Notwithstanding the provisions of this section to the contrary, the notice of the failure to pay such costs, fines, forfeitures or penalties shall not be given where the municipal
court, upon application of the person upon whom the same were imposed filed prior to the expiration of the period within which the same are required to be paid, enters an order finding that such person is financially unable to pay all or a portion of the same: Provided, That where the municipal court, upon finding that the person is financially unable to pay a portion thereof, requires the person to pay the remaining portion thereof, the municipal court shall notify the division of motor vehicles of such person’s failure to pay the same if the same is not paid within the period of time ordered by such court.

(c) If a person charged with a criminal offense fails to appear or otherwise respond in court, the municipal court shall notify the division of motor vehicles thereof within fifteen days of the scheduled date to appear unless such person sooner appears or otherwise responds in court to the satisfaction of the judge. Upon such notice, the division of motor vehicles shall suspend the person’s driver’s license or privilege to operate a motor vehicle in this state until such time that the person 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.

The division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a magistrate court or municipal court of this state, pursuant to subsection (b), section two-a, article three, chapter fifty or subsection (b), section two-a, article ten, chapter eight of this code, that such person has defaulted on the payment of costs, fines, forfeitures
or penalties, which were imposed on the person by the magis-
trate court or municipal court upon conviction of any motor
vehicle violation, after one hundred eighty days following such
conviction, or that such person has failed to appear in court
when charged with a motor vehicle violation. For the purposes
of this section, section two-a, article three, chapter fifty and
section two-a, article ten, chapter eight, "motor vehicle
violation" shall be defined as any violation designated in
chapter seventeen-a, seventeen-b, seventeen-c, seventeen-d or
seventeen-e of this code, or the violation of any municipal
ordinance relating to the operation of a motor vehicle for which
the violation thereof would result in a fine or penalty: Provided,
That any parking violation or other violation for which a
citation may be issued to an unattended vehicle shall not be
considered a motor vehicle violation for the purposes of this
section, section two-a, article three, chapter fifty or section
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.

(a) A magistrate court may accept credit cards in payment
of all costs, fines, fees, forfeitures, restitution or penalties in
accordance with rules promulgated by the supreme court of
appeals. Any charges made by the credit company shall be paid
by the person responsible for paying the cost, fine, forfeiture or
penalty.

(b) Unless otherwise required by law, a magistrate court
may collect a portion of any costs, fines, fees, forfeitures,
restitution or penalties at the time the amount is imposed by the
court so long as the court requires the balance to be paid in
accordance with a payment plan which specifies: (1) The number of payments to be made; (2) the dates on which such payments are due; and (3) the amounts due for each payment.

(c)(1) If any costs, fines, fees, forfeitures, restitution or penalties imposed by the magistrate court in a criminal case are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon judgment rendered on appeal, the circuit clerk shall notify the commissioner of the division of motor vehicles of the failure to pay. Upon such notice, the division of motor vehicles shall suspend any privilege the person defaulting on payment may have to operate a motor vehicle in this state, including any driver’s license issued to the person by the division of motor vehicles, until such time that all the costs, fines, fees, forfeitures, restitution or penalties are paid in full. The suspension shall be imposed in accordance with the provisions of section six, article three, chapter seventeen-b of this code: Provided, That any person who has had his or her license to operate a motor vehicle in this state suspended pursuant to this subsection and his or her failure to pay is based upon inability to pay may, if he or she is employed on a full or part-time basis, petition to the circuit court for an order authorizing him or her to operate a motor vehicle solely for employment purposes. Upon a showing satisfactory to the court of inability to pay, employment and compliance with other applicable motor vehicle laws, the court shall issue such an order.

(2) In addition to the provisions of subdivision (1) of this subsection, if any costs, fines, fees, forfeitures, restitution or penalties imposed or ordered by the magistrate court for a hunting violation described in chapter twenty of this code are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the 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
guilty, until such time that all the costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of section six, article three, chapter seventeen-b of this code.

(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in chapter twenty of this code fails to appear or otherwise respond in court, the magistrate court shall notify the director of the division of natural resources of such failure thereof within fifteen days of the scheduled date to appear, unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon such notice, the director of the division of natural resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the division of natural resources, until final judgment in the case and, if a judgment of guilty, until such time that all the costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any fishing violation described in chapter twenty of this code fails to appear or otherwise respond in court, the magistrate court shall notify the director of the division of natural resources of such failure thereof within fifteen days of the scheduled date to appear, unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon such notice, the director of the division of natural resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the division of natural resources, until final judgment in the case and, if a judgment of guilty, until such time that all the costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full.
(e) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.

(f)(1) If all costs, fines, fees, forfeitures, restitution or penalties imposed by a magistrate court and ordered to be paid are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the clerk of the magistrate court shall notify the prosecuting attorney of the county of such nonpayment and provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerks of the county commissions shall record and index the abstracts of judgment without charge or fee to the prosecuting attorney, and when so recorded, the amount stated to be owing in the abstract shall constitute a lien against all property of the defendant.

(2) When all the costs, fines, fees, forfeitures, restitution or penalties described in subdivision (1) of this subsection for which an abstract of judgment has been recorded are paid in full, the clerk of the magistrate court shall notify the prosecuting attorney of the county of such payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of section one, article twelve, chapter thirty-eight of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerks of the county commissions shall record and index the release of judgment without charge or fee to the prosecuting attorney.
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.


(a) The Legislature finds and declares that:

(1) The West Virginia supreme court of appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate the equal protection clause of the constitution of the United States;

(2) The West Virginia supreme court of appeals has held that a salary system for magistrates which is based upon the
(3) The utilization of a two-tiered salary schedule for magistrates is an equitable and rational manner by which magistrates should be compensated for work performed;

(4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less than eight thousand five hundred in population and the second tier for magistrates serving eight thousand five hundred or more in population is rational and equitable given current statistical information relating to population and caseload; and

(5) That all magistrates who fall under the same tier should be compensated equally.

(b) The salary of each magistrate shall be paid by the state. Magistrates who serve fewer than eight thousand five hundred in population shall be paid annual salaries of thirty thousand six hundred twenty-five dollars and magistrates who serve eight thousand five hundred or more in population shall be paid annual salaries of thirty-seven thousand dollars: Provided, That on and after the first day of July, two thousand three, magistrates who serve fewer than eight thousand five hundred in population shall be paid annual salaries of thirty-three thousand six hundred twenty-five dollars and magistrates who serve eight thousand five hundred or more in population shall be paid annual salaries of forty thousand dollars.

(c) For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. For the purpose of this article, the population of each county is the population as determined by the last preceding decennial census taken under the authority of the United States government.
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.

(a) Except as provided by the provisions of subsection (b) of this section, whenever a person already detained in a regional jail facility is served with a criminal complaint, the initial appearance or arraignment, if accomplished by the use of a video imaging system, shall to the extent practicable be before
a magistrate of the charging jurisdiction. If such is not practicable, a magistrate of the jurisdiction in which the regional jail facility is located may preside over the proceeding.

(b) An order of the supreme court of appeals authorizing a magistrate or magistrates to conduct pretrial proceedings by use of video imaging shall supercede the requirements set forth in 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.

(a) The engaging by a nonresident, or by his or her duly
authorized agent, in any one or more of the acts specified in
subdivisions (1) through (7), inclusive, of this subsection shall
be deemed equivalent to an appointment by such nonresident of
the secretary of state, or his or her successor in office, to be his
or her true and lawful attorney upon whom may be served all
lawful process in any action or proceeding against him or her,
in any circuit court in this state, including an action or proceed-
ing brought by a nonresident plaintiff or plaintiffs, for a cause
of action arising from or growing out of such act or acts, and
the engaging in such act or acts shall be a signification of such
nonresident's agreement that any such process against him or
her, which is served in the manner hereinafter provided, shall
be of the same legal force and validity as though such nonresi-
dent were personally served with a summons and complaint
within this state:

(1) Transacting any business in this state;

(2) Contracting to supply services or things in this state;

(3) Causing tortious injury by an act or omission in this
state;

(4) Causing tortious injury in this state by an act or omis-
sion outside this state if he or she regularly does or solicits
business, or engages in any other persistent course of conduct,
or derives substantial revenue from goods used or consumed or
services rendered in this state;

(5) Causing injury in this state to any person by breach of
warranty expressly or impliedly made in the sale of goods
outside this state when he or she might reasonably have
expected such person to use, consume or be affected by the
goods in this state: Provided, That he or she also regularly does
or solicits business, or engages in any other persistent course of
conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) Having an interest in, using or possessing real property in this state; or

(7) Contracting to insure any person, property or risk located within this state at the time of contracting.

(b) When jurisdiction over a nonresident is based solely upon the provisions of this section, only a cause of action arising from or growing out of one or more of the acts specified in subdivisions (1) through (7), inclusive, subsection (a) of this section may be asserted against him or her.

(c) Service shall be made by leaving the original and two copies of both the summons and the complaint, and the fee required by section two, article one, chapter fifty-nine of this code with the secretary of state, or in his or her office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by the secretary of state to the defendant at his or her nonresident address and the defendant's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the secretary of state which is refused by the addressee and which registered or certified mail is returned to the secretary of state, or to his or her office, showing thereon the stamp of the post office department that delivery has been refused, shall be appended to the original summons and complaint and filed therewith in the clerk's office of the court from which process issued. If any defendant served with summons and complaint fails to appear and defend within thirty days of service, judgment by default may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding.
(d) The fee remitted to the secretary of state at the time of
service shall be taxed in the costs of the action or proceeding.
The secretary of state shall keep a record in his or her office of
all such process and the day and hour of service thereof.

(e) The following words and phrases, when used in this
section, shall for the purpose of this section and unless a
different intent be apparent from the context, have the following
meanings:

(1) "Duly authorized agent" means and includes among
others a person who, at the direction of or with the knowledge
or acquiescence of a nonresident, engages in such act or acts
and includes among others a member of the family of such
nonresident or a person who, at the residence, place of business
or post office of such nonresident, usually receives and receipts
for mail addressed to such nonresident.

(2) "Nonresident" means any person, other than voluntary
unincorporated associations, who is not a resident of this state
or a resident who has moved from this state subsequent to
engaging in such act or acts and among others includes a
nonresident firm, partnership or corporation or a firm, partner-
ship or corporation which has moved from this state subsequent
to any of said such act or acts.

(3) "Nonresident plaintiff or plaintiffs" means a nonresident
of this state who institutes an action or proceeding in a circuit
court in this state having jurisdiction against a nonresident of
this state pursuant to the provisions of this section.

(f) The provision for service of process herein is cumulative
and nothing herein contained shall be construed as a bar to the
plaintiff in any action or proceeding from having process in
such action served in any other mode or manner provided by the
law of this state or by the law of the place in which the service
is made for service in that place in an action in any of its courts
of general jurisdiction.
(g) This section shall not be retroactive and the provisions hereof shall not be available to a plaintiff in a cause of action arising from or growing out of any of said acts occurring prior 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.

(a) Any person convicted of an offense described in section one, two, three, four, seven, nine, nine-a (when that offense constitutes a felony), ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article two, chapter sixty-one of this code or section twelve, article eight of said chapter, when that offense consti-
tutes a felony, shall provide a DNA sample to be used for DNA
analysis as described in this article. Further, any person
convicted of any offense described in article eight-b or eight-d
of said chapter shall provide a DNA sample to be used for DNA
analysis as described in this article.

(b) All persons incarcerated in a state correctional facility
or any county or regional jail in this state who are incarcerated
due to the conviction of any offense listed in subsection (a) of
this section who are incarcerated on the first day of July, one
thousand nine hundred ninety-five, or who are convicted of any
such offense on or after the first day of July, one thousand nine
hundred ninety-five, shall have a DNA sample drawn for
purposes of analysis and storage of the DNA.

(c) Any person convicted after the first day of July, two
thousand, of a violation of section five or thirteen, article two,
chapter sixty-one of this code, section one, two, three, four,
five, seven, eleven, twelve (when that offense constitutes a
felony) or subsection (a), section thirteen, article three of said
chapter, section three, four, five or ten, article three-e of said
chapter or section three, article four of said chapter, shall
provide a DNA sample to be used for DNA analysis as de-
scribed in this article.

(d) Any person convicted after the first day of July, two
thousand two, of an offense which constitutes a felony violation
of the provisions of article four, chapter sixty-a of this code; or
of an attempt to commit a violation of section one or section
fourteen-a, article two, chapter sixty-one of this code; or an
attempt to commit a violation of article eight-b of said chapter
shall provide a DNA sample to be used for DNA analysis as
described in this article.
(e) For the purposes of this section, the term “DNA sample” means a tissue, fluid or other bodily sample of an individual on which a DNA analysis can be done. The method of taking the “DNA sample” is subject to the testing methods utilized by the West Virginia state police crime lab.

(f) When a person who is required to provide a DNA sample as required by this section refuses to comply with any DNA testing, the state shall apply to a circuit court for an order requiring the person to provide a DNA sample to be withdrawn for the purpose of DNA typing and testing. The circuit court shall order the person to submit to DNA testing in conformity 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
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.

(a) It is unlawful for any person to intentionally obstruct or interfere with any emergency medical service agency personnel engaged in the act of delivering or administering emergency medical services. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period not more than one year, or both fined and confined.

(b) It is unlawful for any person to willfully cause bodily injury to any person designated to be an emergency medical personnel engaged in the act of delivering or administering emergency medical services. Any person violating the provisions of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than ten years or fined not more than five thousand dollars, or both fined and confined.

(c) Nothing in this section may be construed to prevent law-enforcement officials from controlling traffic and otherwise maintaining order at the scene of an accident, injury or illness where an emergency medical service agency is rendering services.
(d) No person may willfully fail or refuse to comply with a lawful order or direction of any emergency medical service agency personnel engaged in the act of delivering or administering emergency medical services, relating to directing, controlling or regulating traffic, so long as such order or direction is conveyed by a retro-reflective hand signing device. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof: (1) For a first offense shall be fined not more than one hundred dollars; (2) for a second offense occurring within one year of a previous conviction shall be fined not more than two hundred dollars; and (3) for a third and subsequent offense shall be fined not 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.

(a) It is unlawful, while any fire department or company or firefighter is lawfully exercising or discharging the department’s, company’s or firefighter’s official duty during an emergency, for any person to:

(1) Attack any firefighter or any of his or her equipment with any deadly weapon as defined in section two, article seven, chapter sixty-one of this code; or

(2) Intentionally hinder, obstruct, oppose, or attempt to hinder, obstruct or oppose, or counsel, advise or invite others to hinder, obstruct or oppose, any fire department, fire company or firefighter.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor
more than ten years, or, in the discretion of the court, be
confined in the regional or county jail not more than one year
or fined not more than five hundred dollars, or both.

(c) Any person willfully violating any of the provisions of
section one or three of this article is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not less than one
hundred dollars nor more than five hundred dollars.

(d) Nothing in this article shall be construed to prevent
law-enforcement officials from controlling traffic and otherwise
maintaining order at the scene of a fire.

(e) No person may willfully fail or refuse to comply with a
lawful order or direction of any fire department or company or
firefighter who is lawfully exercising or discharging the
department’s, company’s or firefighter’s official duty during an
emergency, relating to directing, controlling or regulating
traffic, so long as such order or direction is conveyed by a retro-
reflective hand signing device. Any person violating the
provisions of this subsection is guilty of a misdemeanor and,
upon conviction thereof: (1) For a first offense shall be fined
not more than one hundred dollars; (2) for a second offense
occurring within one year of a previous conviction shall be
fined not more than two hundred dollars; and (3) for a third and
subsequent offense shall be fined not more than five hundred
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.

(a) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 401(c), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 408. The effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to
arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose. There may be only one discharge and dismissal under this section with respect to any person.

(b) After a period of not less than six months which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this chapter, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this section has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(c) Notwithstanding any provision of this code to the contrary, any person prosecuted pursuant to the provisions of this article whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of section 401(c) of this article. Payment of such costs may be made a condition of probation.

The costs assessed pursuant to this section, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty, section four, article two-a, chapter fourteen, section four, article twenty-nine, chapter thirty and sections two, seven and ten, article five, chapter sixty-two of this code.
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.

(a) Notwithstanding any provision of this code to the contrary, any person who knowingly and willfully violates an administrative order of a court, a rule or emergency rule promulgated by the secretary of administration, a joint rule of
the Senate and House of Delegates or a rule of the Senate or
House of Delegates relating to access to government buildings
or facilities or portions thereof under their control or who
knowingly and willfully aids or abets another to violate such an
order, rule or joint rule is guilty of a misdemeanor and, upon
conviction, shall be confined for not more than thirty days or
fined more than five hundred dollars, or both.

(b) Any person who violates the provisions of subsection
(a) of this section with the intent to commit a crime which
constitutes a misdemeanor is guilty of a misdemeanor and, upon
conviction, shall be confined in a county or regional jail for not
more than one year or fined not more than one thousand dollars,
or both.

(c) Any person who violates the provisions of subsection
(a) of this section with the intent to commit a crime which
constitutes a felony is guilty of a felony and, upon conviction,
shall be incarcerated in a state correctional facility for not less
than one nor more than five years or fined not more than five
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.

(a) It is unlawful for any person, with the intent to harass or abuse another person, to use a computer to:

(1) Make contact with another without disclosing his or her identity with the intent to harass or abuse;

(2) Make contact with a person after being requested by the person to desist from contacting them;

(3) Threaten to commit a crime against any person or property; or

(4) Cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material.

For purposes of this section, "obscene material" means material that:

(A) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(B) An average person, applying contemporary adult community standards, would find, depicts or describes, in a
patently offensive way, sexually explicit conduct consisting of
an ultimate sexual act, normal or perverted, actual or simulated,
an excretory function, masturbation, lewd exhibition of the
genitals, or sadomasochistic sexual abuse; and

(C) A reasonable person would find, taken as a whole, lacks
literary, artistic, political or scientific value.

(b) It is unlawful for any person to knowingly permit a
computer under his or her control to be used for any purpose
prohibited by this section.

(c) Any offense committed under this section may be
determined to have occurred at the place at which the contact
originated or the place at which the contact was received or
intended to be received.

(d) Any person who violates a provision of this section is
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not more than five hundred dollars or confined in a county
or regional jail not more than six months, or both. For a second
or subsequent offense, the person is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not more than one
thousand dollars or confined in a county or regional jail for not
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.

(a) Any person who, in a public place, any office or office building of the state of West Virginia, or in the state capitol complex, or on any other property owned, leased, occupied or controlled by the state of West Virginia, a mobile home park, a public parking area, a common area of an apartment building or dormitory, or a common area of a privately owned commercial shopping center, mall or other group of commercial retail establishments, disturbs the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his lawful capacity, is guilty of disorderly conduct, a misdemeanor and, upon conviction thereof, may be committed to the custody of the division of corrections for twenty-four hours or fined not more than one hundred dollars: Provided, That nothing in this subsection should be construed as a deterrence to the lawful and orderly public right to demonstrate in support or protest of public policy issues.
(b) For purposes of this section:

(1) “Mobile home park” means a privately owned residential housing area or subdivision wherein the dwelling units are comprised mainly of mobile homes and wherein the occupants of such dwelling units share common elements for purposes of ingress and egress, parking, recreation and other like residential purposes.

(2) “Mobile home” means a moveable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels) and designed to be connected to utilities for year-round occupancy. The term includes: (A) Units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity; and (B) units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.

(3) “Public parking area” means an area, whether publicly or privately owned or maintained, open to the use of the public for parking motor vehicles.

§61-6-19. Willful disruption of governmental processes; offenses occurring at state capitol complex; penalties.

(a) If any person willfully interrupts or molests the orderly and peaceful process of any department, division, agency or branch of state government or of its political subdivisions, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars, or imprisoned in the county or regional jail not more than six months, or both fined and imprisoned: Provided, That any assembly in a peaceable, lawful and orderly manner for a redress of grievances shall not be a violation of this section.
(b) It is unlawful for any person to bring upon the state capitol complex any weapon as defined by the provisions of section two, article seven of this chapter. It is unlawful for any person to willfully deface any trees, wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork or adornment in the state capitol complex. It is unlawful for any person or persons to willfully block or otherwise willfully obstruct any public access, stair or elevator in the state capitol complex after being asked by a law-enforcement officer acting in his or her official capacity to desist: Provided, That in order to preserve the constitutional right of the people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group or crowd, if the persons move to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress: Provided, however, That this subsection shall not apply to a law-enforcement officer acting in his or her official capacity.

Any person who violates any provision of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars or confined in the 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.

(a) It is unlawful for any member of a county commission, overseer of the poor, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: Provided, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.
(b) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and may, in the discretion of the court, be confined in the county or regional jail for a period not to exceed one year.

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked: Provided, That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than twenty-five hundred dollars and, in the court's discretion, the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in the county or regional jail for a period not to exceed one year.

(e) The provisions of subsection (a) of this section do not apply to any person who, or person whose spouse, is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:
(1) Is not a party to the contract;

(2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract;

(3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;

(4) Does not participate in the deliberations or awarding of the contract; and

(5) Does not approve, vote for or otherwise authorize the payment for any services performed or supplies furnished under the contract.

(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or board of education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

(g) The provisions of this section do not apply to publications in newspapers required by law to be made.

(h) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be used in the free school system of this state, as proscribed in section nine, article XII of the constitution of West Virginia, if they qualify for the exceptions set forth in either subsection (e) 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 to commit or is prevented from committing it, shall, where it is not otherwise provided, be punished as follows:

4 (1) If the offense attempted be punishable with life imprisonment, the person making such attempt shall be guilty of a felony and, upon conviction, shall be imprisoned in the penitentiary not less than three nor more than fifteen years.

8 (2) If the offense attempted be punishable by imprisonment in the penitentiary for a term less than life, such person shall be
guilty of a felony and, upon conviction, shall, in the discretion of the court, either be imprisoned in the penitentiary for not less than one nor more than three years, or be confined in jail not less than six nor more than twelve months, and fined not exceeding five hundred dollars.

(3) If the offense attempted be punishable by confinement in jail, such person shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not more than six months, 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.


A prosecution for committing or procuring another person to commit perjury shall be commenced within three years next after the perjury was committed. A prosecution for a misde-
A meanor shall be commenced within one year after the offense was committed: Provided, That whenever the indictment in any case shall be stolen, lost or destroyed, a new indictment may be found for the same offense mentioned in the former indictment, at the first term of the court after such theft, loss or destruction is discovered, or at the next term thereafter, and as often as any such new indictment is stolen, lost or destroyed, another indictment for the same offense may be found at the first term of the court after such theft, loss or destruction is discovered, or at the next term thereafter; and the court shall, in every case where any such indictment has been stolen, lost or destroyed, enter such fact on its record. Whenever such new indictment is found, the clerk shall add to the entry of the finding thereof the following: “This is the second (or third, etc., as the case may be) indictment found against the said ............... for the same offense”; and the same proceedings shall be had in all respects on any such new indictment as might have been had on the first indictment if it had not been stolen, lost or destroyed. And if the offense mentioned in any such indictment is barred by the statute of limitations, the time between the finding of the first and last of such indictments shall not be computed or taken into consideration in the computation of the time in which any such 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.


All home incarceration fees ordered by the circuit court or a magistrate pursuant to subdivision (7), section five of this article are to be paid to the county sheriff. The county sheriff is to establish a special fund designated the home incarceration services fund, in which the sheriff is to deposit all home incarceration fees collected pursuant to this section. The county commission shall appropriate money from the fund to administer a home incarceration program, including the purchase of electronic monitoring devices and other supervision expenses, and may as necessary supplement the fund with additional appropriations. The county commission may also appropriate any excess money from the fund to defray the costs of housing county inmates or for community corrections programs, if the sheriff or other person designated to administer the fund certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

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.


(a) Notwithstanding any provision of this code to the contrary, in any case where a person has been ordered to home incarceration where that person is not in the custody or control of the division of corrections, the circuit court shall have the authority of the board of probation and parole regarding the release, early release or release on parole of the person.

(b) Any person paroled from a sentence of home incarceration imposed by the provisions of this article shall be supervised by the probation office of the sentencing court. If at any time during the period of parole there is reasonable cause to believe that the person paroled has violated the terms and conditions of his or her parole, he or she shall be subject to the procedures and penalties set forth in section ten, article twelve of this chapter. If at any time during the period of parole from home incarceration there is reasonable cause to believe that the person paroled has violated the terms and conditions of his or her parole and the home incarceration was imposed as an alternative sentence to another form of incarceration, he or she shall be subject to the same penalty or penalties as he or she
could have received at the initial disposition hearing. Time served on parole granted shall be credited for time served toward any remainder of the maximum sentence in the event of parole revocation: Provided, That time served on parole from home incarceration may not be credited towards any reduction of sentence for good conduct towards any remainder of the 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.
(a) There is created a special revenue account in the state treasury designated the "parole supervision benefit fund". The fund is to be used by the division of corrections for the benefit of parolee supervision with approval of the commissioner. The fund shall consist of moneys received from any source, including, but not limited to, funds donated by the general public or an organization dedicated to parole supervision improvement and funds seized from parolees that are forfeited pursuant to the provisions of article seven, chapter sixty-a of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commissioner may authorize use of the money in the fund created pursuant to this section for payment to a community corrections program established pursuant to article eleven-c, chapter sixty-two of this code for providing enhanced 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.]
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.
This article shall be known and cited as the "Dam Control and Safety Act".

§22-14-2. Legislative findings; intent and purpose of article.

The Legislature finds that dams may constitute a potential hazard to people and property; therefore, dams in this state must be properly regulated and controlled to protect the health, safety and welfare of people and property in this state. It is the intent of the Legislature by this article to provide for the regulation and supervision of dams in this state to the extent necessary to protect the public health, safety and welfare. The Legislature has ordained this article to fulfill its responsibilities to the people of this state and to protect their lives and private and public property from the danger of a potential or actual dam failure. The Legislature finds and declares that in light of the limited state resources available for the purposes of this article, and in view of the high standards to which the United States natural resources conservation service designs dams, independent state review of the plans and specifications for dams designed by the natural resources conservation service and construction oversight should not be required. The Legislature further finds and declares that dams designed and constructed by the natural resources conservation service but not owned or operated by it should be subject to the same provisions of inspection, after construction and certification by the natural resources conservation service, as other dams covered by this article, so long as any dam under the natural resources conservation service program is designed with standards equal to or exceeding state requirements under this article.

§22-14-3. Definition of terms used in article.

As used in this article, unless used in a context that clearly requires a different meaning, the term:
(a) "Alterations" or "repairs" means only those changes in the structure or integrity of a dam which may affect its safety, which determination shall be made by the secretary.

(b) "Application for a certificate of approval" means the request in writing by a person to the secretary requesting that person be issued a certificate of approval.

(c) "Appurtenant works" means any structure or facility which is an adjunct of, or connected, appended or annexed to a dam, including, but not limited to, spillways, a reservoir and its rim, low level outlet works or water conduits such as tunnels, pipelines and penstocks either through the dam or its abutments.

(d) "Certificate of approval" means the approval in writing issued by the secretary to a person who has applied to the secretary for a certificate of approval which authorizes the person to place, construct, enlarge, alter, repair or remove a dam and specifies the conditions or limitations under which the work is to be performed by that person.

(e) "Dam" means an artificial barrier or obstruction, including any works appurtenant to it and any reservoir created by it, which is or will be placed, constructed, enlarged, altered or repaired so that it does or will impound or divert water and: (1) is or will be twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifteen acre-feet or more of water; or (2) is or will be six feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifty acre-feet or more of water: Provided, That the term "dam" does not include: (A) Any dam owned by the federal government; (B) any dam for which the operation and maintenance thereof is the responsibility of the federal government; (C) farm ponds constructed and used primarily for
agricultural purposes, including, but not limited to, livestock watering, irrigation, retention of animal wastes and fish culture, and which have no potential to cause loss of human life in the event of embankment failure; or (D) roadfill or other transportation structures which do not or will not impound water under normal conditions and which have a designed culvert or similar conveyance or such capacity as would be used under a state designed highway at the same location: Provided, however, that the secretary may apply the provisions of section ten of this article for roadfill or other transportation structures that become a hazard to human life or property through the frequent or continuous impoundment of water.

(f) "Department” means the department of environmental protection.

(g) "Enlargement” means any change in or addition to an existing dam which: (1) Raises the height of the dam; (2) raises or may raise the water storage elevation of the water impounded by the dam; (3) increases or may increase the amount of water impounded by the dam; or (4) increases or may increase the watershed area from which water is impounded by the dam.

(h) "Person” means any public or private corporation, institution, association, society, firm, organization or company organized or existing under the laws of this or any other state or country; the state of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; sanitary district; public service district; drainage district; conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever. The term “person”, when used in this article, includes and refers to any authorized agent, lessee or trustee of any of the foregoing or receiver or trustee appointed by any court for any of the foregoing.
(i) "Reservoir" means any basin which contains or will contain impounded water.

(j) "Secretary" means the secretary of the department of environmental protection.

(k) "Natural resources conservation service" means the natural resource conservation service of the United States department of agriculture or any successor or predecessor agency, including the soil conservation service.

(l) "Water" means any liquid, including any solids or other matter which may be contained therein, which is or may be impounded by a dam.

(m) "Water storage elevation" means the maximum elevation that water can reach behind a dam without encroaching on the freeboard approved for the dam under flood conditions.

§22-14-4. General powers and duties of director; maximum fee established for certificates of approval and annual registration.

The secretary has the following powers and duties:

(a) To control and exercise regulatory jurisdiction over dams as provided for in this article;

(b) To review all applications for a certificate of approval for the placement, construction, enlargement, alteration, repair or removal of any dam;

(c) To grant, modify, amend, revoke, restrict or refuse to grant any certificate of approval if proper or necessary to protect life and property as provided in this article;
(d) To propose, modify, repeal and enforce rules and issue orders, to implement and make effective the powers and duties vested in the secretary by the provisions of this article;

(e) To take any lawful action considered necessary for the effective enforcement of the provisions of this article;

(f) To establish and charge reasonable fees not to exceed three hundred dollars for the review of applications for certificates of approval and the issuance thereof and for assessment of an annual registration fee not to exceed one hundred dollars for persons holding a certificate of approval for existing dams. The secretary shall promulgate rules to establish a schedule of application fees and to establish annual registration fees: Provided, That no fee shall be assessed for dams designed and constructed by the natural resources conservation service for natural resources conservation districts;

(g) To employ qualified consultants or additional persons as necessary to review applications for certificates of approval and to recommend whether they should be approved, to inspect dams and to enforce the provisions of this article;

(h) To cooperate and coordinate with agencies of the federal government, this state and counties and municipalities of this state to improve, secure, study and enforce dam safety and dam technology within this state;

(i) To investigate and inspect dams as is necessary to implement or enforce the provisions of this article and when necessary to enter the public or private property of any dam owner. The secretary may investigate, inspect or enter private or public property after notifying the dam owner or other person in charge of the dam of an intent to investigate, inspect or enter: Provided, That where the owner or person in charge of the dam
is not available, the secretary may investigate, inspect and enter
without notice; and

(j) To prepare and publish within a reasonable time, criteria
to govern the design, construction, repair, inspection and
maintenance of proposed dams herein defined, and to review
these criteria annually in order to consider improved technology
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.

It is unlawful for any person to place, construct, enlarge,
alter, repair, remove or abandon any dam under the jurisdiction
of the secretary until he or she has first: (a) Filed an application
for a certificate of approval with the department; and (b)
obtained from the department a certificate of approval: Pro-
vided, That routine repairs which do not affect the safety of a
dam are not subject to the application and approval require-
ments. A separate application for a certificate of approval must
be submitted by a person for each dam he or she desires to
place, construct, enlarge, alter, repair, remove or abandon. One
application may be valid for more than one dam involved in a
single project or in the formation of a reservoir.

Each application for a certificate of approval shall be made
in writing on a form prescribed by the secretary and shall be
signed and verified by the applicant. The application shall
contain and provide information which may be reasonably
required by the secretary to administer the provisions of this
article.

In the case of dams designed by the natural resources
conservation service for transfer to any political subdivision,
the director shall, within sixty days after receipt of a completed application therefor, issue a certificate of approval without review of the plans and specifications: Provided, That the state, its employees and agents are not responsible or liable for errors, omissions or flaws in the design, construction or modification of such dams.

§22-14-6. Plans and specifications for dams to be in charge of registered professional engineer.

Plans and specifications for the placement, construction, enlargement, alteration, repair or removal of dams shall be in the charge of a registered professional engineer licensed to practice in West Virginia. Any plans or specifications submitted to the department shall bear the seal of a registered professional engineer.

§22-14-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.

Upon receipt of an application for a certificate of approval and the fee required under the provisions of this article, the secretary shall proceed to consider the application for sufficiency. The secretary shall approve or disapprove the application within sixty days after receipt.

If an application is defective, it shall be returned to the applicant by certified or registered mail, return receipt requested, in order that the applicant may correct any defect: Provided, That a defective application must be returned to the department by the applicant within thirty days after it has been returned to the applicant or it shall be treated as a new application: Provided, however, That for good cause shown, the secretary may extend the thirty-day period.
Upon approval by the secretary of the sufficiency of the application, the applicant shall immediately publish the application as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for the publication is the county in which the proposed dam is to be located or in which the existing dam is located. The notice shall include, but not be limited to, the name and address of the owner of the dam and the location of the dam for which the application was filed.

Any person whose life or property may be adversely affected by the issuance of a certificate of approval has a right to a hearing before the secretary if the person demands the hearing in writing within fifteen days of publication of the certificate of approval. The written request for hearing shall include specific objections to the certificate of approval.

Upon receipt by the secretary of the written request for hearing, the secretary shall immediately set a date for the hearing and shall notify the person or persons demanding a hearing. The hearing shall be held within ten days after receipt of the written request. The secretary shall hear evidence from all interested parties and shall either: (1) Refuse to issue a certificate of approval; or (2) issue a certificate of approval which shall be subject to terms, conditions and limitations as the secretary may consider necessary to protect life and property.

Unless otherwise extended by the secretary, a certificate of 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.
Each certificate of approval issued by the secretary under the provisions of this article may contain other terms and conditions as the secretary may prescribe.

The secretary may revoke or suspend any certificate of approval whenever it is determined that the dam for which the certificate was issued constitutes a danger to life and property. If necessary to safeguard life and property, the secretary may also amend the terms and conditions of any certificate by issuing a new certificate containing the revised terms and conditions.

Before any certificate of approval is amended or revoked by the secretary, the secretary shall hold a hearing in accordance with the provisions of article five, chapter twenty-nine-a of this code.

Any person adversely affected by an order entered following the hearing has the right to appeal to the environmental quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-14-9. Inspections during progress of work on dam.

During the placement, construction, enlargement, repair, alteration or removal of any dam, the secretary shall, either with the department’s own engineers or by consulting engineers or engineering organizations, make periodic inspections for the purpose of ascertaining compliance with the certificate of approval. The secretary shall require the owner at his or her expense to perform work or tests as necessary and to provide adequate supervision during the placement, construction, enlargement, repair, alteration or removal of a dam: Provided, That with respect to dams designed by and constructed under the supervision of the natural resources conservation service, as to such dams no state inspections are required.
If at any time during placement, construction, enlargement, repair, alteration or removal of any dam, the secretary finds that the work is not being done in accordance with the provisions of the original or revised certificate of approval, the secretary shall notify the owner by certified or registered mail, return receipt requested, to correct the deficiency, cease and desist work or to show cause as to why the certificate of approval should not be revoked.

The notice shall state the reason or reasons why the work is not in accordance with the certificate of approval. The secretary may order that work on the dam cease until the owner has complied with the notice.

If the secretary finds that amendments, modifications or changes are necessary to ensure the safety of the dam, the secretary may order the owner to revise his or her plans and specifications. If conditions are revealed which will not permit the placement, construction, enlargement, repair, alteration or removal of the dam in a safe manner, the certificate of approval may be revoked.

Immediately upon completion of a new dam or enlargement, repair or alteration of a dam, the owner shall notify the secretary: Provided, That immediately upon completion of a dam constructed under the supervision of the natural resources conservation service, a certification of completion shall be sent to the director by the natural resources conservation service, and a complete set of design documents "as built" plans, and specifications and safety plan of evacuation shall be provided 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.
The owner of a dam has the primary responsibility for determining when an emergency involving a dam exists. When the owner of a dam determines an emergency does exist, the owner shall take necessary remedial action and shall notify the secretary and any persons who may be endangered if the dam should fail.

The secretary shall notify any persons, not otherwise notified, who may be endangered if the dam should fail. The secretary may take any remedial action necessary to protect life and property if: (a) The condition of the dam so endangers life and property that time is not sufficient to permit the issuance and enforcement of an order for the owner to correct the condition; or (b) passing or imminent floods or other conditions threaten the safety of the dam. Remedial actions may include, but are not limited to:

(1) Taking full charge and control of the dam;

(2) Lowering the level of water impounded by the dam by releasing such impounded water;

(3) Completely releasing all water impounded by the dam;

(4) Performing any necessary remedial or protective work at the site of the dam;

(5) Taking any other steps necessary to safeguard life and property.

Once the secretary has taken full charge of the dam, the secretary shall remain in charge and control until in the secretary's opinion it has been rendered safe or the emergency occasioning the action has ceased and the secretary concludes that the owner is competent to reassume control of the dam and its operation. The assumption of control of the dam will not
relieve the owner of a dam of liability for any negligent act or
acts of the owner or the owner’s agent or employee.

When the secretary declares that making repairs to the dam
or breaching the dam is necessary to safeguard life and prop-
erty, repairs or breaching shall be started immediately by the
owner, or by the secretary at the owner’s expense, if the owner
fails to do so. The owner shall notify the secretary at once of
any emergency repairs or breaching the owner proposes to
undertake and of work he or she has under way to alleviate the
emergency. The proposed repairs, breaching and work shall be
made to conform with orders of the secretary. The secretary
may obtain equipment and personnel for emergency work from
any person as is necessary and expedient to accomplish the
required work. Any person undertaking work at the request of
the department shall be paid by the department and is immune
from civil liability under the provisions of section fifteen,
article seven, chapter fifty-five of this code.

The costs reasonably incurred in any remedial action taken
by the secretary shall be paid out of funds appropriated to the
department. All costs incurred by the department shall be
promptly repaid by the owner upon request or, if not repaid, the
department may recover costs and damages from the owner by
appropriate civil action.

§22-14-11. Requirements for dams completed prior to effective
date of this section.

The secretary shall give notice to file an application for a
certificate of approval to every owner of a dam which was
completed prior to the effective date of this section: Provided,
That no such notice need be given to a person who has applied
for and obtained a certificate of approval on or after the first
day of July, one thousand nine hundred seventy-three, in
accordance with the provisions of the prior enactment of section
five of this article. The notice shall be given by certified or registered mail, return receipt requested, to the owner at his or her last address of record in the office of the county assessor of the county in which the dam is located; mailing constitutes service. A separate application for each dam a person owns shall be filed with the director in writing upon forms supplied by him or her and shall include or be accompanied by appropriate information concerning the dam as the secretary requires.

The secretary shall make inspections of such dams or reservoirs at state expense. The secretary shall require owners of dams to perform at their expense work or tests as may reasonably be required to disclose information sufficient to enable the secretary to determine whether to issue a certificate of approval or to issue an order directing further work at the owner's expense necessary to safeguard life and property. For this purpose, the secretary may require an owner to lower the water level of, or to empty, water impounded by the dam adjudged by the secretary to be unsafe. If, upon inspection or upon completion to the satisfaction of the secretary of all work that he or she ordered, the secretary finds that the dam is safe to impound water, a certificate of approval shall be issued.

§22-14-12. Dam owner not relieved of legal responsibilities by any provision of article.

Nothing in this article relieves the owner of a dam of the legal duties, obligations or liabilities incident to the ownership or operation of a dam.

§22-14-13. Offenses and penalties.

(a) Any person who violates any of the provisions of this article or any certificate of approval, order, rule or requirement of the secretary or department is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one
hundred dollars nor more than one thousand dollars, or incarcerated in a county or regional jail not more than six months, or both fined and incarcerated.

(b) Any person who willfully obstructs, hinders or prevents the secretary or department or its agents or employees from performing the duties imposed on them by the provisions of this article or who willfully resists the exercise of the control and supervision conferred by the provisions of this article upon the secretary or department or its agents or employees or any owner or any person acting as a director, officer, agent or employee of an owner, or any contractor or agent or employee of a contractor who engages in the placement, construction, enlargement, repair, alteration, maintenance or removal of any dam who knowingly does work or permits work to be executed on the dam without a certificate of approval or in violation of or contrary to any approval as provided for by the provisions of this article; and any inspector, agent or employee of the department who has knowledge of and who fails to notify the secretary of unapproved modifications to a dam is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, or incarcerated in county jail not more than one year, or both fined and incarcerated.

§22-14-14. Enforcement orders; hearings.

(a) If the secretary, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any certificate of approval, notice, order or rules issued or promulgated hereunder, he or she may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes,
but is not limited to, any or all of the following: Orders suspending, revoking or amending certificates of approval, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (c), section fifteen of this article;

(3) Institute a civil action in accordance with subsection (c), section fifteen of this article; or

(4) Request the attorney general, or the prosecuting attorney of the county in which the alleged violation occurred, to bring a criminal action in accordance with section twelve of this article.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the secretary not more than seven days from the issuance of the order and shall have a hearing before the secretary contesting the terms and conditions of the order within ten days of the filing of the notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of the cease and desist order.

§22-14-15. Civil penalties and injunctive relief.

(a) Any person who violates any provision of this article, any certificate of approval or any rule, notice or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the secretary, of not more than two hundred dollars for each day the violation continues, not to exceed a maximum of four hundred dollars. In assessing any penalty, the secretary shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may
be established by rules proposed by the secretary for legislative approval pursuant to article three, chapter twenty-nine-a of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, notice, order or statement of the certificate of approval's terms that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration date of the twenty-day period. If a hearing is requested, the secretary shall inform the alleged violator of the time and place of the hearing. Within thirty days following the informal hearing, the secretary shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. The authority to levy an administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator shall exceed four hundred dollars per day of each violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this subsection is not subject to a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. Civil administrative penalties shall be levied in accordance with the rules promulgated under the authority of section four of this article. The net proceeds of assessments collected pursuant to
this subsection shall be deposited in the dam safety fund established pursuant to section seventeen of this article. Any person adversely affected by the assessment of a civil administrative penalty has the right to appeal to the environmental quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

(b) No assessment levied pursuant to subsection (a) of this section is due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(c) A civil penalty may be imposed and collected in any civil action instituted by the secretary in the circuit court of Kanawha County or in the county in which the violation or noncompliance exists or is taking place.

Upon application by the secretary, the circuit courts of this state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, and rules proposed in accordance with section four of this article, the terms and conditions of any certificate of approval granted under the provisions of this article, or any order of the secretary or environmental quality board and the venue of any action shall be in the circuit court of Kanawha County or in the county in which the violation or noncompliance exists or is taking place. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunctive application filed. In seeking an injunction, it is not necessary for the secretary to post bond or to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article...
have not been exhausted or invoked against the person or persons against whom the relief is sought.

The judgment of the circuit court upon any application filed or in any civil action instituted under the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. An appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking review of an order in any injunction proceeding must be filed with the supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

(d) Upon request of the secretary, the attorney general or the prosecuting attorney of the county in which the violation occurs, shall assist the secretary in any civil action under this section.

(e) In any action brought pursuant to the provisions of this section, the state or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

§22-14-16. Schedule of application fees established.

The secretary shall promulgate rules in accordance with the provisions of section four of this article, to establish a schedule of application fees which shall be submitted by the applicant to the department together with the application for a certificate of approval filed pursuant to this article. The schedule of application fees shall be designed to establish reasonable categories of certificate application fees based upon the complexity of the permit application review process required by the secretary pursuant to the provisions of this article and the rules promulgated under this article. The secretary shall not process any
§22-14-17. Schedule of annual registration fees established.

The secretary shall promulgate rules in accordance with the provisions of section four of this article, to establish a schedule of annual registration fees which shall be assessed annually upon each person holding a certificate of approval issued pursuant to this article. Each person holding a certificate of approval shall pay the prescribed annual registration fee to the department pursuant to the rules promulgated under this article. The schedule of annual registration fees shall be designed to establish reasonable categories of annual registration fees, including, but not limited to, the size of the dam and its classification. Any certificate of approval issued pursuant to this article becomes void without notification to the person holding a certificate of approval when the annual registration fee is more than ninety days past due pursuant to the rules promulgated under this section.

§22-14-18. Continuation of dam safety fund; components of fund.

(a) The special fund designated “The Dam Safety Fund” hereinafter referred to as “the fund” shall be continued.

(b) All certificate application fees and annual registration fee assessments, any interest or surcharge assessed and collected by the department, interest accruing on investments and deposits of the fund, and any other moneys designated by the department shall be paid into the fund. Accrual of funds shall not exceed three hundred thousand dollars per year, exclusive of application fees. The department shall expend the proceeds of the fund for the review of applications, inspection of dams, payment of costs of remedial emergency actions and enforcement of the provisions of this article.
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.
12. Medical Support.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.


§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, the rate of interest is that specified in section 56-6-31 of this code. Interest accrues only upon the outstanding principal of such obligation. On and after the ninth day of June, one
thousand nine hundred ninety-five, this section will be con-
strued to permit the accumulation of simple interest and may
not be construed to permit the compounding of interest.
Interest which accrued on unpaid installments accruing before
the ninth day of June, one thousand nine hundred ninety-five,
may not be modified by any court, irrespective of whether such
installment accrued simple or compound interest: Provided,
That unpaid installments upon which interest was compounded
before the effective date of this section shall accrue only simple
interest thereon on and after the ninth day of June, one thousand
nine hundred ninety-five.

(b) Notwithstanding any other provision of law, no court
may award or approve prejudgment interest in a domestic
relations action against a party unless the court finds, in writing,
that the party engaged in conduct that would violate subsection
(b), rule eleven of the West Virginia rules of civil procedure.

If prejudgment interest is awarded, the court shall calculate
prejudgment interest from the date the offending representation
was presented to the court.

(c) Upon written agreement by both parties, an obligor may
petition the court to enter an order conditionally suspending the
collection of all or part of the interest that has accrued on past-
due child support prior to the date of the agreement: Provided,
That said agreement shall also establish a reasonable payment
plan which is calculated to fully discharge all arrearages within
twenty-four months. Upon successful completion of the
payment plan, the court shall enter an order which permanently
relieves the obligor of the obligation to pay the accrued interest.
If the obligor fails to comply with the terms of the written
agreement, then the court shall enter an order which reinstates
the accrued interest.

§48-1-307. Collection of child or spousal support by collection
agencies.
(a) Any person attempting to collect a child or spousal support obligation or arrearage on behalf of a resident or from a resident of this state is subject to the provisions of article sixteen, chapter forty-seven of this code and the provisions of this section and is otherwise subject to the jurisdiction of this state.

(b) The amount of delinquent child or spousal support or arrearage established by order of a court of competent jurisdiction in this state is not subject to waiver or compromise, either by agreement of the parties or by a collection agency acting on behalf of a party and may only be modified by an order of a court of competent jurisdiction.

(c) No child or spousal support or arrearage of child or spousal support collected by the state IV-D agency may be redirected to any collection agency.

(d) No collection agency attempting to collect a child or spousal support obligation or arrearage on behalf of a resident or from a resident of this state may include any funds collected by a IV-D agency in the amount from which their fee is determined or collected.

(e) No collection agency, other than an attorney licensed to practice law in this state, attempting to collect a child support or spousal support obligation or arrearage may engage in conduct which is considered the practice of law, including, but not limited to:

(1) The performance of legal services, the offering of legal advice or the making of a false representation, directly or by implication, that a person is an attorney;

(2) Any communication with persons in the name of an attorney or upon stationery or other written matter bearing an attorney’s name; and
(3) Any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

(f) No collection agency may collect or attempt to collect any money alleged to be due and owing by any threat, coercion or attempt to coerce, including, but not limited to:

(1) The use, or the express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation or property of any person;

(2) The accusation or threat to accuse any person of fraud, of any crime, or of any conduct which, if true, would tend to disgrace the other person or in any way subject them to ridicule or contempt of society;

(3) False accusations made to another person, including any credit reporting agency, that a person is willfully refusing to pay a just claim, or the threat to make such false accusations;

(4) The threat that nonpayment of an alleged claim will result in the arrest of any person, or of the taking of any other action requiring judicial sanction, without informing the person that there must be in effect a court order permitting the action before it can be taken; and

(5) The threat to take any action prohibited by this section or other law regulating the conduct of a collection agency.

(g) No collection agency may unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any child or spousal support obligation or arrearage, including, but not limited to:

(1) The use of profane or obscene language or language that is intended to unreasonably abuse the listener or reader;
(2) The placement of telephone calls without disclosure of the caller's identity and with the intent to annoy, harass or threaten any person at the called number;

(3) Causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication by concealment of the true purpose of the communication; and

(4) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number.

(h) No collection agency may unreasonably publicize information relating to any alleged child or spousal support obligation or arrearage, including, but not limited to:

(1) The communication to any employer or his or her agent of any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;

(2) The disclosure, publication or communication of information relating to a child or spousal support obligation or arrearage to any relative or family member of the obligor, except through proper legal action or process or at the express and unsolicited request of the obligor;

(3) The disclosure, publication or communication of any information relating to an obligor's child or spousal support obligation or arrearage to any other person other than a credit reporting agency, by publishing or posting any list of persons, commonly known as "deadbeat lists", or in any manner other than through proper legal action, process or proceeding; and
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(4) The use of any form of communication to the obligor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged claim other than the name, address and telephone number of the collection agency.

(i) No collection agency may use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning support obligors, including, but not limited to:

(1) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the collection agency’s business, company or organization;

(2) Any false representation that the collection agency has in its possession information or something of value for the obligor with the underlying purpose of soliciting or discovering information about the person;

(3) The failure to clearly disclose the name of the person to whom the claim is owed, at the time of making any demand for money;

(4) Any false representation or implication of the character, extent or amount of a claim against an obligor or of the status of any legal proceeding;

(5) Any false representation or false implication that any collection agency is vouched for, bonded by, affiliated with an agency, instrumentality, agent or official of this state or of the federal or local government;

(6) The use, distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any
other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;

(7) Any representation that an existing obligation of the obligor may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact the fees or charges may not legally be added to the existing obligation; and

(8) Any false representation or false impression about the status or true nature of the services rendered by the collection agency.

(j) No collection agency may use unfair or unconscionable means to collect or attempt to collect any claim, including, but not limited to:

(1) The collection of or the attempt to collect any interest in excess of that interest authorized by the provisions of this chapter, or other charge, fee or expense incidental to the principal obligation that exceeds ten percent of the principal amount from an obligor or obligee; and

(2) Any communication with an obligor whenever it appears the obligor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return telephone calls or discuss the obligation in question, or unless the attorney and the obligor consent to direct communication.

(k) No collection agency may use, distribute, sell or prepare for use any written communication which violates or fails to conform to United States postal laws and regulations.
(l) No collection agency may place a telephone call or otherwise communicate by telephone with an obligor at any place, including a place of employment, falsely stating that the call is “urgent” or an “emergency”.

(m) No collection agency may attempt to collect any portion of a fee from any money collected by any other entity or authority. The collection agency may only collect a fee from funds procured solely through its collection activities.

(n) A collection agency must provide the state IV-D agency with an accounting of any money collected and forwarded to the obligee as child support, spousal support or arrearages every sixty days until the collection agency ceases all collection activity.

(o) Any resident of this state who contracts for services with a collection agency to collect current or past-due child support or spousal support may, upon thirty days’ written notice, cancel the contract for collection. The notice must be mailed to the collection agency by first-class mail. All contracts signed by residents of this state must include written notification of this right of cancellation.

(p) Any person who violates the provisions of this section is subject to the penalties set forth in section 47-16-5 and section 11-12-9 of this code.

(q) Any person who violates the provisions of this section is liable to the injured party in a civil action. Additionally, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars for each separate incident.

(r) For any action filed pursuant to this section alleging illegal, fraudulent or unconscionable conduct or any prohibited
debt collection practice, the court, in its discretion, may award all or a portion of the costs of litigation, including reasonable attorney fees, court costs and fees, to the injured party. Upon a finding by the court that an action filed pursuant to this section on the grounds of illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice was brought in bad faith and for the purposes of harassment, the court may award the defendant reasonable attorney fees.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-103. Child support beyond age eighteen.

(a) Upon a specific finding of good cause shown and upon findings of fact and conclusions of law in support thereof, an order for child support may provide that payments of such support continue beyond the date when the child reaches the age of eighteen, so long as the child is unmarried and residing with a parent, guardian or custodian and is enrolled as a full-time student in a secondary educational or vocational program and making substantial progress towards a diploma: Provided, That such payments may not extend past the date that the child reaches the age of twenty.

(b) Nothing herein shall be construed to abrogate or modify existing case law regarding the eligibility of handicapped or disabled children to receive child support beyond the age of eighteen.

(c) The reenactment of this section during the regular session of the Legislature in the year one thousand nine hundred ninety-four shall not, by operation of law, have any effect upon or vacate any order or portion thereof entered under the prior enactment of this section which awarded educational and related expenses for an adult child accepted or enrolled and making satisfactory progress in an educational program at a certified or accredited college. Any such order or portion
thereof shall continue in full force and effect until the court, upon motion of a party, modifies or vacates the order upon a finding that:

(1) The facts and circumstances which supported the entry of the original order have changed, in which case the order may be modified;

(2) The facts and circumstances which supported the entry of the original order no longer exist because the child has not been accepted or is not enrolled in and making satisfactory progress in an educational program at a certified or accredited college, or the parent ordered to pay such educational and related expenses is no longer able to make such payments, in which case the order shall be vacated;

(3) The child, at the time the order was entered, was under the age of sixteen years, in which case the order shall be vacated;

(4) The amount ordered to be paid was determined by an application of child support guidelines in accordance with the provisions of article 13-101, et seq., of this chapter, or legislative rules promulgated thereunder, in which case the order may be modified or vacated; or

(5) The order was entered after the fourteenth day of March, one thousand nine hundred ninety-four, in which case the order shall be vacated.

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.

(a) Upon service of the national medical support notice requiring insurance coverage for the children, the employer, multiemployer trust or union shall enroll the child as a beneficiary in the group insurance plan and withhold any required premium from the obligated parent’s income or wages, unless the child is already enrolled in this plan.

(b) If more than one plan is offered by the employer, multiemployer trust or union, the child shall be enrolled in the same plan as the obligated parent. If the obligated parent is not enrolled for insurance coverage, the employer shall promptly report the availability of plans to the IV-D agency. The IV-D agency, in consultation with parent, shall promptly select the most appropriate plan, considering both the health needs of the child and the cost to the parents, and shall notify the plan administrator and the parties of the selection.

(c) Insurance coverage for the child which is ordered pursuant to the provisions of this section shall not be terminated except as provided in section one hundred fifteen of this article.

(d) A medical support notice issued by the appropriate IV-D agency of another state may be sent directly to an employer in this state without the necessity of first filing a petition or similar pleading or registering the order with the IV-D agency of this state. The medical support notice shall have the same force and effect as if the notice had been issued by the IV-D agency of this state. Upon receipt of a medical support notice from the IV-D agency of another state, the employer shall immediately provide a copy of the notice to the obligor.

§48-12-118. Failure of employer to comply with medical insurance coverage; penalties.
For the failure of any employer, multiemployer trust or employee's union to comply with the requirements of this article the bureau for child support enforcement may assess a civil penalty of not more than one hundred dollars. If a court of competent jurisdiction determines that the employer, multiemployer trust or the employee's union wilfully failed to comply with the provisions of this article the employer, multiemployer trust or employee's union shall be found guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand 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.

(a) Every order entered or modified under the provisions of this article that requires the payment of child support or spousal support must include a provision for automatic withholding from income of the obligor in order to facilitate income withholding as a means of collecting support.

(b) Every support order heretofore or hereafter entered by a court of competent jurisdiction is considered to provide for an order of income withholding, notwithstanding the fact that the support order does not in fact provide for an order of withholding. Income withholding may be instituted under this part for
any arrearage without the necessity of additional judicial or legal action.

(c) Every such order as described in subsection (a) of this section shall contain language authorizing income withholding for both current support and for any arrearages to commence without further court action as follows:

The order shall provide that income withholding shall begin immediately, without regard to whether there is an arrearage;

(A) When a child for whom support is ordered is included or becomes included in a grant of assistance from the division of human services or a similar agency of a sister state for temporary assistance for needy families benefits, medical assistance only benefits or foster care benefits and is referred to the bureau for child support enforcement; or

(B) When the support obligee has applied for services from the bureau for child support enforcement created pursuant to section 18-101, et seq., of this chapter, or the support enforcement agency of another state or is otherwise receiving services from the bureau for child support enforcement as provided for in this chapter. In any case where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an alternative arrangement, such order shall not provide for income withholding to begin immediately, pursuant to section four hundred three, article fourteen of this chapter.

§48-14-406. Notice to source of income; withholding in compliance with order.

(a) Withholding shall occur and the notice to withhold shall be sent either by first-class mail or by electronic means to the
source of income when the support order provides for immediate income withholding pursuant to sections four hundred one and four hundred two of this article or if immediate income withholding is not so provided, when the support payments are in arrears in the amount specified in section four hundred three § 48-14-403 of this article.

(b) The source of income shall withhold so much of the obligor’s income as is necessary to comply with the order authorizing such withholding, up to the maximum amount permitted under applicable law for both current support and for any arrearages which are due. Such withholding, unless otherwise terminated under the provisions of this part, shall apply to any subsequent source of income or any subsequent period of time during which income is received by the obligor.

(c) In addition to any amounts payable as support withheld from the obligor’s income, the source of income may deduct a fee, not to exceed one dollar, for administrative costs incurred by the source of income for each withholding.

§48-14-407. Contents of notice to source of income.

(a) The source of income of any obligor who is subject to withholding, upon being given notice of withholding, shall withhold from such obligor’s income the amount specified by the notice and pay such amount to the bureau for child support enforcement for distribution. The notice given to the source of income shall contain only such information as may be necessary for the source of income to comply with the withholding order and no source of income may require additional information or documentation. Such notice to the source of income shall include, at a minimum, the following:

(1) The amount to be withheld from the obligor’s disposable earnings, and a statement that the amount to be withheld
for support and other purposes, including the fee specified under subdivision (3) of this subsection, may not be in excess of the maximum amounts permitted under Section 303(b) of the federal Consumer Credit Protection Act or limitations imposed under the provisions of this code;

(2) That the source of income shall send the amount to be withheld from the obligor's income to the bureau for child support enforcement, along with such identifying information as may be required by the bureau, the same day that the obligor is paid;

(3) That, in addition to the amount withheld under the provisions of subdivision (1) of this subsection, the source of income may deduct a fee, not to exceed one dollar, for administrative costs incurred by the source of income for each withholding;

(4) That withholding is binding on the source of income until further notice by the bureau for child support enforcement or until the source of income notifies the bureau for child support enforcement of a termination of the obligor's employment in accordance with the provisions of section four hundred twelve of this article;

(5) That the source of income is subject to a fine for discharging an obligor from employment, refusing to employ or taking disciplinary action against any obligor because of the withholding;

(6) That when the source of income fails to withhold income in accordance with the provisions of the notice, the source of income is liable for the accumulated amount the source of income should have withheld from the obligor's income.
(7) That the withholding under the provisions of this part shall have priority over any other legal process under the laws of this state against the same income and shall be effective despite any exemption that might otherwise be applicable to the same income;

(8) That when an employer has more than one employee who is an obligor who is subject to wage withholding from income under the provisions of this code, the employer may combine all withheld payments to the bureau for child support enforcement when the employer properly identifies each payment with the information listed in this part. A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to identify with the information required by this part and is therefore not received by the obligee;

(9) That the source of income shall implement withholding no later than the first pay period or first date for payment of income that occurs after fourteen days following the date the notice to the source of income was mailed; and

(10) That the source of income shall notify the bureau for child support enforcement promptly when the obligor terminates his or her employment or otherwise ceases receiving income from the source of income and shall provide the obligor’s last known address and the name and address of the obligor’s new source of income, if known.

(b) The commission shall, by administrative rule, establish procedures for promptly refunding to obligors amounts which have been improperly withheld under the provisions of this part.

§48-14-801. When monthly payments may be increased to satisfy overdue support.
(a) For the purpose of securing overdue support, the bureau for child support enforcement has the authority to increase the monthly support payments of an obligor by as much as one hundred dollars per month to satisfy the arrearage when:

(1) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for six months if the order requires support to be paid in monthly installments; or

(2) An obligor has failed to make payments as required by a support order and arrears are equal to an amount of support payable for twenty-seven weeks if the order requires support to be paid in weekly or biweekly installments.

(b) An increase in monthly support under this section will be in addition to any amounts withheld from income pursuant to part 4 of this article.

(c) This increase in monthly support may be enforced through the withholding process.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-125. Employment and income reporting.


§48-18-125. Employment and income reporting.

(a) For purposes of this section:

(1) "Employee" means an individual who is an "employee" for purposes of federal income tax withholding, as defined in 26 U.S.C. §3401;

(2) "Employer" means the person or entity for whom an individual performs or performed any service of whatever nature and who has control of the payment of the individual’s
(3) An individual is considered a “new hire” on the first day in which that individual performs services for remuneration and on which an employer begins to withhold amounts for income tax purposes.

(b) Except as provided in subsections (c) and (d) of this section, all employers doing business in the state shall report to the bureau for child support enforcement:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and

(2) The rehiring or return to work of any employee who resides or works in this state.

(c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of such agency has determined that reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) An employer that has employees in states other than this state and that transmits reports magnetically or electronically is not required to report to the bureau for child support enforcement the hiring, rehiring or return to work of any employee if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U.S.C. §653A, a written designation of another state in which it has employees as the reporting state.

(e) Employers shall report by mailing to the bureau for child support enforcement a copy of the employee’s W-4 form; however, an employer may transmit such information through
another means if approved in writing by the bureau for child
support enforcement prior to the transmittal. The report shall
include the employee’s name, address and social security
number, the employer’s name and address, any different
address of the payroll office and the employer’s federal tax
identification number. The employer may report other informa-
tion, such as date of birth or income information, if desired.

(f) Employers shall submit a report within fourteen days of
the date of the hiring, rehiring or return to work of the em-
ployee. However, if the employer transmits the reports
magnetically or electronically by two monthly submissions, the
reports shall be submitted not less than twelve days nor more
than sixteen days apart.

(g) An employer shall provide to the bureau for child
support enforcement, upon its written request, information
regarding an obligor’s employment, wages or salary, medical
insurance, start date and location of employment.

(h) Any employer who fails to report in accordance with the
provisions of this section shall be assessed a civil penalty of no
more than twenty-five dollars per failure. If the failure to report
is the result of a conspiracy between the employer and the
employee not to supply the required report or to supply a false
or incomplete report, the employer shall be assessed a civil
penalty of no more than five hundred dollars.

(i) Employers required to report under this section may
assess each employee so reported one dollar for the administra-
tive costs of reporting.

(j) Uses for the new hire information include, but are not
limited to, the following:

(1) The state directory of new hires shall furnish the
information to the national directory of new hires;
(2) The bureau for child support enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and of establishing, modifying and enforcing child support obligations and may disclose such information to any agent of the agency that is under contract with the bureau to carry out such purposes;

(3) State agencies responsible for administering a program specified in 42 U.S.C. §1320b-7(b) shall have access to information reported by employers for purposes of verifying eligibility for the program; and

(4) The bureau of employment programs shall have access to information reported by employers for purposes of administering employment security and workers' compensation programs.


(a) All state, county and municipal agencies' offices and employers, including profit, nonprofit and governmental employers, receiving a request for information and assistance from the bureau for child support enforcement or any out-of-state agency administering a program under Title IV-D of the Social Security Act shall cooperate with the bureau or with the out-of-state agency in the location of parents who have abandoned and deserted children and shall provide the bureau or the out-of-state agency with all available pertinent information concerning the location, income and property of those parents.

(b) Notwithstanding any other provision of law to the contrary, any entity conducting business in this state or incorporated under the laws of this state shall, upon certification by the bureau or any out-of-state agency administering a program under Title IV-D of the Social Security Act that the information is needed to locate a parent for the purpose of collecting or
distributing child support, provide the bureau or the out-of-state agency with the following information about the parent: Full name, social security number, date of birth, home address, wages and number of dependents listed for income tax purposes: Provided, That no entity may provide any information obtained in the course of providing legal services, medical treatment or medical services.

(c) (1) The bureau for child support enforcement shall have access, subject to safeguards on privacy and information security, and to the nonliability of entities that afford such access under this subdivision, to information contained in the following records, including automated access, in the case of records maintained in automated data bases:

(A) Records of other state and local government agencies, including, but not limited to:

(i) Vital statistics, including records of marriage, birth and divorce;

(ii) State and local tax and revenue records, including information on residence address, employer, income and assets;

(iii) Records concerning real and titled personal property;

(iv) Records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships and other business entities;

(v) Employment security records;

(vi) Records of agencies administering public assistance programs;

(vii) Records of the division of motor vehicles; and
(viii) Corrections records.

(B) Certain records held by private entities with respect to individuals who owe or are owed support or certain individuals against, or with respect to, whom a support obligation is sought, consisting of:

(i) The names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in the customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by section one hundred twenty-three, article eighteen of this chapter; and

(ii) Information, including information on assets and liabilities, on such individuals held by financial institutions.

(2) Out-of-state agencies administering programs under Title IV-D of the Social Security Act shall, without the need for any court order, have the authority to access records in this state by making a request through the bureau for child support enforcement.

(d) All federal and state agencies conducting activities under Title IV-D of the Social Security Act shall have access to any system used by this state to locate an individual for purposes relating to motor vehicles or law enforcement.

(e) Out-of-state agencies administering programs under Title IV-D of the Social Security Act shall have the authority and right to access and use, for the purpose of establishing or enforcing a support order, the state law-enforcement and motor vehicle data bases.

(f) The bureau for child support enforcement and out-of-state agencies administering programs under Title IV-D of the Social Security Act shall have the authority and right to access
and use, for the purpose of establishing or enforcing a support order, interstate networks that state law-enforcement agencies and motor vehicle agencies subscribe to or participate in, such as the national law-enforcement telecommunications system (NLETS) and the American association of motor vehicle administrators (AAMVA) networks.

(g) No state, county or municipal agency or licensing board required to release information pursuant to the provisions of this section to the bureau for child support enforcement or to any out-of-state agency administering programs under Title IV-D of the Social Security Act may require the bureau for child support enforcement or any out-of-state agency to obtain a court order prior to the release of the information.

(h) Any information received pursuant to the provisions of this section is subject to the confidentiality provisions set forth in section 18-131 of this chapter.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.


§48-24-103. Medical testing procedures to aid in the determination of paternity.


(a) A civil action to establish the paternity of a child and to obtain an order of support for the child may be instituted, by verified complaint, in the family court of the county where the child resides: Provided, That if such venue creates a hardship for the parties, or either of them, or if judicial economy requires, the court may transfer the action to the county where either of the parties resides.

(b) A "paternity proceeding" is a summary proceeding, equitable in nature and within the domestic relations jurisdiction of the courts, wherein a family court upon the petition of the state or another proper party may intervene to determine and
protect the respective personal rights of a child for whom
paternity has not been lawfully established, of the mother of the
child and of the putative father of the child. The parties to a
paternity proceeding are not entitled to a trial by jury.

(c) The sufficiency of the statement of the material allega-
tions in the complaint set forth as grounds for relief and the
grant or denial of the relief prayed for in a particular case shall
rest in the sound discretion of the court, to be exercised by the
court according to the circumstances and exigencies of the case,
having due regard for precedent and the provisions of the
statutory law of this state.

(d) A decree or order made and entered by a court in a
paternity proceeding shall include a determination of the filial
relationship, if any, which exists between a child and his or her
putative father and, if such relationship is established, shall
resolve dependent claims arising from family rights and
obligations attendant to such filial relationship.

(e) A paternity proceeding may be brought by any of the
following persons:

(1) An unmarried woman with physical or legal custody of
a child to whom she gave birth;

(2) A married woman with physical or legal custody of a
child to whom she gave birth, if the complaint alleges that:

(A) The married woman lived separate and apart from her
husband preceding the birth of the child;

(B) The married woman did not cohabit with her husband
at any time during such separation and that such separation has
continued without interruption; and
(C) The respondent, rather than her husband, is the father of the child;

(3) The state of West Virginia, including the bureau for child support enforcement;

(4) Any person who is not the mother of the child but who has physical or legal custody of the child;

(5) The guardian or committee of the child;

(6) The next friend of the child when the child is a minor;

(7) By the child in his or her own right at any time after the child’s eighteenth birthday but prior to the child’s twenty-first birthday; or

(8) A man who believes he is the father of a child born out of wedlock when there has been no prior judicial determination of paternity.

(f) If a paternity proceeding is brought that names the father of the child as being someone other than the person whose name appears on the child’s birth certificate, then the person bringing the action shall cause a copy of the verified complaint to be served on the person named as the father on the birth certificate. Service must be in accordance with rule 4 of the rules of civil procedure.

(g) Blood or tissue samples taken pursuant to the provisions of this article may be ordered to be taken in such locations as may be convenient for the parties so long as the integrity of the chain of custody of the samples can be preserved.

(h) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article with respect to a child
who may have been conceived by that act of intercourse. Service of process may be perfected according to the rules of civil procedure.

(i) When the person against whom the proceeding is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default shall be issued by the court as provided by the rules of civil procedure.

§48-24-103. Medical testing procedures to aid in the determination of paternity.

(a) Prior to the commencement of an action for the establishment of paternity, the bureau for child support enforcement may order the mother, her child and the man to submit to genetic tests to aid in proving or disproving paternity. The bureau may order the tests upon the request, supported by a sworn statement, of any person entitled to petition the court for a determination of paternity as provided in section one of this article. If the request is made by a party alleging paternity, the statement shall set forth facts establishing a reasonable possibility or requisite sexual contact between the parties. If the request is made by a party denying paternity, the statement may set forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties or other facts supporting a denial of paternity. If genetic testing is not performed pursuant to an order of the bureau for child support enforcement, the court may, on its own motion or shall upon the motion of any party, order such tests. A request or motion may be made upon ten days' written notice to the mother and alleged father without the necessity of filing a complaint. When the tests are ordered, the court or the bureau shall direct that the inherited characteristics, including, but not limited to, blood types, be determined by appropriate testing procedures at a hospital, independent medical institution or independent
medical laboratory duly licensed under the laws of this state or any other state and an expert qualified as an examiner of genetic markers shall analyze, interpret and report on the results to the court or to the bureau for child support enforcement. The results shall be considered as follows:

(1) Blood or tissue test results which exclude the man as the father of the child are admissible and shall be clear and convincing evidence of nonpaternity and, if a complaint has been filed, the court shall, upon considering such evidence, dismiss the action.

(2) Blood or tissue test results which show a statistical probability of paternity of less than ninety-eight percent are admissible and shall be weighed along with other evidence of the respondent’s paternity.

(3) Undisputed blood or tissue test results which show a statistical probability of paternity of more than ninety-eight percent shall, when filed, legally establish the man as the father of the child for all purposes and child support may be established pursuant to the provisions of this chapter.

(4) When a party desires to challenge the results of the blood or tissue tests or the expert’s analysis of inherited characteristics, he or she shall file a written protest with the family court or with the bureau for child support enforcement, if appropriate, within thirty days of the filing of such test results and serve a copy of such protest upon the other party. The written protest shall be filed at least thirty days prior to any hearing involving the test results. The court or the bureau for child support enforcement, upon reasonable request of a party, shall order that additional tests be made by the same laboratory or another laboratory within thirty days of the entry of the order, at the expense of the party requesting additional testing. Costs shall be paid in advance of the testing. When the results
of the blood or tissue tests or the expert’s analysis which show a statistical probability of paternity of more than ninety-eight percent are confirmed by the additional testing, then the results are admissible evidence which is clear and convincing evidence of paternity. The admission of the evidence creates a presumption that the man tested is the father.

(b) Documentation of the chain of custody of the blood or tissue specimens is competent evidence to establish the chain of custody. A verified expert’s report shall be admitted at trial unless a challenge to the testing procedures or a challenge to the results of test analysis has been made before trial. The costs and expenses of making the tests shall be paid by the parties in proportions and at times determined by the court.

(c) Except as provided in subsection (d) of this section, when a blood or tissue test is ordered pursuant to this section, the moving party shall initially bear all costs associated with the blood or tissue test unless that party is determined by the court to be financially unable to pay those costs. This determination shall be made following the filing of an affidavit pursuant to section one, article two, chapter fifty-nine of this code. When the court finds that the moving party is unable to bear that cost, the cost shall be borne by the state of West Virginia. Following the finding that a person is the father based on the results of a blood or tissue test ordered pursuant to this section, the court shall order that the father be ordered to reimburse the moving party for the costs of the blood or tissue tests unless the court determines, based upon the factors set forth in this section, that the father is financially unable to pay those costs.

(d) When a blood or tissue test is ordered by the bureau for child support enforcement, the bureau shall initially bear all costs subject to recoupment from the alleged father if paternity is established.
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 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:
(1) Are or were married to each other;

(2) Are or were living together as spouses;

(3) Are or were sexual or intimate partners;

(4) Are or were dating: Provided, That a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship;

(5) Are or were residing together in the same household;

(6) Have a child in common regardless of whether they have ever married or lived together;

(7) Have the following relationships to another person:

(A) Parent;

(B) Stepparent;

(C) Brother or sister;

(D) Half-brother or half-sister;

(E) Stepbrother or stepsister;

(F) Father-in-law or mother-in-law;

(G) Stepfather-in-law or stepmother-in-law;

(H) Child or stepchild;

(I) Daughter-in-law or son-in-law;

(J) Stepdaughter-in-law or stepson-in-law;

(K) Grandparent;

(L) Step grandparent;
PART 3. PROCEDURE.

§48-27-312. Production of documents pursuant to a subpoena duces tecum.

Notwithstanding any provision of law or any procedural rule to the contrary, any record in a proceeding filed pursuant to this article shall be supplied to any person presenting a subpoena duces tecum issued by a state or federal court in any criminal action or action filed pursuant to this article. Any record in a proceeding filed pursuant to this article is not subject to disclosure pursuant to a subpoena if the subpoena was issued in a civil action. In civil proceedings a court, for good cause shown, may enter an order permitting a person who is not otherwise permitted access to a court file to examine and copy records of a proceeding filed pursuant to this article: Provided, That the court shall enter such order as may be necessary to protect any document containing the address or other contact information of a person who filed a petition under this article: Provided, however, That any records obtained pursuant to the provisions of this section shall be used only in the context of the case in which the subpoena was issued and not for any other purpose.
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.

(a) Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood, breath or urine, is admissible, if the sample or specimen
was taken within two hours from and after the time of arrest or of the acts alleged. The evidence gives rise to the following presumptions or has the following effect:

(1) Evidence that there was, at that time, five hundredths of one percent or less, by weight, of alcohol in his or her blood, is prima facie evidence that the person was not under the influence of alcohol;

(2) Evidence that there was, at that time, more than five hundredths of one percent and less than ten hundredths of one percent, by weight, of alcohol in the person’s blood is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;

(3) Evidence that there was, at that time, ten hundredths of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

(b) A determination of the percent, by weight, of alcohol in the blood shall be based upon a formula of:

(1) The number of grams of alcohol per one hundred cubic centimeters of blood;

(2) The number of grams of alcohol per two hundred ten liters of breath;

(3) The number of grams of alcohol per sixty-seven milliliters of urine; or

(4) The number of grams of alcohol per eighty-six milliliters of serum.

(c) A chemical analysis of a person’s blood, breath or urine, in order to give rise to the presumptions or to have the effect
provided for in subsection (a) of this section, must be performed in accordance with methods and standards approved by the state division of health. A chemical analysis of blood or urine to determine the alcoholic content of blood shall be conducted by a qualified laboratory or by the state police scientific laboratory of the criminal identification bureau of the West Virginia state police.

(d) The provisions of this article do not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances 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.]
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.
11. Taxation.
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.

Notwithstanding any provision in this article to the contrary, the authority may not hereafter allocate credit to any applicant other than a small business investment company. Every qualified capital company that is not a small business investment company may no longer be considered a qualified capital company and shall, without any further action, be decertified. Each company that has been decertified in accordance with the provisions of this section is no longer subject to the provisions of this article. Nothing herein may be construed to limit an investor in a qualified capital company from applying credits previously allocated by the authority including unused credits carried forward pursuant to section eight of this 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.
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§8-13B-17. Refunding bonds.
§8-13B-18. Use of proceeds from sale of bonds.
§8-13B-20. Exemption from taxation.

§8-13B-1. Short title.

1 This article is known and may be cited as the “Downtown Redevelopment District Act”.

§8-13B-2. Legislative findings and declaration of purpose.

1 The Legislature finds that many downtown business districts within the municipalities of this state are economically depressed. This adversely affects the economic and general well-being of the citizens of those municipalities. Establishment of downtown redevelopment districts within municipalities of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose, and promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the vitality of retail business areas within municipalities, while serving as an effective means for restoring and promoting retail and other business activity within the downtown redevelopment districts created herein. This will be of special benefit to the tax base of the downtown municipalities within which any downtown redevelopment district is created under this article and will 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 established in subdivision (3), subsection (d), section eighteen-a, article twenty-two, chapter twenty-nine of this code;
(2) "District" means a downtown redevelopment district created pursuant to this article;

(3) "District board" means a district board created pursuant to section ten of this article;

(4) "Downtown property" means any taxable or exempt real property which is classified for ad valorem real property tax purposes as Class IV;

(5) "Gross annual district tax revenue amount" means the total amount of consumers sales and service tax actually remitted to the tax commissioner by vendors maintaining places of business within the district with respect to sales made and services rendered by such vendors from a location within the district for the twelve full calendar months immediately preceding the filing of an application pursuant to section seven of this article;

(6) "Municipality" means a municipal corporation recognized as such in chapter eight of this code; and

(7) "Redevelopment expenditures" means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article.


The governing body of any municipality may, in accordance with the procedures and subject to the limitations set forth in this article, create one or more downtown redevelopment districts within the municipality. The municipality may, in accordance with the procedures and subject to the limitations set forth in this article, provide for the administration and financing of redevelopment expenditures within the districts.
and for the administration and financing of a continuing program of redevelopment expenditures within the districts.

§8-13B-5. Redevelopment expenditures.

Any municipality that has established a downtown redevelopment district under this article may make, or authorize to be made by a district board and other public or private parties, such redevelopment expenditures as will restore or promote the economic vitality of the district and the general welfare of the municipality, including, but not limited to, expenditures for the following purposes:

(a) Beautification of the district, by means such as landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(b) Provision of special or additional public services, such as sanitation, security for persons and property and the construction and maintenance of public facilities, including sidewalks and other public areas;

(c) Making payments for principal, interest, issuance costs, any of the costs described in section eighteen of this article and appropriate reserves for bonds and other instruments and arrangements issued or entered into by the municipality for financing the expenditures of the district described in this section and to otherwise implement the purposes of this article;

(d) Providing financial support for public transportation and vehicle parking facilities open to the general public, whether or not physically situate within the district’s boundaries;

(e) Acquiring, demolishing, razing, constructing, repairing, reconstructing, refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and maintaining
real property generally, parking facilities, commercial structures and other capital improvements to real property, fixtures and tangible personal property, whether or not physically situate within the district’s boundaries;

(f) Developing plans for the architectural design of the district and portions thereof, and developing plans and programs for the future development of the district;

(g) Developing, promoting and supporting community events and activities open to the general public;

(h) Providing the administrative costs for a district management program;

(i) Providing for the usual and customary maintenance and upkeep of all improvements and amenities in the district as may be commercially reasonable and necessary to sustain its economic viability on a permanent basis;

(j) Providing any other services which the municipality or district board is authorized to perform and which the municipality does not also perform to the same extent on a municipality-wide basis;

(k) Making grants to the owners or tenants of downtown property for the purposes described in this section;

(l) Acquiring an interest in any entity or entities that own any portion of the real property situate in the district and contributing capital to any such entity or entities; and

(m) To do any and all things necessary, desirable or appropriate to carry out and accomplish the purposes of this article: *Provided*, That notwithstanding anything in this code to the contrary, any redevelopment expenditure made by a licensed race track, as defined in section three, article twenty-
two-a, chapter twenty-nine of this code, within thirty days after such redevelopment expenditure shall have been requested in writing by the district board, shall entitle such licensed race track to receive the same recoupment from its capital reinvestment fund account as any other capital improvement expenditure described in subsection (b), section ten-c, article twenty-two-a, chapter twenty-nine of this code.

§8-13B-6. Notice; hearing.

The governing body of a municipality desiring to create a downtown redevelopment district shall conduct a public hearing. A notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:

(a) The purpose of the hearing;

(b) The name of the proposed district;

(c) The general purpose of the proposed district;

(d) The property proposed to be included in the district; and

(e) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon any businesses operating and properties situated within the proposed district.

At the time and place set forth in the notice, the governing body shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the municipality.
If the governing body of the municipality, following the public hearing, determines it advisable and in the public interest to establish a downtown redevelopment district, it shall apply to the committee for approval of a downtown redevelopment district project pursuant to the procedures provided in section seven of this article.

§8-13B-7. Application to committee for approval of a downtown redevelopment district project.

(a) The committee shall receive and act on applications filed with it by municipalities pursuant to section six of this article. Each such application must contain a copy of the notice described in section six of this article; a general description of the capital improvements, additional or extended services and other proposed redevelopment expenditures to be made in the district; a description of the proposed method of financing such redevelopment expenditures, together with a description of such reserves to be established for financing on-going redevelopment expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of such reserves shall not exceed the amounts that would be required by ordinary commercial capital market considerations; a description of the sources and anticipated amounts of all such financing, including, but not limited to, proceeds from the issuance of any bonds, or other instruments, revenues from the special district excise tax and enhanced revenues from municipal business and occupation taxes, property taxes and fees; a description of the financial contribution of the municipality to the funding of redevelopment expenditures, which contribution may include, but not be necessarily limited to, incremental business and occupation taxes generated from district; a description of the financial contribution to the funding of redevelopment expenditures by the county commission of the county in which the district is situate; identification of any entities which the municipality
expects to relocate their business locations from the district to
another place in the state in connection with the establishment
of district: Provided, however, That for purposes of this article,
any such entities shall be designated "relocated entities"; a good
faith estimate of the aggregate amount of consumers sales and
service tax that was actually remitted to the tax commissioner
by all relocated entities with respect to their sales made and
services rendered from their business locations in the district for
the twelve full calendar months next preceding the date of the
application: Provided further, That for purposes of this article,
such aggregate amount shall be designated as "the relocated tax
revenue amount"; a good faith estimate of the gross annual
district tax revenue amount; and the proposed application of
any surplus from all funding sources to further the objectives of
this article: And provided further, That the amount of all
redevelopment expenditures proposed to be made in the first
twenty-four months following the creation of the district shall
be not less than fifty million dollars. The committee may
establish other criteria for approving such applications: And
provided further, That the committee shall act to approve or not
approve any such application within thirty days following the
receipt of the application: And provided further, That the
committee may not approve more than one application in the
absence of further authorization of the Legislature.

(b) If the committee approves a municipality's downtown
redevelopment district project application, it shall issue to the
municipality a written certificate evidencing such approval:
Provided, That such certificate shall expressly state a base tax
revenue amount which, for purposes of this article shall be the
difference between the gross annual district tax revenue amount
and the relocated tax revenue amount all of which the council
shall have determined with respect to such district's application
based on such investigation as it may deem reasonable and
necessary including, but not limited to, any relevant informa-
tion the council shall request from the tax commissioner and the
tax commissioner shall provide to the council: Provided, however, That, in determining the base tax revenue amount, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the council shall use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(c) The council may promulgate rules to implement the downtown redevelopment district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the secretary of state.

§8-13B-8. Establishment of the downtown redevelopment district fund; Legislature’s authorization of establishment of district.

(a) There is hereby created a special revenue account in the state treasury, designated the “downtown redevelopment district fund,” which shall be an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of the code, with the interest income a proper credit of the fund. A separate and segregated sub-account within the account shall be established for each municipality’s downtown redevelopment district, which has been approved by the council and authorized by the Legislature pursuant to subsection (b) of this section. Funds paid into the account for the credit of any such sub-account may also be derived from the following sources:

(1) All interest or return on the investment accruing to the sub-account;
(2) Any gifts, grants, bequests, transfers, appropriations or donations which may be received from any governmental entity or unit or any person, firm, foundation, or corporation; and

(3) Any appropriations by the Legislature which may be made for this purpose.

(b) The Legislature may authorize the establishment of a downtown redevelopment district if the district has been approved by the council pursuant to section seven of this article. Once the establishment of the district has been authorized by the Legislature, the auditor shall thereafter, upon receipt of a monthly requisition from the district board, issue his warrant on the state treasurer for the funds requested from the district's sub-account as provided in section eleven-a, article ten, chapter eleven of this code, to be applied for the purposes described in section five of this article, and the state treasurer 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.

(a) If a downtown redevelopment district project has been approved by the council, and the establishment of such a district has been authorized by the Legislature, all in accordance with this article, the governing body of the municipality may create the district by ordinance as provided for in article eleven of this chapter: Provided, That the governing body may not amend, alter or change in any manner the boundaries of the downtown redevelopment district as approved by the council. In addition to all other requirements, the ordinance shall contain the following:

(1) The name of the district and a description of its boundaries;
(2) A summary of any proposed services to be provided and capital improvements to be made within the district and a reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax that may be imposed upon the businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

(4) The district board members’ terms, their method of appointment and a general description of the district board’s powers and duties: Provided, That such powers may include the authority to: (A) Make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with any applicable laws; (B) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operations; (C) to enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corporations, and for-profit and not-for-profit organizations, and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes described in section two of this article; (D) to amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon such terms and conditions, for such consideration and for such term of duration, with or without option of renewal, as may be agreed upon by the district board and such person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation; (E) unless otherwise provided for in, and subject to the provisions of, such contracts, or leases, to operate, repair, manage, and maintain such buildings and structures and provide adequate insurance of all types, and in
connection with the primary use thereof and incidental thereto to provide such services, such as retail stores, and restaurants, and to effectuate such incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the district board and such person, agency, governmental department, firm or corporation; (F) to delegate any authority given to it by law to any of its officers, committees, agents or employees; (G) to apply for, receive and use grants-in-aid, donations and contributions from any source or sources, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation; (H) to acquire real property by gift, purchase, or construction, or in any other lawful manner, and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of such real property which it may own, either by contract or at public auction, upon the approval by the district board; (I) to purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction; (J) pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures, and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district’s negotiable notes and other evidences of indebtedness therefor, on such terms as the district shall determine, and give such security therefor as shall be requisite, including, without limitation, a pledge of the district’s rights in its sub-account of the downtown district redevelopment fund; (K) to acquire (either directly or on behalf of the municipality) an interest in any entity or entities that own any real property situate in the district, to contribute capital to such entity or entities and to exercise the rights of an owner with respect thereto; and (L) to expend its funds in the execution of the powers and authority herein given, which expenditures, by the means authorized herein, are hereby determined
and declared as a matter of legislative finding to be for a public purpose and use, in the public interest, and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) The ordinance shall also state the general intention of the municipality to redevelop and increase services and to make capital improvements within the district.

§8-13B-10. District board; duties.

(a) The governing body of any municipality that has been authorized by the Legislature to establish a downtown redevelopment district, in accordance with this article, shall provide by ordinance for the appointment of a district board to oversee the operations of the district: Provided, That the governing body may, by ordinance in lieu of appointing a separate district board, designate itself to act as the district board. If a separate district board is to be appointed, it shall be made up of at least seven members, two of which shall be owners, or representatives of owners, of downtown property situated in the district, and the other five shall be residents of the county within which the municipality is located.

(b) The district board, in addition to the duties prescribed by the ordinance creating the improvement district, shall submit an annual report to the governing body and the council containing:

(1) An itemized statement of its receipts and disbursements for the preceding fiscal year;

(2) A description of its activities for the preceding fiscal year;
(3) A recommended program of services to be performed and capital improvements to be made within the district for the coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

c) Nothing in this article prohibits any member of the district board from also serving on the board of directors of a nonprofit corporation with which the municipality may contract to provide specified services within the district.

d) Each member of the district board may receive reasonable compensation for services on the board, determined by the governing body of the municipality.

§8-13B-11. Special district excise tax authorized.

(a) The governing body of a municipality, authorized by the Legislature to establish a downtown redevelopment district, may, by ordinance, impose a special district excise tax on the privilege of selling tangible personal property and rendering selected services in the district in accordance with this section.

(b) The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district: Provided, That, except for the exemption provided in section nine-f of article fifteen, chapter eleven of this code, all exemptions and exceptions from the consumers sales and service tax shall also apply to the special district excise tax.

c) The rate of a special district excise tax imposed pursuant to this section shall be provided in an ordinance adopted by the governing body of the municipality and shall be six cents on the dollar of sales and services subject to the tax.
(d) The ordinance of a municipality imposing a special district excise tax shall provide procedures for the administration, assessment, collection and enforcement of the tax in conformity with similar provisions and requirements set forth in articles ten and fifteen, chapter eleven of this code, and to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax: Provided, That the governing body of the municipality shall, in any such ordinance, also provide that the state tax commissioner shall administer, assess, collect and enforce a special district excise tax on behalf of and as the agent for the municipality as provided in section eleven-a, article ten, chapter eleven of this code.

(e) The ordinance of a municipality imposing a special district excise tax shall provide that the tax commissioner shall deposit the net amount of tax collected in the special downtown redevelopment district fund to the credit of the municipality’s sub-account therein, and may only be used to pay for development expenditures provided under this article: Provided, That the state treasurer shall withhold from the municipality’s sub-account in the downtown redevelopment district fund, and shall deposit in the general revenue fund of this state, on or before the fifteenth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one-twelfth of the base tax revenue amount last certified by the council pursuant to section seven of this article.

(f) Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins on or after the date of adoption of an ordinance imposing such tax, or at such later date expressly designated in the ordinance that begins on the first day of a calendar month.

§8-13B-12. Modification of included area; notice; hearing.
(a) The ordinance creating a downtown redevelopment district may be amended to include additional downtown property only after such amendment has been approved by the council in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article.

Additional property may not be included in the district unless it is situated within the boundaries of the municipality.

(b) The governing body of any municipality desiring to so amend its ordinance shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(c) At the time and place set forth in the notice, the governing body shall afford the opportunity to be heard to any owners of downtown property either currently included in or proposed to be added to the existing district and to any other residents of the municipality.

(d) Following such hearing, the governing body may, by resolution, apply to the council to approve inclusion of such additional property in the district.

(e) If the council shall approve inclusion of such additional property in the district, the governing body of the municipality may then amend its ordinance accordingly.

(f) All businesses and additional property included in a district shall thereafter be subject to all special district excise taxes whether currently existing or thereafter levied.

§8-13B-13. Abolishment and dissolution of district; notice; hearing.
(a) Except upon the express written consent of the council and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any redevelopment expenditures or any indebtedness the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the governing body of the municipality when there is no outstanding indebtedness the proceeds of which were applied to any redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolition. Notice of such hearing must be provided by first class mail to all owners of downtown property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing. Upon the abolition of any downtown redevelopment district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations, existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district, shall be transferred to and assumed by the municipality. Any funds or other assets so transferred shall be used for the benefit of the area included in the district being abolished.

(b) Following abolition of a district pursuant to this section, its reinstatement shall require compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of a district. Upon the dissolution of any downtown redevelopment district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness, or other financial benefits, liabilities or obligations of the district, existing after full payment has been made on all obligations of the district,
shall be transferred and assumed by the municipality. Any funds or other assets so transferred shall be used for the benefit of the area included in the district being dissolved.

§8-13B-14. Bonds issued to finance downtown redevelopment district projects.

The governing body of a municipality may issue bonds or notes for the purpose of financing redevelopment expenditures, as described in section five of this article, with respect to one or more downtown redevelopment district projects within the municipality. All bonds issued by a municipality under the authority of this article shall be limited obligations of the municipality. No municipality may issue notes, bonds or other instruments for funding district projects or improvements that exceed a repayment schedule of forty years. The principal and interest on such bonds shall be payable out of the funds on deposit in the sub-account established for the downtown redevelopment district pursuant to section eight of this article, including without limitation any funds derived from the special district excise tax imposed by section eleven of this article, or other revenues derived from the downtown redevelopment project to the extent pledged for such purpose by the governing body of the municipality in the resolution authorizing the bonds. To the extent that the average daily amount on deposit in the sub-account established for a district pursuant to section eight of this article exceeds, for more than six consecutive calendar months, the sum of (1) one hundred thousand dollars, plus (2) the amount required to be kept on deposit pursuant to the documents authorizing, securing or otherwise relating to the bonds or notes issued under this section, then such excess shall be used by the district either to redeem the bonds or notes previously issued or shall be remitted to the general fund of this state. The bonds and any interest coupons issued under the authority of this article shall never constitute an indebtedness of the municipality issuing the same within the meaning of any
constitutional provision or statutory limitation and shall never
constitute or give rise to a pecuniary liability of the municipali-
ity issuing the same. Neither shall such bond nor interest
thereon be a charge against the general credit or taxing powers
of the municipality and such fact shall be plainly stated on the
face of each such bond. Such bonds may be executed, issued
and delivered at any time and from time to time; may be in such
form and denomination; may be of such tenor, must be negotia-
ble but may be registered as to the principal thereof or as to the
principal and interest thereof; may be payable in such amounts
and at such time or times; may be payable at such place or
places; may bear interest at such rate or rates payable at such
place or places and evidenced in such manner; and may contain
such provisions therein not inconsistent herewith, all as shall be
provided in the proceedings of the governing body of the
municipality whereunder the bonds shall be authorized to be
issued. Said bonds may be sold by the governing body of the
municipality at public or private sale at, above or below par, as
the governing body of the municipality shall authorize.

The bonds issued pursuant to this article shall be signed by
the mayor or other chief officer thereof and attested by the
clerk, recorder or other official custodian of the records of said
municipality and under the seal of the municipality. Any
coupons attached thereto shall bear the facsimile signature of
the mayor or other chief officer of the municipality. In case any
of the officials whose signatures appear on the bonds or
coupons shall cease to be such officers before the delivery of
such bonds, such signatures shall, nevertheless, be valid and
sufficient for all purposes to the same extent as if they had
remained in office until such delivery.

If the proceeds of such bonds, by error of calculation or
otherwise, shall be less than the cost of the downtown redevelop-
ment district project, or if additional real or personal property
is to be added to the downtown redevelopment district project
or if it is determined that financing is needed for additional
redevelopment expenditures, additional bonds may in like
manner be issued to provide the amount of the deficiency, or to
defray the cost of acquiring or financing such additional real or
personal property or such redevelopment expenditures, and
unless otherwise provided for in the trust agreement, mortgage
or deed of trust, shall be deemed to be of the same issue, and
shall be entitled to payment from the same fund, without
preference or priority, and shall be of equal priority as to any
security.


Unless the governing body of the municipality shall
otherwise determine in the resolution authorizing the issuance
of the revenue bonds under the authority of this article, there is
hereby created a statutory lien upon the sub-account created
pursuant to section eight of this article and all special district
excise tax revenues collected for the benefit of the district
pursuant to section eleven-a, article ten, chapter eleven of this
code, for the purpose of securing the principal of said bonds and
the interest thereon. The principal of and interest on any bonds
issued under the authority of this article shall be secured by a
pledge of the special district excise tax revenues derived from
the downtown redevelopment district project by the governing
body of the municipality issuing such bonds to the extent
provided in the resolution adopted by the governing body of the
municipality authorizing the issuance of the bonds. In the
discretion and at the option of the municipality, such revenue
bonds may also be secured by a trust indenture by and between
the municipality and a corporate trustee, which may be a trust
company or bank having trust powers, within or without the
state of West Virginia. The governing body may authorize the
issuance of such revenue bonds by resolution. The resolution
authorizing the revenue bonds and fixing the details thereof
may provide that such trust indenture may contain such
provisions for the protection and enforcing the rights and
remedies of the bondholders as may be reasonable and proper,
not in violation of law, including covenants setting forth the
duties of the municipality in relation to the construction,
acquisition or financing of a downtown redevelopment district
project, or part thereof, or an addition thereto, and the improve-
ment, repair, maintenance and insurance thereof, and for the
custody, safeguarding and application of all moneys, and may
provide that the downtown redevelopment district project shall
be constructed and paid for under the supervision and approval
of the consulting engineers or architects employed and design-
nated by the governing body or, if directed by the governing
body in the resolution, by the district board, and satisfactory to
the purchasers of the bonds, their successors, assigns or
nominees, who may require the security given by any contractor
or any depository of the proceeds of the bonds or the revenues
received from the downtown redevelopment district project be
satisfactory to such purchasers, their successors, assigns or
nominees. Such indenture may set forth the rights and remedies
of the bondholders, the municipality or such trustee, and said
indenture may provide for accelerating the maturity of the
revenue bonds, at the option of the bondholders or the govern-
mental body issuing the same, upon default in the payment of
the amounts due under the bonds. The governing body may also
provide by resolution and in such trust indenture for the
payment of the proceeds of the sale of the bonds and the
revenues from the downtown redevelopment district project to
such depository as it may determine, for the custody and
investment thereof and for the method of distribution thereof,
with such safeguards and restrictions as it may determine to be
necessary or advisable for the protection thereof and upon the
filing of a certified copy of such resolution or of the indenture
for record in the office of the clerk of the county commission of
the county in which a downtown redevelopment district project
is located, the same shall have the same effect, as to notice, as
the recordation of a deed of trust or other recordable instrument.

In the event that more than one such certified resolution or indenture is so recorded, the security interest granted by the first such recorded resolution or indenture shall have priority in the same manner as an earlier filed deed of trust except to the extent such earlier recorded resolution or indenture provides otherwise.

In addition to or in lieu of the indenture provided for hereinabove the principal of and interest on said bonds may, but need not, be secured by a mortgage or deed of trust covering all or any part of the downtown redevelopment district project from which the revenues so pledged may be derived, and the same may be secured by an assignment or pledge of the income received from the downtown redevelopment district project. The proceedings under which such bonds are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the governing body and a trustee and any such mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenues from the downtown redevelopment district project covered by such proceedings or mortgage, the terms to be incorporated in any lease, sale or financing agreement with respect to such downtown redevelopment district project, the improvement, repair, maintenance and insurance of such downtown redevelopment district project, the creation and maintenance of special funds from the revenues received from the downtown redevelopment district project and the rights and remedies available in event of default to the bondholders, the governing body, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any
such agreements or provisions a municipality shall not have the power to incur original indebtedness by indenture, ordinance, resolution, mortgage or deed of trust, except with respect to the downtown redevelopment district project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers unless approved by the voters in accordance with article one, chapter thirteen of this code, or as otherwise permitted by the constitution of this state. The proceedings authorizing any bonds hereunder and any indenture, mortgage or deed of trust securing such bonds may provide that, in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings, indenture, mortgage or deed of trust, such payment and performance may be enforced by the appointment of a receiver in equity with power to charge and collect rents or other amounts and to apply the revenues from the downtown redevelopment district project in accordance with such proceedings or the provisions of such agreement, indenture, mortgage or deed of trust. Any such agreement, indenture, mortgage or deed of trust may provide also that, in the event of default in such payment or the violation of any agreement contained in the mortgage or deed of trust, the agreement, indenture, mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in equity and may provide that the holder or holders of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if the highest bidder therefor. No breach of any such agreement, indenture, mortgage or deed of trust shall impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.


The revenue bonds issued pursuant to this article may contain a provision therein to the effect that they, or any of
them, may be called for redemption at any time prior to
maturity by the municipality, and at such redemption prices, or
premiums, which terms shall be stated in the bond.

§8-13B-17. Refunding bonds.

Any bonds issued hereunder and at any time outstanding
may at any time and from time to time be refunded by a
municipality by the issuance of its refunding bonds in such
amount as the governing body may deem necessary to refund
the principal of the bonds so to be refunded, together with any
unpaid interest thereon; to make any improvements or alter-
ations in the downtown redevelopment district project; and any
premiums and commissions necessary to be paid in connection
therewith. Any such refunding may be effected whether the
bonds to be refunded shall have then matured or shall thereafter
mature, either by sale of the refunding bonds and the applica-
tion of the proceeds thereof for the redemption of the bonds to
be refunded thereby, or by exchange of the refunding bonds for
the bonds to be refunded thereby: Provided, That the holders of
any bonds so to be refunded shall not be compelled without
their consent to surrender their bonds for payment or exchange
prior to the date on which they are payable or, if they are called
for redemption, prior to the date on which they are by their
terms subject to redemption. Any refunding bonds issued under
the authority of this article shall be subject to the provisions
contained in section fourteen of this article and shall be secured
in accordance with the provisions of section fifteen of this
article.

§8-13B-18. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under
authority of this article shall be applied only for the purpose for
which the bonds were issued: Provided, That any accrued
interest received in any such sale shall be applied to the
payment of the interest on the bonds sold: Provided, however, that if for any reason any portion of such proceeds may not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds may be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on said bonds, or held in reserve for the payment thereof. The costs that may be paid with the proceeds of the bonds include all redevelopment costs described in section five of this article and may also include, but not be limited to, the following: The cost of acquiring any real estate deemed necessary, the actual cost of the construction of any part of a downtown redevelopment district project which may be constructed, including architects’, engineers’, financial or other consultants’ and legal fees, the purchase price or rental of any part of a downtown redevelopment district project that may be acquired by purchase or lease, all expense incurred in connection with the authorization, sale and issuance of the bonds to finance such acquisition, and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding twelve months after completion of construction and any other costs and expenses reasonably necessary in the establishment and acquisition of such downtown redevelopment district project and the financing thereof.


Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of this code.

§8-13B-20. Exemption from taxation.
The revenue bonds issued pursuant to this article and the income therefrom shall be exempt from taxation except inheritance, estate and transfer taxes; and the real and personal property which a municipality or district board may acquire pursuant to the provisions of this article, shall be exempt from taxation by the state, or any county, municipality, or other levying body, as public property, so long as the same is owned 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.
13Q. Economic Opportunity Tax Credit.
13R. Strategic Research and Development Tax Credit.
13S. Manufacturing Investment Tax Credit.
15. Consumers Sales and Service 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.

(a) Purpose. - The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates
certain exceptions to the general principle of confidentiality of taxpayer information.

(b) Exceptions to confidentiality.

(1) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q, thirteen-r and thirteen-s of this chapter and article one, chapter five-e of this code. The categories by dollar amount of credit received shall be as follows:

(A) More than $1.00, but not more than $50,000;

(B) More than $50,000, but not more than $100,000;

(C) More than $100,000, but not more than $250,000;

(D) More than $250,000, but not more than $500,000;

(E) More than $500,000, but not more than $1,000,000; and

(F) More than $1,000,000.

(2) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the following information regarding any compromise of a pending civil tax case that occurs on or after the effective date of this section in which the tax commissioner is required to seek the written recommendation of the attorney general and the attorney general has not recommended acceptance of the compromise or when the tax commissioner compromises any civil tax case for an amount that is more than two hundred fifty thousand dollars less than the assessment of tax owed made by the tax commissioner:
(A) The names and addresses of taxpayers that are parties to the compromise;

(B) A summary of the compromise;

(C) Any written advice or recommendation rendered by the attorney general regarding the compromise; and

(D) Any written advice or recommendation rendered by the tax commissioner’s staff.

Under no circumstances may the tax return of the taxpayer or any other information which would otherwise be confidential under any other provisions of law be disclosed pursuant to the provisions of this subsection.

(3) Notwithstanding any provision in this code to the contrary, the tax commissioner may disclose any relevant return information to the prosecuting attorney for the county in which venue lies for a criminal tax offense when there is reasonable cause, based upon and substantiated by the return information, to believe that a criminal tax law has been or is being violated.

(4) Notwithstanding any provision in this code to the contrary, the tax commissioner may enter into written exchange of information agreements with the commissioners of labor, employment security and workers’ compensation to disclose and receive return information: Provided, That the tax commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code regarding further agencies with which written exchange of information agreements may be sought: Provided, however, That the tax commissioner may not promulgate emergency rules regarding further agencies with which written exchange of information agreements may be sought. The agreements shall be published in the state register and shall only be for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly
enforced, administered or collected by the respective agencies. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information so disclosed shall remain confidential in the hands of the other division to the extent provided by section five-d of this article and by other applicable federal or state laws.

(5) Notwithstanding any provision of this code to the contrary, the tax commissioner may enter into a written agreement with the state treasurer to disclose to the state treasurer the following business registration information:

(A) The names, addresses and federal employer identification numbers of businesses which have registered to do business in West Virginia; and

(B) The type of business activity and organization of those businesses. Disclosure of this information shall begin as soon as practicable after the effective date of this subsection and may be used only for the purpose of recovery and disposition of unclaimed property in accordance with the provisions of article eight, chapter thirty-six of this code. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information disclosed hereunder or thereunder shall otherwise remain confidential to the extent provided by section five-d of this article and by other applicable federal or state laws.

(c) Tax expenditure reports. - Beginning on the fifteenth day of January, one thousand nine hundred ninety-two and every fifteenth day of January thereafter, the governor shall submit to the president of the Senate and the speaker of the House of Delegates a tax expenditure report. This report shall expressly identify all tax expenditures. Within three-year
cycles, the reports shall be considered together to analyze all
tax expenditures by describing the annual revenue loss and
benefits of the tax expenditure based upon information avail-
able to the tax commissioner. For purposes of this section, the
term "tax expenditure" shall mean a provision in the tax laws
administered under this article, including, but not limited to,
exclusions, deductions, tax preferences, credits and deferrals
designed to encourage certain kinds of activities or to aid
taxpayers in special circumstances: Provided, That the tax
commissioner shall promulgate rules setting forth the procedure
by which he or she will compile the reports and setting forth a
priority for the order in which the reports will be compiled
according to type of tax expenditure.

(d) Federal and state return information confidential. -
Notwithstanding any other provisions of this section or of this
code, no return information made available to the tax commis-
sioner by the Internal Revenue Service or department or agency
of any other state may be disclosed to another person in any
manner inconsistent with the provisions of Section 6103 of the
Internal Revenue Code of 1986, as amended, or of the other
states' confidentiality laws.

§11-10-11a. Administration of special district excise tax; commis-
sion authorized.

(a) Any municipality which, pursuant to section eleven,
article thirteen-b, chapter eight of this code, imposes a special
district excise tax, shall, by express provision in the ordinance
imposing that tax, authorize the state tax commissioner to
administer, assess, collect and enforce that tax on behalf of and
as its agent. The municipality shall make such authorization by
the adoption of a provision in its special district excise tax
ordinance stating its purpose and referring to this section, and
providing that such ordinance shall be effective on the first day
of a month at least sixty days after its adoption. A certified copy
of such ordinance shall be forwarded to the tax commissioner so that it will be received within five days after its adoption.

(b) Any special district excise tax administered under this section shall be administered and collected by the tax commissioner in the same manner and subject to the same interest, additions to tax and penalties as provided for the tax imposed in article fifteen of this chapter.

(c) All special district excise tax moneys collected by the tax commissioner under this section shall be paid into the state treasury to the credit of each municipality’s sub-account in the downtown redevelopment district fund created pursuant to section eight, article thirteen-b, chapter eight of this code. Such special district excise tax moneys shall be credited to the sub-account of each particular municipality levying a special district excise tax being administered under this section. The credit shall be made to the sub-account of the municipality in which the taxable sales were made and services rendered as shown by the records of the tax commissioner and certified by him or her monthly to the state treasurer, namely, the location of each place of business of every vendor collecting and paying the tax to the tax commissioner without regard to the place of possible use by the purchaser.

(d) As soon as practicable after the special district excise tax moneys have been paid into the state treasury in any month for the preceding reporting period, the district board may issue a requisition to the auditor requesting issuance of a state warrant for the proper amount in favor of each municipality entitled to the monthly remittance of its special district excise tax moneys. Upon receipt of the requisition, the auditor shall issue his warrant on the state treasurer for the funds requested, and the state treasurer shall pay the warrant out of the sub-account. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to
taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: one sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the municipality and not previously remitted during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the vendor shall be made within three years of the date of the payment error.

(e) Notwithstanding any other provision of this code to the contrary, the tax commissioner shall deduct, and retain for the benefit of his office for expenditure pursuant to appropriation of the Legislature, from each payment into the state treasury as provided in subsection (c) of this section, one percent thereof as a commission to compensate his or her office for the discharge of the duties described in this section.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX CREDIT.

§11-13C-16. Termination of credit; effective date.

(a) Notwithstanding any other provision of this article to the contrary, no entitlement to any tax credit under this article may result from, and no credit is available to any taxpayer for, investment placed in service or use after the thirty-first day of December, two thousand two.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of sections one through fifteen of this article continue to apply to taxpayers that have gained entitlement to the credit pursuant to the placement of qualified investment into service or use prior to the first day of January, two thousand three.
(c) **Transition rules.** — The general rule stated in subsection (a) of this section does not apply:

1. To qualified investment property placed in service or use prior to the first day of January, two thousand three.

2. To property purchased or leased for business expansion that is placed in service or use on or after the first day of January, two thousand three, if at least one of the following clauses applies to the property:

   (A) The new or expanded business facility was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the first day of January, two thousand three, as limited to the provisions of the contract as of that date then binding on the taxpayer, but only to the extent the new or expanded business facility is placed in service or use prior to the first day of January, two thousand four;

   (B) The new or expanded business facility that is part of a project described in subdivision (1), subsection (a), section four-b of this article, was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the first day of January, two thousand three, as limited to the provisions of the contract as of that date then binding on the taxpayer: **Provided,** That only that portion of the contract price attributable to that percentage of the construction contract completed prior to the first day of January, two thousand four, (determined under principles set forth in section 460(b) of the Internal Revenue Code of 1986, as in effect before the first day of January, two thousand three), which is placed in service or use prior to the first day of January, two thousand four, may be treated as property purchased for business expansion under section six of this article;
(C) The new or expanded business facility was purchased or leased pursuant to a written contract executed prior to the first day of January, two thousand three, as limited to the provisions then binding on the taxpayer as of that date, but only to the extent the new or expanded business facility is placed in service or use prior to the first day of January, two thousand four; or

(D) The machinery or equipment or other tangible personal property purchased or leased for business expansion at a new or expanded business facility was purchased or leased by the taxpayer pursuant to a written contract to purchase or lease identifiable tangible personal property executed before the first day of January, two thousand three, as limited to the provisions of the written contract then binding on the taxpayer, but only to the extent the tangible personal property purchased or leased under the contract is placed in service or use before the first day of January, two thousand four.

(d) Notice of election required. — Any person intending to claim credit under one or more of the transition rules provided in subsection (c) of this section shall file written notice of his or her intention with the tax commissioner on or before the thirty-first day of December, two thousand two. In the case of a multiparticipant project, this notice may be filed by the managing project participant on behalf of all participants in the project. Notice is to be in a form prescribed by the tax commissioner and all information required by the form is to be provided.

(e) Failure to file notice. — If any person fails to timely file the notice required by subsection (d) of this section, that person is precluded from claiming credit under this article for investment property placed in service or use after the thirty-first day of December, two thousand two, and may claim credit
under article thirteen-q of this chapter to the extent credit is
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.

(a) Except for persons taxable under section two-o, article
thirteen of this chapter as described in subsection (b) of this
section and persons described in subsection (c) of this section,
no credit is available to any taxpayer under this article after the
thirty-first day of December, two thousand two.

(b) Persons taxable under section two-o, article thirteen of
this chapter that make eligible investment that qualifies for
credit in accordance with the provisions of subsection (e),
section three of this article in property used in the business
activity taxable under section two-o, article thirteen of this
chapter, are entitled to the credit determined under subsection
(e), section three of this article, in accordance with the require-
ments and limitations of this article, without regard to whether
such investment is made or credit claimed after the thirty-first
day of December, two thousand two.

(c) Taxpayers who gained entitlement to any tax credit
pursuant to the terms of this article prior to the first day of
January, two thousand three, retain that entitlement, and may
apply the credit in due course pursuant to the requirements and
limitations of this article until the original ten-year entitlement
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.

(a) Credit allowable. — The amount of annual credit allowable under this article to an eligible taxpayer is two hundred fifty dollars for each new job at a new value-added steel product manufacturing facility located in this state, or at a new value-added steel product line of an existing manufacturing facility located in this state, that is filled by a full-time employee of the eligible taxpayer during the taxable year, subject to the following:

1. When the new value-added steel product manufacturing facility, or the new steel product line of an existing value-added steel product manufacturing facility, is in operation for less than twelve months of the taxable year in which it is placed in service, the credit allowed by subsection (a) of this section shall be prorated by the ratio that the number of months in the taxpayer’s taxable year during which the new value-added steel products facility, or the new products line of an existing value-added steel product manufacturing facility, was in service bears to twelve.

2. When the eligible taxpayer stops manufacturing value-added steel products at the new value-added steel product manufacturing facility, or at the new steel product line of an existing value-added steel product manufacturing facility, during the taxable year, the credit allowed by subsection (a) of this section shall be prorated by the ratio that the number of months in the taxpayer’s taxable year during which the new value-added steel products facility, or the new products line of an existing value-added steel product manufacturing facility, was in operation manufacturing value-added steel product bears to twelve.
(3) When determining the number of full-time employees who fill new jobs at the new value-added steel product manufacturing facility located in this state, or who fill new jobs at a new value-added steel product line of an existing manufacturing facility located in this state, the eligible taxpayer may not include any position occupied by any employee of the eligible taxpayer, or of a related person, which existed in this state as of the first day of the second calendar month preceding the calendar month in which the new value-added steel product manufacturing facility, or a new value-added steel product line at an existing value-added steel products manufacturing facility first becomes operational, whether the positions are filled by permanent, seasonal, temporary or part-time employees.

(4) The amount of credit allowable each taxable year is calculated annually based upon the number of new jobs filled by full-time employees during the taxable year: Provided, That the credit provided for in this article may only be taken one time for each new job created, and once claimed in a tax year for a new job the credit may not be claimed in a subsequent year for that position.

(b) Expiration of credit. — This credit expires on the first day of July, two thousand two. When the first day of July in the year two thousand two falls during the taxable year of the eligible taxpayer, the amount of credit allowable for that taxable year shall be limited to that portion of the amount of credit that would have been allowable had the credit not expired multiplied by the ratio of the number of months during taxpayers taxable year ending before the first day of July, two thousand 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-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-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-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 Opportunity Tax Credit Act".

§11-13Q-2. Legislative finding and purpose.
1 The Legislature finds that the encouragement of economic opportunity in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage greater capital investment in businesses in this state and thereby increase economic opportunity in this state, there is hereby enacted the economic opportunity tax credit.

§11-13Q-3. Definitions.
1 (a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) have the
meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) Terms defined.

(1) Business. — The term “business” means any activity which is engaged in by any person in this state which is taxable under article thirteen, twenty-one, twenty-three or twenty-four of this chapter (or any combination of those articles of this chapter).

(2) Business expansion. — The term “business expansion” means capital investment in a new or expanded business facility in this state.

(3) Business facility. — The term “business facility” means any factory, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and personal property located at or within the facility, used in connection with the operation of the facility, in a business that is taxable in this state, and all site preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.

(4) Commissioner or tax commissioner. — The terms “commissioner” and “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his or her designee.

(5) Compensation. — The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Controlled group. — The term “controlled group” means one or more chains of corporations connected through
stock ownership with a common parent corporation if stock
possessing at least fifty percent of the voting power of all
classes of stock of each of the corporations is owned directly or
indirectly by one or more of the corporations; and the common
parent owns directly stock possessing at least fifty percent of
the voting power of all classes of stock of at least one of the
other corporations.

(7) Corporation. — The term “corporation” means any
corporation, joint-stock company or association, and any
business conducted by a trustee or trustees wherein interest or
ownership is evidenced by a certificate of interest or ownership
or similar written instrument.

(8) Designee. — The term “designee” in the phrase “or his
designee,” when used in reference to the commissioner, means
any officer or employee of the state tax department duly
authorized by the commissioner directly, or indirectly by one or
more redelegations of authority, to perform the functions
mentioned or described in this article.

(9) Eligible taxpayer. — The term “eligible taxpayer”
means any person who makes qualified investment in a new or
expanded business facility located in this state and creates at
least the required number of new jobs and who is subject to any
of the taxes imposed by articles thirteen, twenty-one, twenty-
three and twenty-four of this chapter (or any combination of
those articles). “Eligible taxpayer” shall also include an
affiliated group of taxpayers if the group elects to file a
consolidated corporation net income tax return under article
twenty-four of this chapter.

(10) Expanded facility. — The term “expanded facility”
means any business facility (other than a new or replacement
business facility) resulting from the acquisition, construction,
reconstruction, installation or erection of improvements or
additions to existing property if the improvements or additions are purchased on or after the first day of January, two thousand three, but only to the extent of the taxpayer’s qualified investment in the improvements or additions.

(11) *Includes and including.* — The terms “includes” and “including,” when used in a definition contained in this article, shall not be considered to exclude other things otherwise within the meaning of the term defined.

(12) *Leased property.* — The term “leased property” does not include property which the taxpayer is required to show on its books and records as an asset under generally accepted principles of financial accounting. If the taxpayer is prohibited from expensing the lease payments for federal income tax purposes, the property shall be treated as purchased property under this section.

(13) *New business facility.* — The term “new business facility” means a business facility which satisfies all the requirements of paragraphs (A), (B), (C) and (D) of this subdivision.

(A) The facility is employed by the taxpayer in the conduct of a business the net income of which is or would be taxable under article twenty-one or twenty-four of this chapter. The facility is not considered a new business facility in the hands of the taxpayer if the taxpayer’s only activity with respect to the facility is to lease it to another person or persons.

(B) The facility is purchased by, or leased to, the taxpayer on or after the first day of January, two thousand three.

(C) The facility was not purchased or leased by the taxpayer from a related person. The commissioner may waive this requirement if the facility was acquired from a related party for its fair market value and the acquisition was not tax motivated.
(D) The facility was not in service or use during the ninety
days immediately prior to transfer of the title to the facility, or
prior to the commencement of the term of the lease of the
facility: Provided, That this ninety-day period may be waived
by the commissioner if the commissioner determines that
persons employed at the facility may be treated as “new
employees” as that term is defined in this subsection.

(14) New employee. –

(A) The term “new employee” means a person residing and
domiciled in this state, hired by the taxpayer to fill a position or
a job in this state which previously did not exist in the tax-
payer’s business enterprise in this state prior to the date on
which the taxpayer’s qualified investment is placed in service
or use in this state. In no case may the number of new employ-
ees directly attributable to the investment for purposes of this
credit exceed the total net increase in the taxpayer’s employ-
ment in this state: Provided, That the commissioner may
require that the net increase in the taxpayer’s employment in
this state be determined and certified for the taxpayer’s con-
trolled group: Provided, however, That persons filling jobs
saved as a direct result of taxpayer’s qualified investment in
property purchased or leased for business expansion may be
treated as new employees filling new jobs if the taxpayer
certifies the material facts to the commissioner and the commis-
sioner expressly finds that:

(i) But for the new employer purchasing the assets of a
business in bankruptcy under chapter seven or eleven of the
United States bankruptcy code and the new employer making
qualified investment in property purchased or leased for
business expansion, the assets would have been sold by the
United States bankruptcy court in a liquidation sale and the jobs
saved would have been lost; or
(ii) But for the taxpayer’s qualified investment in property purchased or leased for business expansion in this state, the taxpayer would have closed its business facility in this state and the employees of the taxpayer located at the facility would have lost their jobs: Provided, That the commissioner may not make this certification unless the commissioner finds that the taxpayer is insolvent as defined in 11 U.S.C. §101(32) or that the taxpayer’s business facility was destroyed, in whole or in significant part, by fire, flood or other act of God.

(B) A person is considered to be a “new employee” only if the person’s duties in connection with the operation of the business facility are on:

(i) A regular, full-time and permanent basis:

(I) “Full-time employment” means employment for at least one hundred forty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business;

(II) “Permanent employment” does not include employment that is temporary or seasonal and therefore the wages, salaries and other compensation paid to the temporary or seasonal employees will not be considered for purposes of sections five and seven of this article; or

(ii) A regular, part-time and permanent basis: Provided, That the person is customarily performing the duties at least twenty hours per week for at least six months during the taxable year.

(15) New job. — The term “new job” means a job which did not exist in the business of the taxpayer in this state prior to the taxpayer’s qualified investment being made, and which is filled by a new employee.
(16) New property. — The term “new property” means:

(A) Property, the construction, reconstruction or erection of which is completed on or after the first day of January, two thousand three, and placed in service or use after that date; and

(B) Property leased or acquired by the taxpayer that is placed in service or use in this state on or after the first day of January, two thousand three, if the original use of the property commences with the taxpayer and commences after that date.

(17) Original use. — The term “original use” means the first use to which the property is put, whether or not the use corresponds to the use of the property by the taxpayer.

(18) Partnership and partner. — The term “partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term “partner” includes a member in such a syndicate, group, pool, joint venture or other organization.

(19) Person. — The term “person” includes any natural person, corporation or partnership.

(20) Property purchased or leased for business expansion.

(A) Included property. — Except as provided in paragraph (B), the term “property purchased or leased for business expansion” means real property and improvements thereto, and tangible personal property, but only if the real or personal property was constructed, purchased, or leased and placed in service or use by the taxpayer, for use as a component part of a new or expanded business facility as defined in this section, which is located within the state of West Virginia. This term includes only:
(1) Real property and improvements thereto having a useful life of four or more years, placed in service or use on or after the first day of January, two thousand three, by the taxpayer.

(2) Real property and improvements thereto, acquired by written lease having a primary term of ten or more years and placed in service or use by the taxpayer on or after the first day of January, two thousand three.

(3) Tangible personal property placed in service or use by the taxpayer on or after the first day of January, two thousand three, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business taxpayer under article twenty-one or twenty-four of this chapter, and which has a useful life, at the time the property is placed in service or use in the state, of four or more years.

(4) Tangible personal property acquired by written lease having a primary term of four years or longer, that commenced and was executed by the parties thereto on or after the first day of January, two thousand three, if used as a component part of a new or expanded business facility, shall be included within this definition.

(5) Tangible personal property owned or leased, and used by the taxpayer at a business location outside the state which is moved into the state of West Virginia on or after the first day of January, two thousand three, for use as a component part of a new or expanded business facility located in the state: Provided, That if the property is owned, it must be depreciable or amortizable personal property for income tax purposes, and have a useful life of four or more years remaining at the time it is placed in service or use in the state, and if the property is leased, the primary term of the lease remaining at the time the
leased property is placed in service or use in the state, must be four or more years.

(B) Excluded property. – The term “property purchased or leased for business expansion” does not include:

(i) Property owned or leased by the taxpayer and for which the taxpayer was previously allowed tax credit under article thirteen-c, thirteen-d or thirteen-e of this chapter, or the tax credits allowed by this article.

(ii) Property owned or leased by the taxpayer and for which the seller, lessor, or other transferor, was previously allowed tax credit under article thirteen-c, thirteen-d or thirteen-e of this chapter, or the tax credits allowed by this article.

(iii) Repair costs, including materials used in the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed.

(iv) Airplanes.

(v) Property which is primarily used outside the state, with use being determined based upon the amount of time the property is actually used both within and outside the state.

(vi) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the commissioner consents to waiving this requirement.

(vii) Natural resources in place.

(viii) Purchased or leased property, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time the property is placed in service or use: Provided, That when the contract of purchase or lease specifies a minimum purchase price or minimum annual rent the amount
thereof shall be used to determine the qualified investment in
the property under section eight of this article if the property
otherwise qualifies as property purchased or leased for business
 expansion.

(21) Purchase. — The term "purchase" means any acquisi-
tion of property, but only if:

(A) The property is not acquired from a person whose
relationship to the person acquiring it would result in the
disallowance of deductions under section 267 or 707 (b) of the
United States Internal Revenue Code of 1986, as amended, and
in effect on the first day of January, two thousand three.

(B) The property is not acquired by one component member
of a controlled group from another component member of the
same controlled group. The commissioner can waive this
requirement if the property was acquired from a related party
for its then fair market value; and

(C) The basis of the property for federal income tax
purposes, in the hands of the person acquiring it, is not deter-
mined:

(i) In whole or in part by reference to the federal adjusted
basis of the property in the hands of the person from whom it
was acquired; or

(ii) Under Section 1014 (e) of the United States Internal
Revenue Code of 1986, as amended, and in effect on the first
day of January, two thousand two.

(22) Qualified activity. — The term "qualified activity"
means any business or other activity subject to any of the taxes
imposed by article thirteen, twenty-one, twenty-three or
twenty-four of this chapter (or any combination of those articles
of this chapter), but does not include the activity of severance
or production of natural resources.

(23) Related person. — The term “related person” means:

(A) A corporation, partnership, association or trust con-
trolled by the taxpayer;

(B) An individual, corporation, partnership, association or
trust that is in control of the taxpayer;

(C) A corporation, partnership, association or trust con-
trolled by an individual, corporation, partnership, association or
trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the tax-
payer.

For purposes of this section, “control,” with respect to a
corporation, means ownership, directly or indirectly, of stock
possessing fifty percent or more of the total combined voting
power of all classes of the stock of the corporation entitled to
vote. “Control,” with respect to a trust, means ownership,
directly or indirectly, of fifty percent or more of the beneficial
interest in the principal or income of the trust. The ownership
of stock in a corporation, of a capital or profits interest in a
partnership or association or of a beneficial interest in a trust is
determined in accordance with the rules for constructive
ownership of stock provided in section 267 (c) of the United
States Internal Revenue Code of 1986, as amended, other than
paragraph (3) of that section.

(24) Replacement facility. — The term “replacement
facility” means any property (other than an expanded facility)
that replaces or supersedes any other property located within
this state that:
(A) The taxpayer or a related person used in or in connection with any activity for more than two years during the period of five consecutive years ending on the date the replacement or superseding property is placed in service by the taxpayer; or

(B) Is not used by the taxpayer or a related person in or in connection with any qualified activity for a continuous period of one year or more commencing with the date the replacement or superseding property is placed in service by the taxpayer.

(25) Research and development.--The term "research and development" means systematic scientific, engineering or technological study and investigation in a field of knowledge in the physical, computer or software sciences, often involving the formulation of hypotheses and experimentation, for the purpose of revealing new facts, theories or principles, or increasing scientific knowledge, which may reveal the basis for new or enhanced products, equipment or manufacturing processes.

(A) Research and development includes, but is not limited to, design, refinement and testing of prototypes of new or improved products, or design, refinement and testing of manufacturing processes before commercial sales relating thereto have begun. For purposes of this section, commercial sales includes, but is not limited to, sales of prototypes or sales for market testing.

(B) Research and development does not include:

(i) Market research;

(ii) Sales research;

(iii) Efficiency surveys;

(iv) Consumer surveys;
(v) Product market testing;

(vi) Product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability;

(vii) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(viii) Management studies;

(ix) Advertising;

(x) Promotions;

(xi) The acquisition of another's patent, model, production or process or investigation or evaluation of the value or investment potential related thereto;

(xii) Research in connection with literary, historical, or similar activities;

(xiii) Research in the social sciences, economics, humanities or psychology and other nontechnical activities; and

(xiv) The providing of sales services or any other service, whether technical service or nontechnical service.

(26) Taxpayer. — The term "taxpayer" means any person subject to any of the taxes imposed by article thirteen, twenty-one, twenty-three or twenty-four of this chapter (or any combination of those articles of this chapter).

(27) This code. — The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.
(28) This state. — The term “this state” means the state of West Virginia.

(29) Used property. — The term “used property” means property acquired after the thirty-first day of December, two thousand two, that is not “new property.”

§11-13Q-4. Amount of credit allowed.

(a) Credit allowed. — Eligible taxpayers are allowed a credit against the portion of taxes imposed by this state that are attributable to and the consequence of the taxpayer’s qualified investment in a new or expanded business in this state, which results in the creation of new jobs. The amount of this credit is determined and applied as provided in this article.

(b) Amount of credit. — The amount of credit allowable is determined by multiplying the amount of the taxpayer’s “qualified investment” (determined under section five or eight, or both) in “property purchased or leased for business expansion” (as defined in section three) by the taxpayer’s new jobs percentage (determined under section nine). The product of this calculation establishes the maximum amount of credit allowable under this article due to the qualified investment.

(c) Application of credit over ten years. — The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the taxpayer places the qualified investment in service or use in this state, unless the taxpayer elected to delay the beginning of the ten-year period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under this chapter for the taxable year in which qualified investment is first placed into service or use by the taxpayer. Once made, the election cannot be revoked.
The annual credit allowance is taken in the manner prescribed in section seven of this article.

(d) Placed in service or use. — For purposes of the credit allowed by this section, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer’s depreciation practice, the period for depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

§11-13Q-5. Credit allowed for locating corporate headquarters in this state.

(a) Credit allowed. — A corporation that presently has its corporate headquarters located outside this state that relocates its corporate headquarters in this state and employs, on a full-time basis, at its new corporate headquarters location, at least fifteen people, who are domiciled in this state, is allowed credit under this article, the amount of which is determined as provided in subsection (b) of this section. The restrictions set forth in subsection (a), section nineteen of this article do not apply to the credit for corporate headquarters relocations allowed under this section.

(b) Determination of credit. — The amount of credit allowed by subsection (a) is determined, at the election of the taxpayer:

(1) By multiplying the taxpayer’s adjusted qualified investment by its new jobs percentage (as determined under section nine of this article); or
17 (2) By multiplying the taxpayer’s adjusted qualified investment by ten percent.

19 (c) Corporate headquarters relocations after December 31, 2002. — For purposes of corporate headquarters relocations occurring on or after the first day of January, two thousand three, and notwithstanding any other provision of this article to the contrary:

24 (1) New jobs created in this state by relocation of a corporate headquarters may include jobs created in this state within twelve months before or after the month in which the qualified investment in the corporate headquarters relocation is placed into service or use in this state by:

29 (A) Relocation or transfer of employees of the corporation or employees of a related corporation or related person from an out-of-state location to the relocated corporate headquarters in this state, who: (i) Are or become employees of the corporation within twelve months before or after the month in which the qualified investment in the corporate headquarters is placed into service or use in this state; and (ii) whose regular place of work is in the corporate headquarters; or

37 (B) New employees of the corporation whose regular place of work is in the corporate headquarters.

39 (2) Multiple year projects certified under section six of this article may be allowed for corporate headquarters relocations under this section.

42 (d) Application of credit. — The credit allowed by this section is applied in the manner prescribed in section seven of this article: Provided, That the amount of corporation net income taxes against which the credit allowed by this section may be applied is the sum of the corporation net income tax due on adjusted federal taxable income allocated to this state under
section seven, article twenty-four of this chapter, plus that
portion of the corporation net income tax due on adjusted
federal taxable income apportioned to this state under section
seven, article twenty-four of this chapter, that is further
apportioned to the qualified investment using the payroll factor
provided in subdivision (1), subsection (h), section seven of this
article or an alternative means of apportionment as prescribed
by the commissioner under section seven of this article. For all
other purposes, the credit allowed by this section is treated as
credit allowed by section four of this article.

(e) Definitions. — For purposes of this section:

(1) Adjusted qualified investment. — The term “adjusted
qualified investment” means the taxpayer’s qualified invest-
ment in the corporate headquarters as determined under section
eight of this article and rules of the commissioner, plus the cost
of the reasonable and necessary expenses it incurred to relocate
its corporate headquarters at a location in this state from its
prior location outside this state.

(2) Corporate headquarters. — The term “corporate
headquarters” means the place at which the corporation has its
commercial domicile and from which the business of the
 corporation is primarily conducted.

(3) Reasonable and necessary expenses incurred to relocate
corporate headquarters. — The phrase “reasonable and
necessary expenses incurred to relocate corporate headquarters”
means only those expenses incurred and paid by the corpora-
tion, to unrelated third parties, to move its corporate headquar-
ters and its corporate headquarters employees to this state that
are, upon application by the corporation, determined by the
commissioner to have been both reasonable and necessary to
effectuate the move.
(4) The corporation. — For purposes of this section, the term "the corporation" means the corporation for which the corporate headquarters is relocated.

§11-13Q-6. Credit allowable for certified projects.

(a) In general. — A multiple year project certified by the commissioner is eligible for the credit allowable by this article. A project eligible for certification under this section is one where the qualified investment under this article creates at least the required minimum number of new jobs but the qualified investment is placed in service or use over a period of up to three successive tax years: Provided, That the qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the commissioner, and the qualified investment placed in service or use during the first tax year would not have been made without the expectation of making the qualified investment placed in service or use during the next two succeeding tax years;

(b) Application for certification. — The application for certification of a project under this section shall be filed with and approved by the commissioner prior to any credit being claimed or allowed for the project's qualified investment and new jobs created as a direct result of the qualified investment. This application shall be approved in writing and contain the information as the commissioner may require to determine whether the project should be certified as eligible for credit under this article.

(c) Taking of credit. — The participant or participants claiming the credit for qualified investments in a certified
project shall annually file with their income tax returns filed under this chapter:

(A) Certification that the participant’s qualified investment property continues to be used in the project and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

(B) Certification that the new jobs created by the project’s qualified investment continue to exist and are filled by persons who are residents of this state; and

(C) Any other information the commissioner requires to determine continuing eligibility to claim the annual credit allowance for the project’s qualified investment.

§11-13Q-7. Application of annual credit allowance.

(a) In general. — The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of the following:

(1) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during a prior taxable year; plus

(2) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during the current taxable year; plus

(3) The one-tenth part allowed under section five of this article for locating corporate headquarters in this state; or the amount allowed under section ten of this article of the taxable year.

(b) Application of current year annual credit allowance. — The amount determined under subsection (a) of this section is
allowed as a credit against eighty percent of that portion of the
taxpayer's state tax liability which is attributable to and the
direct result of the taxpayer's qualified investment, and applied
as provided in subsections (c) through (f), both inclusive, of this
section, and in that order: Provided, That if the median salary
of the new jobs is higher than the statewide average nonfarm
payroll wage, as determined annually by the West Virginia
bureau of employment programs, the amount determined under
subsection (a) of this section is allowed as a credit against one
hundred percent of that portion of the taxpayers state tax
liability which is attributable to and the direct result of the
taxpayer's qualified investment, and shall be applied, as
provided in subsections (c) through (f), both inclusive, of this
section, and in that order.

(c) Business and occupation taxes. -- That portion of the
allowable credit attributable to qualified investment in a
business or other activity subject to the taxes imposed under
section two-o, article thirteen of this chapter must first be
applied to reduce the taxes imposed or payable under section
two-o, article thirteen of this chapter, for the taxable year
(determined before application of allowable credits against tax
and the annual exemption). In no case may the credit allowed
under this article be applied to reduce any tax imposed or
payable under section two-f, or under any other section of
article thirteen of this chapter except section two-o.

(1) If the taxes due under section two-o, article thirteen of
this chapter are not solely attributable to and the direct result of
the taxpayer's qualified investment in a business or other
activity taxable under section two-o, article thirteen of this
chapter, the amount of those taxes that are attributable is
determined by multiplying the amount of taxes due under
section two-o, article thirteen of this chapter, for the taxable
year (determined before application of any allowable credits
against tax and the annual exemption), by a fraction, the
numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under section two-o, article thirteen of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under article thirteen of this chapter.

(2) The annual exemption allowed by section three, article thirteen of this chapter, plus any credits allowable under articles thirteen-d, thirteen-e, thirteen-r and thirteen-s of this chapter, shall be applied against and reduce only the portion of article thirteen taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against the taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(d) Business franchise tax. —

(1) After application of subsection (c) of this section, any unused allowable credit is next applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year (determined after application of the credits against tax provided in section seventeen of article twenty-three of this chapter, but before application of any other allowable credits against tax).

(2) If the taxes due under article twenty-three of this chapter are not solely attributable to and the direct result of the
taxpayer's qualified investment in a business or other activity taxable under article twenty-three of this chapter for the taxable year, the amount of the taxes which are so attributable are determined by multiplying the amount of taxes due (determined after application of the credits against tax as provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article twenty-three of this chapter. The denominator of the fraction is wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under article twenty-three of this chapter.

(3) Any credits allowable under articles thirteen-d, thirteen-e, thirteen-r and thirteen-s of this chapter are applied against and reduce only the portion of article twenty-three taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article twenty-three taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against those taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(e) Corporation net income taxes.

(1) After application of subsections (c) and (d) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax).
(2) If the taxes due under article twenty-four of this chapter (determined before application of allowable credits against tax) are not solely attributable to and the direct result of the taxpayer’s qualified investment, the amount of the taxes that is attributable are determined by multiplying the amount of taxes due under article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(3) Any credits allowable under article twenty-four of this chapter are applied against and reduce only the amount of article twenty-four taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article twenty-four taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(f) Personal income taxes. —

(1) If the person making the qualified investment is an electing small business corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit (after application of subsections (c), (d) and (e) of this section) is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax.
under article thirteen or twenty-three of this chapter or on
income of a sole proprietor attributable to the business.

(2) Electing small business corporations, limited liability
companies, partnerships and other unincorporated organizations
shall allocate the credit allowed by this article among its
members in the same manner as profits and losses are allocated
for the taxable year.

(3) If the amount of taxes due under article twenty-one of
this chapter (determined before application of allowable credits
against tax) that is attributable to business, is not solely
attributable to and the direct result of the qualified investment
of the electing small business corporation, limited liability
company, partnership, other unincorporated organization or sole
proprietorship, the amount of the taxes that are so attributable
are determined by multiplying the amount of taxes due under
article twenty-one of this chapter (determined before applica-
tion of allowable credits against tax), that is attributable to
business by a fraction, the numerator of which is all wages,
salaries and other compensation paid during the taxable year to
all employees of the electing small business corporation,
limited liability company, partnership, other unincorporated
organization or sole proprietorship employed in this state,
whose positions are directly attributable to the qualified
investment. The denominator of the fraction is the wages,
salaries and other compensation paid during the taxable year to
all employees of the taxpayer.

(4) No credit is allowed under this section against any
employer withholding taxes imposed by article twenty-one of
this chapter.

(g) If the wages, salaries and other compensation fraction
formula provisions of subsections (c) through (f) of this section,
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
percentage of the cost of each property purchased or leased for
the purpose of business expansion which is placed in service or
use in this state by the taxpayer during the taxable year.

(b) Applicable percentage. — For the purpose of subsection
(a), the applicable percentage of any property is determined
under the following table:

<table>
<thead>
<tr>
<th>If useful life is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 4 years</td>
<td>0%</td>
</tr>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

The useful life of any property, for purposes of this section,
is determined as of the date the property is first placed in
service or use in this state by the taxpayer, determined in
accordance with such rules and requirements the tax commis-
sioner may prescribe.

(c) Cost. — For purposes of subsection (a), the cost of each
property purchased for business expansion is determined under
the following rules:

(1) Trade-ins. — Cost does not include the value of
property given in trade or exchange for the property purchased
for business expansion.

(2) Damaged, destroyed or stolen property. — If property
is damaged or destroyed by fire, flood, storm or other casualty,
or is stolen, then the cost of replacement property does not
include any insurance proceeds received in compensation for
the loss.

(3) Rental property. —
(A) The cost of real property acquired by written lease for a primary term of ten years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

(B) The cost of tangible personal property acquired by written lease for a primary term of:

(i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;

(ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease; or

(iii) Eight years, or longer, is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years: Provided, That in no event may rent reserved include rent for any year subsequent to expiration of the book life of the equipment, determined using the straight-line method of depreciation.

(4) Self-constructed property. — In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(5) Transferred property. — The cost of property used by the taxpayer out-of-state and then brought into this state, is determined based on the remaining useful life of the property at the time it is placed in service or use in this state, and the cost is the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this state. In the case of leased tangible personal property, cost is based on the period remaining in the primary term of the lease after the property is brought into this state for use in a new or expanded business facility of the taxpayer, and is the rent reserved for the remain-
ing period of the primary term of the lease, not to exceed twenty years, or the remaining useful life of the property (determined as aforesaid), whichever is less.


(a) In general. — The new jobs percentage is based on the number of new jobs created in this state directly attributable to the qualified investment of the taxpayer.

(b) When a job is attributable. — An employee’s position is directly attributable to the qualified investment if:

(1) The employee’s service is performed or his or her base of operations is at the new or expanded business facility;

(2) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(3) But for the qualified investment, the position would not have existed.

(c) Applicable percentage. —

For the purpose of subsection (a) of this section, the applicable new jobs percentage is determined under the following table:

<table>
<thead>
<tr>
<th>The applicable percentage is:</th>
<th>If number of new jobs is at least:</th>
</tr>
</thead>
<tbody>
<tr>
<td>20%</td>
<td>20</td>
</tr>
<tr>
<td>25%</td>
<td>280</td>
</tr>
<tr>
<td>30%</td>
<td>520</td>
</tr>
</tbody>
</table>
(d) **Certification of new jobs.** — With the annual return for the applicable taxes filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f), that are, or will be, directly attributable to the qualified investment of the taxpayer. For purposes of this section, "applicable taxes" means the taxes imposed by articles thirteen, twenty-one, twenty-three and twenty-four of this chapter against which this credit is applied.

(e) **Equivalency of permanent employees.** — The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of this section.

(f) **Redetermination of new jobs percentage.** — With the annual return for the applicable taxes imposed, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state, that are directly attributable to the qualified investment of the taxpayer.

1. If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article shall be redetermined and amended returns filed for the first and second taxable years that the qualified investment was in service or use in this state.

2. If the actual number of jobs created would result in a lower new jobs percentage, the credit previously allowed under this article shall be redetermined and amended returns filed for the first and second taxable years. In applying the amount of redetermined credit allowable for the two preceding taxable years, the redetermined credit shall first be applied to the extent it was originally applied in the prior two years to personal
income taxes, then to corporation net income taxes, then to
tax business franchise taxes, and lastly to business and occupation
taxes. Any additional taxes due under this chapter shall be
remitted with the amended returns filed with the commissioner,
along with interest, as provided in section seventeen, article ten
of this chapter, and a ten percent penalty determined on the
amount of taxes due with the amended return, which may be
waived by the commissioner if the taxpayer shows that the
overclaimed amount of the new jobs percentage was due to
reasonable cause and not due to willful neglect.

§11-13Q-10. Credit for small business.

(a) Small business defined. — For purposes of this section,
the term "small business" means a business which has annual
gross receipts of not more than seven million dollars (including
the gross receipts of any affiliates in its controlled group):
Provided, That beginning the first day of January, two thousand
four, and on the first day of January of each year thereafter, the
commissioner shall prescribe an amount that shall apply in lieu
of the seven million dollar amount during that calendar year.
This amount is prescribed by increasing the seven million dollar
amount by the cost-of-living adjustment for that calendar year.
The requirements for annual gross receipts, once met by a given
taxpayer in that taxable year when qualified investment is first
placed in service or use, may not again be applied to that same
taxpayer in subsequent years to defeat the small business credit
to which the taxpayer gained entitlement in that year.

(1) Cost-of-living adjustment. — For purposes of subsection
(a), the cost-of-living adjustment for any calendar year is the
percentage (if any) by which the consumer price index for the
preceding calendar year exceeds the consumer price index for
the calendar year two thousand two.
(2) Consumer price index for any calendar year. — For purposes of subdivision (1) of this subsection, the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the twelve-month period ending on the thirty-first day of August of that calendar year.

(3) Consumer price index. — For purposes of subdivision (2) above, the term “Federal Consumer Price Index” means the most recent consumer price index for all urban consumers published by the United States department of labor.

(4) Rounding. — If any increase under subdivision (1) above is not a multiple of fifty dollars, the increase shall be rounded to the next lowest multiple of fifty dollars.

(b) Amount of credit allowed.

(1) Credit allowed. — An eligible small business taxpayer is allowed a credit against the portion of taxes imposed by this state that are attributable to and the direct consequence of the eligible small business taxpayer’s qualified investment in a new or expanded business in this state which results in the creation of at least ten new jobs within twelve months after placing qualified investment into service. The amount of this credit is determined as provided in subdivision (2) of this subsection.

(2) Amount of credit. — The annual amount of credit allowable under this subsection is determined by dividing the amount of the eligible small business taxpayer’s “qualified investment” (determined under section eight of this article) in “property purchased for business expansion” (as defined in section three of this article) by ten. The amount of qualified investment so apportioned to each year of the ten-year credit period is the annual measure against which taxpayer’s annual new jobs percentage (determined under subsection (d) of this section,) is applied. The product of this calculation establishes
the maximum amount of credit allowable each year for ten
consecutive years under this section due to the qualified
investment.

(3) Application of credit. — The annual credit allowance
must be taken beginning with the taxable year in which the
taxpayer places the qualified investment into service or use in
this state, unless the taxpayer elects to delay the beginning of
the ten-year credit period until the next succeeding taxable year.
This election is made in the annual income tax return filed
under this chapter by the taxpayer for the taxable year in which
the qualified investment is first placed in service or use. Once
made, this election cannot be revoked. The annual credit
allowance shall be taken and applied in the manner prescribed
in section seven of this article.

(c) New jobs. — The term “new jobs” has the meaning
ascribed to it in section three of this article.

(1) The term “new employee” has the meaning ascribed to
it in section three of this article: Provided, That this term does
not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i),
section 51 of the Internal Revenue Code of 1986, or a person
who owns ten percent or more of the business with such
ownership interest to be determined under rules set forth in
subsection (b), section 267 of said Internal Revenue Code; or

(B) Worked for the taxpayer during the six-month period
ending on the date the taxpayer’s qualified investment is placed
in service or use and is rehired by the taxpayer during the
six-month period beginning on the date taxpayer’s qualified
investment is placed in service or use.

(2) When a job is attributable. — An employee’s position
is directly attributable to the qualified investment if:
(A) The employee’s service is performed or his or her base of operations is at the new or expanded business facility;

(B) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(C) But for the qualified investment, the position would not have existed.

(d) New jobs percentage. — The annual new jobs percentage is based on the number of new jobs created in this state by the taxpayer directly attributable to taxpayer’s qualified investment.

(1) If at least ten new jobs are created and filled during the taxable year in which the qualified investment is placed in service or use, the applicable new jobs percentage is ten percent.

(2) During each of the remaining nine years of the ten-year credit period, the annual new jobs percentage is based on the average number of new jobs filled during that taxable year: Provided, That for purposes of estimating the new jobs percentage that will be applicable for each subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable year immediately prior thereto, and in the annual income tax return filed under this chapter for the then current tax year, the taxpayer shall redetermine his or her allowable new jobs percentage for that year based on the average number of new employees employed in new jobs during that year (determined on a monthly basis) created as the direct result of the taxpayer’s qualified investment.

(e) Certification of new jobs. — With the annual income tax return filed under this chapter for each taxable year during the ten-year credit period, the taxpayer shall certify:
(1) The new jobs percentage for that taxable year;

(2) The amount of the credit allowance for that year;

(3) If the business is a partnership, limited liability company or electing small business corporation, the amount of credit allocated to the partners, members or shareholders, as the case may be for that year;

(4) That qualified investment property continue to be used in the business, or if any of it was disposed of during the year the date of disposition and that the property was not disposed of prior to expiration of its useful life, as determined under section eight of this article; and

(5) That the new jobs created by the qualified investment continue to exist and are filled by persons who meet the definition of new employee (as defined in this section).

(f) Small business project. — A small business may apply to the commissioner under section six of this article for certification as a project if that project will create at least ten new jobs.

(g) Rules. — The commissioner may prescribe such rules as he or she determines necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify a taxpayer’s continued entitlement to claim the credit; and to verify proper application of the credit allowed.

(h) The commissioner may require a taxpayer intending to claim credit under this section to file with the commissioner a notice of intent to claim this credit, before the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated tax for the credit provided in this section.
§11-13Q-11. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) Disposition of property or cessation of use. — If during any taxable year, property with respect to which a tax credit has been allowed under this article:

1. Is disposed of prior to the end of its useful life, as determined under section eight of this article; or

2. Ceases to be used in an eligible business of the taxpayer in this state prior to the end of its useful life, as determined under section eight of this article, then the unused portion of the credit allowed for the property is forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of the property allowed under section eight of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the new or expanded business of the taxpayer. The taxpayer shall then file a reconciliation statement for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties. The reconciliation statement shall be filed with the annual return for the primary tax for which the taxpayer is liable under articles thirteen and twenty-three of this chapter.

(b) Cessation of operation of business facility. — If during any taxable year the taxpayer ceases operation of a business facility in this state for which credit was allowed under this article, before expiration of the useful life of property with respect to which tax credit has been allowed under this article, then the unused portion of the allowed credit is forfeited for the
taxable year and for all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of the property allowed under section eight of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a business of the taxpayer that is taxable under article thirteen, twenty-three or twenty-four of this chapter, or in the case of a sole proprietorship, article twenty-one of this chapter. The taxpayer shall then file a reconciliation statement with the annual return for the primary tax for which the taxpayer is liable under articles thirteen, twenty-one or twenty-three of this chapter, for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties.

(c) Reduction in number of employees. — If during any taxable year subsequent to the taxable year in which the new jobs percentage is redetermined as provided in section nine of this article, the average number of employees of the taxpayer, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer’s annual credit allowance is based, the taxpayer shall calculate what his or her annual credit allowance would have been had his or her new jobs percentage been determined based upon the average number of employees, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment. The difference between the result of this calculation and the taxpayer’s annual credit allowance for the qualified investment as determined under section four of this article, is forfeited for the then current taxable year, and for each succeeding taxable year unless for a succeeding taxable year the taxpayer’s average
employment in positions directly attributable to the qualified investment once again meets the level required to enable the taxpayer to utilize its full annual credit allowance for that taxable year.

§11-13Q-12. Recapture of credit; recapture tax imposed.

(a) When recapture tax applies.

(1) Any person who places qualified investment property in service or use and who fails to use the qualified investment property for at least the period of its useful life (determined as of the time the property was placed in service or use), or the period of time over which tax credits allowed under this article with respect to the property are applied under this article, whichever period is less, and who reduces the number of its employees filling new jobs in its business in this state, which were created and are directly attributable to the qualified investment property, after the third taxable year in which the qualified investment property was placed in service or use, or fails to continue to employ individuals in all the new jobs created as a direct result of the qualified investment property and used to qualify for the credit allowed by this article, prior to the end of the tenth taxable year after the qualified investment property was placed in service or use, the person shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when section thirteen of this article applies. However, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to the qualified investment property and the new jobs attributable thereto, are jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to the qualified investment property and new jobs.
(b) **Recapture tax imposed.** —

The recapture tax imposed by this subsection is the amount determined as follows:

1. **Full recapture.** — If the taxpayer prematurely removes qualified investment property placed in service (when considered as a class) from economic service in the taxpayer’s qualified investment business activity in this state, and the number of employees filling the new jobs created by the person falls below the number of new jobs required to be created in order to qualify for the amount of credit being claimed, the taxpayer shall recapture the amount of credit claimed under section seven of this article for the taxable year, and all preceding taxable years, on qualified investment property which has been prematurely removed from service. The amount of tax due under this subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

2. **Partial recapture.** — If the taxpayer prematurely removes qualified investment property from economic service in the taxpayer’s qualified investment business activity in this state, and the number of employees filling the new jobs created by the person remains twenty or more, but falls below the number necessary to sustain continued application of credit determined by use of the new job percentage upon which the taxpayer’s one-tenth annual credit allowance was determined under section four or section ten of this article, taxpayer shall recapture an amount of credit equal to the difference between:

   A. The amount of credit claimed under section seven of this article for the taxable year, and all preceding taxable years; and

   B. The amount of credit that would have been claimed in those years if the amount of credit allowable under section four or ten of this article had been determined based on the qualified
investment property which remains in service using the average number of new jobs filled by employees in the taxable year for which recapture occurs. The amount of tax due under this subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

(3) Additional recapture. — If after a partial recapture under subdivision (2) of this subsection, the taxpayer further reduces the number of employees filling new jobs, the taxpayer shall recapture an additional amount determined as provided under subdivision (1) of this subsection. The amount of tax due under this subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

(c) Recapture of credit allowed for projects. — The commissioner may file in the West Virginia register an emergency legislative rule explaining how the provisions of this section are applied in the case of projects certified under section six of this article.

(d) Payment of recapture tax. — The amount of tax recaptured under this section is due and payable on the day the person’s annual return is due for the taxable year in which this section applies, under article twenty-one or twenty-four of this chapter. When the employer is a partnership, limited liability company or S corporation for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in the partnership, members in the company, or shareholders in the S corporation, in the taxable year in which recapture occurs under this section.

(e) Rules. — The commissioner may promulgate such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. Rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§11-13Q-13. Transfer of qualified investment to successors.
(a) Mere change in form of business. — Property may not be treated as disposed of under section eleven of this article, by reason of a mere change in the form of conducting the business as long as the property is retained in the successor business in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the business facility or facilities transferred, and the transferor business may not be required to redetermine the amount of credit allowed in earlier years.

(b) Transfer or sale to successor. — Property is not treated as disposed of under section eleven of this article by reason of any transfer or sale to a successor business which continues to operate the business facility in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year and the transferor business is not required to redetermine the amount of credit allowed in earlier years.


Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified property:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its straight-line depreciation life;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and
§11-13Q-15. Failure to keep records of investment credit property.

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:

1. (1) A taxpayer is treated as having disposed of, during the taxable year, any investment credit property which the taxpayer cannot establish was still on hand, in this state, at the end of that year.

2. (2) If a taxpayer cannot establish when investment credit property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer will be treated as having placed the returned property in service in the next most recent year.

§11-13Q-16. Interpretation and construction.

(a) No inference, implication or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection or paragraph of this article.

(b) The provisions of this article shall be reasonably construed in order to effectuate the legislative intent recited in section two of this article.
§11-13Q-17. Severability.

(a) If any provision of this article or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of this article or the application thereof is made invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13Q-18. Burden of proof; application required; failure to make timely application.

(a) The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(b) Application for credit required.

(1) Application required. — Notwithstanding any provision of this article to the contrary, no credit is allowed or applied under this article for any qualified investment property placed in service or use until the person asserting a claim for the allowance of credit under this article makes written application to the commissioner for allowance of credit as provided in this
subsection. An application for credit shall be filed no later than the last day of the due date for filing the tax returns required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use and all information required by the form is provided.

(2) Failure to make timely application. — The failure to timely apply for the credit results in the forfeiture of fifty percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until the application is filed.


(a) Notwithstanding any other provision of this article to the contrary, except as provided in section five of this article, no entitlement to the economic opportunity tax credit may result from, and no credit is available to any taxpayer for, investment placed in service or use except for taxpayers engaged in the following industries or business activities:

(1) Manufacturing, including, but not limited to, chemical processing and chemical manufacturing, manufacture of wood products and forestry products, manufacture of aluminum, manufacture of paper, paper processing, recyclable paper processing, food processing, commercial hydroponic growing of food crops, manufacture of aircraft or aircraft parts, manufacture of automobiles or automobile parts, and all other manufacturing activities, but not timbering or timber severance or timber hauling, or mineral severance, hauling, processing or preparation, or coal severance, hauling, processing or preparation or synthetic fuel manufacturing taxable under section two-f, article thirteen of this chapter;
(2) Information processing, including, but not limited to, telemarketing, information processing, systems engineering, back office operations and software development;

(3) The activity of warehousing, including, but not limited to, commercial warehousing and the operation of regional distribution centers by manufacturers, wholesalers or retailers;

(4) The activity of goods distribution (exclusive of retail trade);

(5) Destination-oriented recreation and tourism; and

(6) Research and development, as defined in section three of this article.

(b) Notwithstanding the fact that a company, entity or taxpayer is engaged in an industry or business activity enumerated in subsection (a) of this section, the company, entity or taxpayer must qualify for the economic opportunity tax credit by fulfilling the qualified investment, jobs creation and other credit entitlement requirements of this article in order to obtain entitlement to any credit under this article. Failure to fulfill the statutory requirements of this article results in a partial or complete loss of the tax credit.

§11-13Q-20. Tax credit review and accountability.

(a) Beginning on the first day of February, two thousand six and every third year thereafter, the commissioner shall submit to the governor, the president of the Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the economic opportunity credit during the most recent three-year period for which information is available. The criteria to be evaluated shall include, but not be limited to, for each year of the three-year period:
(1) The numbers of taxpayers claiming the credit;

(2) The net number of new jobs created by all taxpayers claiming the credit;

(3) The cost of the credit;

(4) The cost of the credit per new job created; and

(5) Comparison of employment trends for an industry and for taxpayers within the industry that claim the credit.

(b) Taxpayers claiming the credit shall provide any information the tax commissioner may require to prepare the report: Provided, That the information provided is subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter.

§11-13Q-21. Effective date; election; notice of claim or election under transition rules.

(a) The credit allowed by this article is allowed for qualified investment placed in service or use on or after the first day of January, two thousand three, subject to the rules contained in this section.

(b) Election. — Notwithstanding the general rule stated in subsection (a), the taxpayer may elect to apply the credit allowed under article thirteen-c of this chapter in lieu of the credit allowed by this article to property purchased or leased for business expansion that is placed in service or use on or after the first day of January, two thousand three, if at least one of the following subdivisions applies to the property:

(1) The new or expanded business facility was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the first day of January, two thousand
three, as limited to the provisions of the contract as of that date then binding on the taxpayer, but only to the extent the new or expanded business facility is placed in service or use prior to the first day of January, two thousand four;

(2) The new or expanded business facility that is part of a project described in subsection (a), section six of this article, was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the first day of January, two thousand three, as limited to the provisions of such contract as of such date then binding on the taxpayer;

(3) The new or expanded business facility was purchased or leased pursuant to a written contract executed prior to the first day of January, two thousand three, as limited to the provisions then binding on the taxpayer as of that date, but only to the extent the new or expanded business facility is placed in service or use prior to the first day of January, two thousand four; or

(4) The machinery or equipment or other tangible personal property purchased or leased for business expansion at a new or expanded business facility was purchased or leased by the taxpayer pursuant to a written contract to purchase or lease identifiable tangible personal property executed before the first day of January, two thousand three, as limited to the provisions of the written contract then binding on the taxpayer, but only to the extent the tangible personal property purchased or leased under the contract is placed in service or use before the first day of January, two thousand four.

(c) Notice of election required. — Any person intending to make the election allowed in subsection (b) of this section shall file written notice of his or her intention with the tax commissioner on or before the thirty-first day of December, two thousand two. In the case of a multiparticipant project, this notice may be filed by the managing project participant on
behalf of all participants in the project. The notice shall be in a form prescribed by the tax commissioner and all information required by the form shall be provided.

(d) Failure to file notice. — If any person fails to timely file the notice required by subsection (c) of this section, that person is precluded from claiming credit under article thirteen-c of this chapter for property placed in service or use after the thirty-first day of December, two thousand two, and may claim credit under this article to the extent the credit is allowable 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-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-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 Research and Development Tax Credit Act”.

§11-13R-2. Legislative finding and purpose.
1 The Legislature finds that the encouragement of research and development in this state is in the public interest and
promotes economic growth and development and the general welfare of the people of this state. In order to encourage research and development in this state and thereby increase employment and economic development, there is hereby provided a strategic research and development tax credit.


(a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) Terms defined.

(1) “Base amount” means:

(A) The average annual combined qualified research and development expenditure for the three taxable years immediately preceding the taxable year for which a credit is claimed under this article;

(B) For a taxpayer that has filed a tax return under article twenty-three of this chapter for fewer than three but at least one prior taxable year, determined on the basis of all filings by the taxpayer’s controlled group, the base amount is the average annual combined qualified research and development expenditure for the number of immediately preceding taxable years, other than short taxable years, during which the taxpayer has filed a tax return under article twenty-three of this chapter; or

(C) For a taxpayer that has not filed a tax return under article twenty-three of this chapter for at least one taxable year, determined on the basis of all filings by the taxpayer’s controlled group, the base amount is zero.
(2) "Commissioner" and "tax commissioner" are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his or her delegate.

(3) "Controlled group" means a controlled group as defined by section 1563 of the Internal Revenue Code of 1986, as amended.

(4) "Corporation" means any corporation, limited liability company, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(5) "Delegate" in the phrase "or his or her delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(6) "Eligible taxpayer" means any person that is subject to the tax imposed by article twenty-three or article twenty-four of this chapter that is engaged in qualified research and development that has paid or incurred investment in qualified research and development credit property or that has paid or incurred qualified research and development expenses as defined in section four of this article. In the case of a sole proprietorship subject to neither the tax imposed by article twenty-three nor the tax imposed by article twenty-four, the term "eligible taxpayer" means any sole proprietor who is subject to the tax imposed by article twenty-one of this chapter and who is engaged in qualified research and development that has paid or incurred investment in qualified research and development credit property or that has paid or incurred qualified research
and development expenses as defined in section four of this article.

(7) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or other organization.

(8) "Person" includes any natural person, corporation, limited liability company or partnership.

(9) "Qualified research and development credit property" means depreciable property purchased for the conduct of qualified research and development.

(10) "Research and development" means systematic scientific, engineering or technological study and investigation in a field of knowledge in the physical, computer or software sciences, often involving the formulation of hypotheses and experimentation, for the purpose of revealing new facts, theories or principles, or increasing scientific knowledge, which may reveal the basis for new or enhanced products, equipment or manufacturing processes.

(A) Research and development includes, but is not limited to, design, refinement and testing of prototypes of new or improved products, or design, refinement and testing of manufacturing processes before commercial sales relating thereto have begun. For purposes of this section, commercial sales includes, but is not limited to, sales of prototypes or sales for market testing.

(B) Research and development does not include:
(i) Market research;
(ii) Sales research;
(iii) Efficiency surveys;
(iv) Consumer surveys;
(v) Product market testing;
(vi) Product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability;
(vii) The ordinary testing or inspection of materials or products for quality control (quality control testing);
(viii) Management studies;
(ix) Advertising;
(x) Promotions;
(xi) The acquisition of another’s patent, model, production or process or investigation or evaluation of the value or investment potential related thereto;
(xii) Research in connection with literary, historical or similar activities;
(xiii) Research in the social sciences, economics, humanities or psychology and other non-technical activities; and
(xiv) The providing of sales services or any other service, whether technical service or non-technical service.

(11) “Related person” means:
(A) A corporation, limited liability company, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this article, “control,” with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. “Control,” with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code of 1986, as amended, other than paragraph (3) of that section.

(12) “Taxpayer” means any person subject to the tax imposed by article twenty-three or twenty-four of this chapter or both. In the case of a sole proprietorship subject to neither the tax imposed by article twenty-three nor the tax imposed by article twenty-four, the term “taxpayer” means any sole proprietor who is subject to the tax imposed by article twenty-one of this chapter.
§11-13R-4. Annual combined qualified research and development expenditure, qualified research and development expenses.

(a) General. — The annual combined qualified research and development expenditure is the sum of the applicable percentage of the cost of depreciable property purchased for the conduct of a qualified research and development activity, which is placed in service or use in this state during the taxable year, plus the amount of qualified research and development expenses (as defined in this section) deducted by the eligible taxpayer, for federal income tax purposes for the taxable year.

(b) Applicable percentage of the cost of depreciable property. — For the purpose of subsection (a), the applicable percentage of the cost of depreciable property is determined under the following table:

<table>
<thead>
<tr>
<th>If useful life is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 4 years</td>
<td>33 1/3</td>
</tr>
<tr>
<td>4 years or more but less than 6 years</td>
<td>66 2/3</td>
</tr>
<tr>
<td>6 years or more</td>
<td>100</td>
</tr>
</tbody>
</table>

The useful life of any property for purposes of this section is determined by those methods as the tax commissioner may require as of the date the property is first placed in service or use in this state by the taxpayer.

(c) Placed in service or use. — For purposes of the credit allowed by this article, property is considered placed in service or use in the earlier of the following taxable years:
(1) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(d) Cost of property. — For purposes of subsection (a) of this section, the cost of each property purchased for the conduct of a qualified research and development activity is determined under the following rules:

(1) Trade-ins. — Cost does not include the value of property given in trade or exchange for the property purchased for conduct of the research and development activity.

(2) Damaged, destroyed or stolen property. — If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(3) Rental property. — The cost of property acquired by lease for a term of ten years or longer shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

(4) Property purchased for multiple use. — The cost of property purchased for multiple business use, including direct use in the conduct of a qualified research and development activity, together with some other business or activity not eligible under this section, shall be apportioned between such activities. The amount apportioned to the conduct of the qualified research and development activity is considered to be eligible investment subject to the conditions and limitations of this section.
(5) Self-constructed property. — In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(e) Qualified research and development expenses. — For purposes of this section:

(1) “Qualified research and development expenses” means the sum of in-house and contract research and development expenses for qualified research and development allocated to this state, which are paid or incurred by the eligible taxpayer during the taxable year. In no event does “qualified research and development expenses” include:

(A) Any expense that must be capitalized and depreciated for federal income tax purposes, or any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent or quality of any deposit of coal, limestone or other natural resource, including oil and natural gas; or

(B) Any wage or salary expense for wages or salary reported on form W-2 for federal income tax purposes on which the personal income tax is imposed under article twenty-one of this chapter, and against which tax the credit allowed under this article is applied.

(2) “In-house research and development expenses” means:

(A) Wages paid or incurred to an employee for qualified services performed in this state by the employee;

(B) Amounts paid or incurred for supplies used in the conduct of qualified research and development in this state; or
(C) Amounts paid or incurred to another person for the right to use personal property in the conduct of qualified research and development in this state.

(3) "Qualified services" means services consisting of:

(A) Engaging in qualified research and development;

(B) Engaging in the direct supervision or direct support of qualified research and development; or

(C) If substantially all of the services performed by an individual for the taxpayer during the taxable year consist of services meeting the requirements of paragraph (A) or (B) of this subdivision, the term "qualified services" means all services performed by the individual for the taxable year.

(4) "Supplies" means any tangible property other than:

(A) Land or improvements to land; or

(B) Property of a character subject to depreciation for federal income tax purposes.

(5) "Wages" has the meaning given to that term by section 3401(a) of the Internal Revenue Code of 1986, as amended. In the case of self-employed individuals and owner-employees (within the meaning of section 401(c)(1) of the Internal Revenue Code), the term "wages" includes the earned income (as defined in section 401(c)(2) of the Internal Revenue Code) of the employee. The term "wages" shall not include any amount taken into account in determining the federal targeted jobs credit under section 51(a) of the Internal Revenue Code.

(6) "Contract research and development expenses" means:
(A) In general, sixty-five percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research and development; and

(B) If any contract research and development expenses paid or incurred during any taxable year are attributable to qualified research and development to be conducted after the close of the taxable year, that amount is treated as paid or incurred during the taxable year during which the qualified research and development is conducted.

(7) “Qualified research and development” means research and development that occurs in West Virginia.

(8) Excluded property. — Any property owned or leased by the taxpayer, the cost of which was the basis of a credit against tax taken under any other article of this chapter, does not qualify as property purchased for the conduct of a qualified research and development activity for purposes of this article.

(9) Excluded expense. — Any expense paid or incurred by the taxpayer, which was the basis of a credit against tax taken under any other article of this chapter, does not qualify as a qualified research and development expense for purposes of this article.

(f) Research and development by colleges, universities and certain research and development organizations. — In general, sixty-five percent of the amount paid or incurred by a taxpayer to a research institution as defined in this section for research and development to be performed by the research institution is treated as contract research and development expenses. The preceding sentence applies only if the amount is paid or incurred pursuant to a written research and development agreement between the taxpayer and the research institution.
For purposes of this section, the term "research institution" means any nonprofit educational organization which is an institution of higher education (as defined in section 3304(f) of the Internal Revenue Code of 1986, as amended), a West Virginia institution of higher education subject to the jurisdiction of a board described in article two-a, chapter eighteen-b of this code, or any other nonprofit organization exempt from federal income taxes which is organized and operated primarily to conduct scientific research and is not a private foundation for federal income tax purposes.

(g) Standards for determining qualified research and development expenses. — In prescribing standards for determining which research and development expenses are considered to be qualified research and development expenses for purposes of this section, the tax commissioner may consider:

(1) The place where the services are performed; (2) the residence or business location of the person or persons performing the services; (3) the place where research and development supplies are consumed; and (4) other factors that the tax commissioner believes relevant in determining whether or not the research and development expenses were made for qualified research and development, and depreciable property was purchased and used for qualified research and development, during the taxable year.

(h) Depreciable property. — Purchases of depreciable property for the conduct of qualified research qualify as part of the annual combined qualified research and development expenditure for purposes of this article only if:

(1) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;
(2) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The tax commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(3) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(A) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(B) Under section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

§11-13R-5. Amount of credit allowed.

The allowable credit is the greater of:

(1) Three percent of the annual combined qualified research and development expenditure; or

(2) Ten percent of the excess of the annual combined qualified research and development expenditure over the base amount.

§11-13R-6. Application of credit.

(a) Credit allowed. — Beginning in the year that the annual combined qualified research and development expenditure is paid or incurred, eligible taxpayers and owners of eligible taxpayers described in subsections (d) and (f) of this section are allowed a credit against the taxes imposed by articles twenty-three, twenty-four and twenty-one of this chapter, in that order, as specified in this section.
(b) Business franchise tax. — The credit is first applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).

(c) Corporation net income taxes. — After application of subsection (b) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax).

(d) If the eligible taxpayer is a limited liability company, small business corporation, or a partnership, then any unused credit (after application of subsections (b) and (c) of this section) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(e) Personal income tax taxes. — After application of subsections (b), (c) and (d) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-one.
of this chapter for the taxable year (determined before applica-
tion of allowable credits against tax) of the eligible taxpayer.

(f) If the eligible taxpayer is a limited liability company,
small business corporation, or a partnership, then any unused
credit (after application of subsections (b), (c), (d) and (e) of
this section) is allowed as a credit against the taxes imposed by
article twenty-one of this chapter on owners of the eligible
taxpayer on the conduit income directly derived from the
eligible taxpayer by its owners. Only those portions of the tax
imposed by article twenty-one of this chapter that are imposed
on income directly derived by the owner from the eligible
taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability compa-
nies, partnerships and other unincorporated organizations shall
allocate the credit allowed by this article among their members
in the same manner as profits and losses are allocated for the
taxable year.

(2) No credit is allowed under this article against any
withholding tax imposed by, or payable under, article twenty-
one of this chapter.

(g) The total amount of tax credit that may be used in any
taxable year by any eligible taxpayer in combination with the
owners of the eligible taxpayer under subsections (d) and (f) of
this section may not exceed two million dollars.

(h) Unused credit carry forward. — If the credit allowed
under this article in any taxable year exceeds the sum of the
taxes enumerated in subsections (b), (c), (d), (e) and (f) of this
section for that taxable year, the eligible taxpayer and owners
of eligible taxpayers described in subsections (d) and (f) of this
section may apply the excess as a credit against those taxes, in
the order and manner stated in this section, for succeeding taxable years until the earlier of the following:

(1) The full amount of the excess credit is used; or

(2) The expiration of the tenth taxable year after the taxable year in which the annual combined qualified research and development expenditure was paid or incurred. Credit remaining thereafter is forfeited.

(i) Application for certification. — No credit is allowed or may be applied under this article until the person seeking to claim the credit has filed a written application for certification of the proposed research and development program or project with the tax commissioner, and has received certification of the research and development program or project from the tax commissioner pursuant to that written application. The certification of the program or project must be received by the eligible taxpayer from the tax commissioner prior to any credit being claimed or allowed for any annual combined qualified research and development expenditure for any research activity or project.

(1) In the case of owners of eligible taxpayers described in subsections (d) or (f) of this section, the application for certification filed under this section by the limited liability company, small business corporation or partnership owned by the person is considered to be filed on behalf of the owner, and no separate filing of the application is required of the owner.

(2) Form of application. — The application for certification must be filed in the form as the tax commissioner may prescribe, and shall contain the information as the tax commissioner may require, to determine whether the project should be certified as eligible for credit under this article.
(3) **Time period covered by certification.** — The application may request certification of the research and development program for one taxable year or multiple taxable years, as applicable, based on the nature and character of the program or project plan for the particular research and development project or activity.

(4) **Requirements for application.** — The application shall specifically set forth a written research and development program plan generally describing the nature of the research and development to be undertaken, the projected time period over which the research and development shall be carried out, the period of time for which the applicant seeks certification of the program or project, and such other information as the tax commissioner may require.

(5) **Certification.** — The tax commissioner may issue certification of a research and development program or project if it appears to the tax commissioner that the applicant intends to engage in a bona fide research and development activity, as described in this article, and will otherwise comply with the requirements of this article and all rules and requirements applicable thereto.

(6) **Time period covered by certification.** — The tax commissioner may issue certification for the period of time for which the eligible taxpayer seeks certification, or a different period of time, within the discretion of the tax commissioner. In his or her discretion, the tax commissioner may require that a separate application be filed for each tax year in which qualified research and development activity is to be undertaken or in which qualified research and development property is to be placed in service or use.

(7) **Failure to file.** — The failure to timely file the application for certification of a research and development program or
project under this section results in forfeiture of one hundred percent of the annual credit otherwise allowable under this article. This penalty applies annually until such application is filed.

(8) Research and development undertaken without certification. — If a person has filed an application for certification of a research and development program or project, and has failed to receive certification of the plan or program from the tax commissioner, no credit is allowed under this article for the research and development activity or investment relating thereto.

(9) Failure to comply with terms of certification. — If a person has filed an application for certification of a research and development program or project, and has received certification of the plan or program from the tax commissioner, but fails to conform to the terms of the certification, no credit is allowed under this article for the research and development activity or for investment in the research and development activity by the eligible taxpayer. This restriction may be waived by the tax commissioner upon a finding that the research and development undertaken was within the requirements of this article, and that there was no intent to defraud the state or willful neglect in the applicant’s failure to conform to the terms of the certification.

(10) Failure to comply with certification time restrictions. — If a person has filed an application for certification of a research and development program or project, and has received certification of the plan or program from the tax commissioner, but fails to conform to the time periods specified therein for the certified research and development program or project, or fails to renew the certification so as to cover ongoing or subsequent research and development activity, the research and development activity is out of compliance with the terms of the certification, and no credit is allowed under this article for, or
relating to, the research and development activity by any person
or taxpayer. This restriction may be waived by the tax commis-
sioner upon a finding that the research and development thus
undertaken was within the requirements of this article, and that
there was no intent to defraud the state or willful neglect in the
applicant’s failure to conform to the terms of the certification.

§11-13R-7. Forfeiture of unused tax credits; redetermination of
credit allowed.

(a) Disposition of property or cessation of use. — If during
any taxable year, property with respect to which a tax credit has
been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as
determined under section four of this article; or

(2) Ceases to be used in a qualified research and develop-
ment activity of the taxpayer in this state prior to the end of its
useful life, as determined under section four of this article, then
the unused portion of the credit allowed for such property is
forfeited for the taxable year and all ensuing years. Except
when the property is damaged or destroyed by fire, flood, storm
or other casualty, or is stolen, the taxpayer shall redetermine the
amount of credit allowed in all earlier years by reducing the
applicable percentage of cost of such property allowed under
section four of this article, to correspond with the percentage of
cost allowable for the period of time that the property was
actually used in the qualified research and development activity
of the taxpayer. The taxpayer shall then file a reconciliation
statement with its annual return filed under article twenty-three
of this chapter, for the year in which the forfeiture occurs and
pay any additional taxes owed due to reduction of the amount
of credit allowable for such earlier years, plus interest and any
applicable penalties.
§11-13R-8. Transfer of qualified research and development investment to successors.

(a) *Mere change in form of business.* — Property may not be treated as disposed of under section seven of this article, by reason of a mere change in the form of conducting the business as long as the property is retained in a business in this state for use in qualified research and development, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the property transferred, and the taxpayer (transferor) may not be required to redetermine the amount of credit allowed in earlier years.

(b) *Transfer or sale to successor.* — Property may not be treated as disposed of under section seven of this article by reason of any transfer or sale to a successor business which continues to use the property in qualified research and development. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year, and the taxpayer (transferor) may not be required to redetermine the amount of credit allowed in earlier years.


Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified research and development property:

1. Its identity;
2. Its actual or reasonably determined cost;
3. Its straight-line depreciation life;
(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and

(6) The date it was disposed of or otherwise ceased to be qualified research and development property.

§11-13R-10. Failure to keep records of qualified research and development credit property.

A taxpayer who does not keep the records required for identification of qualified research and development credit property, is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any qualified research and development credit property which the taxpayer cannot establish was still on hand and used in qualified research and development activity at the end of that year.

(2) If a taxpayer cannot establish when qualified research and development credit property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand and used in qualified research and development activity at the end of that year. In that event, the taxpayer will be treated as having placed the returned property in service in the next most recent year.

§11-13R-11. Tax credit review and accountability.

(a) Beginning on the first day of February, two thousand six and on the first day of February every third year thereafter, the
commissioner shall submit to the governor, the president of the Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the credit allowed under this article during the most recent three-year period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:

(1) The numbers of taxpayers claiming the credit;

(2) The net number of new jobs created by all taxpayers claiming the credit;

(3) The cost of the credit;

(4) The cost of the credit per new job created; and

(5) Comparison of employment trends for the industry and for taxpayers within the industry that claim the credit.

(b) Taxpayers claiming the credit shall provide such information as the tax commissioner may require to prepare the report: Provided, That such information shall be subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter.

§11-13R-12. Effective date.

The provisions of this article become effective on the first day of January, two thousand three, and apply only to qualified 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-5. Qualified manufacturing investment.
§11-13S-6. Forfeiture of unused tax credits; redetermination of credit allowed.


§11-13S-8. Identification of investment credit property.


§11-13S-10. Tax credit review and accountability.

§11-13S-1. Short title.

1 This article may be cited as the “West Virginia Manufacturing Investment Tax Credit Act”.

§11-13S-2. Legislative findings and purpose.

1 The Legislature finds that the encouragement of the location of new industry in this state, and the expansion, growth and revitalization of existing industrial facilities in this state is in the public interest and promotes the general welfare of the people of this state.


1 (a) Any term used in this article has the meaning ascribed by this section, unless a different meaning is clearly required by 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 purchases new property for the purpose of industrial expansion, or for the purpose of industrial revitalization of an existing industrial facility in this state.

9 (2) “Industrial expansion” means capital investment in a new or expanded industrial facility in this state.

11 (3) “Industrial facility” means any factory, mill, plant, refinery, warehouse, building or complex of buildings located
within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within the facility primarily used in connection with the operation of the manufacturing business.

(4) "Industrial revitalization" or "revitalization" means capital investment in an industrial facility located in this state to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of the facility in an industrial business of the taxpayer, including the acquisition of any real property necessary to the industrial revitalization.

(5) "Industrial taxpayer" means any taxpayer who is primarily engaged in a manufacturing business.

(6) "Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number, of thirty-one, thirty-two or thirty-three.

(7) "Property purchased for manufacturing investment" means real property, and improvements thereto, and tangible personal property, but only if the property was constructed, or purchased, on or after the first day of January, two thousand three, for use as a component part of a new, expanded or revitalized industrial facility. This term includes only that tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the federal income tax liability of the industrial taxpayer, that has a useful life, at the time the property is placed in service or use in this state, of four years or more. Property acquired by written lease, for a primary term of ten years or longer, if used as a component part of a new or expanded industrial facility, is included within this definition.
(A) "Property purchased for manufacturing investment" does not include:

(i) Repair costs including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(ii) Motor vehicles licensed by the department of motor vehicles;

(iii) Airplanes;

(iv) Off-premises transportation equipment;

(v) Property which is primarily used outside this state; and

(vi) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his or her industrial business in this state, or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(B) Purchases or acquisitions of land or depreciable property qualify as purchases of property purchased for manufacturing investment for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The tax commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and
(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired; or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(8) “Qualified manufacturing investment” means that amount determined under section five of this article as qualified manufacturing investment.

(9) “Taxpayer” means any person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter (or any combination of those articles of this chapter).


(a) Credit allowed. — There is allowed to eligible taxpayers and to persons described in subdivision (5), subsection (b) of this section, a credit against the taxes imposed by articles thirteen-a, twenty-three and twenty-four of this chapter. The amount of credit shall be determined as hereinafter provided in this section.

(b) Amount of credit allowable. — The amount of allowable credit under this article is equal to five percent of the qualified manufacturing investment (as determined in section five of this article), and shall reduce the severance tax, imposed under article thirteen-a of this chapter, the business franchise tax imposed under article twenty-three of this chapter and the corporation net income tax imposed under article twenty-four of this chapter, in that order, subject to the following conditions and limitations:
(1) The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the property purchased for manufacturing investment is first placed in service or use in this state;

(2) **Severance tax.** — The credit is applied to reduce the severance tax, imposed under article thirteen-a of this chapter (determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter). The amount of annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such taxable year (determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter);

(3) **Business franchise tax.** — After application of subdivision (2) of this subsection, any unused credit is next applied to reduce the business franchise tax, imposed under article twenty-three of this chapter (determined after application of the credits against tax provided in section seventeen of article twenty-three of this chapter, but before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce the business franchise tax imposed under article
twenty-three of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the amount of the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined after application of the credits against tax provided in section seventeen of article twenty-three of this chapter, but before application of any other allowable credits against tax);

(4) Corporation net income tax. — After application of subdivision (3) of this subsection, any unused credit is next applied to reduce the corporation net income tax, imposed under article twenty-four of this chapter (determined before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce corporation net income tax imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax);

(5) Pass-through entities. —

(A) If the eligible taxpayer is a limited liability company, small business corporation, or a partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this
subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes (determined before application of any other allowable credits against tax).

(C) When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner, below fifty percent of the amount that would be imposed for such taxable year on the conduit income (determined before application of any other allowable credits against tax).

(6) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit (after application of subdivisions (2), (3) and (4) of this subsection) among their members in the same manner as profits and losses are allocated for the taxable year; and

(7) No credit is allowed under this article against any tax imposed by article twenty-one of this chapter.
(c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Such unused credit is forfeited.

(d) Application for credit required. — (1) Application required. - No credit is allowed or applied under this article for any manufacturing investment until the eligible taxpayer makes written application to the tax commissioner for allowance of credit as provided in this section. An application for credit shall be filed, in the form as the tax commissioner shall prescribe, prior to the first date when qualified investment property is first placed in service or use. All information required by the form is provided. A separate application shall be filed for each tax year in which property purchased for manufacturing investment is placed in service or use.

(2) Failure to file. — The failure to timely apply the application for credit under this section results in forfeiture of fifty percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until such application is filed.

§11-13S-5. Qualified manufacturing investment.

(a) General. — The qualified manufacturing investment is the applicable percentage of the cost of property purchased for manufacturing investment, which is placed in service or use in this state, by the eligible taxpayer during the taxable year.

(b) Applicable percentage. — For the purposes of subsection (a) of this section, the applicable percentage for any property is determined under the following table:

<table>
<thead>
<tr>
<th>If useful life is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3</td>
</tr>
</tbody>
</table>
The useful life of any property for purposes of this section is determined pursuant to the methods as the tax commissioner may require as of the date the property is first placed in service or use in this state by the taxpayer, determined as the tax commissioner may require.

(c) Placed in service or use. — For purposes of the credit allowed by this article, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer’s depreciation practice, the period for depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(d) Cost. — For purposes of this section, the cost of property purchased for manufacturing investment, is determined under the following rules:

(1) Trade-ins. — Cost will not include the value of property given in trade or exchange for property purchased for manufacturing investment;

(2) Damaged, destroyed or stolen property. — If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property will not include any insurance proceeds received in compensation for the loss;

(3) Rental property. — The cost of property acquired by lease for a term of ten years or longer is one hundred percent of
the rent reserved for the primary term of the lease, not to exceed twenty years;

(4) **Property purchased for multiple use.** — The cost of property purchased for multiple business use including use as a component part of a new or expanded or revitalized industrial facility, together with some other business or activity not eligible for credit under this article, is apportioned between the businesses and occupations. The amount apportioned to the new or expanded or revitalized industrial facility is considered as a qualified investment, subject to the conditions and limitations of this section; and

(5) **Self-constructed property.** — In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for purposes of depreciation.

§11-13S-6. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) **Disposition of property or cessation of use.** — If during any taxable year, property with respect to which a tax credit has been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as determined under section five of this article; or

(2) Ceases to be used in an industrial facility of the taxpayer in this state prior to the end of its useful life, as determined under section five of this article, then the unused portion of the credit allowed for such property is forfeited for the taxable year and all ensuing years. Except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of the property allowed under section five of this article, to
correspond with the percentage of cost allowable for the period of time that the property was actually used in manufacturing activity as part of an industrial facility of the taxpayer. The taxpayer must then file a reconciliation statement with its annual return filed under article twenty-three of this chapter, for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties.


(a) *Mere change in form of business.* — Property may not be treated as disposed of under section six of this article, by reason of a mere change in the form of conducting the business as long as the property is retained in a business in this state for use in the activity of manufacturing in an industrial facility in West Virginia, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the property or industrial facility transferred, and the taxpayer (transferor) may not be required to redetermine the amount of credit allowed in earlier years.

(b) *Transfer or sale to successor.* — Property will not be treated as disposed of under section six of this article by reason of any transfer or sale to a successor business which continues to use the property in manufacturing in an industrial facility in West Virginia. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year, and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

§11-13S-8. Identification of investment credit property.
Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of property purchased for manufacturing investment:

1. Its identity;
2. Its actual or reasonably determined cost;
3. Its straight-line depreciation life;
4. The month and taxable year in which it was placed in service;
5. The amount of credit taken; and
6. The date it was disposed of or otherwise ceased to be property purchased for manufacturing investment.


A taxpayer who does not keep the records required for property purchased for manufacturing investment, is subject to the following rules:

1. A taxpayer is treated as having disposed of, during the taxable year, any property purchased for manufacturing investment which the taxpayer cannot establish was still on hand and used in manufacturing activity in this state at the end of that year; and
2. If a taxpayer cannot establish when property purchased for manufacturing investment reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property
placed in service in the most recent year is still on hand and used in manufacturing activity at the end of that year. In that event, the taxpayer will be treated as having placed the returned property in service in the next most recent year.

§11-13S-10. Tax credit review and accountability.

(a) Beginning on the first day of February, two thousand six, and on the first day of February every third year thereafter, the commissioner shall submit to the governor, the president of the Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the credit allowed under this article during the most recent three-year period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:

(1) The numbers of taxpayers claiming the credit;

(2) The net number of new jobs created by all taxpayers claiming the credit;

(3) The cost of the credit;

(4) The cost of the credit per new job created; and

(5) Comparison of employment trends for the industry and for taxpayers within the industry that claim the credit.

(b) Taxpayers claiming the credit shall provide the information as the tax commissioner may require to prepare the report: Provided, That the information is subject to the confidentiality and disclosure provisions of sections five-d and five-s, article 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.

(a) Sales of tangible personal property and services after the thirtieth day of June, two thousand two, directly used or consumed in the activity of research and development are exempt from tax imposed by this article. Any person having a right or claim to the exemption set forth in this section shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit or give to the vendor the person's West Virginia direct pay permit number in accordance with the provisions of section nine-d of this article.

(b) For purposes of this article:

(1) "Directly used or consumed in the activity of research and development" means used or consumed in those activities or operations which constitute an integral and essential part of research and development, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to research and development.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activity of research and development include only:

(i) In the case of tangible personal property, physical incorporation of property into tangible personal property that is the subject of, or directly used in, research and development;
(ii) Causing a direct physical, chemical or other change
upon property that is the subject of, or directly used in, research
and development;

(iii) Transporting or storing property that is the subject of,
or directly used in, research and development;

(iv) Measuring or verifying a change in property that is the
subject of, or directly used in, research and development;

(v) Physically controlling or directing the physical move-
ment or operation of property that is the subject of, or directly
used in, research and development;

(vi) Directly and physically recording the flow of property
that is the subject of, or directly used in, research and develop-
ment;

(vii) Producing energy for property that is the subject of, or
directly used in, research and development;

(viii) Controlling or otherwise regulating atmospheric or
other environmental conditions required for research and
development;

(ix) Serving as an operating supply for property that is the
subject of, or directly used in, research and development;

(x) Maintenance or repair of property, including mainte-
nance equipment, that is directly used in research and develop-
ment;

(xi) Storage, removal or transportation of economic or other
waste resulting from the activity of research and development;

(xii) Pollution control or environmental quality or environ-
mental protection activity directly relating to the activity of
research and development, and personnel, plant, property or
community safety or security activity directly relating to the
activity of research and development; or

(xiii) Otherwise being used as an integral and essential part
of research and development.

(B) Uses of property or services which do not constitute
direct use or consumption in the activity of research and
development include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Planning or scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance,
training, accounting and administration; or

(vi) An activity or function incidental or convenient to
research and development, rather than an integral and essential
part of these activities.

(2) "Research and development" means systematic scien-
tific, engineering or technological study and investigation in a
field of knowledge in the physical, computer or software
sciences, often involving the formulation of hypotheses and
experimentation, for the purpose of revealing new facts,
theories or principles, or increasing scientific knowledge, which
may reveal the basis for new or enhanced products, equipment
or manufacturing processes. Research and development
includes, but is not limited to, design, refinement and testing of
prototypes of new or improved products, or design, refinement
and testing of manufacturing processes before commercial sales
relating thereto have begun. For purposes of this section commercial sales include, but are not limited to, sales of prototypes or sales for market testing.

(A) Research and development does not include:

(i) Market research;

(ii) Sales research;

(iii) Efficiency surveys;

(iv) Consumer surveys;

(v) Product market testing;

(vi) Product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability;

(vii) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(viii) Management studies;

(ix) Advertising;

(x) Promotions;

(xi) The acquisition of another's patent, model, production or process or investigation or evaluation of the value or investment potential related thereto;

(xii) Research in connection with literary, historical or similar projects;

(xiii) Research in the social sciences, economics, humanities or psychology and other nontechnical activities; and
(xiv) The providing of sales services or any other service, whether technical service or nontechnical service.

c) No provision of this section may be interpreted to alter, abrogate or impede application of the exemption for sales of primary opinion research services set forth in section nine of this article.

§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.

The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia department of environmental protection or the West Virginia bureau for public health or both is exempt from the tax imposed by this article. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing the services that are separately billed to the purchaser of the services, and on which the tax imposed 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.

Notwithstanding any provision of this article to the contrary, any sale or service upon which a special district excise tax is paid, pursuant to the provisions of section eleven, article thirteen-b, chapter eight of this code, shall be exempt from the tax imposed by this article.
§11-21-8h. Distribution, sale, transfer or assignment of qualified rehabilitated building investment tax credit.

(a) Any person eligible for credit under section eight-a or eight-g of this article may transfer, sell or assign any unused credits. Any person that transfers, sells or assigns any unused portion of a tax credit shall obtain a certificate of approval from the division of culture and history to transfer, sell or assign the stated amount of unused tax credit. The division of culture and history shall, by the last day of January each year provide in an electronic medium acceptable to the tax commissioner, a report listing the name of the transferor, the transferor’s tax identification number, the name of the transferee, the transferee’s tax identification number, the amount of credit transferred, sold or assigned and the date of the transfer, sale or assignment for each transfer, sale or assignment approved by the division of culture and history during the preceding calendar year.

(b) Credits granted to or acquired by a pass-through entity created or recognized under West Virginia law, or by multiple owners of property, if not transferred, sold or assigned, may be divided among the partners, members, shareholders or owners either according to the distributive shares of income of the entity or pursuant to an executed agreement among the partners, members, shareholders or owners if the agreement documents an alternate method of distribution, as provided in section eight-e of this article.

(c) Any transferee, purchaser or assignee of tax credits under this section may use the acquired credits to offset the tax imposed by this article or article twenty-four of this chapter upon the transferee, purchaser or assignee. To claim the tax credit, the transferee, purchaser or assignee shall attach the certificate obtained by the transferor, seller or assignor in accordance with subsection (a) of this section to the tax return.
against which the credit is claimed when the tax return is filed
with the tax commissioner.

(d) If the credit allowed under this section exceeds the
transferee’s, purchaser’s or assignee’s tax due for the current
tax year, the transferee, purchaser or assignee of the tax credit
may carry forward the excess in accordance with section eight-e
of this article, or section twenty-three-e, article twenty-four of
this chapter when the transferee, purchaser or assignee is
subject to the tax imposed by that article.

(e) The tax commissioner may promulgate procedural rules
in accordance with article three, chapter twenty-nine-a of this
code, necessary to provide procedures for the distribution,
transfer, or assignment and the claiming of the credit allowed
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.

The following organizations and persons are exempt from
the tax imposed by this article to the extent provided in this
section:

(a) Natural persons doing business in this state that are not
doing business in the form of a partnership (as defined in
section three of this article) or in the form of a corporation (as
defined in section three of this article). Natural persons include
persons doing business as sole proprietors, sole practitioners
and other self-employed persons;

(b) Corporations and organizations which by reason of their
purposes or activities are exempt from federal income tax:
Provided, That this exemption does not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly, in the generation of unrelated business income (as defined in the Internal Revenue Code) of any corporation or organization if the unrelated business income is subject to federal income tax;

(c) Insurance companies which pay this state a tax upon premiums;

(d) Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933": Provided, That this exemption does not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code;

(e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred eighty-five;

(f) Any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: Provided, That this exemption does not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code;

(g) Any corporation organized under this code which is a political subdivision of the state of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code;

(h) Any corporation or partnership engaged in the activity of agriculture and farming, as defined in subdivision (8), subsection (b), section three of this article: Provided, That if a
corporation or partnership is not exclusively engaged in that activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the tax commissioner, among its several activities and only that portion attributable to the activity of agriculture and farming is exempt from tax under this article;

(i) Any corporation or partnership licensed under article twenty-three, chapter nineteen of this code, to conduct horse or dog racing meetings or a pari-mutuel system of wagering: Provided, That if the corporation or partnership is not exclusively engaged in this activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the tax commissioner, among its several activities and only that portion attributable to the activity of conducting a horse or dog racing meeting or a pari-mutuel system of wagering is exempt from tax under this article;

(j) For those tax years beginning after the thirtieth day of June, one thousand nine hundred ninety-eight, any corporation or partnership operating as a hunting club: Provided, That the corporation or partnership distributes no income or dividends to its owners or stockholders. For the purposes of this subsection, a hunting club is a group of persons owning land which is used principally for hunting purposes by the members of the club and guests, and where any charges made for hunting are principally for the purpose of defraying the costs of operating and maintaining the club and club properties or establishing a reasonable reserve to meet the operating and maintenance costs of the club. The tax commissioner shall by legislative rule promulgated in accordance with article three of chapter twenty-nine of this code further prescribe the definition of a hunting club and the manner and method in which this credit may be claimed; and
(k) For tax years beginning after the thirty-first day of December, two thousand two, any person or other organization engaged in the activity of providing venture capital to West Virginia businesses: Provided, That if the person or organization is not exclusively engaged in that activity, only that portion of its tax base under this article that is attributable to the providing of venture capital to West Virginia businesses is exempt from tax under this article, and its tax liability under this article is determined by multiplying its pre-credit tax liability by a fraction equal to one minus a fraction, the numerator of which is its gross receipts attributable to its venture capital activities in this state and the denominator of which is its total gross receipts from all of its business activities in this state. For purposes of this exemption, a “person or organization engaged in the activity of providing venture capital to West Virginia business” means a certified West Virginia capital company as defined in section four, article one, chapter five-e of this code.

§11-23-24a. Tax credit for value-added products from raw agricultural products; regulations; termination of credit.

(a) Effective for taxable years beginning the first day of July, one thousand nine hundred ninety-seven, notwithstanding any provisions of this code to the contrary, any person, newly and solely engaged in the production of value-added products from raw agricultural products are allowed a credit, in the amount of one thousand dollars for each taxable year against the tax imposed by this article, for a period of five years from the date the person becomes subject to this article. The credit is allowed only against the tax imposed on that capital which is attributable to the value-added production activity in this state.

(b) For purposes of this section, “value-added product” means the following products derived from processing a raw
agricultural product, whether for human consumption or for other use. The following enterprises qualify as processing raw agricultural products into value-added products: (1) The conversion of lumber into furniture, toys, collectibles and home furnishings; (2) the conversion of fruit into wine; (3) the conversion of honey into wine; (4) the conversion of wool into fabric; (5) the conversion of raw hides into semifinished or finished leather products; (6) the conversion of milk into cheese; (7) the conversion of fruits or vegetables into a dried, canned or frozen product; (8) the conversion of feeder cattle into commonly acceptable marketable retail portions; (9) the conversion of aquatic animals into a dried, canned, cooked or frozen product; and (10) the conversion of poultry into a dried, canned, cooked or frozen product.

(c) The tax commissioner may propose rules for promulgation in accordance with article three, chapter twenty-nine-a as necessary to effectuate the purposes of this section.

(d) No credit is available to any taxpayer under this section after the first day of July, two thousand two: Provided, That taxpayers which have gained entitlement to the credit pursuant to the terms of this section prior to the first day of July, two thousand two, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this section until the original five-year credit entitlement has 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.

(a) Effective for taxable years beginning the first day of July, one thousand nine hundred ninety-seven, notwithstanding any provisions of this code to the contrary, any new corporation
engaged solely in the production of value-added products from raw agricultural products are allowed a credit, in the amount of one thousand dollars for each taxable year against the tax imposed by this article, for a period of five years from the date the person becomes subject to this article. The credit is allowed only against the tax on taxable income which is attributable to the production of value-added products.

(b) Effective for taxable years beginning the first day of July, one thousand nine hundred ninety-seven, any new corporation engaged solely in the production of value-added products in West Virginia is allowed a tax credit, according to the schedule herein, for every one hour spent by a new permanent, full-time employee training to learn a skill specific to the production of value-added products as defined in article twenty-one, chapter thirty-one of this code. The tax credit is allowed for a maximum of sixty hours, per company, per year.

(c) For purposes of this section, tax credits for hours spent by a new permanent, full-time employee in training is allowed as follows:

(1) Corporations which employ up to five new employees is allowed a tax credit of two dollars for every one hour spent by a new employee in training as specified herein;

(2) Corporations which employ between six and twenty-five new employees are allowed a tax credit of one dollar and fifty cents for every one hour spent by a new employee in training as specified herein;

(3) Corporations which employ between twenty-six and seventy-five new employees are allowed a tax credit of one dollar and twenty-five cents for every one hour spent by a new employee in training as specified herein;
Corporations which employ between seventy-six and one hundred and twenty-five new employees are allowed a tax credit of one dollar for every one hour spent by a new employee in training as specified herein; and

Corporations which employ more than one hundred twenty-five new employees are allowed a tax credit of seventy-five cents for every one hour spent by a new employee in training as specified herein.

(d) For purposes of this section, "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. The following enterprises qualify as processing raw agricultural products into value-added products: (1) The conversion of lumber into furniture, toys, collectibles and home furnishings; (2) the conversion of fruit into wine; (3) the conversion of honey into wine; (4) the conversion of wool into fabric; (5) the conversion of raw hides into semifinished or finished leather products; (6) the conversion of milk into cheese; (7) the conversion of fruits or vegetables into a dried, canned or frozen product; (8) the conversion of feeder cattle into commonly acceptable marketable retail portions; (9) the conversion of aquatic animals into a dried, canned, cooked or frozen product; and (10) the conversion of poultry into a dried, canned, cooked or frozen product.

(e) The tax commissioner may propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to effectuate the purposes of this article.

(f) No credit is available to any taxpayer under this section subsequent to the first day of July, two thousand two: Provided, That taxpayers which have gained entitlement to the credit pursuant to the terms of this section prior to the first day of
July, two thousand two, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this section until the original five-year credit 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.

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

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

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

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

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

(e) The trustees of the board shall bear no fiduciary responsibility as provided in section eleven §12-6-11 of this article with specific regard to the revolving loan contemplated in this section.

(f) Subject to cash availability, the board shall make available to the West Virginia economic development authority from the consolidated fund a non-recourse loan in an amount up to twenty-five million dollars, for the purpose of the West Virginia economic development authority making a loan or loans from time to time to the West Virginia enterprise advancement corporation, an affiliated nonprofit corporation of the West Virginia economic development authority. The respective loans authorized by this subsection by the board to the West Virginia economic development authority and by the West Virginia enterprise advancement corporation shall each be evidenced by one note and shall each bear interest at the rate of three percent per annum. The proceeds of any and all loans made by the West Virginia economic development authority to the West Virginia enterprise advancement corporation pursuant to this subsection shall be invested by the West Virginia enterprise corporation in the West Virginia enterprise capital fund, LLC, the manager of which is the West Virginia enter-
prise advancement corporation. The loan to West Virginia economic development authority authorized by this subsection shall be non-revolving, and advances thereunder shall be made at times and in amounts as may be requested or directed by the West Virginia economic development authority, upon reasonable notice to the board, the loan authorized by this subsection is not subject to or included in the limitations set forth in subsection (b) of this section with respect to the fifteen million dollar limitation for any one business or industrial development project and limitation of one hundred three percent of outstanding loans, and may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection to the West Virginia economic development authority shall be classified by the board as a long-term, fixed income investment, shall bear interest on the outstanding principal balance thereof at the rate of three percent per annum payable annually on or before the thirtieth day of June of each year, and the principal of which shall be repaid no later than the thirtieth day of June, two thousand twenty-two, in annual installments due on or before the thirtieth day of June of each year, which annual installments shall commence no later than the thirtieth day of June, two thousand three, in annual principal amounts as may be agreed upon between the board and the West Virginia economic development authority, and which annual installments need not be equal. The loan authorized by this subsection shall be non-recourse and shall be payable by the West Virginia economic development authority solely from amounts or returns received by the West Virginia economic development authority in respect of the loan authorized by this subsection to the West Virginia enterprise advancement corporation, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board shall have a security interest to secure repayment of the loan to the West Virginia economic development authority
authorized by this subsection. Any and all loans from the West Virginia economic development authority to the West Virginia enterprise advancement corporation made pursuant to this subsection shall also bear interest on the outstanding principal balance thereof at the rate of three percent per annum payable annually on or before the thirtieth day of June of each year, shall be non-recourse and shall be payable by the West Virginia enterprise advancement corporation solely from amounts of returns received by the West Virginia enterprise advancement corporation in respect of its investment in the West Virginia enterprise capital fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board shall have a security interest to secure repayment of the loan to the West Virginia economic development authority authorized by this subsection. In the event the amounts or returns received by the West Virginia enterprise corporation in respect of its investment in the West Virginia enterprise capital fund, LLC, are not adequate to pay when due the principal or interest installments, or both, with respect to the loan from the West Virginia economic development authority and, as a result thereof, the West Virginia economic development authority is unable to pay the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the West Virginia economic development authority, the principal or interest, or both, as the case may be due on the loan made to the West Virginia economic development authority pursuant to this subsection shall be deferred, and any and all such past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the West Virginia enterprise advancement corporation of moneys in respect of its investments in the West Virginia enterprise capital fund, LLC. The trustees or the board shall bear no fiduciary responsibility as provided in section eleven, article six, chapter twelve of this code with regard to the 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.

(a) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "state lottery fund". The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the "state lottery fund". The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or lottery fund after the initial appropriation.
(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery may be allocated to and may be disbursed as necessary for fund operation and administration expenses: Provided, That for the period beginning the first day of January, two thousand two, through the thirtieth day of June, two thousand three, not more than seventeen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (e) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the school building debt service fund in subsection (h) of this section to retire the bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, and then satisfying the requirements for funds dedicated to the education, arts, sciences and tourism debt service fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, any and all remaining funds in the state lottery fund
shall be made available to pay debt service in connection with any revenue bonds issued pursuant to section eighteen-a of this article, if and to the extent needed for such purpose from time to time. The Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The lottery education fund created in subsection (g) of this section; (2) the school construction fund created in section six, article nine-d, chapter eighteen of this code; (3) the lottery senior citizens fund created in subsection (j) of this section; and (4) the division of natural resources created in section three, article one, chapter twenty of this code and the West Virginia development office as created in section one, article two, chapter five-b of this code, in accordance with subsection (k) of this section. No transfer to any account other than the school building debt service account, the education, arts, sciences and tourism debt service fund, the economic development project fund created under section eighteen-a, article twenty-two, chapter twenty-nine of this code, or any fund from which debt service is paid under subsection (c), section eighteen-a of this article, may be made in any period of time in which a default exists in respect to debt service on bonds issued by the school building authority, the state building commission, the economic development authority or which are otherwise secured by lottery proceeds. No additional transfer may be made to any account other than the school building debt service account and the education, arts, sciences and tourism debt service fund when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the school building authority and the state building commission which are secured by net profits.

(g) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the “lottery education fund”. The fund shall consist of the amounts
allocated pursuant to subsection (f) of this section, which shall be deposited into the lottery education fund by the state treasurer. The lottery education fund shall also consist of all interest earned from investment of the lottery education fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery education fund from any source. The revenues received or earned by the lottery education fund shall be disbursed in the manner provided below and may not be treated by the auditor and treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery education fund to the state system of public and higher education for these educational programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the school building debt service fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-four, as certified to the lottery director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed one million eight hundred thousand dollars, nor may the total allocation of the net profits to be paid into the school building debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or eighteen million dollars. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the school debt service fund, the deficiency shall be added to the
amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the school building authority in favor of the bonds it issues which are secured by the net lottery profits.

When the school improvement bonds, secured by profits from the lottery and deposited in the school debt service fund, mature, the profits shall become available for debt service on additional school improvement bonds as a first priority from the net profits of the lottery or may at the discretion of the authority be placed into the school construction fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) Beginning on or before the twenty-eighth day of July, one thousand nine hundred ninety-six, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the education, arts, sciences and tourism debt service fund created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-six, as certified to the lottery director in accordance with the provisions of that section. In no event may the monthly amount allocated exceed one million dollars nor may the total allocation paid into the education, arts, sciences and tourism debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and
interest requirements certified to the lottery director or ten
million dollars. In the event there are insufficient funds
available in any month to transfer the amount required pursuant
to this subsection to the education, arts, sciences and tourism
debt service fund, the deficiency shall be added to the amount
transferred in the next succeeding month in which revenues are
available to transfer the deficiency. A second-in-priority lien on
the proceeds of the state lottery fund up to a maximum amount
equal to the projected annual principal, interest and coverage
ratio requirements, not to exceed fifteen million dollars
annually, may be granted by the state building commission in
favor of the bonds it issues which are secured by the net lottery
profits.

When the bonds, secured by profits from the lottery and
deposited in the education, arts, sciences and tourism debt
service fund, mature, the profits shall become available for debt
service on additional bonds as a second priority from the net
profits of the lottery.

(j) There is hereby continued a special revenue fund in
the state treasury which shall be designated and known as the
“lottery senior citizens fund”. The fund shall consist of the
amounts allocated pursuant to subsection (f) of this section,
which amounts shall be deposited into the lottery senior citizens
fund by the state treasurer. The lottery senior citizens fund shall
also consist of all interest earned from investment of the lottery
senior citizens fund and any other appropriations, gifts, grants,
contributions or moneys received by the lottery senior citizens
fund from any source. The revenues received or earned by the
lottery senior citizens fund shall be distributed in the manner
provided below and may not be treated by the auditor or
treasurer as part of the general revenue of the state. Annually,
the Legislature shall appropriate the revenues received or
earned by the lottery senior citizens fund to such senior citizens
medical care and other programs as it considers beneficial to the citizens of this state.

(k) The division of natural resources and the West Virginia development office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the division of natural resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.

§29-22-18a. State excess lottery revenue fund.

(a) There is hereby created a special revenue fund within the state lottery fund in the state treasury which shall be designated and known as the “state excess lottery revenue fund”. The fund shall consist of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under section 29-22B-1408(a)(1) of this chapter, shall be deposited in the state treasury and placed into the “state excess lottery revenue fund”. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section
and shall not be treated by the auditor and the state treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand one, the moneys of the fund established in this section shall be used for the purpose of subsidizing salary increases and associated employee benefits paid from the state general revenue fund as determined by the secretary of administration effective the first day of July, two thousand one or thereafter, including, but not limited to, the salary increase for teachers provided in section two, article four, chapter eighteen-a of this code, by enactment of the Legislature in two thousand one; the salary increase for members of the state police provided in section five, article two, chapter fifteen of this code by enactment of the Legislature in two thousand one; and general salary increases for state employees: Provided, That effective the first day of October, two thousand one, the full year salary increases for state employees other than correctional officers and members of the state police equal seven hundred fifty-six dollars for each full-time employee: Provided, however, That effective the first day of July, two thousand one, the full year salary increases for uniformed correctional officers equal two thousand dollars for each full-time employee; and that the full year salary increases for non-uniformed correctional staff, whose core duties include contact with inmates or juvenile detainees on a regular and frequent basis, equal one thousand two hundred fifty dollars for each full-time employee; but that for all other division of correction and division of juvenile services employees, the full year salary increase equals seven hundred fifty-six dollars for each full-time employee. Until the thirtieth day of June, two thousand two, the lottery commission shall, upon direction from the governor, transfer the moneys of the account to the state general revenue fund in the amounts specified in the governor's official revenue estimates to subsidize the funding of the salary increases described in this subsection. Beginning the first day of July, two thousand two, and thereafter, the
transfer authority granted by this subsection is terminated. After first satisfying the funding requirements directed by this subsection, the moneys remaining in the fund shall be disbursed in the manner provided by subsection (c) of this section.

(c) For the fiscal year beginning the first day of July, two thousand one, the commission shall deposit: (1) Five million five hundred thousand dollars into the account hereby created in the state treasury to be known as the "education improvement fund" for appropriation by the Legislature to the "promise scholarship fund" created in section seven, article seven, chapter eighteen-c of this code; (2) twenty-five million dollars to the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (3) twenty-five million dollars in the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (4) ten million dollars into a separate account within the state lottery fund to be known as the higher education improvement fund for higher education; and (5) nine million dollars into a separate account within the state lottery fund to be known as the state park improvement fund for park improvements. For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars into the subaccount of the state excess lottery revenue fund hereby created in the state treasury to be known as the "general purpose account" to be expended pursuant to appropriation of the Legislature; (2) ten million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section, for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars to the school building debt service fund created
in section six, article nine-d, chapter eighteen of this code for
the issuance of revenue bonds; (5) forty million dollars in the
West Virginia infrastructure fund created in section nine, article
fifteen-a, chapter thirty-one of this code to be spent in accord-
dance with the provisions of that article; (6) ten million dollars
into the higher education improvement fund for higher educa-
tion; and (7) five million dollars into the state park improve-
ment fund for park improvements. For the fiscal year beginning
the first day of July, two thousand three, the commission shall
deposit: (1) Sixty-five million dollars into the general purpose
account to be expended pursuant to appropriation of the
Legislature; (2) seventeen million dollars into the education
improvement fund for appropriation by the Legislature to the
"promise scholarship fund" created in section seven, article
seven, chapter eighteen-c of this code; (3) nineteen million
dollars into the economic development project fund created in
subsection (d) of this section, for the issuance of revenue bonds
and to be spent in accordance with the provisions of said
subsection; (4) twenty million dollars to the school building
debt service fund created in section six, article nine-d, chapter
eighteen of this code for the issuance of revenue bonds; (5)
forty million dollars in the West Virginia infrastructure fund
created in section nine, article fifteen-a, chapter thirty-one of
this code to be spent in accordance with the provisions of that
article; (6) ten million dollars into the higher education im-
provement fund for higher education; and (7) five million
dollars into the state park improvement fund for park improve-
ments. For the fiscal year beginning the first day of July, two
thousand four, and subsequent fiscal years, the commission
shall deposit: (1) Sixty-five million dollars into the general
purpose account to be expended pursuant to appropriation of the
Legislature; (2) twenty-seven million dollars into the education
improvement fund for appropriation by the Legislature to the
"promise scholarship fund" created in section seven, article
seven, chapter eighteen-c of this code; (3) nineteen million
dollars into the economic development project fund created in subsection (d) of this section, for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) nineteen million dollars to the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars in the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements. No portion of the distributions made as provided in subsection (c) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the passage of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under subsection (c) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects
and infrastructure which promote economic development in this state.

(1) The West Virginia economic development authority created and provided for in article fifteen, chapter thirty-one of this code, shall, by resolution, in accordance with the provisions of this article, and article fifteen, chapter thirty-one of this code, and upon direction of the governor, issue revenue bonds of the economic development authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving or maintaining projects under this section or to refund the bonds, at the discretion of the authority. Any revenue bonds issued on or after the first day of July, two thousand two, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) There is hereby created in the state treasury a special revenue fund named the “economic development project fund” into which shall be deposited on and after the first day of July, two thousand two, the amounts to be deposited in said fund as specified in subsection (c) of this section. The economic development project fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund, and any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption or defeasance thereof. The West Virginia economic development authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the
economic development project fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article.

After the West Virginia economic development authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including any coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the economic development project fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(3) The West Virginia economic development authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section of this code for such projects as may be certified under the provision of this subsection: Provided, That the bond proceeds shall be expended in accordance with the requirements and provisions of article five-a, chapter twenty-one of this code and either article twenty-two or article twenty-two-a, chapter five of this code, as the case may be: Provided, however, That if such bond proceeds are expended pursuant to article twenty-two-a, chapter five of this code, and if the design-build board created under said article determines that the execution of a design-build contract in connection with a project is appropriate pursuant to the criteria set forth in said article, and that a competitive bidding process was used in selecting the design builder and awarding such contract, such determination shall be conclusive for all purposes
and shall be deemed to satisfy all the requirements of said article. For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the governor, or his or her designee, the secretary of the department of tax and revenue, the executive director of the West Virginia development office, three persons appointed by the governor from a list of five names to be submitted to the governor by the president of the West Virginia Senate, and three persons appointed by the governor from a list of five names to be submitted to the governor by the speaker of the West Virginia House of Delegates. The committee shall meet as often as necessary and take recommendations from any source whatever regarding possible projects to be funded, in whole or in part, and make certifications, from bond proceeds in accordance with this subsection. The committee shall meet within thirty days of the effective date of this section. Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing. Prior to the issuance of bonds under this subsection, the committee shall certify to the economic development authority a list of those projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(e) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (c) and (h) of this section, the commission shall first make the distribution to the economic development project fund, second, make the distribution or distributions to the other funds from which debt service is to be paid, third, make the distribution to the education improvement fund for appropriation by the Legislature to the promise scholarship fund, and
fourth, make the distribution to the general purpose account: Provided, That, subject to the foregoing, to the extent such revenues are not pledged in support of revenue bonds which are or may be issued from time to time under this section, the aforesaid revenues shall be distributed on a pro rata basis.

(f) For the fiscal year beginning on the first day of July, two thousand two, and each fiscal year thereafter, the commission shall, after meeting the requirements of subsections (c) and (h) of this section, and after transferring to the state lottery fund created under section eighteen of this article, an amount equal to any transfer from the state lottery fund to the excess lottery fund pursuant to subsection (f) of said section, deposit fifty percent of the amount by which annual gross revenue deposited in the state excess lottery revenue fund exceeds two hundred twenty-five million dollars in a fiscal year in a separate account in the state lottery fund to be available for appropriation by the Legislature.

(g) When bonds are issued for projects under subsection (d) of this section or for the school building authority, infrastructure, higher education or park improvement purposes described in this section that are secured by profits from lotteries deposited in the state excess lottery revenue fund, the lottery director shall allocate first, to the economic development project fund an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of July, two thousand two, as certified to the lottery director, and second, to the fund or funds from which debt service is paid on bonds issued under this section for the school building authority, infrastructure, higher education and park improvements an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of April, two thousand two, as certified to the lottery director. In the
event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(h) In fiscal year two thousand four, and thereafter, prior to the distributions provided in subsection (c) of this section, the lottery commission shall deposit into the general revenue fund amounts necessary to provide reimbursement for the refundable credit allowable under section twenty-one, article twenty-one, chapter eleven of this code.

(i) (1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the public employees insurance agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matters areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(j) The Legislature further directs the governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a medicaid waiver to offer prescription drug services to senior citizens; by investigating the establishment of purchasing agreements with other entities to reduce costs; by providing discount prices or rebate programs
for seniors; by coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient and cost effective program possible for the senior citizens of this state; and by working closely with the state's congressional delegation to ensure that a national program is implemented. The Legislature further directs that the governor report his progress back to the joint committee on government and finance on an annual basis beginning in November of the year two thousand one, until a comprehensive program has been fully implemented.

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.]
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 of state government to the extent that they address or impact upon programs and services for children and families, review budgetary needs and revenue sources, and make recommendations regarding the governor’s proposed budget and the
redirection of resources. In making such recommendations, the cabinet shall educate themselves on the availability of and eligibility for federal, local and private funding, with the goal of maximizing federal, local and private revenues for use in areas directly benefitting children and families.

(b) Any legislative recommendation shall be accompanied by a proposal or plan for sufficient funding. In exploring all aspects of funding possibilities, the cabinet shall consider innovative, flexible funding such as interagency funding, joint funding pools, interagency reimbursement, and funding by the families serviced based on ability to pay.

(c) The cabinet shall develop fiscal incentives for the establishment of family resource networks and for programs resulting in substantial cost savings, such as programs which keep children at home and which thereby avoid unnecessary out-of-home care. Any savings resulting from the coordination of programs and services for children and families shall be reinvested for expenditure in areas directly benefitting children and families.

§5-26-9. Prohibition of providing services.

It is the cabinet’s primary duty to coordinate services and resources but not to become a provider of services. Beginning on the first day of July, two thousand three, the cabinet may not provide services other than coordination of services provided by 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.
EDUCATION

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-3e. West Virginia Science Education Enhancement Initiative grant program created; legislative findings and purpose of section.

(a) The Legislature hereby finds and acknowledges that, if remediation is necessary, it should be provided when students are younger and before patterns of failure are established. The Legislature further acknowledges that the people of West Virginia would be better served if the state acted to ensure that all public school students were able to execute science skills at or above grade level upon exiting grade eight, that county boards are in the best position to determine if remediation is necessary for students in grades four through eight and that the counties should have the option of providing summer school for students and may consider student attendance as a factor in determining whether a child is eligible to be promoted to the next grade.

The Legislature further finds that not all students are financially able to pay for summer school, nor do all county schools hold summer school. It is, therefore, the purpose of this section to help the county boards to provide, either individually or cooperatively, free summer school and summer school transportation for those students in grades four through eight who did not perform at grade level during the regular school year. It also is the purpose of this section to help students in grades four through eight who are identified as being in danger of failing to execute science skills at grade level by the end of the school year to receive intensive science instruction during their regularly scheduled science time throughout the regular school year.

(b) Subject to appropriation by the Legislature therefor, the state board shall establish a competitive grant program as set forth in this section to provide science programs for students in
grades four through eight who are not performing at grade level. The program shall be designated and known as the "West Virginia Science Education Enhancement Initiative" program.

(c) Priorities for awarding the grants shall include, but are not limited to:

(1) Schools that have science test scores below the state averages; or

(2) Schools that receive federal funds for the improvement of science.

(d) Competitive grant applications must be submitted by the county boards, or by a community collaborative with the county board as a partner with leadership responsibility, and shall describe how the program will:

(1) Employ strategies, proven methods and innovative techniques for student learning, teaching and school management that are based on reliable research and effective practices, and can be replicated in other schools to improve the science skills of students;

(2) Contain measurable goals for the improvement of student science skills and benchmarks for meeting those goals;

(3) Include a plan for the evaluation of student progress toward achieving the state's high standards;

(4) Identify how other federal, state, local and private resources, including volunteers, will be utilized to further the intent of this section;

(5) Link summer improvement programs for science with science instruction and remediation throughout the school year;
(6) Determine the feasibility of collaborating with colleges of education for the purpose of providing educational experiences for prospective teachers;

(7) Identify the use of technology, including computers and calculators, and demonstrate how technology will be integrated into the program; and

(8) Accomplish other objectives as deemed necessary by the state board.

e) Any county receiving a grant should encourage students in grades four through eight who did not perform at grade level during the regular school year to attend summer school and may consider summer school attendance as a factor in determining whether a child is eligible to be promoted to the next grade. The county board shall provide intensive science instruction during regularly scheduled science time throughout the regular school year to students in grades four through eight who are identified by the classroom teacher as being in danger of failing to execute science skills at grade level by the end of the school year. Nothing in this section prohibits county boards from permitting students to participate in science programs on a student fee basis.

(f) The state board shall approve procedures for the implementation of this section. To assist the state board in developing procedures for the implementation of this section, including the grant application and the grant review and selection process, the state board shall appoint an advisory board consisting of the science education coordinator from the state department of education, a college or university professor of science, a county science curriculum specialist, an elementary teacher and an elementary principal, a middle school teacher with a science certification and a middle school principal, a science teacher with a certificate issued by the
national board of professional teaching standards, if available, and a representative from the West Virginia science teachers association, or a representative of the like successor organization should this named organization cease to exist. The procedures shall provide for:

(1) The appointment of a grant review and selection panel by the state board consisting of persons with expertise and practical experience in delivering programs to increase the science skills of young students, not more than one half of whom may be employees of the state department of education, or the state board may designate the advisory board as the grant review and selection panel;

(2) Notice to all schools of the grant competition and the availability of applications on or before the thirtieth day of September, in each fiscal year for which grant funds are available;

(3) A grant application deadline postmarked on or before the fifteenth day of December, in each fiscal year for which grant funds are available;

(4) Notice of grant awards on or before the first day of March, in each fiscal year for which grant funds are available; and

(5) Other such requirements as deemed necessary by the state board.

(g) The state board may fund, from any other funds available for such purposes, the programs required by this section for students in grades four through eight and any programs required by state board rules such as, but not limited to, the following:

(1) Tutoring;
(2) Summer school educational services;

(3) Additional certified personnel to provide intensive instruction in science throughout the school year;

(4) Staff development for teachers; and

(5) Hot meal programs.

(h) Nothing in this section supersedes the individualized education program (IEP) of any student.

(i) Nothing in this section requires any specific level of funding by the Legislature.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


§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.


The boards, subject to the provisions of this chapter and the rules of the state board, have authority:

(a) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection with the schools and
school interests, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit the records and to conserve the funds, which shall be considered quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(b) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(c) To close any school which is unnecessary and to assign the pupils of the school to other schools: Provided, That the closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in April, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (e) of this section;

(d) To consolidate schools;

(e) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month’s salary;

(f)(1) To provide at public expense adequate means of transportation, including transportation across county lines for students whose transfer from one district to another is agreed to by both boards as reflected in the minutes of their respective meetings, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such rules as the board may establish, adequate means of transportation for
school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto at public expense, by rules and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by the commission, or the local or county chapter of the commission: Provided, however, That in all cases the school buses owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That the county board may provide, under rules established by the state board, for the certification of professional employees as drivers of board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and home: And provided further, That the use of the vehicles shall be limited to one for each school-sponsored activity: And provided further, That buses shall be used for extracurricular activities as provided in this section only when the insurance provided for by this section is in effect;

(2) To enter into agreements with one another as reflected in the minutes of their respective meetings to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of this subdivision and subdivision (h) of this section;

(g)(1) To lease school buses operated only by drivers regularly employed by the board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in acor-
dance with rules established by the board. All costs and
expenses incurred by or incidental to the transportation of the
children shall be borne by the lessee;

(2) To contract with any college or university or officially
recognized campus organizations to provide transportation for
college or university students, faculty or staff to and from the
college or university: Provided, That only college and university
students, faculty and staff are being transported. The
contract shall include consideration and compensation for bus
operators, repairs and other costs of service, insurance and any
rules concerning student behavior;

(h) To provide at public expense for insurance against the
negligence of the drivers of school buses, trucks or other
vehicles operated by the board; and if the transportation of
pupils is contracted, then the contract for the transportation
shall provide that the contractor shall carry insurance against
negligence in an amount specified by the board;

(i) To provide solely from county funds for all regular full-
time employees of the board all or any part of the cost of a
group plan or plans of insurance coverage not provided or
available under the West Virginia public employees insurance
act;

(j) To employ teacher aides, to provide in-service training
for teacher aides, the training to be in accordance with rules of
the state board and, in the case of service personnel assuming
duties as teacher aides in exceptional children programs, to
provide a four-clock-hour program of training prior to the
assignment which shall, in accordance with rules of the state
board, consist of training in areas specifically related to the
education of exceptional children;

(k) To establish and conduct a self-supporting dormitory for
the accommodation of the pupils attending a high school or
participating in a post high school program and of persons employed to teach in the high school or post high school program;

(l) To employ legal counsel;

(m) To provide appropriate uniforms for school service personnel;

(n) To provide at public expense and under rules as established by any county board of education for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board of education;

(o) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That the usage is subject to the supervision of the board and is directly connected with and required by the nature and in the performance of the employee's duties and responsibilities;

(p) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees;

(q) To enter into agreements with one another to provide, on a cooperative basis, improvements to the instructional needs of each county. The cooperative agreements may be used to employ specialists in a field of academic study or support functions or services, for the academic study. The agreements are subject to approval by the state board of education;

(r) To provide information about vocational or higher education opportunities to students with handicapping conditions. The board shall provide in writing to the students and their parents or guardians information relating to programs of
vocational education and to programs available at state funded
institutions of higher education. The information may include
sources of available funding, including grants, mentorships and
loans for students who wish to attend classes at institutions of
higher education;

(s) To enter into agreements with one another, with the
approval of the state board, for the transfer and receipt of any
and all funds determined to be fair when students are permitted
or required to attend school in a county other than the county of
their residence; and

(t) To enter into job-sharing arrangements, as defined in
section one, article one, chapter eighteen-a of this code, with its
professional employees: Provided, That a job-sharing arrange-
ment shall meet all the requirements relating to posting,
qualifications and seniority, as provided for in article four,
chapter eighteen-a of this code: Provided, however, That,
notwithstanding any provisions of this code or legislative rule
and specifically the provisions of article fifteen, chapter five of
this code to the contrary, a county board which enters into a
job-sharing arrangement wherein two or more professional
employees voluntarily share an authorized full-time position
shall provide the mutually agreed upon employee coverage but
shall not offer insurance coverage to more than one of the job-
sharing employees, including any group plan or group plans
available under the state public employees insurance act:
Provided further, That all employees involved in the job-
sharing agreement meet the requirements of subdivision (4),
section two, article sixteen, chapter five of this code.

"Quasi-public funds" as used in this section means any
money received by any principal, teacher, student or other
person for the benefit of the school system as a result of
curricular or noncurricular activities.
The board of each county shall expend under rules it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

§18-5-15. Ages of persons to whom schools are open; enrollment of suspended or expelled student.

(a) The public schools shall be open for the full instructional term to all persons who have attained the entrance age as stated in section five, article two and section eighteen, article five, chapter eighteen of this code: Provided, That any student suspended or expelled from public or private school shall only be permitted to enroll in public school upon the approval of the superintendent of the county where the student seeks enrollment: Provided, however, That in making such decision, the principal of the school in which the student may enroll shall be consulted by the superintendent and the principal may make a recommendation to the superintendent concerning the student's enrollment in his or her new school: Provided further, That if enrollment to public school is denied by the superintendent, the student may petition the board of education where the student seeks enrollment.

(b) Persons over the age of twenty-one may enter only those programs or classes authorized by the state board of education and deemed appropriate by the county board of education conducting any such program or class: Provided, That authorization for such programs or classes shall in no way serve to affect or eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes.

§18-5-18. Kindergarten programs.
(a) County boards shall provide kindergarten programs for all children who have attained the age of five prior to the first day of September of the school year in which the pupil enters the kindergarten program and may, pursuant to the provisions of section forty-four, article five, chapter eighteen of this code, establish kindergarten programs designed for children below the age of five. The programs for children who shall have attained the age of five shall be full-day everyday programs.

(b) Persons employed as kindergarten teachers, as distinguished from paraprofessional personnel, shall be required to hold a certificate valid for teaching at the assigned level as prescribed by regulations established by the state board. The state board shall establish and prescribe guidelines and criteria setting forth the minimum requirements for all paraprofessional personnel employed in kindergarten programs established pursuant to the provisions of this section and no such paraprofessional personnel shall be employed in any kindergarten program unless he meets such minimum requirements.

(c) The state board with the advice of the state superintendent shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of kindergarten programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed also are intended to serve for the establishment and operation of nonpublic kindergarten programs and shall be used for the evaluation and approval of such programs by the state superintendent, provided application for such evaluation and approval is made in writing by proper authorities in control of such programs. The state superintendent, annually, shall publish a list of nonpublic kindergarten programs, including Montessori kindergartens that have been approved in accordance with the provisions of this section. Montessori kindergartens established and operated in accordance with usual and customary practices for the use of the Montessori method which
have teachers who have training or experience, regardless of additional certification, in the use of the Montessori method of instruction for kindergartens shall be considered to be approved.

(d) Pursuant to such guidelines and criteria, and only pursuant to such guidelines and criteria, the county boards may establish programs taking kindergarten to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement regularly certified teachers, mobile or permanent classrooms and other means developed to best carry kindergarten to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as such county board may determine, taking into consideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child's health, the involvement of parents and such other factors as each county board may find pertinent. Such determinations by any county board shall be final and conclusive.

§18-5-18e. Study of limits on the number of pupils per teacher in a classroom in elementary and middle schools.

(a) The legislative oversight commission on education accountability shall conduct a study of the effect of limits on the number of pupils per teacher in a classroom. The commission may conduct the study as a whole or may appoint a subcommittee to conduct the study under its direction. The study includes, but is not limited to, an examination of the following issues:
(1) The effect on student learning of limits on the number of pupils per teacher in a classroom in elementary classes and in a middle school format in which students have different teachers for different subject matter instruction;

(2) The effect on the equity among teachers in a middle school in which the number of pupils per teacher in a classroom is limited for some teachers and not for others, including the additional pay for certain teachers in whose classrooms the limits are exceeded; and

(3) The effect limits on the number of pupils per teacher in a classroom have on the ability of school systems to offer elective courses in secondary schools.

(b) The legislative oversight commission on education accountability shall issue a report of its findings and recommendations, together with any legislation necessary to effectuate its recommendations, on or before the second day of January, two thousand three. In making its findings and recommendations the commission:

(1) Shall include, at a minimum, a recommendation on whether the limits on the number of pupils per teacher in a classroom in a middle school format should be removed or capped on a county-wide or individual school basis; and

(2) May not include as a recommendation consideration of imposing limits on the number of pupils per teacher at grade levels above the sixth grade.

§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.

(a) County boards shall provide proper medical and dental inspections for all pupils attending the schools of their county
and have the authority to take any other action necessary to
protect the pupils from infectious diseases, including the
authority to require from all school personnel employed in their
county, certificates of good health and of physical fitness.

(b) Each county board shall employ full time at least one
school nurse for every one thousand five hundred kindergarten
through seventh grade pupils in net enrollment or major fraction
thereof: Provided, That each county shall employ full time at
least one school nurse: Provided, however, That a county board
may contract with a public health department for services
considered equivalent to those required by this section in
accordance with a plan to be approved by the state board:
Provided further, That the state board shall promulgate rules
requiring the employment of school nurses in excess of the
number required by this section to ensure adequate provision of
services to severely handicapped pupils.

(c) Any person employed as a school nurse must be a
registered professional nurse properly licensed by the West
Virginia board of examiners for registered professional nurses
in accordance with article seven, chapter thirty of this code.

(d) Specialized health procedures that require the skill,
knowledge and judgment of a licensed health professional, may
be performed only by school nurses, other licensed school
health care providers as provided for in this section, or school
employees who have been trained and retrained every two years
who are subject to the supervision and approval by school
nurses. After assessing the health status of the individual
student, a school nurse, in collaboration with the student’s
physician, parents and in some instances an individualized
education program team, may delegate certain health care
procedures to a school employee who shall be trained pursuant
to this section, considered competent, have consultation with,
and be monitored or supervised by the school nurse: Provided,
That nothing in this section prohibits any school employee from providing specialized health procedures or any other prudent action to aid any person who is in acute physical distress or requires emergency assistance. For the purposes of this section, “specialized health procedures” means, but is not limited to, catheterization, suctioning of tracheostomy, naso-gastric tube feeding or gastrostomy tube feeding. “School employee” means “teachers”, as defined in section one, article one of this chapter and “aides”, as defined in section eight, article four, chapter eighteen-a of this code. Commencing with the school year beginning on the first day of July, two thousand two, “school employee” also means “secretary I”, “secretary II” and “secretary III”, as defined in section eight, article four, chapter eighteen-a of this code: Provided, however, That a “secretary I”, “secretary II” and “secretary III” shall be limited to the dispensing of medications.

(e) Any school service employee who elects, or is required by this section, to undergo training or retraining to provide, in the manner specified in this section, the specialized health care procedures for those students for which the selection has been approved by both the principal and the county board, shall receive additional pay of at least one pay grade higher than the highest pay grade for which the employee is paid: Provided, That any training required in this section may be considered in lieu of required in-service training of the school employee and a school employee may not be required to elect to undergo the training or retraining: Provided, however, That commencing with the first day of July, one thousand nine hundred eighty-nine any newly employed school employee in the field of special education is required to undergo the training and retraining as provided for in this section: Provided further, That if an employee who holds a class title of an aide is employed in a school and the aide has received the training, pursuant to this section, then an employee in the field of special education is not required to perform the specialized health care procedures.
(f) Each county school nurse, as designated and defined by this section, shall perform a needs assessment. These nurses shall meet on the basis of the area served by their regional educational service agency, prepare recommendations and elect a representative to serve on the council of school nurses established under this section.

(g) There shall be a council of school nurses which shall be convened by the state board of education. This council shall prepare a procedural manual and shall provide recommendations regarding a training course to the commissioner of the bureau for public health who shall consult with the state department of education. The commissioner then has the authority to promulgate a rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the training and to create standards used by those school nurses and school employees performing specialized health procedures. The council shall meet every two years to review the certification and training program regarding school employees.

(h) The state board of education shall work in conjunction with county boards to provide training and retraining every two years as recommended by the council of school nurses and implemented by the rule promulgated by the commissioner.

§18-5-44. Early childhood education programs.

(a) For the purposes of this section, "early childhood education" means programs for children who have attained the age of four prior to the first day of September of the school year in which the pupil enters the program created in this section.

(b) Findings. –

(1) Among other positive outcomes, early childhood education programs have been determined to:
(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade;

(F) Decrease the number of students placed in special education programs.

(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population with a college degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) West Virginia currently ranks forty-fourth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year two thousand one - two thousand two, six thousand eight hundred fifty-three students less than five years of age were enrolled in the public schools, a number equal to approximately thirty-three percent of the number of five-year-old students enrolled in kindergarten;

(6) Projections indicate that total student enrollment in West Virginia will decline by as much as eighteen percent, or
by approximately fifty thousand students, by the school year two thousand twelve - two thousand thirteen;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year-old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year olds but the program was established in a manner that resulted in unequal implementation among the counties which helped create deficit financial situations for several county school boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year two thousand twelve - two thousand thirteen, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to the first day of September of the school year in which the pupil enters the early childhood education program.

(d) The program shall meet the following criteria:
(1) It shall be voluntary, except, upon enrollment, the provisions of section one, article eight of this chapter shall apply to an enrolled student; and

(2) It may be for fewer than five days per week and may be less than full day.

(e) Enrollment of students in head start, or in any other program approved by the state superintendent as provided in subsection (k) of this section, shall be counted toward satisfying the requirement of subsection (c) of this section.

(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U.S.C. §6301, et seq.;

(2) Federal funds provided for head start pursuant to 42 U.S.C. §9831, et seq.;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U.S.C. §601, et seq.;

(4) Funds provided by the school building authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Prior to the school year beginning two thousand three, each county shall develop a plan for implementing the program required by this section. The plan shall include the following elements:
(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, head start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Such other items as the state board by policy may require.

(h) Prior to the school year beginning two thousand three, a county board shall submit its plan to the secretary of the department of health and human resources. The secretary shall approve the plan if the following conditions are met:

(1) The county has maximized the use of federal and other available funds for early childhood programs;

(2) The county has provided for the maximum implementation of head start programs and other public and private programs approved by the state superintendent pursuant to the terms of subsection (k) of this section; and

(3) If the secretary of the department of health and human resources finds that the county has not met one or more of the requirements of this subsection, but that the county has acted in good faith and the failure to comply was not the primary fault of the county board, then the secretary shall approve the plan.
Any denial by the secretary may be appealed to the circuit court
of the county in which the county board is located.

(i) Prior to the school year beginning two thousand three,
the county board shall submit its plan for approval to the state
board. The state board shall approve the plan if the county
board has complied substantially with the requirements of
subsection (g) of this section and has obtained the approval
required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval
by the secretary of the department of health and human re-
sources and by the state board at least every two years after the
initial approval of the plan and until full implementation of the
early childhood education program in the county. As part of the
submission, the county board shall provide a detailed statement
of the progress made in implementing its plan. The standards
and procedures provided for the original approval of the plan
apply to any reapproval.

(k) Commencing with the school year beginning on the first
day of July, two thousand four, and thereafter, no county board
may increase the total number of students enrolled in the county
in an early childhood program until its program is approved by
the secretary of the department of health and human resources
and the state board has been granted.

(l) The state board annually may grant a county board a
waiver for total or partial implementation if the state board
finds that all of the following conditions exist:

(i) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to
implement the program;
(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county seeking a waiver must apply with the supporting data to meet the criteria for which they are eligible on or before the twenty-fifth day of March for the following school year. The state superintendent shall grant or deny the requested waiver on or before the fifteenth day of April of that same year.

(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten shall apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

(n) On or before the first day of December, two thousand four, and each year thereafter, the state board shall report to the legislative oversight commission on education accountability on the progress of implementation of this section.

(o) During or after the school year beginning in two thousand four, and except as may be required by federal law or regulation, no county shall enroll students who will be less than four years of age prior to the first day of September for the year they enter school.

(p) Neither the state board nor the state department may provide any funds to any county for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(q) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the secretary of
the department of health and human resources in the preparation of the rule. The rule shall contain the following:

(1) Standards for curriculum;
(2) Standards for preparing students;
(3) Attendance requirements;
(4) Standards for personnel; and
(5) Such other terms as may be necessary to implement the provisions of this section.

The rule shall include the following elements relating to curriculum standards:

(1) A requirement that the curriculum be designed to address the developmental needs of four-year-old children, consistent with prevailing research on how children learn;
(2) A requirement that the curriculum be designed to achieve long range goals for the social, emotional, physical and academic development of young children;
(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;
(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;
(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;
(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision-making and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(s) On or before the second day of January, two thousand four, the secretary and the state superintendent submit a report to the legislative oversight commission on education accountability and the joint committee on government and finance which address, at a minimum, the following issues:

(1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section;

(2) An analysis of the total cost to the state and counties of implementing the plans;

(3) A separate analysis of the impact of the plans on counties with increasing enrollment; and

(4) An analysis of the effect of the programs on the maximization of the use of federal funds for early childhood programs.
The intent of this subsection is to enable the Legislature to proceed in a fiscally responsible manner and make any program improvements as may be necessary based on reported information prior to implementation of the early childhood education programs.

§18-5-45. School calendar.

(a) As used in this section, the following terms have the following meanings:

(1) Instructional day means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for the amounts of time provided by state board rule;

(B) A minimum percentage of students, as defined by state board rule, is present in the county schools;

(C) Instructional time is used for instruction, cocurricular activities and approved extracurricular activities, and pursuant to the provisions of subdivision (12), subsection (b), section five, article five-a of this chapter, faculty senates;

(D) Such other criteria as the state board determines appropriate.

(2) Bank time means time added beyond the required instructional day which may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities, as further defined by the state board.

(3) Extracurricular activities are activities under the supervision of the school such as athletics, noninstructional assemblies, social programs, entertainment and other similar activities, as further defined by the state board.
(4) Cocurricular activities are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the state board.

(b) Findings. –

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar traditionally has provided for one hundred eighty actual days of instruction but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.

(4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.

(5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term for teachers of no less than two hundred days, exclusive of Saturdays and Sundays; and

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days.
(d) The instructional term shall commence no earlier than the twenty-sixth day of August and terminate no later than the eighth day of June.

(e) Noninstructional days shall total twenty and shall be comprised of the following:

(1) Seven holidays as specified in section two, article five, chapter eighteen-a of this code;

(2) Election day as specified in section two, article five, chapter eighteen-a of this code;

(3) Six days to be designated by the county board to be used by the employees outside the school environment; and

(4) Six days to be designated by the county board for any of the following purposes:

(A) Curriculum development;

(B) Preparation for opening and closing school;

(C) Professional development;

(D) Teacher-pupil-parent conferences;

(E) Professional meetings; and

(F) Making up days when instruction was scheduled but not conducted.

(f) Three of the days described in subdivision (4), subsection (e) of this section shall be scheduled prior to the twenty-sixth day of August for the purposes of preparing for the opening of school and staff development.
(g) At least one of the days described in subdivision (4), subsection (e) of this section shall be scheduled after the eighth day of June for the purpose of preparing for the closing of school. If one hundred eighty separate instruction days occur prior to the eighth day of June, this day may be scheduled on or before the eighth day of June.

(h) At least four of the days described in subdivision (3), subsection (e) of this section shall be scheduled after the first day of March.

(i) At least two of the days described in subdivision (4), subsection (e) of this section, will be scheduled for professional development. The professional development conducted on these days will be consistent with the goals established by the state board pursuant to the provisions of section twenty-three-a, article two, chapter eighteen of this code.

(j) Subject to the provisions of subsection (g) of this section, all noninstructional days will be scheduled prior to the eighth day of June.

(k) The state board may not schedule the primary statewide assessment program prior to the fifteenth day of May of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.

(l) If, on or after the first day of March, the county board determines that it is not possible to complete one hundred eighty separate days of instruction, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, and the day will be used for instruction. The provisions of this subsection do not apply to: (1) Holidays; and (2) election day.

(m) The following applies to bank time:
(1) Bank time may not be used to avoid one hundred eighty separate days of instruction;

(2) Bank time may not be used to lengthen the time provided in law for faculty senates;

(3) The use of bank time for extracurricular activities will be limited by the state board; and

(4) Such other requirements or restrictions as the state board may provide in the rule required to be promulgated by this section.

(n) The following applies to cocurricular activities:

(1) The state board shall determine what activities may be considered cocurricular;

(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and

(3) Such other requirements or restrictions as the state board may provide in the rule required to be promulgated by this section.

(o) The following applies to extracurricular activities:

(1) Except as provided by subdivision (3) of this subsection, extracurricular activities may not be scheduled during instructional time;

(2) The use of bank time for extracurricular activities will be limited by the state board; and

(3) The state board shall provide for the attendance by students of certain activities sanctioned by the secondary schools activities commission when those activities are related
to statewide tournaments or playoffs or are programs required for secondary schools activities commission approval.

(p) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.

(q) Nothing in this section prohibits establishing year-round schools in accordance with rules to be established by the state board.

(r) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.

(s) The county board may contract with all or part of the personnel for a longer term.

(t) The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and where the event causing the declaration is substantially related to a reduction of instructional days.

(u) Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, the participation for up to five of the noninstructional days of the employment term.

(v) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.
§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which is comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. Professional educators, as used in this section, means professional educators as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held on a regular basis as determined by a schedule approved by the faculty senate and amended periodically if needed. Emergency meetings may be held at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting. For emergency meetings the agenda shall be available as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board of education or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor
to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it deems most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted fifty dollars for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to the faculty senate: Provided, That nothing contained herein prohibits the funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at-risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year are available for expenditure in the next school year: Provided, however, that the amount of county funds budgeted in a fiscal year may not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but does not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for faculty members to interview new prospective professional educators
and paraprofessional employees at the school and submit recommendations regarding employment to the principal, who may also make independent recommendations, for submission to the county superintendent: Provided, That such process shall be chaired by the school principal and must permit the timely employment of persons to perform necessary duties.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors
for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, That the faculty senate shall select a member who has the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and is subject to normal auditing procedures.

(11) Any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether the evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the state board of education: Provided, That nothing herein creates any new right of access to or review of any individual's evaluations.

(12) A local board shall provide to each faculty senate either: (A) A two-hour per month block of instructional time within the instructional day; or (B) an unlimited block of time per month during noninstructional days. A faculty senate scheduled on a noninstructional day shall be considered as part of the purpose for which the noninstructional day is scheduled. This time may be utilized and determined at the local school level and includes, but is not limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit the strategic plan to the superintendent of the county board of education.
periodically pursuant to guidelines developed by the state department of education. Each faculty senate shall encourage the participation of local school improvement councils, parents and the community at large in developing the strategic plan for each school.

Each strategic plan developed by the faculty senate shall include at least: (A) A mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for placing additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in integrated classrooms; (G) guidelines for implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.

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.

The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of this code, to such service personnel employed: Provided, That no county shall receive an allowance for an amount in excess of thirty-four service personnel per one thousand students in adjusted enrollment: Provided, however, That the state superintendent of schools is authorized in accordance with rules and regulations established by the state board and upon request of a county superintendent to waive the maximum ratio of thirty-
four service personnel per one thousand students in adjusted enrollment and the twenty percent per year growth cap provided in this section, to the extent appropriations are provided, in those cases where the state superintendent determines that student population density and miles of bus route driven or the transportation of students to a county or a multi-county vocational-technical center justify the waiver, except that no waiver shall be granted to any county whose financial statement shows a net balance in general current expense funds greater than three percent at the end of the previous fiscal year: Provided further, That on or before the first day of each regular session of the Legislature, the state board, through the state superintendent, shall make to the Legislature a full report concerning the number of waivers granted and the fiscal impact related thereto. Every county shall utilize methods other than reduction in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section.

For any county which has in excess of thirty-four service personnel per one thousand students in adjusted enrollment, the allowance shall be computed based upon the average state minimum pay scale salary of all service personnel in the county: Provided, That for any county having fewer than thirty-four service personnel per one thousand students in adjusted enrollment, in any one year, the number of service personnel used in making this computation may be increased the succeeding years by no more than twenty percent per year of its total potential increase under this provision, except that in no case shall the limit be fewer than two service personnel until the county attains the maximum ratio set forth: Provided, however, That where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be prorated among the participating counties
on the basis of each one's enrollment therein and that the personnel shall be considered within the above-stated limit.

§18-9A-5b. Foundation allowance for increasing professional and service personnel positions.

Commencing with the school year beginning on the first day of July, two thousand five, two million five hundred thousand dollars shall be appropriated for the purpose of increasing the ratios of professional and service personnel per one thousand students in net enrollment. For each of the eleven following school years, an additional two million five hundred thousand dollars shall be added to the appropriation for this purpose. The increases in the ratios of professional and service personnel per one thousand students in net enrollment shall be made in a manner which reflects the greater need of counties with a low student population density for additional personnel.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.


(a) The Legislature finds the following:

(1) The decline in student enrollment over the last twenty years has necessitated consolidation of schools in many counties;

(2) It is projected that the decline in student enrollment during the period two thousand two through two thousand twelve may be as great as eighteen percent and will continue the necessity to consolidate schools;

(3) The new consolidated school buildings now being built across the state provide an opportunity for communities to have comprehensive high schools that include space for vocational-technical courses, community college courses and other
workforce related courses for the students and the public at large;

(4) Requiring students to be bused to remote vocational centers has sometimes deterred student participation in vocational courses and has sometimes been considered a stigma upon those students attending vocational courses;

(5) Offering vocational, community college and workforce programs in close proximity to each other compliment the high school and the programs; and

(6) The change in the season for girls' basketball to coincide with boys' basketball has placed significant pressures on the availability of gymnasium space and often has caused practices to be scheduled late in the evenings and on weekends, interfering with time needed for studying and rest.

(b) When planning the construction of a high school which has been approved by the authority and which meets the required authority efficiencies, the authority shall provide funding for comprehensive vocational facilities to be located, when feasible, on the same site as the high school and may, in cooperation with the higher education policy commission, established in section one, article one-b, chapter eighteen-b, provide funding for facilities for community and technical college education. When building in conjunction with the higher education policy commission, an educational specification shall be developed for the proposed new facility by the appropriate institutional governing board as defined in section two, article one, chapter eighteen-b of this code. The county board is the fiscal agent for construction. All planning, design, bidding and construction shall be completed with authority guidelines and under the supervision of the authority.
(c) When planning the construction of a high school which has been approved by the authority and meets the required authority efficiencies, the authority shall provide funding sufficient for the construction of at least one auxiliary gymnasium. The authority may establish standards for the auxiliary gymnasium.

(d) Upon application of a county board to construct comprehensive vocational facilities at an existing high school, the authority will provide technical assistance to the county in developing a plan for construction of the comprehensive vocational facility. Upon development of the plan, the authority shall consider funding based on the following criteria:

1. The distance of any existing vocational facilities from the high schools it serves;
2. The time required to travel to and from the vocational facility to the high schools it serves;
3. The ability of the county board to provide local funds for the construction of new comprehensive vocational facilities;
4. The size of the existing high schools and the demand for vocational technical courses;
5. The age and physical condition of the existing vocational facilities; and
6. Such other criteria as the authority shall consider 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.
The state superintendent may waive the assessment requirement for parochial schools set forth in section three of this article if the state superintendent determines that a court of law has held that the assessment requirement would violate a provision of the state or federal constitution.

CHAPTER 18A. SCHOOL PERSONNEL.

Article
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.

(a) Before entering upon their duties, all teachers shall execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

(b) A teacher's contract, under this section, shall be for a term of not less than one nor more than three years, one of which shall be for completion of a beginning teacher internship pursuant to the provisions of section two-b, article three of this chapter, if applicable; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same and the board of education enter into a new contract of employment, it shall be a continuing contract: Provided, That
any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the said three-year probationary period shall upon qualifying for said professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status: Provided, however, That a teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year.

(c) The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated: (1) By a majority vote of the full membership of the board on or before the first Monday of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior to the board's action thereon; or (2) by written resignation of the teacher before that date, to initiate termination of a continuing contract. Such termination shall take effect at the close of the school year in which the contract is so terminated: Provided, That the contract may be terminated at any time by mutual consent of the school board and the teacher and that this section shall not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article: Provided, however, That a continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred eighty-four and one thousand nine hundred eighty-five shall remain in full force and effect: Provided further, That a continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and
pupil-teacher ratios. The written notification of teachers being considered for dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal is based upon known or expected circumstances which will require dismissal for lack of need. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. In case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment in a position for which they are qualified: And provided further, That he or she has not accepted a teaching position elsewhere. Such reemployment shall be upon a teacher's preexisting continuing contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under said continuing contract, the board may provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of such teacher or any other rights, privileges or benefits under the provisions of this chapter. Released time shall be provided for any professional educator while serving as a member of the Legislature during any duly constituted session of that body and its interim and statutory committees and commissions without jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of experience for placement on the state minimum salary schedule in the following school year under the provisions of this chapter, board policy and law.

(e) Any teacher who fails to fulfill his contract with the board, unless prevented from so doing by personal illness or
other just cause or unless released from such contract by the board, or who violates any lawful provision thereof, shall be disqualified to teach in any other public school in the state for a period of the next ensuing school year and the state department of education or board may hold all papers and credentials of such teacher on file for a period of one year for such violation: *Provided*, That marriage of a teacher shall not be considered a failure to fulfill, or violation of, the contract.

(f) Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a board of education or request a leave of absence, such resignation or leave of absence to become effective on or before the fifteenth day of July of the same year and after completion of the employment term, may do so at any time during the school year by written notification thereof and any such notification received by a board of education shall automatically extend such teacher's public employee insurance coverage until the thirty-first day of August of the same year.

(g) Any classroom teacher who gives written notice to the county board of education on or before the first day of February of the school year of their resignation or retirement from employment with the board at the conclusion of the school year shall be paid five hundred dollars from the “Early Notification of Retirement” line item established for the department of education for this purpose, subject to appropriation by the Legislature. If the appropriations to the department of education for this purpose are insufficient to compensate all applicable teachers, the department of education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment shall not be counted as part of the final average salary for the purpose of calculating retirement.
§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for drunkenness, untruthfulness, immorality, or for any physical, mental or moral defect which would render him unfit for the proper performance of his duties as a teacher, or for any neglect of duty or refusal to perform the same, or for using fraudulent, unapproved, or insufficient credit, or for any other cause which would have justified the withholding of a certificate when the same was issued. The state superintendent may designate the West Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or licensure denials and make recommendations for action by the state superintendent.

It shall be the duty of any county superintendent who knows of any immorality or neglect of duty on the part of any teacher to report the same, together with all the facts and evidence, to the state superintendent for such action as in his judgment may be proper.

If a certificate has been granted through an error, oversight, or misinformation, the state superintendent of schools shall have authority to recall the certificate and make such corrections as will conform to the requirements of law and the state board of education.

§18A-3-9. County service personnel staff development councils.

(a) The Legislature finds the professional expertise and insight of service personnel to be an invaluable ingredient in the
development and delivery of staff development programs which meet the needs of service personnel.

(b) Therefore, a service personnel staff development council comprised of representation from the various categories of service personnel employment shall be established in each school district in the state in accordance with rules adopted by the state board of education. Nominations of service personnel to serve on the county service personnel staff development council may be submitted by the six groups, as defined in subsection (e), section one, article one of this chapter, of the district to the county superintendent who shall prepare and distribute ballots and tabulate the votes of the counties service personnel voting on the persons nominated. Each county staff service personnel development council shall consist of two employees from each category of employment one of whom shall be elected as chairperson by the staff development council members. The councils have final authority to propose staff development programs for their peers based upon rules established by statute and the council on service personnel education. The county superintendent or a designee has an advisory, nonvoting role on the council. The county board shall make available an amount equal to one tenth of one percent of the amounts provided in accordance with section five, article nine-a, chapter eighteen of this code and credit the funds to an account to be used by the council to fulfill its objectives. The local board has the final approval of all proposed disbursements. Any funds credited to the council during a fiscal year, but not used by the council, shall be carried over in the council account for use in the next fiscal year. Any carried-over funds shall be separate and apart from, and in addition to, the funds to be credited to the council pursuant to this section.

(c) At the end of each fiscal year, the county board of education shall report to the staff development chairperson the total amount and balance of the staff development council
account, the amount appropriated for the recent fiscal year, the amount of funds requested and used by the staff development council, and the amount of funds carried over into the next fiscal year. The county board of education shall further provide to the state superintendent of schools at the end of each fiscal year the names of the service personnel staff development council members, the name of the chairperson, the number of meetings the service personnel staff development council held to plan staff development programs and the number of hours service employees were provided during their employment 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.

(a) Each teacher shall receive the amount prescribed in the "state minimum salary schedule I" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year: Provided, That beginning on the first day of July, two thousand two, and thereafter, each teacher shall receive the amount prescribed in "state minimum salary schedule II" as set forth in this section, specific additional amounts prescribed in this section or article,
and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

### STATE MINIMUM SALARY SCHEDULE I

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### STATE MINIMUM SALARY SCHEDULE II

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<td>Class</td>
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(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(c) Effective until the first day of July, two thousand two, in addition to any amounts prescribed in the applicable state minimum salary schedule, each professional educator shall be paid annually the following incremental increases in accordance with their years of experience. The payments shall be paid in equal monthly installments and shall be considered a part of the state minimum salaries for teachers.
(d) On and after the first day of July, two thousand two, in addition to any amounts prescribed in the applicable state minimum salary schedule, each professional educator shall be paid annually the following incremental increases in accordance with their years of experience. The payments shall be paid in equal monthly installments and shall be considered a part of the state minimum salaries for teachers.

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<tr>
<td>36</td>
<td>570</td>
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§18A-4-3. State minimum annual salary increments for principals and assistant principals.

In addition to any salary increments for principals and assistant principals, in effect on the first day of January, two thousand two, and paid from local funds, and in addition to the county schedule in effect for teachers, the county board shall pay each principal, a principal's salary increment and each assistant principal an assistant principal's salary increment as prescribed by this section from state funds appropriated for the salary increments.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code.

The salary increment in this section for each principal shall be determined by multiplying the basic salary for teachers in
accordance with the classification of certification and of
training of the principal as prescribed in this article, by the
appropriate percentage rate prescribed in this section according
to the number of teachers supervised.

STATE MINIMUM SALARY INCREMENT
RATES FOR PRINCIPALS
EFFECTIVE UNTIL JULY 1, 2002

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<tr>
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<td>58 and up</td>
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</table>

STATE MINIMUM SALARY INCREMENT
RATES FOR PRINCIPALS
EFFECTIVE ON AND AFTER JULY 1, 2002

<table>
<thead>
<tr>
<th>No. of Teachers Supervised</th>
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<td>12.0%</td>
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<tr>
<td>58 and up</td>
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</tr>
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</table>

The salary increment in this section for each assistant
principal shall be determined in the same manner as that for
principals, utilizing the number of teachers supervised by the
principal under whose direction the assistant principal works,
except that the percentage rate shall be fifty percent of the rate prescribed for the principal.

Salaries for employment beyond the minimum employment term shall be at the same daily rate as the salaries for the minimum employment terms.

For the purpose of determining the number of teachers supervised by a principal, the county board shall use data for the second school month of the prior school term and the number of teachers shall be interpreted to mean the total number of professional educators assigned to each school on a full-time equivalency basis: Provided, That if there is a change in circumstances because of consolidation or catastrophe, the county board shall determine what is a reasonable number of supervised teachers in order to establish the appropriate increment percentage rate.

No county may reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, two thousand two, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making the reduction.

Nothing in this section prevents a county board from providing, in a uniform manner, salary increments greater than those required by this section.

§18A-4-5. Salary equity among the counties; state salary supplement.

(a) For the purposes of this section, salary equity among the counties means that the salary potential of school employees 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
and the conditions set forth herein, each teacher and school service personnel shall receive a supplemental amount in addition to the amount from the state minimum salary schedules provided for in this article.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four and five, article nine-a, chapter eighteen of this code: Provided, That in making this division an adequate amount of state equity funds shall be reserved to finance the appropriate foundation allowances and staffing incentives provided for in article nine-a, chapter eighteen of this code.

Pursuant to this section, each teacher and school service personnel shall receive the amount that is the difference between their authorized state minimum salary and ninety-five percent of the maximum salary schedules prescribed in sections five-a and five-b of this article, reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on the first day of January of the fiscal year immediately preceding that in which the salary equity appropriation is distributed: Provided, That the amount received pursuant to this section shall not be decreased as a result of any county supplement increase instituted after the first day of January, one thousand nine hundred eighty-four, until the objective of salary equity is reached: Provided, however, That any amount received pursuant to this section may be reduced proportionately based upon the amount of funds appropriated for this purpose.
No county may reduce any salary supplement that was in effect on the first day of January, one thousand nine hundred eighty-four, except as permitted by sections five-a and five-b of this article.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

(a) A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications.

(b) The county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications.

(c) In judging qualifications for hiring employees pursuant to subsections (a) and (b) of this section, consideration shall be given to each of the following:

(1) Appropriate certification and/or licensure;

(2) Amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the subject area;

(3) The amount of course work and/or degree level in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and
(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

(d) If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria:

(1) Appropriate certification and/or licensure;

(2) Total amount of teaching experience;

(3) The existence of teaching experience in the required certification area;

(4) Degree level in the required certification area;

(5) Specialized training directly related to the performance of the job as stated in the job description;

(6) Receiving an overall rating of satisfactory in evaluations over the previous two years; and

(7) Seniority.

(e) In filling positions pursuant to subsection (d) of this section, consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant’s qualifications.

(f) The seniority of classroom teachers, as defined in section one, article one of this chapter, with the exception of guidance counselors, shall be determined on the basis of the length of time the employee has been employed as a regular
full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified and/or licensed.

(g) Upon completion of one hundred thirty-three days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(h) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: Provided, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one area of employment.

(i) Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: Provided, That when two or more principals have accumulated identical seniority,
decisions on reductions in force shall be based on qualifications.

(j) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter. The provisions of this subsection are subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) An employee subject to release shall be employed in any other professional position where such employee is certified and was previously employed or to any lateral area for which such employee is certified and/or licensed, if such employee's seniority is greater than the seniority of any other employee in that area of certification and/or licensure;

(3) If an employee subject to release holds certification and/or licensure in more than one lateral area and if such employee's seniority is greater than the seniority of any other employee in one or more of those areas of certification and/or licensure, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification and/or licensure;

and

(4) If, prior to the first day of August of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or
her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(k) For the purpose of this article, all positions which meet the definition of classroom teacher as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions the county board of education shall adopt a policy by the thirty-first day of October, one thousand nine hundred ninety-three, and may modify said policy thereafter as necessary, which defines which positions shall be lateral positions. The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state board shall compile a report and submit same to the legislative oversight commission on education accountability by the thirty-first day of December, one thousand nine hundred ninety-three, and by such date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting such a policy, the board shall give consideration to the rank of each position in terms of title, nature of responsibilities, salary level, certification and/or licensure and days in the period of employment.

(l) After the fifth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following:
(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(2) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence; and

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students: Provided, That the county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the fifth day prior to the beginning of the instructional term. The Legislature finds that it is not in the best interest of the students particularly in the elementary grades to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the fifth day prior to the beginning of the instructional term should be kept to a minimum.

(m) All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification and/or licensure, the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept such position.

(n) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for
professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification and/or licensure.

(o) Openings in established, existing or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices which shall be subject to the following:

(A) The notices shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) The notice shall be posted within twenty working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy shall be filled until after the five-day minimum posting period;
(3) If one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the posting period;

(4) A position held by a certified and/or licensed teacher who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein shall prevent the county board of education from eliminating a position due to lack of need.

(p) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: Provided, That the employee and the county board of education mutually agree to the reassignment.

(q) Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school
without that position being posted: Provided, That the employee is certified and/or licensed and agrees to the reassignment.

(r) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

(s) The county board shall compile, update annually on the first day of July and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may be no less than ten months. A month is defined as twenty employment days: Provided, That the county board may contract with all or part of these service personnel for a longer term. The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever
there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

(d) No service employee, without his or her agreement, may be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If an employee whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each day he or she reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

(f) Custodians, aides, maintenance, office and school lunch employees required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds: Provided, That when engaged in duties of transporting students exclusively, aides shall not be regarded as working an interrupted schedule. Maintenance personnel are defined as personnel who hold a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.
(g) Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, the employee's salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon the employee's advanced classification and allowable years of employment.

(h) An employee's contract as provided in section five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

(1) “Pay grade” means the monthly salary applicable to class titles of service personnel;

(2) “Years of employment” means the number of years which an employee classified as service personnel has been employed by a board in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States, if the employee were employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

(3) “Class title” means the name of the position or job held by service personnel;
(4) "Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means personnel who are employed in the county board office to manage and supervise accounts payable and/or payroll procedures;

(7) "Accounts payable supervisor" means personnel who are employed in the county board office who have primary responsibility for the accounts payable function, which may include the supervision of other personnel, and who have either completed twelve college hours of accounting courses from an accredited institution of higher education or have at least eight years of experience performing progressively difficult accounting tasks;

(8) "Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title may be employed as an aide in any special education program;

(10) "Aide III" means those personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and have completed six semester hours of college credit at an institution of higher
education or are employed as an aide in a special education program and have one year's experience as an aide in special education;

(11) "Aide IV" means personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit;

(12) "Audiovisual technician" means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment;

(13) "Auditor" means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) "Autism mentor" means personnel who work with autistic students and who meet standards and experience to be determined by the state board: Provided, That if any employee has held or holds an aide title and becomes employed as an autism mentor, the employee shall hold a multiclassification status that includes aide and autism mentor titles, in accordance with section eight-b of this article;

(15) "Braille or sign language specialist" means personnel employed to provide braille and/or sign language assistance to students: Provided, That if any employee has held or holds an aide title and becomes employed as a braille or sign language
specialist, the employee shall hold a multiclassification status that includes aide and braille or sign language specialist title, in accordance with section eight-b of this article;

(16) "Bus operator" means personnel employed to operate school buses and other school transportation vehicles as provided by the state board;

(17) "Buyer" means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(18) "Cabinetmaker" means personnel employed to construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(20) "Carpenter I" means personnel classified as a carpenter's helper;

(21) "Carpenter II" means personnel classified as a journeyman carpenter;

(22) "Chief mechanic" means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained;

(23) "Clerk I" means personnel employed to perform clerical tasks;
(24) "Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;

(25) "Computer operator" means qualified personnel employed to operate computers;

(26) "Cook I" means personnel employed as a cook's helper;

(27) "Cook II" means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a "Cook I" for a period of four years, if the personnel have not been elevated to this classification within that period of time;

(28) "Cook III" means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(29) "Crew leader" means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) "Custodian I" means personnel employed to keep buildings clean and free of refuse;

(31) "Custodian II" means personnel employed as a watchman or groundsman;

(32) "Custodian III" means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;
"Custodian IV" means personnel employed as head custodians. In addition to providing services as defined in "custodian III," their duties may include supervising other custodian personnel;

"Director or coordinator of services" means personnel who are assigned to direct a department or division. Nothing in this subdivision may prohibit professional personnel or professional educators as defined in section one, article one of this chapter, from holding this class title, but professional personnel may not be defined or classified as service personnel unless the professional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services." Directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel;

"Draftsman" means personnel employed to plan, design and produce detailed architectural/engineering drawings;

"Electrician I" means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal;

"Electrician II" means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal;

"Electronic technician I" means personnel employed at the apprentice level to repair and maintain electronic equipment;
(39) "Electronic technician II" means personnel employed at the journeyman level to repair and maintain electronic equipment;

(40) "Executive secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties;

(41) "Food services supervisor" means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system's food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(42) "Foremen" means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment;

(43) "General maintenance" means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;

(44) "Glazier" means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(45) "Graphic artist" means personnel employed to prepare graphic illustrations;

(46) "Groundsmen" means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assign-
ments may include the operation of a small heating plant and
routine cleaning duties in buildings;

(47) "Handyman" means personnel employed to perform
routine manual tasks in any operation of the county school
system;

(48) "Heating and air conditioning mechanic I" means
personnel employed at the apprentice level to install, repair and
maintain heating and air conditioning plants and related
electrical equipment;

(49) "Heating and air conditioning mechanic II" means
personnel employed at the journeyman level to install, repair
and maintain heating and air conditioning plants and related
electrical equipment;

(50) "Heavy equipment operator" means personnel em-
ployed to operate heavy equipment;

(51) "Inventory supervisor" means personnel who are
employed to supervise or maintain operations in the receipt,
storage, inventory and issuance of materials and supplies;

(52) "Key punch operator" means qualified personnel
employed to operate key punch machines or verifying ma-
chines;

(53) "Locksmith" means personnel employed to repair and
maintain locks and safes;

(54) "Lubrication man" means personnel employed to
lubricate and service gasoline or diesel-powered equipment of
a county school system;

(55) "Machinist" means personnel employed to perform
machinist tasks which include the ability to operate a lathe,
planer, shaper, threading machine and wheel press. These personnel should also have, the ability to work from blueprints and drawings;

(56) “Mail clerk” means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(57) “Maintenance clerk” means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(58) “Mason” means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying;

(59) “Mechanic” means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(60) “Mechanic assistant” means personnel employed as a mechanic apprentice and helper;

(61) “Multiclassification” means personnel employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

(62) “Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper;

(63) “Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Personnel are responsible for parts being purchased
necessary for the proper operation of a program of continuous maintenance and repair;

(64) “Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(65) “Paraprofessional” means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional: Provided, however, That if any employee has held or holds an aide title and becomes employed as a paraprofessional, the employee shall hold a multiclassification status that includes aide and paraprofessional titles in accordance with section eight-b of this article: Provided further, That once an employee who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(66) “Payroll supervisor” means personnel who are employed in the county board office who have primary responsibility for the payroll function, which may include the supervision of other personnel, and who have either completed twelve college hours of accounting from an accredited institution of higher education or have at least eight years of experience performing progressively difficult accounting tasks;
(67) "Plumber I" means personnel employed as an apprentice plumber and helper;

(68) "Plumber II" means personnel employed as a journeyman plumber;

(69) "Printing operator" means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials;

(70) "Printing supervisor" means personnel employed to supervise the operation of a print shop;

(71) "Programmer" means personnel employed to design and prepare programs for computer operation;

(72) "Roofing/sheet metal mechanic" means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(73) "Sanitation plant operator" means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(74) "School bus supervisor" means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees;

(75) "Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;
(76) “Secretary II” means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied in this subdivision that would prevent the employees from holding or being elevated to a higher classification;

(77) “Secretary III” means personnel assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of “secretary II” or “secretary III” in this section for eight years;

(78) “Supervisor of maintenance” means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board;

(79) “Supervisor of transportation” means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system;
“Switchboard operator-receptionist” means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

“Truck driver” means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles;

“Warehouse clerk” means personnel employed to be responsible for receiving, storing, packing and shipping goods;

“Watchman” means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

“Welder” means personnel employed to provide acetylene or electric welding services for a school system; and

“WVEIS data entry and administrative clerk” means personnel employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia education information system, and to perform other administrative duties assigned by the principal.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee is, notwithstanding any provisions in this code to the contrary, entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article
may not be paid less than the amount shown for the maximum
years of employment shown and provided for in the classifica-
tion in which he or she is employed.

(l) The county boards shall review each service personnel
employee job classification annually and shall reclassify all
service employees as required by the job classifications. The
state superintendent of schools may withhold state funds
appropriated pursuant to this article for salaries for service
personnel who are improperly classified by the county boards.
Further, the state superintendent shall order county boards to
correct immediately any improper classification matter and with
the assistance of the attorney general shall take any legal action
necessary against any county board to enforce the order.

(m) No service employee, without his or her written
consent, may be reclassified by class title, nor may a service
employee, without his or her written consent, be relegated to
any condition of employment which would result in a reduction
of his or her salary, rate of pay, compensation or benefits
earned during the current fiscal year or which would result in a
reduction of his or her salary, rate of pay, compensation or
benefits for which he or she would qualify by continuing in the
same job position and classification held during that fiscal year
and subsequent years.

(n) Any board failing to comply with the provisions of this
article may be compelled to do so by mandamus, and is liable
to any party prevailing against the board for court costs and the
prevailing party's reasonable attorney fee, as determined and
established by the court.

(o) Notwithstanding any provisions in this code to the
contrary, service personnel who hold a continuing contract in a
specific job classification and who are physically unable to
perform the job's duties as confirmed by a physician chosen by
the employee shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if qualified as provided in section eight-e of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

(1) Until the first day of July, two thousand two, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade I" and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the "state minimum pay scale pay grade I" set forth in this section. Beginning the first day of July, two thousand two, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade II" and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the "state minimum pay scale pay grade II" set forth in this section.

**STATE MINIMUM PAY SCALE PAY GRADE I**

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<th>Years of Employment</th>
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<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
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Aide II .............................................. B
Aide III .............................................. C
Aide IV .............................................. D
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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

(2) An additional twelve dollars per month shall be added
to the minimum monthly pay of each service employee who
holds a high school diploma or its equivalent.

(3) Until the first day of July, two thousand two, an
additional ten dollars per month also shall be added to the
minimum monthly pay of each service employee for each of the
following, and beginning the first day of July, two thousand
two, the ten dollars per month shall be increased to an addi-
tional eleven dollars per month for each of subdivisions (A)
through (J), inclusive, of this subsection only, and beginning the
first day of July, two thousand two, the ten dollars per month
shall be increased to an additional forty dollars per month for
each of subdivisions (K) through (N), inclusive, of this subsec-
tion only:

(A) A service employee who holds twelve college hours or
comparable credit obtained in a trade or vocational school as
approved by the state board;

(B) A service employee who holds twenty-four college
hours or comparable credit obtained in a trade or vocational
school as approved by the state board;

(C) A service employee who holds thirty-six college hours
or comparable credit obtained in a trade or vocational school as
approved by the state board;
(D) A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(E) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(F) A service employee who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(G) A service employee who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(H) A service employee who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(I) A service employee who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(J) A service employee who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(K) A service employee who holds an associate's degree;

(L) A service employee who holds a bachelor's degree;

(M) A service employee who holds a master's degree;

(N) A service employee who holds a doctorate degree.

(4) Effective the first day of July, two thousand two, an additional eleven dollars per month shall be added to the
minimum monthly pay of each service employee for each of the following:

(A) A service employee who holds a bachelor's degree plus fifteen college hours;

(B) A service employee who holds a master's degree plus fifteen college hours;

(C) A service employee who holds a master's degree plus thirty college hours;

(D) A service employee who holds a master's degree plus forty-five college hours; and

(E) A service employee who holds a master's degree plus sixty college hours.

(5) When any part of a school service employee's daily shift of work is performed between the hours of six o'clock p.m. and five o'clock a.m. the following day, the employee shall be paid no less than an additional ten dollars per month and one half of the pay shall be paid with local funds.

(6) Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee's usual hourly rate.

(7) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(8) No service employee may have his or her daily work schedule changed during the school year without the em-
employee's written consent and the employee’s required daily 
work hours may not be changed to prevent the payment of time 
and one-half wages or the employment of another employee.

(9) The minimum hourly rate of pay for extra duty assign-
ments as defined in section eight-b of this article shall be no 
less than one seventh of the employee’s daily total salary for 
each hour the employee is involved in performing the assign-
ment and paid entirely from local funds: Provided, That an 
alternative minimum hourly rate of pay for performing extra 
duty assignments within a particular category of employment 
may be utilized if the alternate hourly rate of pay is approved 
both by the county board and by the affirmative vote of a two-
thirds majority of the regular full-time employees within that 
classification category of employment within that county: 
Provided, however, That the vote shall be by secret ballot if 
requested by a service personnel employee within that classifi-
cation category within that county. The salary for any fraction 
of an hour the employee is involved in performing the assign-
ment shall be prorated accordingly. When performing extra 
duty assignments, employees who are regularly employed on a 
one-half day salary basis shall receive the same hourly extra 
duty assignment pay computed as though the employee were 
employed on a full-day salary basis.

(10) The minimum pay for any service personnel employ-
ees engaged in the removal of asbestos material or related 
duties required for asbestos removal shall be their regular total 
daily rate of pay and no less than an additional three dollars per 
hour or no less than five dollars per hour for service personnel 
supervising asbestos removal responsibilities for each hour 
these employees are involved in asbestos related duties. 
Related duties required for asbestos removal include, but are 
not limited to, travel, preparation of the work site, removal of 
asbestos decontamination of the work site, placing and removal 
of equipment and removal of structures from the site. If any
A member of an asbestos crew is engaged in asbestos related duties outside of the employee’s regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(11) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, “under the direct supervision of certificated professional personnel” means that certificated professional personnel is present, with and accompanying the aide.

§18A-4-8b. Seniority rights for school service personnel.

(a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section
eight of this article, on the basis of seniority, qualifications and
evaluation of past service.

(b) Qualifications shall mean that the applicant holds a
classification title in his category of employment as provided in
this section and must be given first opportunity for promotion
and filling vacancies. Other employees then must be consid-
nered and shall qualify by meeting the definition of the job title
as defined in section eight of this article, that relates to the
promotion or vacancy. If requested by the employee, the board
must show valid cause why an employee with the most senior-
ity is not promoted or employed in the position for which he or
she applies. Applicants shall be considered in the following
order:

(1) Regularly employed service personnel;

(2) Service personnel whose employment has been discon-
tinued in accordance with this section;

(3) Professional personnel who held temporary service
personnel jobs or positions prior to the ninth day of June, one
thousand nine hundred eighty-two, and who apply only for such
temporary jobs or positions;

(4) Substitute service personnel; and

(5) New service personnel.

(c) The county board may not prohibit a service employee
from retaining or continuing his employment in any positions
or jobs held prior to the effective date of this section and
thereafter.

(d) A promotion shall be defined as any change in his
employment that the employee deems to improve his working
circumstance within his classification category of employment
and shall include a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment. Each class title listed in section eight of this article shall be considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment. The cafeteria manager class title shall be included in the same classification category as cooks. The executive secretary class title shall be included in the same classification category as secretaries. Paraprofessional, autism mentor and braille or sign language specialist class titles shall be included in the same classification category as aides. The mechanic assistant and chief mechanic class titles shall be included in the same classification category as mechanics.

(e) For purposes of determining seniority under this section an employee's seniority begins on the date that he or she enters into his assigned duties.

(f) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment. For the purpose of this
section, "extra-duty assignments" are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(g) Boards shall post and date notices of all job vacancies of established existing or newly created positions in conspicuous places for all school service employees to observe for at least five working days. The notice of the job vacancies shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job. After the five-day minimum posting period all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions. Job postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.

(i) The seniority of any service personnel shall be determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, when an employee has been employed in one or more classifications, the seniority accrued in each previous classification shall be retained by the employee.
(j) If a county board is required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy: Provided, That if there is no job vacancy for employment within the classification or grades of classification, he or she shall be employed in any other job classification which he or she previously held with the county board if there is a vacancy and shall retain any seniority accrued in the job classification or grade of classification.

(k) If, prior to the first day of August after a reduction in force or transfer is approved, the reason for any particular reduction in force or transfer no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the affected employee in writing of his or her right to be restored to his or her former position of employment. Within five days of being so notified, the affected employee shall notify the board of his or her intent to return to his or her former position of employment or the right of restoration to the former position shall terminate: Provided, That the board shall not rescind the reduction in force of an employee until all employees with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section. If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the employee who was subject to reduction in force, the position of the released employee shall be posted and filled in accordance with this section.

(l) If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system
established by the employees and approved by the county board.

(m) All employees whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

(n) Employees placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s), where they had previously been employed, or to any lateral position for which the employee is qualified or to a lateral area for which an employee has certification and/or licensure.

(o) Employees on the preferred recall list shall not forfeit their right to recall by the county board if compelling reasons require an employee to refuse an offer of reemployment by the county board.

(p) The county board shall notify all employees on the preferred recall list of all position openings that from time to time exist. The notice shall be sent by certified mail to the last known address of the employee; it is the duty of each such employee to notify the county board of any change in the address of the employee.

(q) No position openings may be filled by the county board, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(r) An employee released from employment for lack of need as provided in section eight-a or six, article two of this chapter shall be accorded preferred recall status on the first day
of July of the succeeding school year if the employee has not
been reemployed as a regular employee.

(s) Any board failing to comply with the provisions of this
article may be compelled to do so by mandamus and is liable to
any party prevailing against the board for court costs and the
prevailing party’s reasonable attorney fee, as determined and
established by the court. Further, employees denied promotion
or employment in violation of this section shall be awarded the
job, pay and any applicable benefits retroactively to the date of
the violation and shall be paid entirely from local funds. Further, the board is liable to any party prevailing against the
board for any court reporter costs including copies of tran-
scripts.

§18A-4-14a. Study on daily planning periods.

(a) The legislative oversight commission on education
accountability shall conduct a study of the length of time within
the instructional day needed by teachers to plan. The commis-

sion may conduct the study as a whole or may appoint a
subcommittee to conduct the study under its direction. The
study shall include, but is not limited to, an examination of the
following issues:

(1) The length of planning periods in different grade levels
and under different class period schedules;

(2) A comparison of the amount and difficulty of the
subject matter to be covered during the instructional day and the
length of the planning period in different grade levels and under
different class period schedules;

(3) An analysis of the appropriate use of planning period
time and actual practices; and
(4) An analysis of the cost to the state and the counties of daily planning periods of different lengths and the potential for savings through appropriate measures for standardization.

(b) The legislative oversight commission on education accountability shall issue a report of its findings and recommendations, together with any legislation necessary to effectuate its recommendations, on or before the second day of January, two thousand three. In making its findings and recommendations, the commission shall:

1. Consider measures for standardization in the length of planning periods for teachers in similar grade levels;

2. Consider appropriate uses of any nonscheduled teacher time which becomes available if the standardization of planning period length results in planning periods which are less than the usual class period at a school, including, but not limited to, mentoring, tutoring, providing additional supervision, meetings and other noninstructional activities; and

3. Consider adjustments or restructuring of the requirements for planning periods that do not result in any additional cost to the state or counties.

§18A-4-16. Extracurricular assignments.

(1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis: Provided, That all school service personnel assignments shall be considered
extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight of this article, or extra-duty assignments, as provided by section eight-b of this article.

(2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.

(3) The terms and conditions of the agreement between the employee and the board shall be in writing and signed by both parties.

(4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board.

(5) The board shall fill extracurricular school service personnel assignments and vacancies in accordance with section eight-b of this article: Provided, That an alternative procedure for making extracurricular school service personnel assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment.

(6) An employee who was employed in any service personnel extracurricular assignment during the previous school year shall have the option of retaining the assignment if it continues to exist in any succeeding school year. A county board of education may terminate any school service personnel extracurricular assignment for lack of need pursuant to section
seven, article two of this chapter. If an extracurricular contract has been terminated and is reestablished in any succeeding school year, it shall be offered to the employee who held the assignment at the time of its termination. If the employee declines the assignment, the extracurricular assignment shall be 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
each institution's compact, as set forth in section two, article
one-b, chapter eighteen-b of this code, includes provisions for
incorporating the data generated by public education assess-
ments into their decision making processes. The use of the data
may include, but is not limited to, consideration as a factor in
admission to postsecondary education, college placement, or
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.

(a) Legislative intent. — The intent of this section is to
provide for the coordination of professional development
programs by the state board and to promote high quality
instructional delivery and management practices for a thorough
and efficient system of schools.

(b) Goals. — The state board annually shall establish goals
for professional staff development in the public schools of the
state. As a first priority, the state board shall require adequate
and appropriate professional staff development to ensure high
quality teaching that will enable students to achieve the content
standards established for the required curriculum in the public
schools.

The state board shall submit the goals to the state depart-
ment of education, the center for professional development, the
regional educational service agencies, the higher education
policy commission and the legislative oversight commission on
education accountability on or before the fifteenth day of
January, each year.

The goals shall include measures by which the effectiveness
of the professional staff development programs will be evalu-
In establishing the goals, the state board shall review reports that may indicate a need for professional staff development including, but not limited to, the report of the center for professional development created in article three-a, chapter eighteen-a of this code, student test scores on the statewide student assessment program, the measures of student and school performance for accreditation purposes, school and school district report cards, and its plans for the use of funds in the strategic staff development fund pursuant to section thirty-two, article two, chapter eighteen of this code.

(c) The center for professional development shall design a proposed professional staff development program plan to achieve the goals of the state board and shall submit the proposed plan to the state board for approval as soon as possible following receipt of the state board goals each year.

The proposed plan shall include a strategy for evaluating the effectiveness of the professional staff development programs delivered under the plan and a cost estimate. The state board shall review the proposed plan and return it to the center for professional development noting whether the proposed plan is approved or is not approved, in whole or in part. If a proposed plan is not approved in whole, the state board shall note its objections to the proposed plan or to the parts of the proposed plan not approved and may suggest improvements or specific modifications, additions or deletions to address more fully the goals or eliminate duplication. If the proposed plan is not wholly approved, the center for professional development shall revise the plan to satisfy the objections of the state board. State board approval is required prior to implementation of the professional staff development plan.
(d) The state board approval of the proposed professional staff development plan shall establish a master plan for professional staff development which shall be submitted by the state board to the affected agencies and to the legislative oversight commission on education accountability. The master plan shall include the state board approved plans for professional staff development by the state department of education, the center for professional development, the state institutions of higher education and the regional educational service agencies to meet the professional staff development goals of the state board. The master plan also shall include a plan for evaluating the effectiveness of the professional staff development delivered through the programs and a cost estimate.

The master plan shall serve as a guide for the delivery of coordinated professional staff development programs by the state department of education, the center for professional development, the state institutions of higher education and the regional educational service agencies beginning on the first day of June in the year in which the master plan was approved through the thirtieth day of May in the following year: Provided, That nothing in this section shall prohibit changes in the master plan, subject to state board approval, to address staff development needs identified after the master plan was approved.

§18-2-26. Establishment of multicounty regional educational service agencies; purpose; authority of state board; governance; annual performance standards.

(a) Legislative intent. — The intent of the Legislature in providing for establishment of regional education service agencies, hereinafter referred to in this section as agency or agencies, is to provide for high quality, cost effective education programs and services to students, schools and school systems.
Since the first enactment of this section in one thousand nine hundred seventy-two, the focus of public education has shifted from a reliance on input models to determine if education programs and services are providing to students a thorough and efficient education to a performance based accountability model which relies on the following:

(1) Development and implementation of standards which set forth the things that students should know and be able to do as the result of a thorough and efficient education including measurable criteria to evaluate student performance and progress;

(2) Development and implementation of assessments to measure student performance and progress toward meeting the standards;

(3) Development and implementation of a system for holding schools and school systems accountable for student performance and progress toward obtaining a high quality education which is delivered in an efficient manner; and

(4) Development and implementation of a method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress.

(b) Purpose. — In establishing the agencies the Legislature envisions certain areas of service in which the agencies can best assist the state board in implementing the standards based accountability model pursuant to subsection (a) of this section and, thereby, in providing high quality education programs. These areas of service include the following:

(1) Providing technical assistance to low performing schools and school systems;
(2) Providing high quality, targeted staff development designed to enhance the performance and progress of students in state public education;

(3) Facilitating coordination and cooperation among the county boards within their respective regions in such areas as cooperative purchasing; sharing of specialized personnel, communications and technology; curriculum development; and operation of specialized programs for exceptional children;

(4) Installing, maintaining and/or repairing education related technology equipment and software with special attention to the state level basic skills and SUCCESS programs;

(5) Receiving and administering grants under the provisions of federal and/or state law; and

(6) Developing and/or implementing any other programs or services as directed by law or by the state board.

(c) *State board rule.* — The state board shall reexamine the powers and duties of the agencies in light of the changes in state level education policy that have occurred and shall establish multicounty regional educational service agencies by rule, promulgated in accordance with the provisions of article three-b, chapter twenty-nine-a of this code.

The rule shall contain all information necessary for the effective administration and operation of the agencies. In developing the rule, the state board may not delegate its constitutional authority for the general supervision of schools to the agencies, however, it may allow the agencies greater latitude in the development and implementation of programs in the service areas outlined in subsection (b) of this section with the exceptions of providing technical assistance to low performing schools and school systems and providing high quality, targeted staff development designed to enhance the perfor-
mance and progress of students in state public education. These
two areas constitute the most important responsibilities for the
agencies.

The rule establishing the agencies shall be promulgated
before the first day of November, two thousand two, and shall
be consistent with the provisions of this section. It shall include,
but is not limited to, the following procedures:

(1) Providing for a uniform governance structure for the
agencies containing at least these elements:

(A) Selection by the state board of an executive director
who shall be responsible for the administration of his or her
respective agency. The rule shall provide for the state board to
consult with the appropriate regional council during the
selection process;

(B) Development of a job description and qualifications for
the position of executive director, together with procedures for
informing the public of position openings and for taking and
evaluating applications for these positions;

(C) Provisions for the agencies to employ other staff, as
necessary, with the approval of the state board and upon the
recommendation of the executive director: Provided, That prior
to the first day of July, two thousand three, no person who is an
employee of an agency on the effective date of this section may
be terminated or have his or her salary and benefit levels
reduced as the sole result of the changes made to this section or
by state board rule;

(D) Appointment by the county boards of a regional council
in each agency area consisting of representatives of county
boards and county superintendents from within that area for the
purpose of advising and assisting the executive director in
carrying out his or her duties. The state board may provide for
membership on the regional council for representatives from other agencies and institutions who have interest or expertise in the development or implementation of regional education programs; and

(E) Selection by the state superintendent of a representative from the state department of education to serve on each regional council. These representatives shall meet with their respective regional councils at least quarterly;

(2) Establishing statewide standards by the state board for service delivery by the agencies. These standards may be revised annually and shall include, but are not limited to, programs and services to fulfill the purposes set forth in subsection (b) of this section;

(3) Establishing procedures for developing and adopting an annual basic operating budget for each agency and for other budgeting and accounting procedures as the state board may require;

(4) Establishing procedures to clarifying that agencies may acquire and hold real property;

(5) Dividing the state into appropriate, contiguous geographical areas and designating an agency to serve each area. The rule shall provide that each of the state's counties is contained within a single service area and that all counties located within the boundaries of each agency, as determined by the state board, shall be members of that agency; and

(6) Such other standards or procedures as the state board finds necessary or convenient.

(d) Regional services. — In furtherance of the purposes provided for in this section, the state board and the regional council of each agency shall continually explore possibilities
for the delivery of services on a regional basis which will facilitate equality in the education offerings among counties in its service area, permit the delivery of high quality education programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.

Technical, operational, programmatic or professional services are among the types of services appropriate for delivery on a regional basis.

(e) Virtual education. — The state board, in conjunction with the various agencies, shall develop an effective model for the regional delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where the delivery method substantially improves the quality of an instructional program. The model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional educational service agencies may adopt and utilize the model for the delivery of the instruction.

(f) Computer information system. — Each county board of education shall use the uniform integrated regional computer information system recommended by the state board for data collection and reporting to the state department of education. County boards of education shall bear the cost of and fully participate in the implementation of the system by using one of the following methods:

(1) Acquiring necessary, compatible equipment to participate in the regional computer information system; or
(2) Following receipt of a waiver from the state superintendent, operating a comparable management information system at a lower cost which provides at least all uniform integrated regional computer information system software modules and allows on-line, interactive access for schools and the county board office onto the statewide communications network. All data formats shall be the same as for the uniform integrated regional information system and will reside at the regional computer.

Any county granted a waiver shall receive periodic notification of any incompatibility or deficiency in its system. No county shall expand any system either through the purchase of additional software or hardware that does not advance the goals and implementation of the uniform integrated regional computer information system as recommended by the state board.

(g) Reports and evaluations. — Each agency shall submit to the state superintendent on such date and in such form as specified in the rules adopted by the state board a report and evaluation of the technical assistance and other services provided and utilized by the schools within each respective region and their effectiveness. Additionally, any school may submit an evaluation of the services provided by the agency to the state superintendent at any time. This report shall include an evaluation of the agency program, suggestions on methods to improve utilization and suggestions on the development of new programs and the enhancement of existing programs. The reports and evaluations submitted pursuant to this subsection shall be submitted to the state board and shall be made available upon request to the standing committees on education of the West Virginia Senate and House of Delegates and to the secretary of education and the arts.
(h) **Funding sources.** — An agency may receive and disburse funds from the state and federal governments, from member counties, or from gifts and grants.

(i) **Employee expenses.** — Notwithstanding any other provision of this code to the contrary, employees of agencies shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the department of administration.

A county board member may not be an employee of an agency.

(j) **Meetings and compensation.** —

(1) Agencies shall hold at least one half of their regular meetings during hours other than those of a regular school day. The executive director of each agency shall attend at least one meeting of each of the member county boards of education each year to explain the agency’s services, garner suggestions for program improvement and provide any other information as may be requested by the county board.

(2) Notwithstanding any other provision of this code to the contrary, county board members serving on regional councils may receive compensation at a rate not to exceed one hundred dollars per meeting attended, not to exceed fifteen meetings per year. County board members serving on regional councils may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the department of administration.

(k) **Computer installation, maintenance and repair.** — Agencies shall serve as the lead agency for computer installation, maintenance and repair for the basic skills and SUCCESS computer programs. Each agency shall submit a quarterly status report on turn around time for computer installation, mainte-
nance and repair to the state superintendent of schools who shall then submit a report to the legislative oversight commission on education accountability. The status report for turn around time for computer installation, maintenance and repair shall be based on the following suggested time schedules:

- Network File Servers .................. forty-eight hours
- Local Area Networks .................. forty-eight hours
- West Virginia Education Information System ........ twenty-four hours
- Computer Workstations ................. three to five days
- Printers ................................ three to five days
- Other Peripherals ....................... three to five days

Agencies also shall submit an audit report to the legislative oversight commission on education accountability each year.

(1) Professional development. — Pursuant to the processes and provisions of section twenty-three-a, article two, chapter eighteen of this code, each agency shall provide coordinated professional development programs within its region to meet the professional development goals established by the state board.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§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.

§18-2E-5c. Process for improving education council established; membership; expenses; meetings; powers.

§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.

(a) Legislative findings, purpose and intent. —

(1) The Legislature finds that the process for improving education includes four primary elements, these being:

(A) Standards which set forth the things that students should know and be able to do as the result of a thorough and efficient education including measurable criteria to evaluate student performance and progress;

(B) Assessments of student performance and progress toward meeting the standards;

(C) A system for holding schools and school systems accountable for student performance and progress toward obtaining a high quality education which is delivered in an efficient manner; and

(D) A method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress.

(2) The Legislature further finds that as the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to establish the standards, assess the performance and progress of students against the standards, hold schools and school systems accountable, and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking
additional resources in consultation with the Legislature and the governor.

(3) The Legislature also finds that as the constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the things that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed, by evaluating the results and the efficiency of the system of schools, by ensuring accountability, and by providing for the necessary capacity and its efficient use.

(4) Therefore, the purpose of this section is to establish a process for improving education that includes the four primary elements as set forth in subdivision (1) of this subsection to provide assurances that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis and that the high quality standards are, at a minimum, being met.

(5) The intent of the Legislature in enacting this section is to establish a process through which the Legislature, the governor and the state board can work in the spirit of cooperation and collaboration intended in the process for improving education to consult and examine, when necessary, the performance and progress of students, schools and school systems and consider alternative measures to ensure that all students continue to receive the thorough and efficient education to which they are entitled. However, nothing in this section requires any specific level of funding by the Legislature.

(b) Unified county and school improvement plans. — The state board shall promulgate rules in accordance with article
three-b, chapter twenty-nine-a of this code establishing a unified county improvement plan for each county board and a unified school improvement plan for each public school in this state. The rules shall specify that the unified school improvement plan shall include all appropriate plans required by law including, but not limited to, the following:

(1) The report required to be delivered to the county-wide council on productive and safe schools pursuant to subsection (f), section two, article five-a of this chapter;

(2) Plans or applications required in the area of technology pursuant to 20 U.S.C. §6845, section seven, article two-e of this chapter, state board policy or rule or any other county, state or federal law;

(3) The strategic plan to manage the integration of special needs students as required by section five, article five-a of this chapter; and


The plans are required to be included only to the extent permitted by state and federal law.

(c) High quality education standards and efficiency standards. — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update high quality education standards for student, school and school system performance and processes in the following areas:

(1) Curriculum;

(2) Workplace readiness skills;
(3) Finance;
(4) Transportation;
(5) Special education;
(6) Facilities;
(7) Administrative practices;
(8) Training of county board members and administrators;
(9) Personnel qualifications;
(10) Professional development and evaluation;
(11) Student performance and progress;
(12) School and school system performance and progress;
(13) A code of conduct for students and employees;
(14) Indicators of efficiency; and
(15) Any other areas determined by the state board.

(d) Performance measures. — The standards shall assure that all graduates are prepared for gainful employment or for continuing post-secondary education and training and that schools and school systems are making progress in achieving the education goals of the state.

The standards shall include measures of student performance and progress and measures of school and school system performance, progress and processes that enable student performance. The measures of student performance and progress and school and school system performance, progress and processes shall include, but are not limited to, the following:
(1) The acquisition of student proficiencies as indicated by student performance and progress by grade level measured, where possible, by a uniform statewide assessment program;

(2) School attendance rates;

(3) The student dropout rate;

(4) The high school graduation rate;

(5) The percentage of graduates who enrolled in college and the percentage of graduates who enrolled in other post-secondary education within one year following high school graduation;

(6) The percentage of graduates who received additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the level required for graduation; and

(7) The percentage of students who enrolled in and the percentage of students who successfully completed advanced placement, dual credit and honors classes, respectively, by grade level.

(e) *Indicators of efficiency.* — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update indicators of efficiency for student and school system performance and processes in the following areas:

(1) Curriculum delivery including, but not limited to, the use of distance learning;

(2) Transportation;

(3) Facilities;

(4) Administrative practices;
(5) Personnel;

(6) Utilization of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency, or other regional services that may be initiated between and among participating county boards; and

(7) Any other indicators as determined by the state board.

(f) Assessment and accountability of school and school system performance and processes. — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance audits which measures the quality of education and the preparation of students based on the standards and measures of student, school and school system performance, progress and processes, including, but not limited to, the standards and measures set forth in subsections (c) and (d) of this section. The system of education performance audits shall assist the state board, the Legislature and the governor in ensuring that the standards and measures established pursuant to this section are, at a minimum, being met and that a thorough and efficient system of schools is being provided. The system of education performance audits shall include: (1) The assessment of student performance and progress, school and school system performance and progress, and the processes in place in schools and school systems which enable student performance and progress; (2) the review of school and school system unified improvement plans; and (3) the periodic on-site review of school and school system performance and progress and compliance with the standards.

(g) Uses of school and school system assessment information. — The state board and the process for improving education council established pursuant to section five-c of this article
shall use information from the system of education performance
audits to assist them in ensuring that a thorough and efficient
system of schools is being provided and to improve student,
school and school system performance and progress. Informa-
tion from the system of education performance audits further
shall be used by the state board for these purposes, including,
but not limited to, the following: (1) Determining school
accreditation and school system approval status; (2) holding
schools and school systems accountable for the efficient use of
existing resources to meet or exceed the standards; and (3)
targeting additional resources when necessary to improve
performance and progress. Primary emphasis in determining
school accreditation and school system approval status is based
on student performance and progress, school and school system
performance and progress and such other measures as selected
by the state board. The state board shall make accreditation
information available to the Legislature, the governor, the
general public and to any individuals who request the informa-
tion, subject to the provisions of any act or rule restricting the
release of information.

Based on the assessment of student, school and school
system performance and progress, the state board shall establish
early detection and intervention programs using the available
resources of the department of education, the regional educa-
tional service agencies, the center for professional development
and the principals academy, as appropriate, to assist under-
achieving schools and school systems to improve performance
before conditions become so grave as to warrant more substan-
tive state intervention. Assistance shall include, but is not
limited to, providing additional technical assistance and
programmatic, professional staff development, providing
monetary, staffing and other resources where appropriate, and,
if necessary, making appropriate recommendations to the
process for improving education council.
(h) Office of education performance audits. —

(1) To assist the state board and the process for improving education council in the operation of a system of education performance audits that will enable them to evaluate whether a thorough and efficient education is being provided, and to assist the state board in making determinations regarding the accreditation status of schools and the approval status of school systems, the state board shall establish an office of education performance audits which shall be operated under the direction of the state board independently of the functions and supervision of the state department of education and state superintendent. The office of education performance audits shall report directly to and be responsible to the state board in carrying out its duties under the provisions of this section.

(2) The office shall be headed by a director who shall be appointed by the state board and who shall serve at the will and pleasure of the state board. The salary of the director shall not exceed the salary of the state superintendent of schools.

(3) The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by law and by the state board. Employees of the state department of education who are transferred to the office of education performance audits retain their benefit and seniority status with the department of education.

(4) Under the direction of the state board, the office of education performance audits shall receive from the West Virginia education information system staff research and analysis data on the performance and progress of students, schools and school systems, and shall receive assistance, as determined by the state board, from staff at the state department of education, the regional education service agencies, the center for professional development, the principals academy and the
state school building authority to carry out the duties assigned
to the office.

(5) In addition to other duties which may be assigned to it
by the state board or by statute, the office of education perfor-
manee audits also shall:

(A) Assure that all statewide assessments of student
performance are secure as required in section one-a of this
article;

(B) Administer all accountability measures as assigned by
the state board, including, but not limited to, the following:

(i) Processes for the accreditation of schools and the
approval of school systems. These processes shall focus on
those measurable criteria related to student performance and
progress and to the delivery of instruction which will enable
student performance and progress; and

(ii) Recommendations to the state board on appropriate
action, including, but not limited to, accreditation and approval
action;

(C) Determine, in conjunction with the assessment and
accountability processes, what capacity may be needed by
schools and school systems to meet the standards established by
the Legislature and the state board, and recommend to the
school, the school system, the state board and the process for
improving education council, plans to establish those needed
capacities;

(D) Determine, in conjunction with the assessment and
accountability processes, whether statewide system deficiencies
exist in the capacity to establish and maintain a thorough and
efficient system of schools, including the identification of
trends and the need for continuing improvements in education,
and report those deficiencies and trends to the state board and
the process for improving education council;

(E) Determine, in conjunction with the assessment and
accountability processes, staff development needs of schools
and school systems to meet the standards established by the
Legislature and the state board, and make recommendations to
the state board, the process for improving education council, the
center for professional development, the regional educational
service agencies, the higher education policy commission, and
the county boards;

(F) Identify, in conjunction with the assessment and
accountability processes, exemplary schools and school systems
and best practices that improve student, school and school
system performance, and make recommendations to the state
board and the process for improving education council for
recognizing and rewarding exemplary schools and school
systems and promoting the use of best practices. The state
board shall provide information on best practices to county
school systems and shall use information identified through the
assessment and accountability processes to select schools of
excellence; and

(G) Develop reporting formats, such as check lists, which
shall be used by the appropriate administrative personnel in
schools and school systems to document compliance with
various of the applicable laws, policies and process standards
as considered appropriate and approved by the state board,
including, but not limited to, compliance with limitations on the
number of pupils per teacher in a classroom and the number of
split grade classrooms. Information contained in the reporting
formats shall be examined during an on-site review to deter-
mine compliance with laws, policies and standards. Intentional
and grossly negligent reporting of false information is ground
for dismissal.
(i) **On-site reviews.**

1. At the direction of the state board or by weighted selection by the office of education performance audits, an on-site review shall be conducted by the office of education performance audits of any school or school system for purposes, including, but not limited to, the following:

   - Verifying data reported by the school or county board;
   - Documenting compliance with policies and laws;
   - Evaluating the effectiveness and implementation status of school and school system unified improvement plans;
   - Investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems;
   - Investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate; and
   - Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the state fire marshal, the health department, the school building authority and the responsible divisions within the department of education, and whether noted deficiencies have been or are in the process of being corrected. The office of education performance audits may not conduct a duplicate review or inspection nor mandate more stringent compliance measures.

2. The selection of schools and school systems for an on-site review shall use a weighted sample so that those with lower performance and progress indicators and those that have not
had a recent on-site review have a greater likelihood of being selected. The director of the office of education performance audits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days prior to commencing an on-site review of an individual school: Provided, That the state board may direct the office of education performance audits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

(3) The office of education performance audits may conduct on-site reviews which are limited in scope to specific areas in addition to full reviews which cover all areas.

(4) An on-site review of a school or school system shall include a person or persons who has expert knowledge and experience in the area or areas to be reviewed and who is designated by the state board from the department of education and the agencies responsible for assisting the office. If the size of the school or school system being reviewed necessitates the use of an on-site review team or teams, the person or persons designated by the state board shall advise and assist the director to appoint the team or teams. The person or persons designated by the state board shall be the team leaders.

The persons designated by the state board shall be responsible for completing the report on the findings and recommendations of the on-site review in their area of expertise. It is the intent of the Legislature that the persons designated by the state board participate in all on-site reviews that involve their area of expertise to the extent practicable so that the on-site review process will evaluate compliance with the standards in a uniform, consistent and expert manner.
(5) The office of education performance audits shall reimburse a county board for the costs of substitutes required to replace county board employees while they are serving on a review team.

(6) At the conclusion of an on-site review of a school system, the director and team leaders shall hold an exit conference with the superintendent and shall provide an opportunity for principals to be present for at least the portion of the conference pertaining to their respective schools. In the case of an on-site review of a school, the exit conference shall be held with the principal and the superintendent shall be provided the opportunity to be present.

(7) The office of education performance audits shall report the findings of the on-site reviews to the state board for inclusion in the evaluation and determination of a school’s or county board’s accreditation or approval status as applicable. The report on the findings of an on-site review shall be submitted to the state board within thirty days following the conclusion of the on-site review and to the county superintendent and principals of schools within the reviewed school system within forty-five days following the conclusion of the on-site review. A copy of the report shall be provided to the process for improving education council.

(j) School accreditation. — The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school one of the following approval levels: Exemplary accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status, or seriously impaired status.

(1) Full accreditation status shall be given to a school when the school’s performance and progress on the standards adopted
by the state board pursuant to subsections (c) and (d) of this section are at a level which would be expected when all of the high quality education standards are being met. A school which meets or exceeds the measures of student performance and progress set forth in subsection (d) of this section, and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board, shall remain on full accreditation status for six months following an on-site review in which other deficiencies are noted. The school shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary accreditation status shall be given to a school when the measure of the school’s performance and progress is below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school’s unified improvement plan is revised to increase the performance and progress of the school to a full accreditation status level. The revised unified school improvement plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, cost estimates, and a date certain for achieving full accreditation. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school’s performance and progress on the standards adopted by the state board are below the level required for full accreditation, but the school’s unified improvement plan has been revised to achieve full accreditation status by a date certain, the plan has been approved by the state board and the school is meeting the objectives and time line specified in the revised plan.
(4) Exemplary accreditation status shall be given to a school when the school’s performance and progress on the standards adopted by the state board pursuant to subsections (c) and (d) of this section substantially exceed the minimal level which would be expected when all of the high quality education standards are being met. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a, designated to establish standards of performance and progress to identify exemplary schools.

(5) The state board shall establish and adopt standards of performance and progress to identify seriously impaired schools and the state board may declare a school seriously impaired whenever extraordinary circumstances exist as defined by the state board.

(A) These circumstances shall include, but are not limited to, the following:

(i) The failure of a school on temporary accreditation status to obtain approval of its revised unified school improvement plan within a reasonable time period as defined by the state board;

(ii) The failure of a school on conditional accreditation status to meet the objectives and time line of its revised unified school improvement plan; or

(iii) The failure of a school to achieve full accreditation by the date specified in the revised plan.

(B) Whenever the state board determines that the quality of education in a school is seriously impaired, the state board shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correction of the impairment. When the state board approves the recommendations, they shall be communicated to the county board. If
progress in correcting the impairment as determined by the state board is not made within six months from the time the county board receives the recommendations, the state board shall place the county board on temporary approval status and provide consultation and assistance to the county board to assist it in the following areas:

(i) Improving personnel management;

(ii) Establishing more efficient financial management practices;

(iii) Improving instructional programs and rules; or

(iv) Making any other improvements that are necessary to correct the impairment.

(C) If the impairment is not corrected by a date certain as set by the state board:

(i) The state board shall appoint a monitor who shall be paid at county expense to cause improvements to be made at the school to bring it to full accreditation status within a reasonable time period as determined by the state board. The monitor’s work location shall be at the school and the monitor shall work collaboratively with the principal. The monitor shall, at a minimum, report monthly to the state board on the measures being taken to improve the school’s performance and the progress being made. The reports may include requests for additional assistance and recommendations required in the judgment of the monitor to improve the school’s performance, including, but not limited to, the need for targeting resources strategically to eliminate deficiencies;

(ii) The state board may make a determination, in its sole judgment, that the improvements necessary to provide a thorough and efficient education to the students at the school
cannot be made without additional targeted resources, in which case, it shall establish a plan in consultation with the county board that includes targeted resources from sources under the control of the state board and the county board to accomplish the needed improvements. Nothing in this subsection shall be construed to allow a change in personnel at the school to improve school performance and progress, except as provided by law;

(iii) If the impairment is not corrected within one year after the appointment of a monitor, the state board may make a determination, in its sole judgment, that continuing a monitor arrangement is not sufficient to correct the impairment and may intervene in the operation of the school to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, establishing instructional programs, taking such direct action as may be necessary to correct the impairments, declaring the position of principal is vacant and assigning a principal for the school who shall serve at the will and pleasure of and, under the sole supervision of, the state board: Provided, That prior to declaring that the position of the principal is vacant, the state board must make a determination that all other resources needed to correct the impairment are present at the school. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

(I) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the principal assigned by the state board shall be paid by the county board;
(II) The principal who was removed shall be placed on the preferred recall list for all positions in the county for which the principal is certified, as defined in section seven, article four of this chapter; and

(III) The principal who was removed shall be paid by the county board and may be assigned to administrative duties, without the county board being required to post that position until the end of the school term;

(6) The county board shall take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.

(7) The state board may appoint a monitor pursuant to the provisions of this subsection to assist the school principal after intervention in the operation of a school is completed.

(k) Transfers from seriously impaired schools. — Whenever a school is determined to be seriously impaired and fails to improve its status within one year, any student attending the school may transfer once to the nearest fully accredited school, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(I) School system approval. — The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval, or nonapproval.

(1) Full approval shall be given to a county board whose education system meets or exceeds all of the high quality standards for student, school and school system performance, progress and processes adopted by the state board and whose schools have all been given full, temporary or conditional
accreditation status. A school system which meets or exceeds the measures of student performance and progress set forth in subsection (d) of this section, and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board, shall remain on full accreditation status for six months following an on-site review in which other deficiencies are noted. The school shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its unified county improvement plan to increase the performance and progress of the school system to a full approval status level. The revised plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, a cost estimate, and a date certain for achieving full approval. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose unified county improvement plan meets the following criteria:

(i) The plan has been revised to achieve full approval status by a date certain;

(ii) The plan has been approved by the state board; and

(iii) The county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its unified county improvement plan or revised unified county improvement plan within a reasonable time period as defined by the state board or
which fails to meet the objectives and time line of its revised
unified county improvement plan or fails to achieve full
approval by the date specified in the revised plan.

(A) The state board shall establish and adopt additional
standards to identify school systems in which the program may
be nonapproved and the state board may issue nonapproval
status whenever extraordinary circumstances exist as defined by
the state board.

(B) Whenever a county board has more than a casual
deficit, as defined in section one, article one of this chapter, the
county board shall submit a plan to the state board specifying
the county board’s strategy for eliminating the casual deficit.
The state board either shall approve or reject the plan. If the
plan is rejected, the state board shall communicate to the county
board the reason or reasons for the rejection of the plan. The
county board may resubmit the plan any number of times.
However, any county board that fails to submit a plan and gain
approval for the plan from the state board before the end of the
fiscal year after a deficit greater than a casual deficit occurred
or any county board which, in the opinion of the state board,
fails to comply with an approved plan may be designated as
having nonapproval status.

(C) Whenever nonapproval status is given to a school
system, the state board shall declare a state of emergency in the
school system and shall appoint a team of improvement
consultants to make recommendations within sixty days of
appointment for correcting the emergency. When the state
board approves the recommendations, they shall be communi-
cated to the county board. If progress in correcting the emer-
gency, as determined by the state board, is not made within six
months from the time the county board receives the recommen-
dations, the state board shall intervene in the operation of the
school system to cause improvements to be made that will
provide assurances that a thorough and efficient system of
schools will be provided. This intervention may include, but is not limited to, the following:

(i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas designated by the state board by rule, which may include delegating decision-making authority regarding these matters to the state superintendent;

(ii) Declaring that the office of the county superintendent is vacant;

(iii) Delegating to the state superintendent both the authority to conduct hearings on personnel matters and school closure or consolidation matters and, subsequently, to render the resulting decisions, and the authority to appoint a designee for the limited purpose of conducting hearings while reserving to the state superintendent the authority to render the resulting decisions; and

(iv) Taking any direct action necessary to correct the emergency including, but not limited to, the following:

(I) Delegating to the state superintendent the authority to replace administrators and principals in low performing schools and to transfer them into alternate professional positions within the county at his or her discretion; and

(II) Delegating to the state superintendent the authority to fill positions of administrators and principals with individuals determined by the state superintendent to be the most qualified for the positions. Any authority related to intervention in the operation of a county board granted under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this code;
(m) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection (l) of this section, if the state board finds the following:

(1) That the conditions precedent to intervention exist as provided in this section; and that delaying intervention for any period of time would not be in the best interests of the students of the county school system; or

(2) That the conditions precedent to intervention exist as provided in this section and that the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.

(n) Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of unified school and school system improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system unified improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the governor.
The state board shall recommend to the appropriate body including, but not limited to, the process for improving education council, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

1. Examining reports and unified improvement plans regarding the performance and progress of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;
2. Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system;
3. Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;
4. Requesting technical assistance from the school building authority in assessing or designing comprehensive educational facilities plans;
5. Recommending priority funding from the school building authority based on identified needs;
6. Requesting special staff development programs from the center for professional development, the principals academy, higher education, regional educational service agencies and county boards based on identified needs;
(7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(8) Directing county boards to target their funds strategically toward alleviating deficiencies;

(9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;

(10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

§18-2E-5c. Process for improving education council established; membership; expenses; meetings; powers.

(a) Process for improving education council. — There is hereby established the process for improving education council for the purpose of providing opportunities for consultation among state policy leaders on the process for improving education, including, but not limited to, determination of the things that students should know and be able to do as the result of a thorough and efficient education, the performance and progress of students toward meeting the high quality standards established by the state board, and any further improvements necessary to increase the capacity of schools and school systems to deliver a thorough and efficient education.

(b) Council membership. — The legislative oversight commission on education accountability, together with the governor, ex officio, or the governor’s designee, and the chancellor of the higher education policy commission, ex officio, or the chancellor’s designee, comprise the process for
improving education council. Ex officio members are entitled to vote. The governor or the governor’s designee shall convene the council, as appropriate, and shall serve as chair. The council may meet at any time at the call of the governor or the governor’s designee.

(c) Compensation. — Members of the council shall serve without compensation, but shall be reimbursed as provided by law by their respective agencies for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement of their expenses.

(d) Powers of the council. —

The council has the following powers:

(1) To meet and consult with the state board, or their designees, and make recommendations on issues related to student, school and school system performance. The following steps are part of the consultation process:

(A) The state board shall notify each member of the council whenever the state board proposes to amend its rules on any of the following issues:

(i) High quality education standards and efficiency standards established pursuant to section five of this article;

(ii) Indicators of efficiency established pursuant to section five of this article; and

(iii) Assessment and accountability of school and school system performance and processes established pursuant to section five of this article.
(B) If the governor, or the governor's designee, believes it is necessary for the council to meet and consult with the state board, or its designees, on changes proposed to any of the issues outlined in subdivision (1) of this subsection, he or she may convene a meeting of the council.

(C) If both the president of the Senate and the speaker of the House of Delegates believe it is necessary for the council to meet and consult with the state board, or its designees, they shall notify the governor who shall convene a meeting of the council.

(D) If the chancellor, or the chancellor's designee, believes that it is necessary for the council to meet and consult with the state board, or its designees, he or she may request the governor to convene a meeting of the council.

(2) To require the state board, or its designees, to meet with the council to consult on issues that lie within the scope of the council's jurisdiction;

(3) To participate as observers in any on-site review of a school or school system conducted by the office of education performance audits; and

(4) To authorize any employee of the agencies represented by council members to participate as observers in any on-site review of a school or school system conducted by the office of education performance audits.


(a) Findings: — The Legislature finds that:

(1) West Virginia schools have improved and expanded internet access which enables schools to offer courses through the internet and other new and developing technologies;
(2) Current technology is available to provide students with more resources for learning and new and developing technologies offer even more promise for expanded learning opportunities;

(3) A number of states and other jurisdictions have developed internet-based instruction which is available currently and which is being used by schools in this state;

(4) To educate better the students of West Virginia, more course and class offerings can be made available through technology, especially to students who are geographically disadvantaged;

(5) Virtual learning enables students to learn from remote sites, learn at times other than the normal school day and learn at a different pace and gives students access to courses that would not be available in their area;

(6) There is a need to assure that internet-based courses and courses offered through new and developing technologies are of high quality; and

(7) The state and county school systems can benefit from the purchasing power the state can offer.

(b) The Legislature hereby creates the West Virginia virtual school. The West Virginia virtual school shall be located within the office of technology and information systems within the West Virginia department of education.

(c) The state superintendent of schools shall appoint the director of the West Virginia virtual school with the approval of the state board.

(d) The director of the West Virginia virtual school has the following powers and duties:
(1) To contract with providers for courses and other services;

(2) To review courses and courseware and make determinations and recommendations relative to the cost and quality of the courses and the alignment with the instructional goals and objectives of the state board;

(3) To develop policy recommendations for consideration by the state board, which may include, but not be limited to, the following:

(A) Hardware and software considerations for the offering of courses on the internet or other developing technologies;

(B) Standards of teachers and other school employees who are engaged in the activities surrounding the offering of courses on the internet or other developing technologies;

(C) Sharing of resources with other agencies of government, both within and outside West Virginia, to facilitate the offering of courses on the internet or other developing technologies;

(D) Methods for including courses offered on the internet or through other developing technologies in alternative education programs;

(E) Methods for making courses offered on the internet or through other developing technologies available for students receiving home instruction;

(F) Methods for brokering the courses offered on the internet or through other developing technologies;

(G) Methods for applying for grants;
(H) Methods for employing persons who are the most familiar with the instructional goals and objectives to develop the courses to be offered on the internet and through other developing technologies; and

(I) Proper funding models that address all areas of funding including, but not limited to, which county, if any, may include a student receiving courses on the internet or through other developing technologies in enrollment and who, if anyone, is required to pay for the courses offered on the internet or through other developing technologies; and

(4) Any other powers and duties necessary to address the findings of the Legislature in subsection (a) of this section.

(e) Subject to the process outlined in this section, the West Virginia virtual school’s approved virtual and distance learning courses are exempt from the mandatory use of primary source instructional materials listed on the state multiple list.

(f) The West Virginia department of education shall report the progress of the West Virginia virtual school to the legislative oversight commission on education accountability on or before the first day of September, two thousand.

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.

The purpose of this article is to create the West Virginia professional staff development advisory council and eight regional professional staff development councils to advise and
assist the state board with ensuring the coordination and quality of professional staff development programs that address locally identified needs for professional staff development and meet the goals for professional staff development established by the state board.

§18-21-3. Creation of West Virginia professional staff development advisory council; members; and functions.

(a) There shall be a West Virginia professional staff development advisory council which shall consist of the following members:

(1) The chairpersons of each of the eight regional staff development councils established in section five of this article;

(2) The coordinators of each of the eight regional educational service agency staff development councils;

(3) The assistant superintendent for the division of instructional and student services of the state department of education;

(4) The secretary of education and the arts or his or her designee, who shall chair the council;

(5) The chancellor of the higher education policy commission or his or her designee;

(6) The executive director of the West Virginia center for professional development;

(7) The presidents, or their designees, of each of the two professional organizations or associations representing teachers in the state with the greatest number of teacher members.
(b) Any member of the advisory council may be reimbursed by the state board for the cost of reasonable and necessary expenses actually incurred in the performance of their duties under this article.

§18-21-4. Functions of the West Virginia professional staff development advisory council.

The council shall advise and assist the state board in all phases of developing or amending the goals for professional staff development required by subsection (b) of this section. Advice and assistance shall include, but is not limited to, the following:

(a) Reporting to the state board on the professional staff development needs identified by the public schools within the respective regions;

(b) Recommending effective professional staff development programs to meet identified needs;

(c) Providing local input on the proposed goals and on the professional staff development plan proposed by the center for professional development pursuant to subsection (c) of this section;

(d) Communicating professional staff development information and findings to the regional and county staff development councils; and

(e) Advancing the coordination and quality of professional staff development programs in the public schools of West Virginia.

ARTICLE 5. COUNTY BOARD OF EDUCATION.
§18-5-18b. School counselors in public schools.

(a) A school counselor means a professional educator who holds a valid school counselor’s certificate in accordance with article three of this chapter.

(b) Each county board shall provide counseling services for each pupil enrolled in the public schools of the county.

(c) The school counselor shall work with individual pupils and groups of pupils in providing developmental, preventive and remedial guidance and counseling programs to meet academic, social, emotional and physical needs; including programs to identify and address the problem of potential school dropouts. The school counselor also may provide consultant services for parents, teachers and administrators and may use outside referral services, when appropriate, if no additional cost is incurred by the county board.

(d) The state board may adopt rules consistent with the provisions of this section that define the role of a school counselor based on the “National Standards for School Counseling Programs” of the American school counselor association. A school counselor is authorized to perform such services as are not inconsistent with the provisions of the rule as adopted by the state board. To the extent that any funds are made available for this purpose, county boards shall provide training for counselors and administrators to implement the rule as adopted by the state board.

(e) Each county board shall develop a comprehensive dropout prevention program utilizing the expertise of school counselors and any other appropriate resources available.

(f) School counselors shall be full-time professional personnel, shall spend at least seventy-five percent of work time in a direct counseling relationship with pupils, and shall devote
ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1d. Adoption of a state model for individualized education program.

The state board shall adopt a basic model for individualized education programs to be used by all special education teachers throughout the public schools of the state when preparing individualized education programs for students with exceptional needs.

The model shall comply with, but may not exceed, all state laws and federal laws, policies, rules, and regulations relating to providing education services to students with exceptional needs and shall include instructions for adapting the model to specific exceptionalities.

No professional educator may be required to prepare or implement an individualized education program which exceeds the requirements of federal and state laws, policies, rules or regulations.

CHAPTER 18A. SCHOOL PERSONNEL.

Article
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.

(a) The state board of education shall adopt a written system for the evaluation of the employment performance of personnel, which system shall be applied uniformly by county boards of education in the evaluation of the employment performance of personnel employed by the board.

(b) The system adopted by the state board of education for evaluating the employment performance of professional personnel shall be in accordance with the provisions of this section.

c) For purposes of this section, "professional personnel", "professional" or "professionals", means professional personnel as defined in section one, article one of this chapter.

d) In developing the professional personnel performance evaluation system, and amendments thereto, the state board shall consult with the professional development project of the center for professional development created in section three, article three-a of this chapter. The center shall participate actively with the state board in developing written standards for evaluation which clearly specify satisfactory performance and the criteria to be used to determine whether the performance of each professional meets such standards.

e) The performance evaluation system shall contain, but shall not be limited to, the following information:

1. The professional personnel positions to be evaluated, whether they be teachers, substitute teachers, administrators, principals, or others;

2. The frequency and duration of the evaluations, which shall be on a regular basis and of such frequency and duration...
as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn: Provided, That for school personnel with five or more years of experience, who have not received an unsatisfactory rating, evaluations shall be conducted no more than once every three years unless the principal determines an evaluation for a particular school employee is needed more frequently: Provided, however, That a classroom teacher may exercise the option of being evaluated at more frequent intervals;

(3) The evaluation shall serve the following purposes:

(A) Serve as a basis for the improvement of the performance of the personnel in their assigned duties;

(B) Provide an indicator of satisfactory performance for individual professionals;

(C) Serve as documentation for a dismissal on the grounds of unsatisfactory performance; and

(D) Serve as a basis for programs to increase the professional growth and development of professional personnel;

(4) The standards for satisfactory performance for professional personnel and the criteria to be used to determine whether the performance of each professional meets such standards and other criteria for evaluation for each professional position evaluated. Effective the first day of July, two thousand three and thereafter, professional personnel, as appropriate, shall demonstrate competency in the knowledge and implementation of the technology standards adopted by the state board. If a professional fails to demonstrate competency, in the knowledge and implementation of these standards, he or she will be subject to an improvement plan to correct the deficiencies; and
(5) Provisions for a written improvement plan, which shall be specific as to what improvements, if any, are needed in the performance of the professional and shall clearly set forth recommendations for improvements, including recommendations for additional education and training during the professional's recertification process.

(f) A professional whose performance is considered to be unsatisfactory shall be given notice of deficiencies. A remediation plan to correct deficiencies shall be developed by the employing county board of education and the professional. The professional shall be given a reasonable period of time for remediation of the deficiencies and shall receive a statement of the resources and assistance available for the purposes of correcting the deficiencies.

(g) No person may evaluate professional personnel for the purposes of this section unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education training approved by the state board, which will enable the person to make fair, professional, and credible evaluations of the personnel whom the person is responsible for evaluating. After the first day of July, one thousand nine hundred ninety-four, no person may be issued an administrative certificate or have an administrative certificate renewed unless the state board determines that the person has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training approved by the state board.

(h) Any professional whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan. If the next performance evaluation shows that
the professional is now performing satisfactorily, no further
action may be taken concerning the original performance
evaluation. If the evaluation shows that the professional is still
not performing satisfactorily, the evaluator either shall make
additional recommendations for improvement or may recom-
 mend the dismissal of the professional in accordance with the
provisions of section eight of this article.

(i) Lesson plans are intended to serve as a daily guide for
teachers and substitutes for the orderly presentation of the
curriculum. Lesson plans may not be used as a substitute for
observations by an administrator in the performance evaluation
process. A classroom teacher, as defined in section one, article
one of this chapter, may not be required to include in his or her
lesson plans any of the following:

(1) Teach and reteach strategies;

(2) Write to learn activities;

(3) Cultural diversity;

(4) Color coding; or

(5) Any other similar items which are not required to serve
    as a guide to the teacher or substitute for daily instruction; and

(j) The Legislature finds that classroom teachers must be
    free of unnecessary paper work so that they can focus their time
    on instruction. Therefore, classroom teachers may not be
    required to keep records or logs of routine contacts with parents
    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.

(a) The education of professional educators in the state shall be under the general direction and control of the state board of education after consultation with the secretary of education and the arts and the chancellor of the higher education policy commission, who shall represent the interests of teacher preparation programs within the institutions of higher education in this state as those institutions are defined in section two, article one, chapter eighteen-b of this code.

The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools including: (1) Those programs in all institutions of higher education, including student teaching in the public schools; (2) beginning teacher internship programs; (3) the granting of West Virginia certification to persons who received their preparation to teach outside the boundaries of this state; (4) any alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of section one-a of this article and programs which are in effect on the effective date of this section; and (5) any continuing professional education, professional development and in-service training programs for professional educators employed in the public schools in the state.

(b) The state board of education, after consultation with the secretary of education and the arts and the chancellor of the higher education policy commission, who shall represent the interests of teacher preparation programs within the institutions of higher education in this state as those institutions are defined in section two, article one, chapter eighteen-b of this code, shall
adopt standards for the education of professional educators in the state and for the awarding of certificates valid in the public schools of this state subject to the following conditions:

(1) The standards approved by the board for teacher preparation shall include a provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions and social roles.

(2) Effective the first day of January, one thousand nine hundred ninety-three, the standards approved by the board shall also include a provision for the study of classroom management techniques and shall include methods of effective management of disruptive behavior which shall include societal factors and their impact on student behavior.

(c) To give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification, the state board of education may enter into an agreement with county boards for the use of the public schools. Such agreement shall recognize student teaching as a joint responsibility of the teacher preparation institution and the cooperating public schools and shall include: (1) The minimum qualifications for the employment of public school teachers selected as supervising teachers; (2) the remuneration to be paid public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers; and (3) minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching. The student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher.
(d) The state superintendent of schools may issue certificates to graduates of teacher education programs and alternative teacher education programs approved by the state board of education and in accordance with rules adopted by the state board after consultation with the secretary of education and the arts and the chancellor of the higher education policy commission. A certificate to teach shall not be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his or her certificate is issued; except that an exchange teacher from a foreign country, or an alien person who meets the requirements to teach, may be granted a permit to teach within the public schools of the state.

(e) In consultation with the secretary of education and the arts and the chancellor of the higher education policy commission institutions of higher education approved for teacher preparation may cooperate with each other, with the center for professional development and with one or more county boards in the organization and operation of centers to provide selected phases of the teacher preparation program such as student teaching, beginning teacher internship programs, instruction in methodology and seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.

The institutions of higher education, the center for professional development and county boards may by mutual agreement budget and expend funds for the operation of the centers through payments to the appropriate fiscal office of the participating institutions, the center for professional development and the county boards.
(f) The provisions of this section shall not be construed to require the discontinuation of an existing student teacher training center or school which meets the standards of the state board of education.

(g) All institutions of higher education approved for teacher preparation in the school year of one thousand nine hundred sixty-two—sixty-three shall continue to hold that distinction so long as they meet the minimum standards for teacher preparation. Nothing contained herein shall infringe upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

§18A-3-2c. Training through the principals academy.

(a) Principal training and professional development required. — After the effective date of this section and subject to the provisions of subsection (c) of this section, every principal shall complete training and professional development through the principals academy as provided in subsection (b) of this section.

(b) Principal training and professional development through the academy. — The academy and the persons required to complete training and professional development through the academy shall adhere to the following guidelines:

(1) All persons assigned as a principal for the first time in a West Virginia school after the first day of July, two thousand two, shall complete specialized training and professional development for newly appointed principals through the academy within the first twelve months following assignment;

(2) All principals of schools which have been designated as seriously impaired, in accordance with section five, article two-e, chapter eighteen of this code, shall complete specialized training and professional development through the academy
specifically designed to assist the principal to improve school
performance commencing as soon as practicable following
receipt of the designation;

(3) All principals who are subject to an improvement plan,
in accordance with section twelve, article two of this chapter,
shall complete specialized training and professional develop-
ment through the academy specifically designed for principals
subject to an improvement plan. The specialized training and
professional development shall be completed within twelve
months from the date that the principal is first subject to the
improvement plan;

(4) All principals who transfer to a school with a signifi-
cantly different grade configuration shall complete specialized
training and professional development for principals in schools
with the grade configuration to which they transferred through
the academy within the first twelve months following transfer;
and

(5) All persons serving as school principals shall complete
training and professional development through the academy
designed to build the qualities, proficiencies and skills required
of all principals as determined by the state board.

(c) Academy and requirements to complete training and
professional development subject to funding. — The require-
ment that principals complete training and professional devel-
opment through the academy shall be subject to the availability
of funds for the principals academy from legislative appropria-
tion and from other sources. If these funds are insufficient to
provide for the total cost of the training and professional
development required by subsection (b) of this section, then the
academy shall provide training and professional development
for the persons described in subdivisions (1) through (5), of
subsection (b) according to the priority in which the subdivi-
sions appear in that subsection. If such funds are insufficient to
provide for the training and professional development of all the
persons described in one or more of subdivisions (1) through
(5), subsection (b) of this section, the academy is authorized to
determine which persons described within the subdivision or
subdivisions shall be admitted and which shall not be admitted:

Provided, That the principals academy shall make every effort
to ensure that all principals receive training and professional
development through the academy at least once every six years
effective the first day of July, two thousand two and thereafter:

Provided, however, That nothing in this section shall be
construed to require any specific level of funding by the
Legislature.

(d) Principals standards advisory council. — To assist the
state board in the performance of the duties described in
subsection (e) of this section, there is hereby created a "Princi-
pals Standards Advisory Council", which shall consist of nine
persons, as follows: The executive director of the center for
professional development, who shall serve as the ex officio
chair; three principals, one from an elementary school and one
from a middle school or a junior high school selected by the
West Virginia association of elementary and middle school
principals, and one from a high school selected by the West
Virginia association of secondary school principals; one county
school superintendent selected by the West Virginia association
of school administrators; and two representatives from higher
education who teach in principal preparation programs selected
by the teacher education advisory council; and two citizen
representatives who are knowledgeable on issues addressed in
this section, appointed by the governor. Members of the
principals standards advisory council who are public employees
shall be granted release time from their employment for
attending meetings of the council. Members may be reimbursed
for reasonable and necessary expenses actually incurred in the
performance of their official duties by the center for profes-
sional development. The terms of all members appointed to the
principals standards advisory council under the prior enactment of this section shall terminate on the thirty-first day of August, two thousand two. The principals standards advisory council as amended on the effective date of this section shall become effective on the first day of September, two thousand two.

(e) Establishment of standards. — On or before the first day of October, one thousand nine hundred ninety-six, the state board shall approve and promulgate rules regarding the minimum qualities, proficiencies and skills that will be required of principals after the first day of January, one thousand nine hundred ninety-seven. The state board shall promulgate and may from time to time amend such rules after consultation with the principals standards advisory council created in subsection (d) of this section. The rules promulgated by the state board shall address at least the following:

1. Staff relations, including, but not limited to, the development and use of skills necessary to make a positive use of faculty senates, manage faculty and staff with courtesy and mutual respect, coach and motivate employees, and build consensus as a means of management;

2. School community leadership qualities, including, but not limited to, the ability to organize and leverage community initiative, communicate effectively, work effectively with local school improvement councils, manage change, resolve conflict and reflect the highest personal values;

3. Educational proficiencies, including, but not limited to, knowledge of curriculum, instructional techniques, student learning styles, student assessment criteria, school personnel performance, evaluation skills and family issues; and
(4) Administrative skills, including, but not limited to, organizational, fiscal, public policy and total quality management skills and techniques.

(f) Waivers. — Any person desiring to be relieved of the requirements of all or any part of this section may apply in writing to the state board for a waiver. Upon a showing of reasonable cause why relief should be granted, the state board may grant a waiver, upon such terms and conditions as the state board shall determine proper, as to all or any part of this section.

(g) Failure to comply. — Any person who fails or refuses to complete training and professional development through the academy, as required by the provisions of this section, and who fails to obtain a waiver, as described in subsection (f) of this section, shall be ineligible to be employed as, or serve in the capacity of, a principal.

(h) Tracking of requirement. — On or before the first day of January, one thousand nine hundred ninety-seven, the state board shall establish a system to track the progress of each person required to complete training through the academy and shall regularly advise such persons of their progress.

(i) Payment of reasonable and necessary expenses and stipends. — The center for professional development shall reimburse persons attending the academy for reasonable and necessary expenses. A person may not be required to complete training and professional development through the principals academy before the fifteenth day of September and after the first day of June of the school year. The center for professional development shall utilize alternative methods of instructional delivery and scheduling, including electronic delivery, as considered appropriate to minimize the amount of time principals 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-1. Center for professional development established; intent and mission; principals academy curriculum and expenses; authorization to charge fees.

(a) Teaching is a profession that directly correlates to the
social and economic well-being of a society and its citizens.
Superior teaching is essential to a well educated and productive
populace. Strong academic leadership provided by principals
and administrators skilled in modern management principles is
also essential. The intent of this article is to recognize the value
of professional involvement by experienced educators, principals
and administrators in building and maintaining a superior
force of professional educators and to establish avenues for
applying such involvement.

(b) The general mission of the center is to advance the
quality of teaching and management in the schools of West
Virginia through: (1) The implementation primarily of state-
wide training, professional staff development and technical
assistance programs and practices as recommended by the state
board to assure the highest quality of teaching and manage-
ment; and (2) the provision of technical and other assistance
and support to regional and local education agencies in identify-
ing and providing high quality professional staff development
and training programs and implementing best practices to meet
their locally identified needs. The center also may implement
local programs if the state board, in its master plan for professional staff development established pursuant to section twenty-three-a, article two, chapter eighteen of this code, determines that there is a specific local need for the programs. Additionally, the center shall perform such duties as are assigned to it by law.

Nothing in this article shall be construed to require any specific level of funding by the Legislature.

(c) The center board shall consist of eleven persons as follows: The secretary of education and the arts, ex officio, and the state superintendent of schools, ex officio, both of whom shall be entitled to vote; three members of the state board, elected by the state board; three experienced educators, of whom two shall be working classroom teachers, and one of whom shall be a school or county administrator appointed by the governor by and with the advice and consent of the Senate, all of whom shall be experienced educators who have achieved recognition for their superior knowledge, ability and performance in teaching or management, as applicable; and three citizens of the state, one of whom shall be a representative of public higher education, and all of who shall be knowledgeable in matters relevant to the issues addressed by the center, including, but not limited to, professional development and management principles, appointed by the governor by and with the advice and consent of the Senate. Not more than two appointees shall be residents within the same congressional district. The center board shall be cochaired by the secretary of education and the arts and the state superintendent.

All successive elections shall be for two-year terms. Members elected from the state board may serve no more than two consecutive two-year terms. The state board shall elect another member to fill the unexpired term of any person so elected who subsequently vacates state board membership. Of
the initial appointed members, three shall be appointed for one-
year terms and three shall be appointed for two-year terms. All
successive appointments shall be for two-year terms. An
experienced educator may serve no more than two consecutive
two-year terms. The governor shall appoint a new member to
fill the unexpired term of any vacancy in the appointed mem-
bership.

(d) The center for professional development board shall
meet at least quarterly and the appointed members shall be
reimbursed for reasonable and necessary expenses actually
incurred in the performance of their official duties from funds
appropriated or otherwise made available for such purposes
upon submission of an itemized statement therefor.

(e) From appropriations to the center for professional
development, the center board shall employ and fix the com-
ensation of an executive director with knowledge and experi-
ence in professional development and management principles
and such other staff as may be necessary to carry out the
mission and duties of the center. The executive director shall
serve at the will and pleasure of the center board. The executive
director of the center also shall serve as the chair of the prin-
cipals standards advisory council created in section two-c, article
three of this chapter, and shall convene regular meetings of this
council to effectuate the purposes of this council.

When practicable, personnel employed by state higher
education agencies and state, regional and county public
education agencies shall be made available to the center to
assist in the operation of projects of limited duration.

(f) The center shall assist in the delivery of programs and
activities pursuant to this article to meet statewide, and if
needed as determined by the goals and master plan for profes-
sional staff development established by the state board pursuant
to section twenty-three-a, article two, chapter eighteen of this
code, the local professional development needs of teachers,
principals and administrators and may contract with existing
agencies or agencies created after the effective date of this
section or others to provide training programs in the most
efficient manner. Existing programs currently based in agencies
of the state shall be continued in the agency of their origin
unless the center establishes a compelling need to transfer or
cancel the existing program. The center shall recommend to the
governor the transfer of funds to the providing agency, if
needed, to provide programs approved by the center.

(g) The center for professional development shall imple-
ment training and professional development programs for the
principals academy based upon the minimum qualities,
proficiencies and skills necessary for principals in accordance
with the standards established by the state board pursuant to the
terms of section two-c, article three of this chapter.

(h) In accordance with section two-c, article three of this
chapter, the center shall be responsible for paying reasonable
and necessary expenses for persons attending the principals
academy: Provided, That nothing in this section shall be
construed to require any specific level of funding by the
Legislature.

(i) Persons attending the professional development offer-
ings of the center and such other courses and services as shall
be offered by the center for professional development, except
the principals academy shall be assessed fees which shall be
less than the full cost of attendance. There is hereby created in
the state treasury a special revenue account known as the
“center for professional development fund”. All moneys
collected by the center shall be deposited in the fund for
expenditure by the center board for the purposes specified in
Subject to the provisions of section twenty-three-a, article two, chapter eighteen of this code, through this project the center shall:

(1) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help professional educators acquire the knowledge, skills, attitudes, practices and other such pertinent complements deemed essential for an individual to demonstrate appropriate performance as a professional personnel in the public schools of West Virginia. The basis for such performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto. The center also may permit and encourage school personnel such as classroom aides, higher education teacher education faculty and higher education faculty in programs such as articulated tech prep associate degree and other programs to participate in appropriate professional development programs and activities with public school professional educators;

(2) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help principals and administrators acquire knowledge, skills, attitudes and practices in academic leadership and management principles for principals and administrators and such other pertinent complements deemed essential for principals and administrators to demonstrate appropriate performance in the public schools of West Virginia. The basis for such performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto;
(3) Serve in a coordinating capacity to assure that the knowledge, skills, attitude and other pertinent complements of appropriate professional performance which evolve over time in the public school environment are appropriately reflected in the programs approved for the education of professional personnel, including, but not limited to, advising the teacher education programs of major statutory and policy changes in the public schools which affect the job performance requirements of professional educators, including principals and administrators;

(4) Provide for the routine updating of professional skills of professional educators, including principals and administrators, through in-service and other programs. Such routine updating may be provided by the center through statewide or regional institutes which may require a registration fee;

(5) Provide consultation and assistance to county staff development councils established under the provisions of section eight, article three of this chapter in planning, designing, coordinating, arranging for and delivering professional development programs to meet the needs of the professional educators of their district. From legislative appropriations to the center for professional development, exclusive of such amounts required for the expenses of the principals academy, the center shall, unless otherwise directed by the Legislature, provide assistance in the delivery of programs and activities to meet the expressed needs of the school districts for professional development to help teachers, principals and administrators demonstrate appropriate performance based on the laws, policies and regulations adopted for the public schools of West Virginia; and

(6) Cooperate and coordinate with the institutions of higher education to provide professional staff development programs that satisfy some or all of the criteria necessary for currently certified professional educators to meet the requirements for an
additional endorsement in an area of certification and for
certification to teach in the middle school grades.

If the center is not able to reach agreement with the
representatives of the institutions providing teacher education
programs on which courses will be approved for credit toward
additional endorsements, the state board may certify certain
professional staff development courses to meet criteria required
by the state board. This certification shall be done on a course
by course basis.


There is hereby established within the center for profes-
sional development the "Principals Academy". Training
through the principals academy shall include at least the
following:

(a) Training designed to build within principals the mini-
imum qualities, proficiencies and skills that will be required of
all principals pursuant to the rules of the state board;

(b) Specialized training and professional development
programs for all principals; and

(c) Specialized training and professional development
programs for the following principals:

(1) Newly appointed principals;

(2) Principals whose schools have been designated as
seriously impaired, which programs shall commence as soon as
practicable following the designation;

(3) Principals subject to improvement plans; and

(4) Principals of schools with significantly different grade
level configurations.
ARTICLE 3B. STATE BOARD OF EDUCATION RULE MAKING.

§29A-3B-9. Submission of legislative rules to the legislative oversight commission on education accountability.

(a) When the board proposes a legislative rule, the board shall submit to the legislative oversight commission on education accountability at its offices or at a regular meeting of the commission twenty copies of: (1) The full text of the legislative rule as proposed by the board and filed with the office of the secretary of state, with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; and (5) any other information which the commission may request or which may be required by law.

(b) The commission shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;
(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the commission may recommend to the board any changes needed to comply with the legislative intent of the statute upon which the rule is based or otherwise to modify the activity subject to the rule, or may make any other recommendations to the board as it considers appropriate.

(d) When the board finally adopts a legislative rule, the board shall submit to the legislative oversight commission on education accountability at its offices or at a regular meeting of the commission six copies of the rule as adopted by the board. After reviewing the legislative rule, the commission may recommend to the Legislature any statutory changes needed to clarify the legislative intent of the statute upon which the rule is based or may make any other recommendations to the Legislature as it considers appropriate.
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.

(a) Restrictions on use of student social security numbers.— No public or private elementary or secondary school or college or university shall display any student’s social security number to identify students for posting or public listing of grades, on class rosters or other lists provided to teachers, on student identification cards, in student directories or similar listings, or, unless specifically authorized or required by law, for any public identification purpose: Provided, That any student identification cards, directories or similar listings produced prior to July 1, 2002, shall not be subject to the provisions of this section.
(b) Use of social security numbers. — Nothing in this section shall be construed as prohibiting the higher education policy commission, state institutions of higher education, state board of education, county boards of education or the public or private schools from using a student's social security number for internal record keeping purposes or studies.

(c) Social security number or alternative required for enrollment or attendance in public school. —

(1) Effective on the first day of July, two thousand three, the appropriate county board shall request the parent, guardian, or other responsible person to furnish the social security number of each child who is currently enrolled in a public school under the jurisdiction of the county board.

(2) Prior to admitting a child to a public school in this state, the appropriate county board shall request the parent, guardian, or other responsible person to furnish the social security number for each child who is to be enrolled after the first day of July, two thousand three.

(3) The county board shall inform the parent, guardian or other responsible person that, if he or she declines to provide a social security number for a child who is currently enrolled or for a child to be enrolled, the county board shall assign to the child a nine-digit number as designated by the state board.

(4) For any student who is attending a public school and for whom a social security number has not been provided, the county board shall make a request annually to the parent, guardian, or other responsible person to furnish the social security number.
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.

(a) The Legislature hereby finds that the clothing and footwear worn by students in public schools often preoccupy and distract students from their major purpose for being in school, which is obtaining an education. The Legislature finds that in schools that have adopted a dress code requiring students to wear school uniforms, disparities in student socioeconomic levels are less obvious and disruptive incidents are less likely to occur.

(b) The state board shall promulgate rules in accordance with article three-b, chapter twenty-nine-a of this code that
allow a county board to implement a dress code requiring students to wear a school uniform. The uniforms may be required by the county board for either a school district, or for any certain school within the district. The rules shall provide at least the following:

(1) The county board may create an advisory committee comprised of parents, school employees and students for the purpose of considering whether the board should adopt a dress code requiring school uniforms for students in the district;

(2) The county board may create an advisory committee comprised of parents, school employees and students for the purpose of considering whether the board should adopt a dress code requiring school uniforms for students in any certain school within the district;

(3) If the advisory committee recommends to the board that a dress code requiring school uniforms for students be adopted either for the district or for any certain school within the district, the advisory committee also shall make recommendations on alternative methods of paying for the school uniforms; and

(4) If the advisory committee recommends to the board that a dress code requiring school uniforms for students be adopted either for the district or for any certain school within the district and if the advisory committee reports its recommendations on alternative methods of paying for the school uniforms to the board, the board may adopt a dress code requiring school uniforms for students.

(c) Nothing in this section requires a county board to adopt a dress code requiring school uniforms for students.

(d) Nothing in this section requires any level of funding by the Legislature, boards of education or any other agency of 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.

(a) The Legislature finds that schools that have implemented programs to strengthen student learning ability are reporting statistically significant improvement in the statewide test scores in reading, language and math of students referred to the programs. Therefore, it is the intent of the Legislature through this section to establish a more formal method to fund programs that strengthen student learning ability.

(b) The state board shall establish a program for strengthening student learning ability that includes the following:

1. A procedure for schools to apply for funds to implement programs to strengthen student learning ability in accordance with the provisions of this section;

2. Specific factors for determining the need for each school applying for funds in accordance with subsection (e) of this section;

3. A method for judging applications for funds on a competitive basis; and

4. A determination of the maximum percentage of total funds appropriated for the purposes of this section which may be distributed for use in grades six through twelve so that the priority for program implementation is at the prekindergarten and elementary levels.

(c) Except as provided in subsection (d) of this section, a school is not eligible to receive an award of funds appropriated for the purposes of this section unless the proposed program includes the following:
(1) Assessment of the cognitive abilities of students;

(2) Physical screening that identifies barriers to a student’s ability to learn;

(3) Development of a student-specific program to improve student learning ability based on the results of the assessment and physical screening;

(4) Administration of learning development exercises that strengthen the ability of students to learn; and

(5) An evaluation of the program’s impact, including factors such as student test scores and other measures of student performance, the program’s impact on special education referrals, program cost and other information considered important for judging the value of the program.

(d) A school is eligible to receive an award of funds appropriated for the purposes of this section for the implementation of an early childhood system to strengthen student learning abilities that includes cognitive/perceptual exercises for all children which are clearly based on the same intellectual premise, and are intended to address for all students the same developmental needs, as the more individual specific remedies required for programs under subsection (c) of this section. The programs shall include a method for evaluating program impact using appropriate measures of early childhood student development and progress.

(e) All the funds appropriated for the purposes of this section shall be distributed to schools based upon need as determined by the state board. In determining need, the state board may consider such things as the assessment test scores of the students, percentage of students who are enrolled in special
education programs, dropout rates, attendance rates, the number
of at-risk students, monetary and in-kind resources available
from other sources that will be committed to the program and
any other indicators the state board determines appropriate.

(f) The state board shall promulgate a rule pursuant to
article three-b, chapter twenty-nine-a of this code to implement
the provisions of this section.

(g) Nothing in this section requires any specific level of
funding by the Legislature.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-6a. Released time for service personnel.

In the assignment of position or duties of a service person
under a continuing contract, the board may provide for released
time of a service person for any special professional or govern-
mental assignment without jeopardizing the contractual rights
of such service or any other rights, privileges or benefits under
the provisions of this chapter. Released time shall be provided
for any service person while serving as a member of the
Legislature during any duly constituted session of that body and
its interim and statutory committees and commissions without
jeopardizing his or her contractual rights or any other rights,
privileges, benefits or accrual of experience for placement on
the state minimum salary schedule in the following school year
under the provisions of this chapter, board policy and law. For
the purposes of this section, service person is the singular of
service personnel as defined in section one, article one of this
chapter.
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.

(a) In addition to the provisions of section thirteen of this article, prior to any final decision of a county board on any proposal to close or consolidate any school, except in cases in which a construction bond issue was passed by the voters and which bond issue included the schools to be closed or consolidated, the county board shall:

(1) Prepare and reduce to writing its reasons and supporting data regarding the school closing or consolidation. The written reasons shall:
10. (A) Be available for public inspection in the office of the county school superintendent during the thirty days preceding 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 consolidated, and of any school which will receive the students who are relocated as a result of the closure or consolidation;

18. (ii) The chair, if any, of the local school improvement council representing a school which is proposed to be closed or consolidated, and any school which will receive the students who are relocated as a result of the closure or consolidation;

23. (C) Comply with the rule promulgated pursuant to subsection (b) of this section;

25. (2) Provide notice for a public hearing. The notice shall be advertised through a Class III legal advertisement, pursuant to the provisions of article three, chapter fifty-nine of this code for the three weeks prior to the date of the hearing. The notice shall contain the time and place of the hearing and the proposed action of the county board. Additionally, the notice shall contain the statement that the hearing location is subject to change if at the time the meeting is called to order, it is determined that the meeting location is of insufficient size. A copy of the notice shall be posted at any school which is proposed to be closed or consolidated, and at any school which will receive the students who are relocated as a result of the closure or consolidation, in conspicuous working places for all professional and service personnel to observe. The notice shall be posted at least thirty days prior to the date of the hearing;
(3) Conduct a public hearing which meets the following criteria:

(A) At least a quorum of the county board members and the county superintendent from the county wherein an affected school is located shall attend and be present at the public hearing;

(B) Members of the public may be present, submit statements and testimony, and question county school officials at the public hearing;

(C) A separate hearing shall be held for each school closed or consolidated;

(D) More than one hearing may be held during any one day;

(E) The hearing shall be held in a facility of sufficient size to accommodate all those who desire to attend;

(F) If, at the time the hearing is called to order, it is determined by the board that insufficient space is available to accommodate all those who desire to attend, the hearing shall be recessed and moved to a new location of sufficient size to accommodate all those who desire to attend. If the meeting location is changed due to insufficient capacity, the county board shall cause the new meeting location to be posted at the original meeting location; and

(G) The hearing is subject to the requirements set forth in the rule promulgated in accordance with subsection (c) of this section; and

(4) Receive findings and recommendations from any local school improvement council representing an affected school relating to the proposed closure or consolidation prior to or at the public hearing.
(b) The state board shall promulgate a rule, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, detailing the type of supporting data a county board shall include as part of its written statement of reason required by this section for school closing or consolidation. The rule shall require at least the following data:

1. The transportation time of the affected students; and

2. Any data required by the state board to amend a county’s comprehensive educational facilities plan.

(c) The state board shall promulgate a rule, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, that establishes the procedure to be followed by county boards when conducting a public hearing on the issues of school consolidation and closing.

1. The rule shall provide standards for at least the following:

A. The appropriate forum and venue for public hearings to be held;

B. A process for affording interested parties the opportunity for their perspectives to be expressed;

C. Establishing, where necessary, reasonable restrictions on the amount of time allowed each individual desiring to speak so that all parties wishing to speak at the hearing are given an equal amount of time; and

D. Scheduling and organizing public hearings when more than one school within a county is proposed for consolidation or closure.
(2) It is the purpose of this subsection to provide for uniformity among the counties in the procedures followed when scheduling, organizing and conducting public hearings on the issues of school consolidation and closure.

(d) The state board shall promulgate the rules required by this section by the first day of June, two thousand two.

(e) Any document prepared, notice given, hearing conducted or action taken prior to the effective date of the amendments made to this section during the two thousand two regular session of the Legislature, is considered sufficient if the county board complied with the terms of this section effective at the time and the county board violates no other provision of law which would invalidate the document, notice, hearing or 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:
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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.

(a) County districts and school attendance. — The county board may divide the county into such districts as are necessary to determine the schools the students of its county shall attend. Upon the written request of any parent or guardian, or person legally responsible for any student, or for reasons affecting the best interests of the schools, the superintendent may transfer students from one school to another within the county. Any aggrieved person may appeal the decision of the county superintendent to the county board, and the decision of the county board shall be final.

(b) Transfers between counties; legislative findings. —

(1) Transfers of students from one county to another may be made by the county board of the county in which the student desiring to be transferred resides. The transfer shall be subject to the approval of both the board of the county in which the student resides and the board to which the student wishes to be transferred.

(2) Legislative findings. — Over the past several years, counties have been forced to close a number of schools because of declining student enrollment. School officials predict that an additional eighteen percent loss in enrollment may occur between two thousand two and two thousand twelve. This continued decrease in the number of students enrolled in the public schools of the state may result in more instances of consolidation which will increase the problem of long bus rides for students if they remain in a school in their county of residence.
Therefore the Legislature makes the following findings:

(A) County lines may impede the effective and efficient delivery of education services;

(B) Students often must endure long bus rides to a school within their county of residence when a school in an adjacent county is a fraction of the distance away;

(C) The wishes of parents or guardians to have their children transferred to a county other than their county of residence should be considered by the county boards; and

(D) Where counties can not agree, it is necessary to establish a process to determine when transfers are appropriate.

The state board shall establish a process whereby a parent or guardian of a student may appeal the refusal of a county board to enter into an agreement to transfer or accept the transfer of the student.

(A) The process shall designate the state superintendent to hear the appeal. In determining whether to overturn a decision of a county board, the state superintendent shall consider such factors as the following:

(i) Travel time for the student;

(ii) Impact on levies or bonds;

(iii) Other financial impact on the county of residence; and

(iv) Such other factors as the state superintendent may determine.

(B) If, during the appeal process, the state superintendent discovers that the education and the welfare of students in the transferring county could be enhanced, the state superintendent
may direct that students may be permitted to attend a school in another county.

(C) If multiple appeals are received from the same geographical area of a county, the state superintendent may impose on the receiving county restrictions including, but not limited to, requiring the receiving county to accept all students in that geographical area of the sending county who wish to transfer to the receiving county.

(D) If a student is transferred on either a full-time or a part-time basis without the agreement of both boards by official action as reflected in the minutes of their respective meetings and if the student's parent or guardian fails to appeal or loses the appeal under the process established in subdivision (3) of this subsection, the student shall be counted only in the net enrollment of the county in which the student resides.

(4) If, after two county boards have agreed to a transfer arrangement for a student, that student chooses to return to a school in his or her county of residence after the second month of any school year, the following shall apply:

(A) The county of residence may issue an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county of residence otherwise would have received under the state basic foundation program established in article nine-a of this chapter; and

(B) The county from which the student transferred shall reimburse the county of residence for the amount of the invoice.

(c) Transfers between high schools. — In any county where a high school is maintained, but topography, impassable roads, long bus rides or other conditions prevent the practicable transportation of any students to such high school, the board may transfer them to a high school in an adjoining county. In
any such case, the county boards may enter into an agreement providing for the payment of the cost of transportation, if any, of the students.

(d) Transfers between states. — Transfer of students from this state to another state shall be upon such terms as shall be mutually agreed upon by the board of the transferring county and the authorities of the school to which the transfer is made.

(e) No parent, guardian or person acting as parent or guardian shall be required to pay for the transfer of a student or for the tuition of the student after the transfer when such 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.

There shall be established at each school in the state a school curriculum team composed of the school principal, the counselor designated to serve that school and no fewer than three teachers representative of the grades taught at the school and chosen by the faculty senate: Provided, That for a school curriculum team established at an elementary school or a combination elementary and middle school, when the counselor is not assigned to the school on at least a one-half time basis, the curriculum team may meet on days when the counselor is not at the school and the principal shall consult with the counselor on the issues relevant to the meeting agenda.

The school curriculum team shall establish the programs and methods for implementing a curriculum based on state-approved instructional goals and objectives based on the needs of the individual school with a focus on reading, composition, mathematics, science and technology. The curriculum thus established shall be submitted to the county board for approval or for return to the school for reconsideration.

The school curriculum team may apply through the school’s local school improvement council for a waiver from the textbook adoption process established in article two-a of this chapter if, in the judgment of the team, materials necessary for the implementation of such curriculum are not available through the normal adoption process.

The school team may apply for a grant from the state board for the development or implementation, or both, of remedial and accelerated programs to meet the needs of the students at the individual school.
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.

(a) The state board of education shall establish minimum standards for all driver education courses offered and made available to persons within the state, regardless of whether the courses are offered by public, private, parochial, denominational or commercial schools, but no person shall be permitted to enroll in any driver education course who has a known mental or physical defect that would prevent the person from qualifying for an operator's license, unless the mental or physical defect is controlled or corrected so the person could so qualify.
(b) The minimum standards shall provide at least that:

(1) All driver education courses offered within the state are taught by instructors certified by the state board as qualified for these purposes; and

(2) Each person enrolled in a driver education course shall receive practice driving and observation in a dual control automobile and instruction in at least the following:

(A) Basic and advanced driving techniques, including techniques for handling emergencies;

(B) Traffic regulations and laws of the road as provided in chapter seventeen-c of this code and other applicable state and local laws and ordinances;

(C) Critical mechanical parts of vehicles requiring preventive maintenance for safety;

(D) The vehicle, highway and community features that aid the driver in avoiding crashes; protect him or her and his or her passengers in crashes; and maximize the salvage of the injured;

(E) Signs, signals, highway markings and highway design features which require understanding for safe operation of motor vehicles;

(F) Differences in characteristics of urban and rural driving, including safe use of modern expressways;

(G) Pedestrian safety; and

(H) Motorcycle safety awareness in a program which shall include, but not be limited to, ensuring that the driver has knowledge and awareness of motorcycles sharing the roads of this state for the safety of motorcyclists.

(c) In addition, in driver education courses, participating students shall be encouraged to acquire first aid skills.
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.

For the purpose of this section, reemployment of a former or retired teacher as a teacher shall in no way impair such teacher's eligibility for a prior service pension, or any other benefit provided by this article.

Retired teachers, who qualified for an annuity because of age or service, may not receive prior service allowance from the retirement board when employed as a teacher and when regularly employed by the state of West Virginia. The payment of such allowance shall be discontinued on the first day of the month within which such employment begins, and shall be resumed on the first day of the month succeeding the month within which such employment ceases. The annuity paid any
such teacher on first retirement resulting from the teachers’ accumulation fund and the employers’ accumulation fund shall continue throughout the governmental service and thereafter according to the option selected by the teacher upon first retirement.

Retired teachers, who qualified for an annuity because of disability, shall receive no further retirement payments, if the retirement board finds that the disability of the teacher no longer exists; payment shall be discontinued on the first day of the month within which such finding is made. If such retired teacher returns to service as a teacher, he shall contribute to the teachers’ accumulation fund as a member of the system. His prior service eligibility, if any, shall not be impaired because of his disability retirement. His accumulated contributions and interest which were transferred to the benefit fund upon his retirement shall be returned to his individual account in the teachers’ accumulation fund, minus retirement payments received which were not supported by such contributions and interest. Upon subsequent retirement, he shall receive credit for all of his contributory experience, anything to the contrary in this article notwithstanding.

Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full time, part time basis or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person’s retirement commences between the effective date of the enactment of this section in two thousand two and the thirty-first day of December, two thousand two: Provided, That such person shall not be eligible to participate in any other state retirement system provided by this code.

The retirement board is herewith authorized to require of the retired teachers and their employers such reports as it deems necessary to effectuate the provisions of this section.
AN ACT to amend article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto 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.

(a) The Legislature finds that:

(1) The consolidated public retirement board has determined that retired substitute teachers should not perform substitute teaching without limit;
(2) The consolidated public retirement board has established, by rule, a maximum number of days in which a retired teacher may accept employment prior to having his or her retirement benefit reduced; and

(3) There have been inconsistencies in the manner in which county boards calculate the maximum number of days established by rule.

(b) For the purpose of calculating whether a retired substitute teacher has exceeded the maximum number of days in which a substitute teacher may accept employment without incurring a reduction in his or her retirement benefit, the number of days worked shall be determined by:

(1) Totaling the number of hours worked; and

(2) Dividing by the standard number of hours that a full-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.

(a) In an effort to create well-ventilated school environments and notwithstanding any other provision of this code to the contrary, any new school building designed and constructed in the state by a county board, regardless of the funding source, shall be designed and constructed in compliance with the current standards of the American society of heating, refrigerating and air conditioning engineers handbook (ASHRAE), the national fire protection association code (NFPA) and the code of the building officials and code administrators (BOCA).

(b) Upon notice from the school building authority that a new public school building is occupied, the division of health shall perform radon testing in the school within the first year after occupancy and at least every five years thereafter. The county board shall provide any reasonable assistance to the division of health that is necessary to perform the radon testing. The radon testing shall include all major student-occupied areas at or below grade level. If it is determined that radon is present in amounts greater than the amount determined to be acceptable by the rules promulgated by the school building authority, pursuant to subsection (d) of this section, any industry accepted mitigation technique shall be used to reduce the radon level to
the level or below the level determined acceptable by the school building authority.

(c) If the school building authority determines that it is feasible to test for radon prior to the construction of a school building, the school building authority may cause preconstruction site testing for radon to be performed.

(d) The school building authority shall promulgate rules pursuant to article three-a, chapter twenty-nine-a of this code to ensure that any new school building designed after the effective date of this article is designed and constructed in accordance with the current ASHRAE, NFPA and BOCA standards. The school building authority shall promulgate rules, pursuant to article three-a, chapter twenty-nine-a of this code, that establish standards for safe levels of radon for public school buildings. The rules shall include the requirement that county boards submit all new school designs to the school building authority for review and approval for compliance with current education standards and design efficiencies prior to preparation of final bid documents.

(e) On or before the first day of July, two thousand two, the school building authority shall promulgate rules to establish a process for independent testing, adjusting and balancing (TABS) heating, ventilation and air conditioning (HVAC) systems in new school buildings or renovated schools when the HVAC system has been replaced prior to occupancy. The process shall be consistent with current ASHRAE standards and shall include, but not be limited to, the following:

(1) Requiring HVAC designers to be professional engineers registered in this state in the specific discipline associated with the system being designed;
(2) Requiring a process to ensure that the HVAC system has been installed in the prescribed manner and will operate within the performance guidelines as designed;

(3) Requiring participation of the design engineer who designed the system to verify the intent of the design;

(4) Requiring the TAB agent to be qualified to perform the desired services and perform testing and balancing procedures, or qualified to perform other school building authority-approved certification according to the procedures contained in the associated air balance council (AABC) national standards, the national environmental balancing bureau (NEBB) procedural standards and the environment engineering consultants (EEC) standards for testing, adjusting and balancing of environmental systems;

(5) Requiring that the independent TAB agent directly represent the building owner and is under contract with the building owner and paid from project funds;

(6) Requiring that sufficient documentation is provided to the owner to facilitate control and maintenance of the systems in accordance with the manufacturer’s requirements;

(7) Requiring that sufficient training is provided by the equipment manufacturer or an agent of the manufacturer to those persons who will operate and maintain the systems prior to occupation of the facility, including at least one full day follow-up training between six and eight months after the facility has been occupied; and

(8) Requiring certification upon successful completion of the TAB process by the independent TAB agent.

(f) To ensure proper maintenance and operation of new and replacement HVAC equipment, the department of education,
using existing staff, shall provide county maintenance personnel additional training on the equipment and its controls at the site of the installation. The training shall occur within one year after student occupation of any new school facility or at any existing school facility where the HVAC system has been replaced or generally rehabilitated. Additionally, the department of education’s facility staff shall provide on-site training to the county maintenance staff on the county’s HVAC equipment at any facility that has been determined to have problematic indoor air quality as identified through the complaint procedure set forth in state board policy 6202.

(g) Upon completion of the required training, the department of education’s facility staff shall provide the county board a report summarizing the training that was completed and a plan for continuing education of the county’s HVAC staff. If sufficient staff is not available to the county to perform maintenance on HVAC systems, the department of education’s staff shall assist the county in the development of an immediate and long range maintenance plan to ensure that HVAC systems are maintained and operated according to the manufacturer’s recommendations.

(h) Beginning the first day of July, two thousand two, and every three months thereafter, the department of education shall forward to the school building authority copies of any complaints received by the department of education of indoor air quality problems which require system repair or replacement and are identified through the complaint procedure established in state board policy 6202.

(i) The state board shall promulgate rules, pursuant to article three-b, chapter twenty-nine-a of this code, in consultation with the division of health, that authorize the use of any appropriate floor covering in public school buildings, based on user needs and performance specifications.
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-I, 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-I, 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 exist until the first day of July, two thousand three, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to that 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 ENDOVMENT TRUST FUND ACT.

§18B-18-1. Legislative findings.
§18B-18-2. Definition.
§18B-18-5. Administration of fund.
§18B-18-6. Duties of higher education policy commission.
§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.

(a) The Legislature hereby finds that the essence of excellence in education is the attraction and retention of outstanding faculty; and that, however necessary modern facilities and efficient and effective administration may be, the faculty provides the catalyst by which all the elements of higher education combine to offer a quality education. The Legislature further finds that the attraction and retention of outstanding faculty at all state colleges and universities, particularly those who have attained distinction as scholars, teachers and researchers, requires a long-term and permanent commitment from both public and private sources. Private support will help strengthen the commitment of citizens and organizations to the promotion of excellence in higher education and will provide moneys for salaries competitive with those paid to faculty of
similar eminence working for this country’s leading colleges
and universities.

(b) The Legislature further finds that the appropriation of
public moneys to attract and retain outstanding faculty and to
encourage the commitment of private moneys with a view
toward the accumulation of moneys in trust funds for these
purposes is a proper annual expense of the state. Therefore, the
establishment of an eminent scholars endowment trust fund at
each state institution of higher education is a proper means of
providing for the advancement of public higher education in
this state.

§18B-18-2. Definition.

Whenever the following term is used in this article, it has
the meaning described below:

“Board of governors” or “board” means the institutional
boards of governors, individually or collectively, created
pursuant to subsection (b), section one, article two-a of this
chapter.


There is hereby established at each state institution of
higher education an eminent scholars endowment trust fund.


(a) Each board of governors is hereby expressly authorized
to receive private or public grants, gifts or bequests restricted
by the donor to the programs set out in this article. The board
may hold, invest or reinvest such moneys and expend the
income from the moneys as provided in section five of this
article.
(b) Each board is exempt from liability for any loss or
decrease in value of the assets or income of the fund, except as
losses or decreases in value are shown to be the result of bad
faith, gross negligence or intentional misconduct.

(c) For the purpose of valuing assets, a board may use any
commonly accepted techniques of appraisal or commonly
accepted principles of accounting. No agency of government
nor any person, natural or corporate, may charge or collect any
fee or receive any part of the principal or income from any
appropriation, grant, gift or bequest as a fee for the acquisition
or administration of the appropriation, grant, gift or bequest.

(d) A board shall at all times adhere to the terms and
limitations of any appropriation, grant, gift or bequest received.
However, a board may refuse to receive any grant, gift or
bequest which incorporates terms and limitations which it
considers to be unacceptable.

(e) A board may, in its sole discretion, borrow money when
necessary in order to avoid the untimely sale of assets. At no
time, however, may the board incur any debt obligation for such
purpose which exceeds twelve months in duration.

§18B-18-5. Administration of fund.

(a) Each eminent scholars endowment trust fund established
at a state institution of higher education pursuant to section
three of this article is to be administered by the appropriate
board of governors. The fund at each institution shall consist of
new gifts or bequests of private moneys specifically restricted
and designated for the uses set out in this article.

(b) Gifts and bequests received after the first day of July,
two thousand two, and restricted by the donor for use consistent
with the purposes of this article constitute the principal in these
accounts. The principal in each account may not be expended
for any purpose. Each board of governors shall adopt a spend-
ing policy to protect the principal and the purchasing power of
the original gift.

(c) Investment earnings accruing in each account during the
previous fiscal year may be expended for the purposes set out
in this article.

(d) The investment earnings accrued and any matching
funds appropriated by the Legislature shall be used solely to
supplement the base salaries of faculty who are appointed as
eminent scholars after the first day of July, two thousand two,
and who are selected as set out in this article.

(e) Gifts and bequests constituting the principal in these
accounts may not consist of institutional funds or funds or
assets received from the institution’s affiliated foundation.

(f) For the purpose of encouraging the donation of private
moneys to the fund, each board may designate specific chairs
or specific areas of academic study or research as subjects of
challenge grants. A specific chair, or a chair in a designated
academic or research area, shall be established whenever the
total amount of principal and accumulated investment earnings
dedicated to it reaches an amount considered sufficient by the
board to support the anticipated salary supplement for the chair.

(g) Salary supplements awarded under this article shall be
in addition to the base contract salary of the faculty member.
The base contract salary of the faculty member shall be
consistent with that of other similarly situated faculty at the
institution with the same rank, experience and field of study and
shall be paid from funds other than those constituting the
endowment accounts established pursuant to this article,
investment earnings authorized for expenditure by the institu-
tions spending policy, or the state appropriation to match the eligible investment earnings.

(h) Nothing in this article may be construed to require any specific level of funding by the Legislature.

§18B-18-6. Duties of higher education policy commission.

The higher education policy commission shall:

(a) Establish documentation standards and review procedures to determine the eligibility of donor gifts to participate in the eminent scholars program when the gift is initially received or whenever the terms are significantly changed;

(b) Require that each participating institution report on total gifts received, investment earnings realized and anticipated expenditures in its annual operating budget request;

(c) Annually develop and submit a consolidated budget request for the eminent scholars program to the governor for the fiscal year beginning on the first day of July, two thousand three. The budget request shall include a request for an appropriation by the Legislature to each institutional account each fiscal year in an amount equal to the investment earnings in the previous fiscal year which are intended for use in the fiscal year to supplement the salaries of eminent scholars;

(d) Allocate any funds appropriated by the Legislature among the participating institutions in equal installments at the beginning of each quarter; and

(e) Submit to the Legislature no later than the first day of December of each year an annual report on the status of the programs, the qualifications and accomplishments of the eminent scholars, the value of endowment holdings, the investment earnings realized and salary supplements paid.

(a) The governor shall consider for inclusion in the appropriate account the budget request of the policy commission for the eminent scholars program.

(b) Whether or not the governor includes the budget request of the policy commission as described in subsection (a) of this section, the Legislature may include an appropriation in the appropriate account.

(c) Nothing in this section shall be construed to require any specific level of funding by the Legislature.

§18B-18-8. Selection of eminent scholars.

(a) Each institution shall establish criteria for the selection of persons to be appointed as eminent scholars pursuant to this article. The criteria shall include, but not be limited to:

(1) The prospective appointees’ record of distinguished academic or professional work in an appropriate field as judged in national terms and verified by the department or college benefitting from the salary supplement;

(2) The prospective appointees’ record of increasing the quality and reputation of academic programs and economic development through new research centers; and

(3) The relevance of prospective appointees’ academic or professional work to the economic development goals of the state as defined by the West Virginia council for community and economic development.

(b) Appointees shall submit to peer review at the department or college and any other review procedures that are 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 each institution, may solicit moneys for the endowment of eminent scholars pursuant to this article. All persons and institutions engaged in soliciting moneys shall apprise the board of their actions and provide periodic reports, at least once each fiscal year, regarding the amounts secured and, upon receipt of any moneys, shall forward them immediately to the board for deposit.

§18B-18-10. Other funds.

1 Effective the first day of July, two thousand two, all funds existing in accounts established in the eminent scholars endowment trust fund act and the distinguished professors endowment trust fund act as previously set out in articles twenty-two-a and twenty-two-e, respectively, of chapter eighteen of this code are hereby transferred to the institution for which they were previously designated. Moneys used to fund chairs or professorships established under these two articles shall continue to be used for the purposes and in the manner previously designated. Funds accrued under these two articles may not be transferred to the trust funds established by this 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 pool of recipients eligible for state-funded financial aid. The Legislature further finds that in the first year of implementation
of the PROMISE scholarship program established in article seven of this chapter, it is premature to determine the effects of combining state-funded student financial aid resources for students eligible for multiple sources.

(b) For the fiscal year ending on the thirtieth day of June, two thousand three only, students with the greatest level of financial need as defined by this section, are eligible for both a PROMISE scholarship and a higher education grant award.

(c) Under the terms set forth in subsection (b) of this section, a student is eligible to receive an award for both the higher education grant program and the PROMISE scholarship program if he or she meets the following criteria:

(1) Expected family contribution requirements provided in subsection (d) of this section; and

(2) Eligibility requirements of both the higher education grant program and the PROMISE scholarship program.

(d) The provisions of subsection (c) of this section are restricted to the least affluent students in the higher education grant program recipient pool, as measured by the student’s expected family contribution. A student’s expected family contribution meets the requirement of subdivision (1), subsection (c) of this section if the contribution expectation is equal to or less than two thirds of the maximum expected family contribution level in the recipient pool of the prior fall term.

(e) For the fiscal year ending on the thirtieth day of June, two thousand three only, the policy commission shall make awards from the higher education grant program based on the provisions of this subsection as a means of increasing the number of potential recipients of higher education grant awards. The academic standard for the grant program shall be modified to be at least ten percent more accessible, and up to a maximum
of twenty percent more accessible if funds are available: Provided, That the recipient’s grade point average is at least 2.0 on a 4.0 scale.

(f) The policy commission shall report the following data to the legislative oversight commission on education accountability by the first day of December, two thousand two:

(1) The number of students receiving a higher education grant award;

(2) The financial resources and academic characteristics of the recipients;

(3) The number of students receiving aid from more than one state-funded program; and

(4) An analysis of any recommendations issued by the West Virginia financial aid coordinating council established pursuant to article eight of this chapter, including draft legislation if necessary, to implement the provisions of the recommendations.

(g) The policy commission shall file a legislative rule subject to the provisions of article three-a, chapter twenty-nine-a of this code providing for the following:

(1) Implementation of the higher education grant program;

(2) A determination of whether to allow a student to receive financial aid from multiple state-funded sources when the student is eligible for aid from more than one state-funded source.

The rule shall be filed with the legislative oversight commission on education accountability on or before the fifteenth day of December, two thousand two.
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.


Each governing board separately has the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction;

(b) Develop a master plan for the institutions under its jurisdiction; except the administratively linked community and technical colleges shall develop their master plans subject to the provisions of section one, article six of this chapter. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the board of governors or board of advisors, as applicable, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission. Each master plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure
that the needs of the institution's area of responsibility for a
quality system of higher education are addressed;

(3) Documentation of the involvement of the commission,
institutional constituency groups, clientele of the institution and
the general public in the development of all segments of the
institutional master plan.

The plan shall be established for periods of not less than
three nor more than six years and shall be revised periodically
as necessary, including the addition or deletion of degree
programs as, in the discretion of the appropriate governing
board, may be necessary.

(c) Prescribe for the institutions under its jurisdiction, in
accordance with its master plan and the compact for each
institution, specific functions and responsibilities to meet the
higher education needs of its area of responsibility and to avoid
unnecessary duplication;

(d) Direct the preparation of a budget request for the
institutions under its jurisdiction, such request to relate directly
to missions, goals and projections as found in the institutional
master plans and the institutional compacts;

(e) Consider, revise and submit to the commission a budget
request on behalf of the institutions under its jurisdiction;

(f) Review, at least every five years, all academic programs
offered at the institutions under its jurisdiction. The review
shall address the viability, adequacy and necessity of the
programs in relation to its institutional master plan, the institu-
tional compact and the education and work force needs of its
responsibility district. As a part of the review, each governing
board shall require the institutions under its jurisdiction to 
conduct periodic studies of its graduates and their employers to 
determine placement patterns and the effectiveness of the 
education experience. Where appropriate, these studies should 
coincide with the studies required of many academic disciplines 
by their accrediting bodies;

(g) The governing boards shall ensure that the sequence and 
availability of academic programs and courses offered by the 
institutions under their jurisdiction is such that students have 
the maximum opportunity to complete programs in the time 
frame normally associated with program completion. Each 
governing board is responsible to see that the needs of nontradi-
tional college-age students are appropriately addressed and, to 
the extent it is possible for the individual governing board to 
control, to assure core coursework completed at institutions 
under its jurisdiction is transferable to any other state institution 
of higher education for credit with the grade earned;

(h) Subject to the provisions of article one-b of this chapter, 
the appropriate governing board has the exclusive authority to 
approve the teacher education programs offered in the institu-
tion under its control. In order to permit graduates of teacher 
education programs to receive a degree from a nationally 
accredited program and in order to prevent expensive duplica-
tion of program accreditation, the chancellor may select and 
utilize one nationally recognized teacher education program 
accreditation standard as the appropriate standard for program 
evaluation;

(i) Utilize faculty, students and classified employees in 
institutional-level planning and decision making when those 
groups are affected;

(j) Subject to the provisions of federal law and pursuant to 
the provisions of article nine of this chapter and to rules
adopted by the commission, administer a system for the 
management of personnel matters, including, but not limited to, 
personnel classification, compensation, and discipline for 
employees of the institutions under their jurisdiction;

(k) Administer a system for hearing employee grievances 
and appeals. Notwithstanding any other provisions of this code 
to the contrary, the procedure established in article six-a, 
chapter twenty-nine of this code is the exclusive mechanism for 
hearing prospective employee grievances and appeals. In 
construing the application of article six-a, chapter twenty-nine 
to grievances of higher education employees, the following 
apply:

(1) "Chief administrator" means the president of a state 
institution of higher education as to those employees employed 
by the institution and the chancellor as to those employees 
employed by the commission;

(2) The state division of personnel may not be a party to nor 
have any authority regarding a grievance initiated by a higher 
education employee; and

(3) The provisions of this section supersede and replace the 
grievance procedure set out in article twenty-nine, chapter 
eighteen of this code for any grievance initiated by a higher 
education employee after the first day of July, two thousand 
one.

(l) Solicit and utilize or expend voluntary support, including 
financial contributions and support services, for the institutions 
under its jurisdiction;

(m) Appoint a president or other administrative head for the 
institutions under its jurisdiction subject to the provisions of 
section six, article one-b of this chapter;
(n) Conduct written performance evaluations of each institution's president pursuant to section six, article one-b of this chapter;

(o) Submit to the commission no later than the first day of November of each year an annual report of the performance of the institutions under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and institutional compact;

(p) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the public institution of higher education or at off-campus locations in the institution's responsibility district. To accomplish this goal, the boards are permitted to share resources among the various groups in the community;

(q) Provide and transfer funding and property to certain corporations pursuant to section ten, article twelve of this chapter;

(r) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of a particular institution under its jurisdiction to the president or other administrative head of the institution in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the provisions of this subsection, it shall notify the chancellor. Any such delegation of power and control may be rescinded by the appropriate governing board or the chancellor at any time, in whole or in part;
(s) Unless changed by the chancellor, the governing boards shall continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for their respective institutions. Individual departments at institutions of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the appropriate governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

(t) Each governing board, or its designee, shall consult, cooperate and work with the state treasurer and the state auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of special revenue and appropriated state funds at the institutions under its jurisdiction that ensures that properly submitted requests for payment be paid on or before due date, but in any event, within fifteen days of receipt in the state auditor’s office;

(u) The governing boards in consultation with the chancellor and the secretary of the department of administration shall develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate standardized system or forms which will be submitted to the respective governing board and the department of finance and administration;

(v) Notwithstanding any other provision of this code to the contrary, the governing boards may transfer funds from any account specifically appropriated for their use to any corresponding line item in a general revenue account at any agency or institution under their jurisdiction as long as such transferred
funds are used for the purposes appropriated. The governing boards may transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated; and

(w) Notwithstanding any other provision of this code to the contrary, the governing boards may acquire legal services as are considered necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards may, but are not required to, call upon the attorney general for legal assistance and representation as provided by law.

ARTICLE 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.

(a) The Legislature finds and determines that the future economic development in the state will depend in part upon research developed at the state institutions of higher education, and enhanced research opportunities for state institutions of higher education will promote the general economic welfare of the citizens of the state. In order to enhance the competitive position of state institutions of higher education in the current environment for research and development, expenditures for equipment and material for research projects must be handled in an expeditious fashion, and the acquisition and utilization of research grants can be simplified and expedited through the utilization of private corporations.
(b) The interest of the citizens of the state will be best met by agreements entered into and carried out by the governing boards and corporations to provide research assistance for state institutions of higher education. Therefore, in order to facilitate research and development grants and opportunities for state institutions of higher education, it is appropriate to authorize the governing boards to contract with private corporations organized for the purpose of providing such services to state institutions of higher education.

§18B-12-4. Agreement; required provisions.

(a) Notwithstanding section ten, article three, chapter twelve of this code or any other provision of law to the contrary, each governing board is hereby authorized to enter into an agreement with a private corporation, which agreement shall be for the benefit of the state institution of higher education and contain the following provisions, subject to further specification as is mutually agreed upon by the governing board and the corporation:

(1) On the effective date of the agreement, the corporation is charged with the responsibility of serving as fiscal agent for sponsored projects conducted by the faculty, staff and students of the state institution of higher education, and grants shall be accepted by the corporation on behalf of the institution and assigned to the corporation for fiscal management.

(2) The corporation shall provide evaluation, development, patenting, licensing, management and marketing services for inventions, processes, trademarks, except institutional trademarks an institution’s governing board elects to retain, copyrights or any other intellectual property developed by faculty, staff and students of any state institution of higher education.
(3) The corporation has the right to determine the application of the proceeds from any invention, process, trademark, except institutional trademarks an institution's governing board elects to retain, copyright or any other intellectual property developed by the faculty, staff or students of an institution among the corporation, the inventor or developer, and the institution.

(4) The corporation has the right to receive, purchase, hold, lease, use, sell and dispose of real and personal property of all classes subject to the provisions of section ten of this article.

(5) The corporation has such additional responsibilities related to the administration of research and development at the institution as are necessary or desirable.

(b) Upon termination of the agreement, the funds or grants paid or held by the corporation, and all other property held by the corporation, shall be transferred to the institution or its designee as the governing board directs.

(c) A corporation may utilize both corporation employees and personnel of the institution. The corporation may pay the costs incurred by the institution including personnel funded on grants and contracts, fringe benefits of personnel funded on grants and contracts, administrative support costs and other costs which may require reimbursement. The corporation may include as costs any applicable overhead and fringe benefit assessments necessary to recover the costs expended by the institution, pursuant to the terms of the agreement, and that a board may be reimbursed for expenses incurred by it pursuant to the agreement.

§18B-12-10. Assignment or transfer of property to certain corporations.
(a) Institutional boards of governors may provide and transfer funding and property, both real and personal, to corporations as defined in section one of this article, and with which the institution under its jurisdiction has contracted pursuant to the provisions of this article. Any deed that transfers real property under the provisions of this section to a corporation, as defined in section one of this article, for either: (i) Research and development; (ii) economic development projects resulting in the creation of employment related to the results of research and development conducted on the property; or (iii) both; under this section shall include provisions requiring that the real property revert to the institution under the following circumstances:

(1) For a period of two years, the property is not used for at least one of the purposes for which it may be conveyed;

(2) The corporation to which the real property is transferred is dissolved; or

(3) The corporation files a petition in bankruptcy.

(b) Any corporation, as that term is defined in section one of this article, may provide and transfer funding and property, both real and personal, to another person, firm or corporation for: (i) Research and development; (ii) economic development projects resulting in the creation of employment related to the results of research and development conducted on the property; or (iii) both. Any deed that transfers real property to a person, firm or corporation shall include provisions requiring that the real property revert to the corporation, as defined in section one of this article, under the following circumstances:

(1) For a period of six months, the property is not used for at least one of the purposes for which it may be conveyed;
(2) The corporation to which the real property is transferred is dissolved; or

(3) The corporation files a petition in bankruptcy.

c) The person, firm or corporation that receives real property from the corporation, as defined in section one of this article, may not transfer the property to another party without the written permission of the corporation, as defined in section one of this article. The corporation, as defined in section one of this article, may not grant any such request unless the corporation determines that covenants in the deed or lease agreement provide adequate assurance that the terms of subsections (a) and (b) of this section are preserved.

d) At least twenty days before the transfer of any property pursuant to the provisions of this section, the institutional board of governors or the corporation, as defined in section one of this article, whichever is appropriate, shall give public notice of the transfer through a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this 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.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one, chapter eighteen of this code apply to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School personnel" means all personnel employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. School personnel shall be comprised of two categories: Professional personnel and service personnel.

(b) "Professional personnel" means persons who meet the certification and/or licensing requirements of the state and includes the professional educator and other professional employees.

(c) "Professional educator" is synonymous with and has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators shall be classified as:

(1) "Classroom teacher". — The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his or her time in this capacity.

(2) "Principal". — The professional educator who, as agent of the board, has responsibility for the supervision, management and control of a school or schools within the guidelines established by said board. The major area of such
26 responsibility shall be the general supervision of all the schools
and all school activities involving pupils, teachers and other
school personnel.

29 (3) "Supervisor". — The professional educator who,
whether by this or other appropriate title, is responsible for
working primarily in the field with professional and other
personnel in instructional and other school improvement.

33 (4) "Central office administrator". — The superintendent,
associate superintendent, assistant superintendent and other
professional educators, whether by these or other appropriate
titles, who are charged with the administering and supervising
of the whole or some assigned part of the total program of the
countywide school system.

39 (d) "Other professional employee" means that person from
another profession who is properly licensed and is employed to
serve the public schools and includes a registered professional
nurse, licensed by the West Virginia board of examiners for
registered professional nurses and employed by a county board
of education, who has completed either a two-year (sixty-four
semester hours) or a three-year (ninety-six semester hours)
nursing program.

47 (e) "Service personnel" means those who serve the school
or schools as a whole, in a nonprofessional capacity, including
such areas as secretarial, custodial, maintenance, transportation,
school lunch and as aides.

51 (f) "Principals academy" or "academy" means the academy
created pursuant to section two-b, article three-a of this chapter.

53 (g) "Center for professional development" means the center
created pursuant to section one, article three-a of this chapter.
(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its professional employees who wish to divide between them the duties and responsibilities of one authorized full-time position.

(i) "Prospective employable professional personnel" means certified professional educators who:

1. Have been recruited on a reserve list of a county board;
2. Have been recruited at a job fair or as a result of contact made at a job fair;
3. Have not obtained regular employee status through the job posting process provided for in section seven-a, article four of this chapter; and
4. Have obtained a baccalaureate degree from an accredited institution of higher education within the past year.

(j) "Dangerous student" means a pupil who is substantially likely to cause serious bodily injury to himself, herself or another individual within that pupil's educational environment, which may include any alternative education environment, as evidenced by a pattern or series of violent behavior exhibited by the pupil, and documented in writing by the school, with the documentation provided to the student and parent or guardian at the time of any offense.

(k) "Alternative education" means an authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions.
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.

(a) A principal shall suspend a pupil from school or from transportation to or from the school on any school bus if the pupil, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a pupil from school, or from transportation to or from the school on any school bus, if the pupil, in the determination of the principal after an informal
hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the uniform controlled substances act as described in chapter sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a pupil from school, or transportation to or from the school on any school bus, if the pupil, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a pupil, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or pupil; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the
county board finds that the student did commit the alleged violation, the county board may expel the student.

(d) The actions of any pupil which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the pupil is enrolled. If the principal determines that the alleged actions of the pupil would be grounds for suspension, he or she shall conduct an informal hearing for the pupil immediately after the alleged actions have occurred. The hearing shall be held before the pupil is suspended unless the principal believes that the continued presence of the pupil in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the pupil shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the pupil as to whether he or she admits or denies the charges. If the pupil does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the pupil for a maximum of ten school days, including the time prior to the hearing, if any, for which the pupil has been excluded from school.

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the pupil by regular United States mail. The
suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

(e) Prior to a hearing before the county board, the county board shall cause a written notice which states the charges and the recommended disposition to be served upon the pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly whether the board will attempt at hearing to establish the student as a dangerous student, as defined by section one, article one of this chapter. The notice also shall include any evidence upon which the board will rely in asserting its claim that the student is a dangerous student. The notice shall set forth a date and time at which the hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to determine if the pupil should be reinstated or should or, under the provisions of this section, must be expelled from school. If the county board determines that the student should or must be expelled from school, it may also determine whether the student is a dangerous student pursuant to subsection (g) of this section. At this, or any hearing before a county board conducted pursuant to this section, the pupil may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross-examine witnesses supporting the charge against him or her. Such a hearing shall be recorded by mechanical means unless recorded by a certified court reporter. Any such hearing may be postponed for good cause shown by the pupil but he or she shall remain under suspension until after the hearing. The state board may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board shall either: (1) Order the pupil reinstated immediately or at the end of his or her initial suspension; (2)
suspend the pupil for a further designated number of days; or
(3) expel the pupil from the public schools of the county.

(g) A county board that did not intend prior to a hearing to assert a dangerous student claim, that did not notify the student prior to the hearing that such a determination would be considered and that determines through the course of the hearing that the student may be a dangerous student shall schedule a second hearing within ten days to decide the issue. The hearing may be postponed for good cause shown by the pupil, but he or she remains under suspension until after the hearing.

A county board that expels a student, and finds that the student is a dangerous student, may refuse to provide alternative education. However, after a hearing conducted pursuant to this section for determining whether a student is a dangerous student, when the student is found to be a dangerous student, is expelled and is denied alternative education, a hearing shall be conducted within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the pupil’s conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.
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(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the pupil; (2) when proceedings to compel a subpoenaed witness to appear must be instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide sufficient notice to appear to a witness. A pupil remains under suspension until after the hearing in any case where a postponement occurs.

The county boards are directed to report the number of pupils determined to be dangerous students to the state board of education. The state board will compile the county boards' statistics and shall report its findings to the legislative oversight commission on education accountability.

(i) Pupils may be expelled pursuant to the provisions of this section for a period not to exceed one school year, except that if a pupil is determined to have violated the provisions of subsection (a) of this section the pupil shall be expelled for a period of not less than twelve consecutive months: Provided,
That the county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the pupil if the circumstances of the pupil’s case demonstrably warrant. Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the pupil’s case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the pupil was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

1. The extent of the pupil’s malicious intent;
2. The outcome of the pupil’s misconduct;
3. The pupil’s past behavior history; and
4. The likelihood of the pupil’s repeated misconduct.

In all hearings under this section, facts shall be found by a preponderance of the evidence.

For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act of 1990 (PL 101-476).

If a pupil transfers to another school in West Virginia, the principal of the school from which the pupil transfers shall provide a written record of any disciplinary action taken against the pupil to the principal of the school to which the pupil transfers.
(m) Principals may exercise any other authority and perform any other duties to discipline pupils consistent with state and federal law, including policies of the state board of education.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

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

(1) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term "blackjack" shall include, but not be limited to, a billy, billy club, sand club, sandbag or slapjack.

(2) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force and when so released is locked in place by means of a button, spring, lever or other locking or catching device.

(3) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting, stabbing or tearing wounds. The term "knife" shall include, but not be limited to, any dagger, dirk, poniard or stiletto, with a blade over three and one-half inches in length, any switchblade knife or gravity knife and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational
uses, or a knife designed for use as a tool or household implement shall not be included within the term “knife” as defined herein unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.

(4) “Switchblade knife” means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.

(5) “Nunchuka” means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(6) “Metallic or false knuckles” means a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The terms “metallic or false knuckles” shall include any such instrument without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(7) “Pistol” means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(8) “Revolver” means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(9) “Deadly weapon” means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term “deadly weapon”
shall include, but not be limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of section one-a, article five, chapter eighteen-a of this code and section eleven-a, article seven of this chapter, in addition to the definition of "knife" set forth in subdivision (3) of this section, the term "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the purposes of section one-a, article five, chapter eighteen-a of this code and section eleven-a, article seven of this chapter, the term "deadly weapon" includes explosive, chemical, biological and radiological materials. Notwithstanding any other provision of this section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes.

(10) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried.

(11) "Firearm" means any weapon which will expel a projectile by action of an explosion.

(12) "Controlled substance" has the same meaning as is ascribed to that term in subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(13) "Drug" has the same meaning as is ascribed to that term in subsection (1), section one hundred one, article one, chapter sixty-a of this code.
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.

(a) The West Virginia department of education shall promulgate rules to administer the reimbursement of tuition, registration and other required fees for coursework completed by teachers in accordance with the provisions of this section. The rules shall provide for reimbursement for courses completed toward both certification renewal, and additional endorsement in a shortage area.

(b) As used in this section, the following words and phrases have the meanings ascribed to them:

(1) "Teacher" has the meaning provided in section one, article one, chapter eighteen of this code.

(2) "Shortage area" shall be defined by state board policy to indicate the subject areas for which an insufficient number of teachers are available.

(3) "Certification" and "certificate" mean a valid West Virginia:

(A) Professional teaching, service or administrative certificate, or its equivalent; or

(B) Provisional professional teaching, service or administrative certificate, or its equivalent.

(4) "Requirements for certification renewal" are those requirements of the state department of education as provided in section three of this article.

(5) "Requirements for additional endorsement" are those requirements of the state department of education as provided in section three of this article.
(6) "State institution of higher education" has the meaning provided in section two, article one, chapter eighteen-b of this code.

(c) To the extent of funds appropriated for the purposes specified in this section, payment shall be made to any teacher who:

(1) Holds either a valid West Virginia:

(A) Certificate; or

(B) First class permit for full-time employment; and

(2) Is seeking:

(A) An additional endorsement in a shortage area, and either resides in the state or is employed regularly for instructional purposes in a public school in the state; or

(B) Certification renewal, and has a continuing contract with a county board.

(d) The payment shall be made as reimbursement for the tuition, registration and other required fees for any course completed at:

(1) Any college or university within the state; or

(2) A college or university outside the state if prior approval is granted by the department.

(e) A course is eligible for reimbursement if it meets the requirements for:

(1) An additional endorsement in a shortage area; or

(2) Certification renewal.
(f) In the fiscal year beginning the first day of July, two thousand two, funds appropriated for the purposes specified in this section shall be disbursed evenly between courses completed toward certification renewal and courses completed toward additional endorsement in a shortage area. Thereafter, funds shall be divided between renewal and endorsement in the same proportion that the number of applications for each was made toward the total number of applications received, except that reimbursement toward either may not exceed seventy-five percent of total funds appropriated.

(g) Payment made for any single fee may not exceed the amount of the highest corresponding fee charged at a state institution of higher education.

(h) Reimbursement for courses completed toward certification renewal is limited to fifteen semester hours of courses for any teacher.

(i) The West Virginia department of education shall seek funding from sources other than general revenue appropriation, including, but not limited to, workforce investment funds.

(j) No provision of this section may be construed to require any appropriation or any specific amount of appropriation for the purposes specified in this section, or to require the department to expend funds for those purposes from any other 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.

(a) From funds appropriated, the department of education may pay the moving expenses for a teacher who meets the following criteria:
(1) The teacher’s position was eliminated as part of a reduction in force by a West Virginia county school board;

(2) The teacher has secured employment for a West Virginia county school board in another county;

(3) The teacher has moved his or her residence to the West Virginia county in which he or she has gained employment or to an adjacent county in West Virginia;

(4) The teacher is to be employed in a county where shortages exist either in numbers of teachers or in subject matter areas as determined by the state board; and

(5) As a result of the new employment, it would be impractical for the teacher to maintain his or her previous residence.

(b) The reimbursement shall be for actual expenses and shall not exceed two thousand five hundred dollars, subject to the availability of funds.

(c) Each county board of education shall send the state board by the first day of May, annually, a report that includes:

(1) The available teacher positions in the county;

(2) Any shortages in subject matter areas in the county; and

(3) The name of all teachers reduced in force: Provided, that the teacher has permitted the county board to submit his or her name.

(d) The state board shall compile a report including all information submitted to the state board based on the reports provided in subsection (c) of this section. The state board shall send this report to each county board of education. Additionally, the state board shall send a letter to all teachers reduced in
force. This letter shall identify all teacher positions available in West Virginia and identify those counties where shortages exist either in numbers of teachers or in subject matter areas.

(e) The state board shall promulgate a rule pursuant to the provisions of article three-b, chapter twenty-nine-a of this code that implements the provisions of this section. The rule shall include, but is not limited to:

(1) Standards sufficient to define and measure the criteria set forth in subsection (a) of this section; and

(2) A procedure for allocating the funds if the funds appropriated are insufficient.

(f) Nothing in this section shall require any level of appropriation by the Legislature.

(g) The state board shall report to the Legislature by the first day of January of each year on the number of teachers being reimbursed.

(h) This section shall expire on the first day of July, two 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.

(a) Budget request and appropriations. — The commission has the responsibility to develop a budget for the state system of higher education and submit a budget request to the governor before the first day of September, beginning in two thousand, and for each fiscal year thereafter. The budget request specifically shall include the amount of the institutional operating budgets, as defined in section two, article one of this chapter, required for all state institutions of higher education. The budget appropriation for the state system of higher education under this chapter and other provisions of the law shall consist of separate control accounts or institutional control accounts, or some combination of such accounts, for appropriation of
institutional operating budgets and other funds. The commission is responsible for allocating state appropriations to supplement institutional operating budgets in accordance with this section. In addition to the institutional operating budget and incentive funding, however, the commission also is responsible for allocating funds that are appropriated to it for other purposes: Provided, That, in order to determine institutional allocations, it is the responsibility of the institutions and their respective institutional boards of governors or advisors, as appropriate, to provide to the commission documentation on institutional progress toward mission enhancement, preliminary peer comparison calculations, performance of increased productivity and academic quality and measurable attainment in fulfilling state priorities as set forth in this article. The documentation shall be provided to the commission no later than the first day of October each year for commission review and verification.

(b) Legislative funding priorities. –

(1) The Legislature recognizes the current resource allocation model has not moved all state institutions equitably towards comparable peer funding levels. This formula has left West Virginia institutions at a competitive disadvantage to their national peers.

(2) The Legislature acknowledges that the resource allocation model used to comply with Senate Bill 547, passed during the legislative session of one thousand nine hundred ninety-five, alleviated some of the disparity that exists among state institutions’ operating budgets, but left significant differences between the institutions and their national peers.

(3) The Legislature recognizes that a system of independently-accredited community and technical colleges is essential to the economic vitality of the state.
(4) The Legislature places great importance on achieving the priority goals outlined in the public policy agenda and believes the state institutions of higher education should play a vital role in facilitating the attainment of these goals.

(5) The Legislature also believes it is imperative that the state make progress on narrowing the peer inequity while balancing the need for sustaining the quality of our institutions.

(6) It is the charge of the commission to allocate all funds appropriated in excess of the fiscal year two thousand one general revenue appropriations in alignment with the legislative funding priorities listed below. The commission shall consider the priorities and assign a percentage of the total appropriation of new funds to each priority.

(A) Peer equity. — Funds appropriated for this purpose increase the level of the institutional operating budget for state institutions of higher education comparable to their peer institutions. The allocation shall provide, subject to the availability of funds and legislative appropriations, for a systematic adjustment of the institutional operating budgets to move all institutions’ funding in the direction of levels comparable with their peers. Institutional allocations shall be calculated as follows:

(i) A calculation shall be made of the deficiency in per student funding of each institution in comparison with the mean per student funding of the peer institutions as defined by the commission pursuant to section three of this article;

(ii) For all institutions that are deficient in comparison with peer institutions, the amounts of the deficiencies shall be totaled;

(iii) A ratio of the amount of the deficiency for an institution divided by the total amounts of deficiency for all West
Virginia institutions shall be established for each institution; and

(iv) The allocation to each institution shall be calculated by multiplying the ratio by the total amount of money in the account.

(B) Independently accredited community and technical colleges development. — Funds appropriated for this purpose will ensure a smooth transition, where required, from “component” community and technical colleges to independently accredited community and technical colleges as defined in section two, article one of this chapter. Appropriations for this purpose are only to be allocated to those institutions having approved compacts with the commission that expressly include the transition of their component community colleges to independently accredited status and have demonstrated measurable progress towards this goal. By the first day of July, two thousand seven, or when all required community and technical colleges are independently accredited, whichever first occurs, funds for this purpose shall be allocated to the incentives for institutional contributions to state priorities: Provided, That if the commission determines that payments from the account to the institutions should continue beyond the first day of July, two thousand seven, it shall request an extension from the Legislature;

(C) Research challenge. — Funds appropriated for this purpose shall assist public colleges and universities in West Virginia to compete on a national and international basis by providing incentives to increase their capacity to compete successfully for research funding. The Legislature intends for institutions to collaborate in the development and execution of research projects to the extent practicable and to target research to the needs of the state as established in the public policy agenda and linked to the future competitiveness of this state.
(i) The commission shall develop criteria for awarding grants to institutions under this account, which may include, but are not limited to, the following:

(I) Grants to be used to match externally funded, peer-reviewed research;

(II) Grants to be used to match funds for strategic institutional investments in faculty and other resources to increase research capacity;

(III) Grants to support funding for new research centers and projects that will foster economic development and work force investment within the state. These grants shall be limited to seven years and each research center or project funded shall receive a decreasing award each year and shall be required to be supported solely by external funding within seven years;

(ii) The commission may establish an advisory council consisting of nationally prominent researchers and scientists, including representatives from outside the state, to assist in developing the criteria for awarding grants under this account.

(iii) For the purposes of making the distributions from this account, the commission shall establish the definition for research, research funds and any other terms as may be necessary to implement this subdivision; and

(D) Incentives for institutional contributions to state priorities. — Funds appropriated for this purpose provide incentives to institutions which demonstrate success toward advancing the goals of the public policy agenda as set forth in section one-a, article one of this chapter and to provide incentives for mission enhancement as set forth in section two of this article.
(E) Sustained quality support. — The commission shall provide additional operating funds to institutions with approved compacts. The commission shall allocate these funds on an equal percentage basis to all institutions: Provided, That the commission may delay distribution of these funds to any institution which does not demonstrate measurable progress towards the goals provided in its compact with the commission.

(c) Allocations to institutional operating budgets. — For the purposes of this subsection, the commission shall establish by rule pursuant to subsection (f), section two of this article the method for measuring the progress of each institution towards meeting the benchmarks of its institutional compact.

(d) Allocation of appropriations to the institutions. — Appropriations in this section shall be allocated to the state institutions of higher education in the following manner:

(1) For the fiscal year two thousand two, appropriations above the fiscal year two thousand two institutional operating budget shall be allocated only to institutions with approved compacts, pursuant to this article;

(2) For the fiscal year two thousand three, and each fiscal year thereafter, appropriations from the funds shall be allocated only to institutions with approved compacts, pursuant to section two of this article and which also have achieved their annual benchmarks for accomplishing the goals of their compacts, as approved by the commission: Provided, That if an institution has not achieved all of its annual benchmarks, the commission may distribute a portion of the funds to the institution based on its progress as the commission determines appropriate: Provided, however, That the commission shall establish by rule pursuant to subsection (f), section two, of this article the method for measuring the progress of each institution toward meeting the benchmarks of its institutional compact;
(e) Nothing in this section shall be construed in a manner that limits the appropriation or collection of fees necessary to effectuate the operation and purpose of the commission.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.


1 Each governing board shall establish and implement a policy through which college students obtain credit toward graduation for service performed in the public schools as tutors, student advisors and mentors to instill in public school students 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.

(a) Definitions. — For the purposes of this section, the following terms have the following meanings:

1. “College campus” includes the premises and grounds of an institution of higher education;

2. “Credit card debt education brochure” means the information developed by a college or university, by a registered nonprofit corporation or by other sources as identified and approved by the institution of higher education, that details the appropriate use, benefits and risks of incurring debt through the use of credit cards;

3. “Credit card marketer” includes a person, corporation, financial institution or business entity that promotes, offers or accepts applications for a credit card;

4. “Institution of higher education” means any of the following:

   i. A community college or technical college as defined in subsection (e), section two, article one of this chapter; and

   ii. Bluefield state college, Concord college, Glenville state college, Fairmont state college, Marshall university, West Virginia northern community college, West Liberty state college, Potomac state college of West Virginia university, Shepherd college, West Virginia university institute of technol-
ogy, southern West Virginia community institute of technology, West Virginia university at Parkersburg, West Virginia school of osteopathic medicine, West Virginia state college, West Virginia university and all branch campuses of these institutions of higher education; and

(5) “Student” means a person who is at least eighteen years of age and who attends an institution of higher education whether on a full-time or part-time basis.

(b) The governing boards of each institution shall propose rules in accordance with the rule adopted by the higher education policy commission pursuant to the provisions of section six, article one of this chapter no later than the first day of July, two thousand three, to regulate the marketing practices used on campuses by credit card companies. In proposing these rules, the governing boards shall consider the following requirements:

(1) Registering on-campus credit card marketers;

(2) Limiting credit card marketers to specific institutional campus sites designated by the president or administrative head of the institution or his or her designee;

(3) Prohibiting credit card marketers from offering tangible gifts to students in exchange for completing a credit card application;

(4) Requiring that no application for the extension of debt through a credit card may be made available to a student unless the application is accompanied by a credit card debt education brochure;

(5) Whether or not to use or the appropriate use of student lists for the purpose of soliciting applications for credit cards; and
Developing a credit card debt education presentation to be incorporated into orientation programs offered to new students.

(c) Unless a student's parent or guardian has agreed in writing to be liable as a cosigner for credit card debts of the student, no person may initiate a debt collection action against the parent or guardian regarding any credit card debt incurred 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.
(a) The legislative rule filed in the state register on the second day of February, two thousand one, and modified and refiled on the third day of April, two thousand one, relating to the higher education policy commission (higher education finance policy), is authorized.

(b) The legislative rule filed in the state register on the twentieth day of November, two thousand one, relating to the higher education policy commission (higher education report card rule), is authorized.

(c) The legislative rule filed in the state register on the fourth day of January, two thousand two, relating to the higher education policy commission (performance indicators rule), is 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).

The legislative rule filed in the state register on the fourth day of January, two thousand two, and modified and refiled on the eighteenth day of January, two thousand two, relating to the higher education policy commission (West Virginia providing real opportunities for maximizing in-state student excellence 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-second day of October, two thousand one, relating to the higher education policy commission (higher education adult part-time 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.

(a) Notwithstanding any other provision of this code or rule of the higher education policy commission to the contrary, a person who has met all other conditions of eligibility for state funded financial aid, grants, or scholarships shall not be deemed ineligible for state funded financial aid, grants, or scholarships based solely upon his or her attendance at a private high school outside the state if:

(1) During his or her attendance at the school outside the state, the student was residing with his or her parent or legal guardian in this state and that parent or legal guardian was a resident of this state and had been a resident of this state for at least two years prior to the student’s attendance at the school;

(2) The student commuted during the school term on a daily basis from this state to attend the school in another state;

(3) The student is a dependent of the parent or legal guardian upon which eligibility is based and the student has not established domicile outside the state;

(4) The school is fully accredited in the state of its location to the degree acceptable to the superintendent of schools of this state in his or her discretion; and

(5) The school’s curriculum requirements for graduation are the same as the curriculum requirements for graduation in this state, or sufficiently similar to those requirements, as determined by the superintendent of schools of this state in his or her discretion.

(b) Nothing in this section may be construed to alter, amend or extend any application deadlines or other requirements established by law or policy.
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.

(a) Legislative findings. — The Legislature finds that there is a critical need for additional practicing health care professionals in West Virginia. Therefore, there is hereby created a health sciences scholarship program to be administered by the vice chancellor for health sciences. The purpose of this program is to provide an incentive for health professional students to complete their training and provide primary care in underserved areas of West Virginia.
(b) Establishment of special account. — There is hereby established a special revolving fund account under the higher education policy commission in the state treasury to be known as the "Health Sciences Scholarship Fund" that shall be used to carry out the purposes of this section. The fund shall consist of one or more of the following: (1) All unexpended health sciences scholarship funds on deposit in the state treasury on the effective date of this section; (2) appropriations as may be provided by the Legislature; (3) repayments, including interest as set by the vice chancellor for health sciences, collected from scholarship recipients who fail to practice or teach in West Virginia under the terms of the scholarship agreement as set forth under this section; or (4) amounts that may become available from other sources. Balances remaining in the fund at the end of the fiscal year shall not expire or revert to the general revenue. All costs associated with the administration of this section shall be paid from the health sciences scholarship fund under the direction of the vice chancellor for health sciences.

(c) Eligibility requirements. — An individual is eligible for consideration for a health sciences scholarship if the individual: (1) Either: (A) Is a fourth-year medical student at the Marshall university school of medicine, West Virginia school of osteopathic medicine or West Virginia university school of medicine who has been accepted in a primary care internship/residency program in West Virginia; or (B) is enrolled or accepted for enrollment in an approved education program at a West Virginia institution leading to a degree or certification in the field of nurse practitioner, nurse midwife, physician assistant or other disciplines identified as shortage fields by the vice chancellor for health sciences; and (2) signs an agreement to practice for at least two years in an underserved area of West Virginia as determined by the bureau for public health. An individual also is eligible for consideration for a health sciences scholarship if the individual is pursuing a master's degree in nursing and signs an agreement to teach at least two years for
a school of nursing located in West Virginia, as may be
determined by the vice chancellor for health sciences, after
receiving her or his master's degree. Awarding preference will
be given to West Virginia residents.

(d) Scholarship awards. — Scholarships shall be in the
amount of twenty thousand dollars for medical students and ten
thousand dollars for all others and may be awarded by the vice
chancellor for health sciences, with the advice of an advisory
panel, from the pool of all applicants with a commitment to
practice in an underserved area of West Virginia as determined
by the bureau for public health. Nothing herein shall be
construed as granting or guaranteeing any applicant any right to
such a scholarship.

(e) Repayment provisions. — A scholarship recipient who
fails to practice in an underserved area of West Virginia within
six months of the completion of his or her training, who fails to
complete his or her training or who fails to complete the
required teaching is in breach of contract and is liable for
repayment of the total scholarship amount received plus
interest. The granting or renewal of a license to practice in West
Virginia or to reciprocal licensure in another state based upon
licensure in West Virginia shall be contingent upon beginning
payment and continuing payment until complete repayment of
the total scholarship amount if the recipient fails to practice in
an underserved area. No license, renewal or reciprocity shall be
granted to persons whose repayments are in arrears. The
appropriate regulatory board shall inform all other states where
a recipient has reciprocated based upon West Virginia licensure
of any refusal to renew licensure in West Virginia as a result of
failure to repay the scholarship amount. This provision shall be
explained in bold type in the scholarship contract. Repayment
terms, not inconsistent with this section, shall be established by
the vice chancellor for health sciences pursuant to rules as
required under subsection (f) of this section.
(f) Promulgation of rules. — The higher education policy commission shall promulgate rules pursuant to article three-a, chapter twenty nine-a of this code necessary for the implementation and administration of this section.

(g) Definitions. — For purposes of the repayment provisions of this section, the term “training” means the entire degree program or certification program for nurse midwives, nurse practitioners, physician assistants and other disciplines identified as shortage field by the vice chancellor. The term also means the completion of a degree program and includes completion of an approved residency/internship program for students pursuing a degree in medicine or a degree in osteopathy.

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.

(a) The West Virginia financial aid coordinating council is hereby created. The council is established for the purpose of examining and recommending strategies for maximizing coordination among the various sources of student financial aid.

(b) The council is responsible for examining financial aid issues which include at least the following:

(1) A manner for administering and maintaining the most efficient, simplified and coordinated application process. This includes implementing the optimum use of technology in the application process.

The council shall explore the feasibility of developing a single form for completing the application process;

(2) A strategy for ensuring that a reasonable balance of need-based, merit-based and self-help financial assistance is available to West Virginia students;

(3) An integrated and well coordinated system for making financial aid awards on a timely basis;
(4) A comprehensive informational and marketing plan that delivers to middle school through high school students and the public an awareness of the various financial aid resources;

(5) An articulation plan between secondary and postsecondary education regarding delivery and availability of student financial aid, including dual credit course offerings for secondary students free of charge;

(6) A strategy for working with and informing high school guidance counselors in implementing effective strategies for assisting students in completing the financial aid application process; and

(7) A strategy for implementing a system of student identification numbers that is both compatible and uniform to be used by public schools and public institutions of higher education.

(c) The council shall take actions including, but not limited to, the following:

(1) Make recommendations with respect to coordinating the application for and disbursement of funds from all sources of a student’s financial aid package, and for maximizing the level of funding derived from federal sources;

(2) Identify and examine all sources of student financial aid, and recommend the most effective manner for coordinating all financial aid resources. The sources include, but are not limited to, the following:

(A) PROMISE scholarship program;

(B) Higher education grant program;

(C) Higher education adult part-time student grant program;
(D) Prepaid tuition trust and savings programs;

(E) Underwood-Smith teacher scholarship program;

(F) Health sciences scholarship program;

(G) West Virginia engineering, science and technology scholarship program;

(H) Federal PELL grant program;

(I) Federal student loans;

(J) Work/study programs;

(K) Tuition waivers; and

(L) Privately funded scholarships;

(3) In consultation with the higher education policy commission, recommend funding levels for each state grant and scholarship program;

(4) Utilize the resources of national or regional education organizations such as, but not limited to, the southern regional education board, education commission of the states and national association of student financial aid administrators; and

(5) Meet at any time that the council determines appropriate.

§18C-8-2. Council membership; council chair; compensation of members; establishing quorum.

(a) The council is composed of seventeen members as follows:

(i) Chancellor for higher education, or designee;
(2) State superintendent of schools, or designee;

(3) Secretary of education and the arts, or designee;

(4) State treasurer, or designee;

(5) Vice chancellor for administration for the higher education policy commission;

(6) Director for student and educational services for the higher education policy commission;

(7) Assistant state superintendent for technical and adult education services, or designee;

(8) Executive director of the PROMISE scholarship program;

(9) Director of American education services-West Virginia;

(10) Representative of proprietary institutions selected by the West Virginia association of independent colleges and schools;

(11) Representative of independent institutions selected by the West Virginia independent colleges and universities, inc.;

(12) President of the West Virginia association of student financial aid administrators;

(13) President of the West Virginia counselors association, or designee;

(14) Two representatives of state institutions of higher education appointed by the policy commission, one of whom represents community and technical college education; and
Two members appointed by the governor who are knowledgeable about and representative of the interests of student financial aid applicants.

(b) The secretary of education and the arts or his or her designee is chair of the council.

c Members serve without compensation, but are reimbursed for expenses, including travel expenses, actually incurred by the member in the official conduct of business at the same rate as is paid to state employees. Any members employed by a government agency shall be reimbursed by his or her employer; all other members shall be reimbursed by the office of the secretary of education and the arts. A majority of council members constitutes a quorum for the transaction of business.

§18C-8-3. Reports; termination of council.

(a) The council shall make a preliminary report of its recommendations on or before the first day of December, two thousand two. If the council is able to finish its work and make a final report on this date, it shall cease to exist on the first day of April, two thousand three. If the council finds that it cannot complete its work on or before the first day of December, two thousand two, the council may vote to continue its work and issue a final report on the first day of December, two thousand three, in which case, the council shall cease to exist on the first day of April, two thousand four.

(b) The council shall provide copies of its reports to the governor; president of the Senate; speaker of the House of Delegates; chairs of the Senate and House finance committees; legislative oversight commission on education accountability; higher education policy commission; and state board of education.
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 contained in more than one senatorial or delegate district, as such senatorial districts are established by section one of this article and as such delegate districts are established by section two of this article, the county commission of the county in which the precinct is located shall, prior to the fifteenth day of March, two thousand two, alter the boundary lines of its election precincts so that no precinct contains territory included in more than one senatorial or delegate district.
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 hundred ninety-four, and in every fourth year thereafter, the voters of each political party in each senatorial district shall elect two male and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two such elected committee members shall be residents of the same county. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at
When senatorial districts are realigned following a decennial census, members of the state executive committee previously elected or appointed shall continue in office until the expiration of their terms, and appointments made to fill vacancies on the committee until the next election of executive committee members shall be selected from the previously established districts. At the first election of executive committee members following the realignment of senatorial districts, members shall be elected from the newly established districts.

At such primary election, the voters of each political party in each county shall elect one male and one female member of the party’s executive committee of the congressional district, of the senatorial district and of the delegate district in which such county is situated, if such county be situated in a multi-county senatorial or delegate district. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county to a congressional or multi-county senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multi-county district until the expiration of their terms: Provided, That the county executive committee of the political party shall determine which previously elected members shall represent the county if the number of multi-county senatorial or delegate districts in the county is decreased; and shall appoint members to complete the remainder of the term if the number of such districts is increased.

At the same time such voters of the county in each magisterial district or executive committee district, as the case may be, shall elect one male and one female member of the party’s county executive committee, except that in counties having three executive committee districts there shall be elected two male and two female members of the party’s executive committee from each magisterial or executive committee district.
For the purpose of complying with the provisions of this section, the county commission shall create such executive committee districts as they shall determine, which such districts shall not be fewer than the number of magisterial districts in such counties, nor shall they exceed in number the following: Forty for counties having a population of one hundred thousand persons or more; thirty for counties having a population of fifty thousand to one hundred thousand; twenty for counties having a population of twenty thousand to fifty thousand; and such districts in counties having a population of less than twenty thousand persons shall be coextensive with the magisterial districts.

The executive committee districts shall be as nearly equal in population as practicable, and shall each be composed of compact, contiguous territory. The county commissions shall change the territorial boundaries of such districts as required by the increase or decrease in the population of such districts as determined by a decennial census. Such changes must be made within two years following such census.

All members of executive committees, selected for each political division as herein provided, shall reside within the county or district from which chosen. The term of office of all members of executive committees elected at the primary election in the year one thousand nine hundred ninety-four shall begin on the first day of July, following said primary, and shall continue for four years thereafter and until their successors are elected and qualified. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, senatorial district, delegate district or county shall be filled by the party's executive committee of the county in which such vacancy exists, and shall be for the unexpired term.
As soon as possible after the certification of the election of the new executive committees, as herein provided, they shall convene an organizational meeting within their respective political divisions, on the call of the chairman of corresponding outgoing executive committees, or by any member of the new executive committee in the event there is no corresponding outgoing executive committee and proceed to select a chairman, a treasurer and a secretary, and such other officers as they may desire, each of which officers shall for their respective committees perform the duties that usually appertain to such offices. The organizational meeting may be conducted prior to the beginning of the term, but no official action other than the election of officers and the appointment to fill vacancies on the committee may be made before the first day of July. A current listing of all executive committees' members shall be filed with the secretary of state by the end of July of each year. Vacancies in any executive committee shall be filled no later than four months after the vacancy occurs and the chairman of each executive committee shall submit an updated committee list as changes occur. Executive committee membership lists shall include at least the member's name, full address, employer, telephone number and term information. If a vacancy on an executive committee is not filled within the four-month period prescribed by the provisions of this section, the chair of the executive committee shall name someone to fill the vacancy within ten days of the expiration of the four-month period.

Any meeting of any political party executive committee shall be held only after public notice and notice to each member is given according to party rules and shall be open to all members affiliated with such party. Meetings shall be conducted according to party rules, all official actions shall be made by voice vote, and minutes shall be maintained and shall be open to inspection by members affiliated with such party.
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.

CHAPTER 3. ELECTIONS.

Article
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 election officials charged with conducting the process of voting within a precinct and consists of five persons, including one team of poll clerks, one team of election commissioners for the
ballot box and one additional election commissioner: Provided, That if a municipal election is held at a time when there is no county or state election, then the standard receiving board is to consist of four persons, including one team of poll clerks and one team of election commissioners for the ballot box;

(2) The term “expanded receiving board” means a standard receiving board as defined in subdivision (1) of this subsection and one additional team of poll clerks;

(3) The term “counting board” means those election officials charged with counting the ballots at the precinct in counties using paper ballots and includes one team of poll clerks, one team of election commissioners and one additional commissioner;

(4) The term “team of poll clerks” or “team of election commissioners” means two persons appointed by opposite political parties to perform the specific functions of the office: Provided, That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation; and

(5) The term “election official trainee” means an individual who is sixteen or seventeen years of age who meets the requirements of subdivisions (2), (3), (4), (5) and (6), subsection (a), section twenty-eight of this article who serves as a trainee to the standard receiving board on a volunteer basis by assisting the standard receiving board in performing its official duties and who receives credits for an official community service program as may be required to obtain a high school diploma.

(b) The composition of boards of election officials shall be as follows:
(1) In any primary, general or special election other than a presidential primary or presidential general election, each election precinct is to have one standard receiving board;

(2) In presidential primary and presidential general elections, each election precinct is to have one receiving board as follows:

(A) For precincts of less than five hundred registered voters, one standard receiving board;

(B) For precincts of five hundred to seven hundred registered voters, one standard receiving board or, at the discretion of the county commission, one expanded receiving board; and

(C) For precincts of more than seven hundred registered voters, one expanded receiving board;

(3) In any election conducted using paper ballots, counting boards may be allowed, disallowed or required as follows:

(A) For any state, county or municipal special election, no counting board may be allowed;

(B) In a statewide primary or general election, one counting board is required for any precinct of more than four hundred registered voters and one counting board may be allowed, at the discretion of the county commission, for any precinct of at least two hundred but no more than four hundred registered voters; and

(C) In a municipal primary or general election, one counting board may be allowed, at the discretion of the municipal governing body, for any precinct of more than two hundred registered voters.
(c) For each primary and general election in the county, the county commission shall designate the number and type of election boards for the various precincts according to the provisions of this section. At least eighty-four days before each primary and general election the county commission shall notify the county executive committees of the two major political parties in writing of the number of nominations which may be made for poll clerks and election commissioners.

(d) For each municipal election, the governing body of the municipality shall perform the duties of the county commission as provided in this section.

(e) For each primary, general or special election in the county, the county commission, and for each municipal election, the governing body of the municipality, may appoint 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.

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;
(3) Each county executive committee shall also nominate qualified persons as alternates for at least ten percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chairman or secretary on its behalf, shall file in writing with the appointing body, no later than the fifty-sixth day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:
(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.

e) The appropriate governing body shall appoint the election officials for each designated election board no later than the forty-ninth day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting, the governing body shall appoint persons as alternates: Provided, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official, or is instructed to attend and actually attends training as an alternate,
and, if called to do so, also serves at the polls on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within fourteen days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If an appointed election official fails to appear at the polling place by forty-five minutes past five o’clock a.m. on election day, the election officials present shall contact the
office of the clerk of the county commission for assistance in filling the vacancy and the clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in section twenty-nine of this article, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(k) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other
and the name of the poll clerk affixing the voter’s mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon.

(b) The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer that person’s registration to the nearest polling place in the county which is handicap accessible. Requests by these persons for a transfer of registration shall be received by the county clerk no later than thirty days prior to the date of the election. Any handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a challenged ballot at a handicap accessible polling place in the county of his or her registration and, if during the canvass the county commission determines that the person had been registered in a precinct not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated “challenged ballot/handicapped voter”. After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter’s ballot shall be placed with other approved challenged ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter’s signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and shall deliver the ballot to the voter to be voted by him or her then without leaving the
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
for voting in the manner hereinbefore provided and, on request, shall read over to the voter the names of candidates on the ballot as so prepared;

(B) Require the election commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his or her ballot in the manner hereinbefore provided;

(C) Be assisted by any person of the voter’s choice, other than the voter’s present or former employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member, or a candidate on the ballot; or

(D) If he or she is handicapped, vote from an automobile, outside the polling place or precinct, in the presence of an election commissioner of each political party if all of the following conditions are met:

(i) The polling place is not handicap accessible; and

(ii) No voters are voting or waiting to vote inside the polling place.

(2) Any voter who requests assistance in voting but who is believed not to be qualified for such assistance under the provisions of this section shall nevertheless be permitted to vote a challenged ballot with the assistance of any person herein authorized to render assistance.

(3) Any one or more of the election commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter thereof received assistance in voting it when in his or their opinion that the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The
election commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and reason therefor on the form and in the manner prescribed or authorized by article three of this chapter.

(4) An election commissioner or other person who assists a voter in voting:

(A) May not in any manner request or seek to persuade or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question and must not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and must not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter or which ticket he or she had voted or how he or she had voted on any public question or anything occurring within the voting booth or compartment or voting machine booth except when required pursuant to law to give testimony as to the matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the secretary of state stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation: Provided, That no person providing assistance to a voter is required to sign an oath or affirmation where the reason for requesting assistance is the voter's inability to vote without assistance because of blindness as defined in section three, article fifteen, chapter five of this code and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.
(5) In accordance with instructions issued by the secretary of state, the clerk of the county commission shall provide a form entitled “list of assisted voters”, the form of which list shall likewise be prescribed by the secretary of state. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter has been assisted in voting the ballot as herein provided, the commissioners shall likewise make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot the voter shall fold the same so that the face is not exposed and so that the names of the poll clerks thereon are seen. The voter shall then announce his or her name and present his or her ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room and beyond the sixty-foot limit thereof and may not return except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters, together with the “list of assisted voters”, shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns, who shall make the oaths, affirmations and list available for public inspection and who shall preserve these for a period of twenty-two months or until disposition is authorized or directed by the secretary of state, or court of record.
(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county or regional jail for a period of not more than one year, or both fined and imprisoned.

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the election commissioner or poll clerk not to require assistance in voting is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.

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.

(a) The clerk of the county commission shall provide voter registration services at all times when the office of the clerk is open for regular business. In addition, the office of the clerk shall remain open for voter registration from 9:00 a.m. until 8:00 p.m. on the two weekdays immediately preceding the close of registration for statewide primary and general elections, other than legal holidays, and from 9:00 a.m. until 5:00 p.m. on
the Saturday prior to the close of registration for statewide primary and general elections.

(b) Any eligible voter who desires to apply for voter registration in person at the office of the clerk of the county commission shall complete a voter registration application on the prescribed form and shall sign the oath required on that application in the presence of the clerk of the county commission or his or her deputy. The applicant shall then present valid identification and proof of age, except that the clerk may waive the proof of age requirement if the applicant is clearly over the age of eighteen.

(c) The clerk shall attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes.

(d) Upon receipt of the completed registration application, the clerk shall either:

(1) Provide a notice of procedure for verification and notice of disposition of the application and immediately begin the verification process prescribed by the provisions of section sixteen of this article; or

(2) Upon presentation of a current driver’s license or state-issued identification card containing the residence address as it appears on the voter registration application, issue the receipt of registration.

§3-2-19. Maintenance of active and inactive registration files in precinct record books and county alphabetical registration file.
(a) Each county shall continue to maintain a record of each active and inactive voter registration in precinct registration books until the state uniform data system is adopted pursuant to the provisions of section twenty of this article, fully implemented and given final approval by the secretary of state. The precinct registration books shall be maintained as follows:

1. Each active voter registration shall be entered in the precinct book or books for the county precinct in which the voter's residence is located and shall be filed alphabetically by name, alphabetically within categories, or by numerical street address, as determined by the clerk of the county commission for the effective administration of registration and elections. No active voter registration record shall be removed from the precinct registration books unless the registration is lawfully transferred or canceled pursuant to the provisions of this article.

2. Each voter registration which is designated "inactive" pursuant to the procedures prescribed in section twenty-seven of this article shall be retained in the precinct book for the county precinct in which the voter's last recorded residence address is located until the time period expires for which a record must remain on the inactive files. Every inactive registration shall be clearly identified by a prominent tag or notation or arranged in a separate section in the precinct book clearly denoting the registration status. No inactive voter registration record shall be removed from the precinct registration books unless the registration is lawfully transferred or canceled pursuant to the provisions of this article.

(b) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

1. County precinct books shall be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same and all registrants of the
precinct are entitled to vote in state, county and municipal elections within the precinct or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or book for that county precinct and can be used either alone or in combination with other precinct books to make up a complete set of registration records for the municipal election precinct.

(2) Upon request of the municipality, and if the clerk of the county commission does not object, separate municipal precinct books shall be maintained in cases where municipal or ward boundaries divide county precincts and it is impractical to use county precinct books or separate municipal sections of those precinct books. If the clerk of the county commission objects to the request of a municipality for separate municipal precinct books, the state election commission must determine whether the separate municipal precinct books should be maintained.

(3) No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

(c) No later than the first day of January, one thousand nine hundred ninety-five, and within thirty days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality shall file with the clerk of the county commission a certified current official municipal boundary map and a list of streets and ranges of street numbers within the municipality to assist the clerk in determining whether a voter’s address is within the boundaries of the municipality.

(d) Each county, so long as precinct registration books are maintained, shall maintain a duplicate record of every active and inactive voter registration in a county alphabetical file. The
alphabetical file may be maintained on individual paper forms or, upon approval of the secretary of state of a qualified data storage program, may be maintained in digitized format. A qualified data storage program shall be required to contain the same information for each voter registration as the precinct books, shall be subject to proper security from unauthorized alteration and shall be regularly duplicated to backup data storage to prevent accidental destruction of the information on 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.

Throughout the period of absentee voting in person, the official designated to supervise and conduct absentee voting shall make the following provisions for voting:

(1) The official shall provide a sufficient number of voting booths or devices appropriate to the voting system at which voters may prepare their ballots. The booths or devices are to be in an area separate from but within clear view of the public entrance area of the official's office or other area designated by the county commission for absentee voting and are to be arranged to ensure the voter complete privacy in casting the ballot.
The official shall make the voting area secure from interference with the voter and shall ensure that voted and unvoted ballots are at all times secure from tampering. No person, other than a person lawfully assisting the voter according to the provisions of this chapter, may be permitted to come within five feet of the voting booth while the voter is voting. No person, other than the officials or employees of the official designated to supervise and conduct absentee voting or members of the board of ballot commissioners assigned to conduct absentee voting, may enter the area or room set aside for voting.

The official designated to supervise and conduct absentee voting shall request the county commission designate another area within the county courthouse or any annex of the courthouse as a portion of the official’s office for the purpose of absentee voting in the following circumstances:

(A) If the voting area is not accessible to voters with physical disabilities;

(B) If the voting area is not within clear view of the public entrance of the office of the official designated to supervise and conduct absentee voting; or

(C) If there is no suitable area for absentee voting within the office.

Any designated area is subject to the same requirements as the regular absentee voting area.

No person may do any electioneering nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters or material of any kind which tends to influence the voting for or against any candidate or any public question on the property of the county courthouse or any annex facilities during the entire period of regular in-person absentee voting. The official designated to
supervise and conduct absentee voting is hereby authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.

§3-3-3. Voting an absentee ballot in person.

(a) Regular absentee voting in person is to be conducted during regular business hours beginning on the fifteenth day before the election and continuing through 1:00 p.m. the Monday before the election for any election held on a Tuesday, or continuing through 1:00 p.m. the day before the election for any election held on another day. For any election held on a Tuesday, regular absentee voting in person is to be available from 9:00 a.m. to 5:00 p.m. on the Saturday before the election.

(b) Special absentee voting in person for persons eligible to vote an absentee ballot under the provisions of subsection (c), section one of this article is to be conducted during regular business hours in the office of the official designated to supervise and conduct absentee voting beginning on the forty-second day before the election and continuing until the first day when regular absentee voting in person begins. Any person seeking to vote absentee under this subsection is to first give an affidavit, on a form prescribed by the secretary of state, stating under oath the specific circumstances which prevent voting absentee during the period for regular absentee voting in person or by mail.

(c) Upon oral request, the official designated to supervise and conduct absentee voting shall provide the voter with the appropriate application for voting absentee in person, as provided in this article. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of illiteracy or physical disability, the person assisting the voter and witnessing
the mark of the voter shall sign his or her name in the space provided.

(d) Upon completion, the application is to be immediately returned to the official designated to supervise and conduct absentee voting who shall determine:

(1) Whether the application has been completed as required by law;

(2) Whether the applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested; and

(3) Whether the applicant is authorized for the reasons given in the application to vote an absentee ballot by personal appearance during the special absentee voting period at the time of the application.

(e) If the official designated to supervise and conduct absentee voting determines the conditions provided in subsection (d) of this section have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall challenge the voter's absentee ballot as provided in this article.

(f) The official designated to supervise and conduct absentee voting shall provide each person voting an absentee ballot in person the following items to be printed as prescribed by the secretary of state:

(1) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) For all punch card and paper ballot voting and for optical scan ballots voted after election supplies are delivered to the election supply commissioner, one envelope, unsealed,
which may have no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions to the voter;

(3) For all punch card and paper ballot voting and for optical scan ballots voted after election supplies are delivered to the election supply commissioner, one envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2"; and

(4) For optical scan voting systems, ballots, a secrecy sleeve and access to a ballot box secured by two locks with keys kept by the president of the county commission and the county clerk.

(g) The voter shall enter the voting booth alone and there mark the ballot: Provided, That the voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the punch card and paper absentee voter shall: (1) Place the ballot or ballots in envelope no. 1 and seal that envelope; (2) place the sealed envelope no. 1 in envelope no. 2 and seal that envelope; (3) complete and sign the forms on envelope no. 2; and (4) return that envelope to the official designated to supervise and conduct the absentee voting.

(h) Upon receipt of the sealed envelope, the official designated to supervise and conduct the absentee voting shall:

(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and
§3-3-4. Assistance to voter in voting an absent voter's ballot by personal appearance; penalties.

(a) Any registered voter who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write may be given assistance by a person of the voter's choice: Provided, That the assistance may not be given by the voter's present or former employer or agent of that employer, by the officer or agent of a labor union of which the voter is a past or present member or by a candidate on the ballot.

(b) Any voter who requests assistance in voting an absent voter's ballot but who is determined by the official designated to supervise and conduct absentee voting not to be qualified for assistance under the provisions of this section and section thirty-four, article one of this chapter may vote a challenged absent voter's ballot with the assistance of any person authorized to render assistance pursuant to this section. The official designated to supervise and conduct absentee voting shall in this case challenge the absent voter's ballot on the basis of his or her determination that the voter is not qualified for assistance.

(c) Any one or more of the election commissioners or poll clerks in the precinct to which an absent voter's ballot has been sent may challenge the ballot on the ground that the voter received assistance in voting it when in his or their opinion: (1) The person who received the assistance in voting the absent voter's ballot did not require assistance; or (2) the person who provided the assistance in voting did not make an affidavit as required by this section. The election commissioner or poll clerk or commissioners or poll clerks making a challenge shall
enter the challenge and reason for the challenge on the form and in the manner prescribed or authorized by this article.

(d) Before entering the voting booth or compartment, the person who intends to provide a voter assistance in voting shall make an affidavit, the form of which is to be prescribed by the secretary of state, that he or she will not in any manner request or seek to persuade or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question and that he or she will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter or which ticket he or she had voted or how he or she had voted on any public question or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to the matter in a judicial proceeding.

(e) In accordance with instructions issued by the secretary of state, the official designated to supervise and conduct absentee voting shall provide a form entitled "List of Assisted Voters", prescribed by the secretary of state, which list is to be divided into two parts. Part A is to be entitled "Unchallenged Assisted Voters" and Part B is to be entitled "Challenged Assisted Voters". Under Part A, the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving unchallenged assistance in voting an absent voter's ballot, the address of the voter assisted, the nature of the disability which qualified the voter for assistance in voting an absent voter's ballot, the name of the person providing the voter with assistance in voting an absent voter's ballot, the fact that the person rendering the assistance in voting made and subscribed to the oath required by this section and the signature of the official designated to supervise and conduct absentee voting certifying to the fact that he or she had deter-
mined that the voter who received assistance in voting an absent voter’s ballot was qualified to receive the assistance under the provisions of this section. Under Part B, the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving challenged assistance in voting, the address of the voter receiving challenged assistance, the reason for the challenge and the name of the person providing the challenged voter with assistance in voting. At the close of the period provided for voting an absent voter’s ballot by personal appearance, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath on the list that the list is correct in all particulars; if no voter has been assisted in voting an absent voter’s ballot as provided in this section, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath of that fact on the list. The “List of Assisted Voters” is to be available for public inspection in the office of the official designated to supervise and conduct absentee voting during regular business hours throughout the period provided for voting an absent voter’s ballot by personal appearance and, unless otherwise directed by the secretary of state, the official shall transmit the list, together with the affidavits, applications and absent voters’ ballots, to the precincts on election day.

(f) Following the election, the affidavits required by this section from persons providing assistance in voting, together with the “List of Assisted Voters”, are to be returned by the election commissioners to the clerk of the county commission, along with the election supplies, records and returns, who shall make the oaths and list available for public inspection and who shall preserve the oaths and list for twenty-two months or, if under order of the court, until their destruction or other disposition is authorized or directed by the court.

(g) Any person making an affidavit required under the provisions of this section who knowingly swears falsely in the
affidavit or any person who counsels or advises, aids or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period of not more than one year, or both.

(h) Any person who provides a voter assistance in voting an absent voter's ballot in the office of the official designated to supervise and conduct absentee voting who is not qualified or permitted by this section to provide assistance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county or regional jail for a period of not more than one year, or both.

(i) Any official designated to supervise and conduct absentee voting, election commissioner or poll clerk who authorizes or allows a voter to receive or to have received unchallenged assistance in voting an absent voter's ballot when the voter is known to the official designated to supervise and conduct absentee voting or election commissioner or poll clerk not to be or have been authorized by the provisions of this section to receive or to have received assistance in voting is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county or regional jail for a period of not more than one year, or both.

(j) The term "physical disability" as used in this section means blindness or a degree of blindness as will prevent the voter from seeing the names on the ballot or amputation of both hands or a disability of both hands that neither can be used to make cross marks on the absent voter's ballot.

§3-3-7. Delivery of absentee ballots to polling places.
(a) Except as otherwise provided in this article, in counties in which the clerk of the county commission has determined that the absentee ballots should be counted at the precincts in which the absent voters are registered, the absentee ballots of each precinct, together with the applications for the absentee ballots, the affidavits made in connection with assistance in voting, and any forms, lists and records as may be designated by the secretary of state, are to be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he or she picks up the official ballots and other election supplies as provided in section twenty-four, article one of this chapter.

(b) For optical scan voting systems, all ballots voted before the precinct supplies are delivered to the precinct supply commissioner are to be deposited in the ballot box. The ballots deposited in the ballot box shall be counted and merged with the election day ballots at the counting center on election night.

(c) Absentee ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant to section twenty-four, article one of this chapter, by the official designated to supervise and conduct absentee voting in person, or by messenger, before the closing of the polls, provided the ballots are received by the official in time to make the delivery. Any ballots received by the official after the time that delivery may reasonably be made but within the time required as provided in subsection (g), section five of this article, are to be delivered to the board of canvassers along with the challenged ballots.

§3-3-8. Disposition and counting of absent voters' ballots.
(a) All absentee ballots voted must be deposited in the absentee ballot box. The ballots deposited in the ballot box must be counted and merged with the election day ballots at the counting center on election night or, at the option of the clerk of the county commission, be delivered for counting at the precinct in which the absent voter is registered to vote, as provided in section seven of this article.

(b) The county clerk shall appoint at least one team of five absentee ballot counting commissioners. The composition of each team shall consist of the same combination of election officials as provided for a counting board in subdivision (3), subsection (a), section twenty-nine, article one of this chapter. The absentee ballot counting commissioners must count the absentee ballots at the counting center as follows:

(1) Immediately after the closing of the polls on election day the absentee ballot counting commissioners, in the presence of each other, shall open the ballot box in which are enclosed the absent voters’ ballots.

(2) After the ballot box has been opened, each of the absentee ballot counting commissioners shall examine each of the mail-in sealed absent voter’s ballot envelopes no. 2 contained therein, as well as the information contained thereon, the application for such ballot, the affidavits, records and lists, if any, made, prepared or authorized under the provisions of this article which relate thereto and make a decision as to each ballot whether a challenge is or is not to be made to such ballot. The appropriate form indicating the challenge shall be completed as to each ballot challenged by one or more of the absentee ballot counting commissioners. Each ballot challenged shall remain sealed in absent voter’s ballot envelope no. 2 and be deposited in the box or envelope for challenged ballots.
32 (3) The absentee ballot counting commissioners shall next determine whether any challenge has been made to any absent voter’s ballot by any registered voter in the county under the provisions of section nine of this article. Each such ballot challenged shall remain sealed in absent voter’s ballot envelope no. 2 and be deposited in the box or envelope for challenged ballots.

39 (4) The absentee ballot counting commissioners, in the presence of each other, shall then open, in a manner as not to deface or destroy the information thereon, all of the mail-in absent voter’s ballot envelopes no. 2 which contain ballots not challenged and remove therefrom the absent voter’s ballot envelopes no. 1. These envelopes shall then be shuffled and intermingled.

58 (6) The absentee ballot counting commissioners shall next count the mail-in and in-person absentee ballots and enter the totals onto the precinct election records.

71 (7) The challenged ballots shall be deposited in a challenged ballot envelope and delivered to the board of canvassers.
(c) Any election official who determines a person has voted an absent voter's ballot and has also voted at the polls on election day must report the fact to the prosecuting attorney of the county in which the votes were cast.

§3-3-11. Preparation, number and handling of absent voters' ballots.

(a) Absent voters' ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided for in any specific election law in which case the lesser number of days applies, the clerks of the circuit courts of the several counties shall estimate and determine the number of absent voters' ballots of all kinds which will be required in their respective counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, are to be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters' ballots that are to be printed under their directions as provided in this chapter and those ballots are to be delivered to the clerk of the circuit court of the county not less than forty-two days before the day of the election at which they are to be used. Before any ballot is mailed or delivered, the clerk of the circuit court shall affix his or her official seal and he or she and the other members of the board of ballot commissioners shall place their signatures near the lower left-hand corner on the back of the ballot. The clerks of the circuit courts are authorized to have their signatures affixed by a facsimile printed on the back of absentee ballots, by a facsimile signature stamp or by signing their original signatures. An absent voter's ballot not containing the seal and signatures shall be challenged.
29 If an accurate accounting is made for all ballots and applications in that precinct and no other valid challenge exists against the voter, the ballot shall be counted at the canvas.

32 (b) The official designated to supervise and conduct absentee voting shall be primarily responsible for the mailing, receiving, delivering and otherwise handling of all absent voters’ ballots. He or she shall keep a record, as may be prescribed by the secretary of state, of all ballots so delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him or her and shall deliver to the commissioner of election a certificate stating the number of ballots delivered or mailed to absent voters and those marked before him or her, if any, and the names of the voters to whom those ballots have been delivered or mailed or by whom they have been marked, if marked before him or her.

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 machines are to be used in any election shall cause to be printed for use in the election the ballot labels for the voting machines and paper ballots for absentee voting, voting by persons unable to use the voting machine and challenged ballots, or if an electronic voting system or direct recording election equipment is to be used in an election, the ballot commissioners shall comply with requirements of section eleven, article four-a of this chapter. The labels shall be clearly printed in black ink on clear white material of such size as will fit the ballot frames.
The paper ballots shall be printed in compliance with the provisions of this chapter governing paper ballots.

(b) The heading, the names and arrangement of offices and the printing and arrangement of names of the candidates for each office indicated must be placed on the ballot for the primary election as nearly as possible according to the provisions of sections thirteen and thirteen-a, article five of this chapter, and for the general election according to the provisions of section two, article six of this chapter: Provided, That the staggering of the names of candidates in multicandidate races and the instructions to straight ticket voters prescribed by section two, article six of this chapter shall appear on paper ballots but shall not appear on ballot labels for voting machines which mechanically control crossover voting.

(c) Each question to be voted on must be placed at the end of the ballot and must be printed according to the provisions of the laws and regulations governing the question.

(d) The ballot labels printed must total in number one and one-half times the total number of corresponding voting machines to be used in the several precincts of the county in the election. All the labels must be delivered to the clerk of the circuit court at least twenty-eight days prior to the day of the election. The clerk of the circuit court shall determine the number of paper ballots needed for absentee voting and to supply the precincts for challenged ballots and ballots to be cast by persons unable to use the voting machine. All required paper ballots shall be delivered to the clerk of the circuit court at least forty-two days prior to the day of the election.

(e) When the ballot labels and absentee ballots are delivered, the clerk of the circuit court shall examine them for accuracy, assure that the appropriate ballots and ballot labels are designated for each voting precinct, and deliver the ballot
labels to the clerk of the county commission, who shall insert one set in each machine prior to the inspection of the machines as prescribed in section twelve of this article. The remainder of the ballot labels for each machine shall be retained by the clerk of the county commission for use in an emergency.

(f) In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots and facsimile diagrams of the voting machine ballot adequate for the orderly conduct of the election in each precinct in their county. In addition, they shall provide appropriate facilities for the reception and safekeeping of the ballots of absent voters and of challenged voters and of such "independent" voters who shall, in primary elections, cast their votes on nonpartisan candidates and public questions submitted to the voters.

§3-4-20. Recording and disposition of absent voters' ballots.

The recording and disposition of absent voters' ballots shall 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.

An electronic voting system that has been approved in accordance with section eight of this article may be adopted for use in general, primary and special elections in any county by either of the following procedures and not otherwise:

(1) By a majority of the members of the county commission voting to adopt the same at a special public meeting called for
the purpose of said adoption, with due notice thereof published
as a Class II-0 legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code and
the publication area for such publication shall be the county
involved: Provided, That such meeting shall be held not less
than six months prior to a general election or six months prior
to a primary election. If at such meeting such county commis-
sion shall enter an order of its intention to adopt the use of an
electronic voting system, it shall thereafter forthwith cause to
be published a certified copy of such order as a Class II-0 legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code and the publication area for
such publication shall be the county involved. The first publica-
tion of such order shall not be less than twenty days after the
entry of such order. Such county commission shall not adopt
the use of an electronic voting system until eighty-five days
after the entry of such order of its intention to adopt the same.
Promptly after the expiration of eighty-five days after the entry
of such order of intention to adopt the use of an electronic
voting system, if no petition has theretofore been filed with
such county commission requesting a referendum on the
question of adoption of an electronic voting system as hereinaf-
ther provided, such county commission shall enter a final order
adopting the electronic voting system and the electronic voting
system shall thereby be adopted.

If five percent or more of the registered voters of such
county shall sign a petition requesting that an electronic voting
system be not adopted for use in such county and such petition
be filed with the county commission of such county within
eighty-five days after the entry of such order of intention to
adopt the use of an electronic voting system, such county
commission shall submit to the voters of such county at the next
general or primary election, whichever shall first occur, the
question: "Shall an electronic voting system be adopted in
County?" If this question be answered in the
affirmative by a majority of the voters in such election upon the question, an electronic voting system shall thereby be adopted. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall not be adopted.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of the adoption of an electronic voting system in such county. If five percent or more of the registered voters of such county shall sign a petition requesting the adoption of an electronic voting system for use in such county and such petition be filed with the county commission of such county, such county commission shall submit to the voters of such county at the next general or primary election the question: “Shall an electronic voting system be adopted in ______ County?” If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, an electronic voting system shall thereby be adopted. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall not be adopted: Provided, That nothing in this section shall be construed to affect or invalidate the adoption of any electronic voting system by any county in accordance with applicable law prior to the effective date of this section: Provided, however, That the amendments to this section adopted during the regular session of the Legislature in the year two thousand two apply to any county commission which is in the process of adopting an electronic voting system 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.

(a) Where applicable, every ballot utilized during the course of any electronic voting system election conducted under the
provisions of this article is to have two lines for the signatures of the poll clerks. Both of the signature lines are to be printed on a portion of the ballot where votes are not recorded by perforation or marking, but which portion is an actual part of the ballot deposited in the ballot box after the voter has perforated or marked his or her ballot and after the ballot stub has been removed. Each of the two poll clerks shall sign his or her name on one of the designated lines provided on each ballot before any ballot is distributed to a voter.

(b) After a voter has signed the pollbook, as required in section nineteen of this article, the two poll clerks shall deliver a ballot to the voter, which ballot has been signed by each of the two poll clerks as provided in this section: Provided, That where an electronic voting system that utilizes screens upon which votes may be recorded by means of a stylus or by means of touch, an election commissioner shall accompany the voter to the voting device and shall activate the device for voting.

(c) Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

(a) Absentee voters shall cast their votes on absent voter ballots.

(b) If absentee voters are deemed eligible to vote in person at the office of the official designated to supervise and conduct absentee voting, in accordance with the provisions of article three of this chapter, the official for each county shall provide a vote recording device or other means, as may be appropriate for votes recorded by electronically sensible ink or pencil, or by
means of a stylus or by means of touch, for the use of the absentee voters. Notwithstanding any provision of article three of this chapter to the contrary, any voter who desires to vote by absentee ballot in a county using an electronic voting system with a screen upon which votes are recorded by means of a stylus or by means of touch shall complete an application prescribed by the secretary of state which is to be processed in the manner otherwise prescribed by law, except that the official designated to supervise and conduct absentee voting shall deliver a copy of the application to each polling place. No voter who votes in person by absentee ballot may vote in person on the date of the election.

(c) For all absentee voters considered eligible to vote an absent voter's ballot by mail, in accordance with the provisions of article three of this chapter, the official designated to supervise and conduct absentee voting for each county shall prepare and issue an absent voter ballot packet consisting of the following:

(1) One official absent voter ballot;

(2) One punching tool for perforating or a device for marking by electronically sensible pen or ink, as may be appropriate;

(3) If a punching tool is to be utilized, one disposable styrofoam block to be placed behind the ballot card for voting purposes and to be discarded after use by the voter;

(4) One absent voter instruction ballot;

(5) One absent voter’s ballot envelope no. 1, unsealed, which may have no writing on it and which is to be identical to the secrecy envelope used for placement of ballots at the polls; and
(6) One absent voter's ballot envelope no. 2, marked with the proper precinct number and providing a place on its seal for the absent voter to affix his or her signature. The envelope is also to contain the forms and instructions as provided in section five, article three of this chapter relating to the absentee voting of proper ballots.

(d) Upon receipt of an absent voter's ballot by mail, the voter shall mark the ballot with the punch tool or marking device, whichever is appropriate, and the voter may receive assistance in voting his or her absent voter's ballot in accordance with the provisions of section six, article three of this chapter.

(e) After the voter has voted his or her absent voter's ballot, he or she shall: (1) Enclose the ballot in absent voter's ballot envelope no. 1, and seal that envelope; (2) enclose sealed absent voter's ballot envelope no. 1 in absent voter's ballot envelope no. 2; (3) complete and sign the forms, if any, on absent voter's ballot envelope no. 2 according to the instructions on the envelope; and (4) mail, postage prepaid, sealed absent voter's ballot envelope no. 2 to the official designated to supervise and conduct absentee voting for the county in which he or she is registered to vote, unless the voter has appeared in person, in which event he or she shall hand deliver the sealed absent voter's ballot envelope no. 2 to the official.

(f) Upon receipt of the sealed envelope, the official designated to supervise and conduct absentee voting shall: (1) Enter onto the envelope any information as may be required of him or her according to the instructions on the envelope; (2) enter his or her challenge, if any, to the absent voter's ballot; (3) enter the required information into a record of persons making application for and voting an absent voter's ballot by personal appearance or by mail on a form prescribed by the secretary of state; and (4) place the sealed envelope in a secure
location in his or her office, there to remain until after the close
of the polling place on election day in accordance with the
provisions of this article or, in case of a challenged ballot, to the
county commission sitting as a board of canvassers.

(g) Notwithstanding any provision of article three of this
chapter to the contrary, no voter who has voted by absentee
ballot in accordance with the provisions of article three of this
chapter, or otherwise as provided by law, in a county using an
electronic voting system with screens upon which votes are
recorded by means of a stylus or by means of touch may vote
in person on the date of the election.

(h) The absentee ballot counting commissioners shall, at the
close of the polls, proceed to determine the legality of the
ballots as prescribed in article three of this chapter. The
absentee ballot counting commissioners shall then open all of
the absent voter’s ballot envelopes no. 2 which contain ballots
not challenged and remove from the envelopes the absent
voter’s ballot envelopes no. 1. These ballot envelopes no. 1 are
then to be shuffled and intermingled. The absentee ballot
counting commissioners, in the presence of each other, shall
next open all of the absent voter’s ballot envelopes no. 1 and
remove the ballots from the envelopes. The absentee ballot
counting commissioners who are poll clerks shall then affix
their signatures to the ballots as provided in section nineteen-a
of this article. The commissioners shall then insert each ballot
into a secrecy envelope identical to the secrecy envelopes used
for the placement of ballots of voters who are voting in person
at the polls and shall deposit the ballot in the ballot box. The
requirement that two poll clerks sign a ballot according to this
subsection is a mandatory duty and is not to be construed as
merely directory.

(i) In the course of an election contest, if it is established
that a ballot does not contain the two signatures required by this
section, the ballot is null, void and of no effect and may not be counted. The requirement that a ballot not be counted if it does not meet the requirements of this section is mandatory and not to be construed as merely directory.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-13. Form and contents of ballots and ballot labels.

The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(a) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words “Primary Election” and the month, day and year of the election. The ballot title of the political party ballots is to contain the words “Official Ballot of the (Name) Party” and the official symbol of the political party may be included in the heading. The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the board of education is to contain the words “Nonpartisan Ballot of Election of Members of the _____________ County Board of Education”. The districts for which less than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office. Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(b) (1) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: “National Ticket”, “State Ticket”, “County Ticket” and, in a presidential election 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 magister-
57 rial district and the words “Vote for One” printed below the
58 name of the office.
(c) The location for indicating the voter’s choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(d)(1) The name of every candidate certified by the secretary of state or the board of ballot commissioners is to be printed in capital letters in no smaller than eight-point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the secretary of state, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(2) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(3) The arrangement of names within each office must be determined as prescribed in section thirteen-a of this article.

(4) If the number of candidates for an office exceeds the space available on a column or ballot label page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions
given the voter that the candidates for the office are continued
on the following column or page.

(e) When an insufficient number of candidates has filed for
a party to make the number of nominations allowed for the
office or for the voters to elect sufficient members to the board
of education or to executive committees, the vacant positions on
the ballot shall be filled with the words “No Candidate Filed”:
Provided, That in paper ballot systems which allow for write-
ins to be made directly on the ballot, a blank line shall be placed
in any vacant position in the office of board of education or for
election to any party executive committee. A line shall separate
each candidate from every other candidate for the same office.
Notwithstanding any other provision of this code, if there are
multiple vacant positions on a ballot for one office, the multiple
vacant positions which would otherwise be filled with the
words “No Candidate Filed” may be replaced with a brief
detailed description, approved by the secretary of state, indicat-
ing that there are no candidates listed for the vacant positions.

(f) In presidential election years, the words “For election in
accordance with the plan adopted by the party and filed with the
secretary of state” is to be printed following the names of all
candidates for delegate to national convention.

(g) All paper ballots are to be printed in black ink on paper
sufficiently thick so that the printing or marking cannot be
discernible from the back. Ballot cards and paper for printing
ballots using electronically sensible ink are to meet minimum
requirements of the tabulating systems.

(h) Electronically tabulated ballots and ballot cards are to
contain perforated tabs at the top of the ballots and are to be
printed with unique sequential numbers from one to the highest
number representing the total number of ballots or ballot cards
printed. On paper ballots, the ballot is to be bordered by a solid
line at least one sixteenth of an inch wide, and the ballot is to be trimmed to within one-half inch of that border.

(i) On the back of every official ballot or ballot card the words “Official Ballot” with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words “Poll Clerks”.

(j) Absent voters’ ballots are to be in all respects like other official ballots except that three blank lines are to be printed on the back of the ballot or ballot card in the lower left corner with the words “Ballot Commissioners” printed underneath.

(k) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word “sample” is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word “sample” may be printed in red ink. No printing may be placed on the back of the 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.

(a) All ballots prepared under the provisions of this section are to contain:

(1) The name and ticket of each party which is a political party under the provisions of section eight, article one of this chapter;
(2) The name chosen as the party name by each group of citizens which has secured nomination for two or more candidates by petition under the provisions of section twenty-three of this article;

(3) The names of every candidate for any office to be voted for at the election whose nomination in the primary election, nomination by petition or nomination by appointment to fill a vacancy on the ballot has been certified and filed according to law and no others.

(b) The provisions of subdivision (3), subsection (b); subsection (c); subdivisions (1) and (2), subsection (d); and subsections (g), (h), (i), (j) and (k), section thirteen of article five pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

(c) (1) For all ballot systems, the ballot heading is to be in display type and contain the words “Official Ballot, General Election” and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot is to contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem, the position for straight party voting for each party and the name of each party as prescribed in subsection (a) of this section. On paper ballots, the position for straight party voting is to be a heavy circle, three-fourths inch in diameter, surrounded by the words “For a straight ticket mark within this circle” printed in bold six-point type. On all other ballots or ballot labels, the positions for straight party voting is to be marked “Straight Party Ticket”. For ballots tabulated electronically, the secretary of state shall prescribe a uniform number for the straight ticket position for each party.
(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election is to be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote is to be next and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election are to be placed in the sequence in which the final certificates of nomination by petition were filed.

(4) (A) Except for lever machine ballot labels, the following general instructions for straight party voters are to be printed in no smaller than eight-point bold type: "IF YOU MARKED A STRAIGHT TICKET: When you mark any individual candidate in a different party, that vote will override your straight party vote for that office. When you mark any individual candidate in a different party for an office where more than one will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR THAT OFFICE because your straight ticket vote will not be counted for that office". The last sentence of the instructions may not be included on any ballot which does not contain any office or division where more than one candidate will be elected.

On paper ballots, the general instructions are to be placed below the party name and across the top of all columns, followed by a heavy line separating them from the rest of the ballot. On ballots marked with electronically sensible ink and on ballot labels for voting devices in punch card systems, the general instructions are to be placed after the position for straight voting and before any office.

(B) Except for lever machine ballot labels, the following specific instructions are to be printed on the ballot for any partisan election for an office or division to which more than one candidate is to be elected: "If you marked a straight ticket
and you mark any candidate in a different party for this office, 
you must mark all your choices for this office because your 
straight ticket vote will not be counted for this office”.

On paper ballots, the specific instructions are to be placed
below the office name of any partisan office where more than
one is to be elected and across the top of all columns for that
office before the names of any candidates. On all other ballots
and ballot labels, the specific instructions are to be placed
above or to the side of the names of the candidates as the voting
system requires.

(5) For all ballots, any columns, rows or sections in which
the ticket of one party appears are to be clearly separated from
the other columns, rows or sections by a heavy line or other
clear division. For each party, the offices are to be arranged in
the order prescribed in section thirteen-a, article five of this
chapter under the appropriate tickets, which are to be headed
“National Ticket”, “State Ticket” and “County Ticket”. The
number of pages, columns or rows, where applicable, may be
modified to meet the limitations of ballot size and composition
requirements, subject to approval by the secretary of state.

(d) The arrangement of names within each office for all
ballot systems is to be as follows:

(1) In elections for presidential electors, the names of the
candidates for president and vice president of each party are to
be placed beside a brace with a single voting position, so that a
vote for any presidential candidate is a vote for the electors of
the party for which the candidates were named.

(2) The order of names of candidates for any office or
division for which more than one is to be elected is determined
as prescribed in section thirteen-a, article five of this chapter:
Provided, That the drawing by lot is to be conducted on the
seventieth day next preceding the date of the general election, beginning at 9:00 a.m.

(3) Except in voting machine systems, in any office where more than one person is to be elected, the names of the candidates for the office are to be staggered so that no two candidates for that office appear directly opposite any other candidate, as shown in the example below:

For House of Delegates
First Delegate District
(Vote For Not More Than Two)

SUSAN B. ANTHONY
City (County)

For House of Delegates
First Delegate District
(Vote For Not More Than Two)

JOHN ADAMS
City (County)

ABRAHAM LINCOLN
City (County)

JAMES MONROE
City (County)

(4) Each voting system is to provide a means for voters to vote for any person whose name does not appear on the ticket by writing it with pen or pencil or by using stamps, stickers, tapes, labels or other means of writing in the name of a candidate which does not interfere with the tabulation of the ballot.

(A) In paper ballot systems which allow for write-ins to be made directly on the ballot, a blank square and a blank line
equal to the space which would be occupied by the name of the
candidate is to be placed under the proper office for each
vacancy in nomination and for an office for which more than
one is to be elected, any vacancy is to appear after any other
candidates for the office.

(B) In machine and electronically tabulated ballot systems
in which write-in votes must be made in a place other than on
the ballot label, if there is a vacancy in nomination leaving
fewer candidates in any party than can be elected to that office,
the words “No Candidate Nominated” is to be printed in the
space that would be occupied by the name of the candidate and
for an office for which more than one is to be elected, any such
vacancy is to appear after any other candidates for the office.

Notwithstanding any other provision of this code, if there are
multiple vacant positions on a ballot for one office, the multiple
vacant positions which would otherwise be filled with the
words “No Candidate Filed” may be replaced with a brief
detailed description, approved by the secretary of state, indicat-
ing that there are no candidates listed for the vacant positions.

(5) In a general election in any county in which unexpired
terms of the board of education are to be filled by election, a
separate section or page of the ballot is to be set off by means
clearly separating the nonpartisan ballot from the ballot for the
political party candidates and is to be headed “Nonpartisan
Board of Education”.

(e) Any constitutional amendment is to be placed following
all offices, followed by any other issue upon which the voters
are to cast a vote. The heading for each amendment or issue is
to be printed in large, bold type according to the requirements
of the resolution authorizing the election.

(f) The board of ballot commissioners may not place any
issue on the ballot for election which is not specifically autho-
ized under the West Virginia constitution or statutes or which
has not been properly ordered by the appropriate governmental
body charged with calling the election.

§3-6-4a. Filing requirements for write-in candidates.

Any eligible person who seeks to be elected by write-in
votes to an office, except delegate to national convention,
which is to be filled in a primary, general or special election
held under the provisions of this chapter shall file a write-in
candidate’s certificate of announcement as provided in this
section. No certificate of announcement may be accepted and
no person may be certified as a write-in candidate for a political
party nomination for any office or for election as delegate to
national convention.

(a) The write-in candidate’s certificate of announcement
shall be in a form prescribed by the secretary of state on which
the candidate shall make a sworn statement before a notary
public or other officer authorized to give oaths, containing the
following information:

(1) The name of the office sought and the district and
division, if any;

(2) The legal name of the candidate and the first and last
name by which the candidate may be identified in seeking the
office;

(3) The specific address designating the location at which
the candidate resides at the time of filing, including number and
street or rural route and box number and city, state and zip
code;

(4) A statement that the person filing the certificate of
announcement is a candidate for the office in good faith; and

(5) The words “subscribed and sworn to before me this
_____ day of ____________, ____” and a space for the
signature of the officer giving the oath.
(b) The certificate of announcement shall be filed with the filing officer for the political division of the office as prescribed in section seven, article five of this chapter.

(c) The certificate of announcement shall be filed with and received by the proper filing officer as follows:

(1) Except as provided in subdivisions (2) and (3) of this subsection, the certificate of announcement for any office shall be received no later than the close of business on the fourteenth day before the election at which the office is to be filled;

(2) When a vacancy occurs in the nomination of candidates for an office on the ballot resulting from the death of the nominee or from the disqualification or removal of a nominee from the ballot by a court of competent jurisdiction not earlier than the twenty-first day nor later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later;

(3) When a vacancy occurs in an elective office which would not otherwise appear on the ballot in the election, but which creates an unexpired term of one or more years which, according to the provisions of this chapter, is to be filled by election in the next ensuing election, and such vacancy occurs no earlier than the twenty-first day and no later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later.

(d) Any eligible person who files a completed write-in candidate's certificate of announcement with the proper filing officer within the required time shall be certified by that filing officer as an official write-in candidate:
(1) The secretary of state shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in more than one county and certify the name of each official write-in candidate to the clerks of the circuit court of the appropriate counties.

(2) The clerk of the circuit court shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in one county and certify and deliver to the election officials of the appropriate precincts the names of all official write-in candidates and the office sought by each for statewide, district and county offices on the ballot in the precinct for which valid write-in votes will be counted.

§3-6-6. Ballot counting procedures in paper ballot systems.

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided for in this article. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall proceed to ascertain the result of the election in the following manner:

(a) In counties in which the clerk of the county commission has determined that the absentee ballots should be counted at the precincts in which the absent voters are registered, the receiving board must first process the absentee ballots and deposit the ballots to be counted in the ballot box. The receiving
board shall then proceed as provided in subsections (b) and (c) of this section. In counties in which the absentee ballots are counted at the central counting center, the receiving board shall proceed as provided in subsections (b) and (c) of this section.

(b) The receiving board shall ascertain from the pollbooks and record on the proper form the total number of voters who have voted. The number of ballots challenged shall be counted and subtracted from the total, which result should equal the number of ballots deposited in the ballot box. The commissioners and clerks shall also report, over their signatures, the number of ballots spoiled and the number of ballots not voted.

(c) The procedure for counting ballots, whether performed throughout the day by the counting board as provided in section thirty-three, article one of this chapter or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose, without unfolding it. Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas. If properly signed, the commissioner shall hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for election for any person other than an official write-in candidate shall be disregarded. When a voter casts a straight ticket vote and also casts a write-in vote for an office, the straight ticket vote for
that office shall be rejected whether or not a vote can be counted for a write-in candidate;

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots as they are removed and whenever the number shall equal the number of voters entered on the pollbook minus the number of challenged ballots, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same or allowing anyone to examine or know the contents thereof, and the number of excess ballots shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose, so as to show the number of votes received by each candidate for each office and for and against each issue on the ballot; and

(5) When the reading of the votes is completed, the ballot shall be immediately strung on a thread.

ARTICLE 7. CONTESTED ELECTIONS.

§3-7-6. County and district contests; notices; time.

In all cases of contested elections, the county commission shall be the judge of the election, qualifications and returns of their own members and of all county and district officers: Provided, That a member of the county commission whose election is being contested may not participate in judging the election, qualifications and returns.

A person intending to contest the election of another to any county or district office, including judge of any court or any office that shall hereafter be created to be filled by the voters of the county or of any magisterial or other district therein, shall, within ten days after the result of the election is certified, give
the contestee notice in writing of such intention and a list of the
votes he will dispute, with the objections to each, and of the
votes rejected for which he will contend. If the contestant
objects to the legality of the election or the qualification of the
person returned as elected, the notice shall set forth the facts on
which such objection is founded. The person whose election is
so contested shall, within ten days after receiving such notice,
deliver to the contestant a like list of the votes he will dispute,
with the objections to each, and of the rejected votes for which
he will contend; and, if he has any objection to the qualification
of the contestant, he shall specify in writing the facts on which
the objection is founded. Each party shall append to his notice
an affidavit that he verily believes the matters and things set
forth to be true. If new facts be discovered by either party after
he has given notice as aforesaid, he may, within ten days after
such discovery, give an additional notice to his adversary, with
the specifications and affidavit prescribed in this section.

The provisions of this section apply to all elections,
including municipal elections, except that the governing body
of the municipality is the judge of any contest of a municipal
election.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-4a. Termination of political committees.

(a) A political committee may terminate by filing a written
request, in accordance with the provisions of section four of this
article, and by stating in the request that it will no longer
receive any contributions or make any disbursements and that
it has no outstanding debts or obligations. At such time, any
excess funds of the committee may be transferred to a political
committee established by the same candidate pursuant to the
provisions of section four or five-e of this article.

(b) The provisions of this section may not be construed to
eliminate or limit the authority of the secretary of state, in
consultation with the state election commission, to establish
procedures for: (1) The determination of insolvency with
respect to any political committee; (2) the orderly liquidation of
an insolvent political committee and the orderly application of
its assets for the reduction of outstanding debts; and (3) the
termination of an insolvent political committee after such
liquidation and application of assets.

(c) Notwithstanding any other provision of this code, any
political committee which has been terminated within three
years prior to the effective date of the reenactment of this
section during the regular session of the Legislature in the year
two thousand two, pursuant to a written request made in
accordance with the provisions of section four of this article,
may file a written request and be authorized by the secretary of
state to reestablish the political committee. Any request to
reestablish a political committee pursuant to the provisions of
this subsection must be filed on or before the first day of July,
two thousand two. The provisions of this subsection may not be
construed to increase the maximum contribution authorized
during an election cycle, as provided in section twelve of this
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.

Notwithstanding any charter provision to the contrary, it is
the duty of each city by charter provision or each municipality
by ordinance to make provision for integrating the conduct of
all municipal elections with the system of “permanent registra-
tion of voters” as provided in article two, chapter three of this
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 Technology Act”.

§3-1C-2. Findings.

1 The Legislature makes the following findings:
(1) Microchip and digital technologies are increasingly changing the way Americans vote;

(2) State and political subdivisions are replacing antiquated voting methods and machines with computer- and electronic-based voting systems, but nonvisual access, whether by speech, Braille or other appropriate means is often overlooked in certifying and purchasing the latest voting technology;

(3) Voting technology and systems which allow the voter to access and select information solely through visual means are a barrier to access by individuals who are blind or visually impaired, thereby discouraging them from exercising the right to vote, the most fundamental right of citizenship in a free and democratic society;

(4) Software and hardware adaptations have been created so that voters can interact with voting technology and systems through both visual and nonvisual means allowing blind and visually impaired people to cast a secret ballot and independently verify their vote; and

(5) In promoting full participation in the electoral process, the goals of the state and its political subdivisions must recognize the right of all citizens regardless of blindness or visual impairment to vote and to cast and verify their ballots independently.

§3-1C-3. Definitions.

As used in this article, unless the context otherwise requires a different meaning, the term:

(1) “Access” means the ability to receive, use, select and manipulate data and operate controls included in voting technology and systems;
(2) "Nonvisual" means synthesized speech, Braille and other output methods not requiring sight.

§3-1C-4. Requirements for accessible voting technology and systems.

(a) If any county upgrades or replaces existing voting equipment or an existing voting system and the upgraded or new equipment or system is certified by the secretary of state to have the capability to provide or the capability to be upgraded to provide blind and visually impaired individuals with nonvisual access which is equivalent to that access provided to individuals who are not blind or visually impaired, then the county must purchase or lease at least one voting mechanism which provides such nonvisual access to be used during the period of voting regular absentee ballots in person. The voting mechanism must also be used in a precinct, as designated by the county commission, on election day.

(b) The county commission of any county may place voting mechanisms that provide nonvisual access to blind or visually impaired persons in as many other precincts of the county as the county commission determines is feasible for use on election day, if the type of voting mechanism to be used has been 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.

This article is intended to protect the health, safety and welfare of the public and to protect public and private property by assuring the competence of persons who perform electrical inspections of dwellings and other structures through certification by the state fire marshal.

§29-3C-2. Definitions.

(a) As used in this article, the terms:
(1) "Certified electrical inspector" means a person who is certified by the state fire marshal as qualified to perform electrical inspections. "Electrical inspector" does not include an inspector employed by the office of miners' health, safety and training pursuant to the provisions of section eleven, article one, chapter twenty-two-a of this code.

(2) "Electrical inspection" means any inspection required by this code and any inspection of a building to which electrical service is connected, wherein the inspector certifies that the electrical system in the building is in compliance with the national electrical code, state fire code and the state building code.

§29-3C-3. Certification of electrical inspectors required.

After the first day of January, two thousand three, no electrical inspections may be performed, offered or engaged in for compensation or hire within the state of West Virginia by any person who is not certified pursuant to this article: Provided, That any person who is employed by this state or any subdivision of this state and who in the normal course of his or her business conducts electrical inspections may perform electrical inspections as within the scope of his or her employment without certification pursuant to this article.

§29-3C-4. Certification program; duties of the state fire marshal; rulemaking.

(a) The state fire marshal shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish a program for the certification of electrical inspectors. Proposed rules shall provide: Standards and procedures for certification, including applications, examinations, fees, qualifications, procedures for investigating complaints, revoking or suspending certifications
and for renewing licenses. The state fire marshal is also authorized to propose emergency rules to implement the provisions of this article: Provided, That the emergency rules specify an initial certification fee of fifty dollars.

(b) The state fire marshal shall certify an electrical inspector upon a finding that the applicant possesses the requisite qualifications.

§29-3C-5. Denial of license; suspension and revocation of license.

The state fire marshal shall deny certification to any applicant who:

1. Fails to establish that he or she holds any other required qualifications for certification established pursuant to rules promulgated pursuant to section four of this article; or

2. Is not a licensed master electrician in accordance with rules promulgated pursuant to section four of this article.

§29-3C-6. Suspension or revocation of certification.

The state fire marshal may, upon complaint, upon a request or referral, or upon his or her own inquiry suspend or revoke the certification of any person upon a finding that:

1. The certification was granted upon an application, or upon documents supporting the application, that materially misstated the applicant’s qualifications or experience;

2. The certified electrical inspector knowingly subscribed to or vouched for a misstatement by an applicant for certification;

3. The certified electrical inspector incompetently performed an electrical inspection;
(4) The certified electrical inspector failed to comply with a provision of this article, or any rule promulgated pursuant to section four of this article; or

(5) The certified electrical inspector failed to comply with the reporting requirements of section eight of this article.

§29-3C-7. Prohibited acts.

A certified electrical inspector may not:

(1) Approve nor disapprove work of which he or she does not have personal knowledge;

(2) Misrepresent his or her authority or responsibility;

(3) Use his or her certification as an electrical inspector to secure special favors or treatment;

(4) Inspect any electrical installation for which he or she has performed any part of the work; or

(5) Perform an electrical inspection of any work furnished by a private contractor that employs him or her on a full-time, part-time or incidental basis: Provided, That an employee of a contractor performing electrical installation may inspect electrical work performed by other employees of the same employer, as long as the inspection is not intended to be relied on by any person other than the employer, and the electrical inspector does not certify to an electric utility or to any person that the work is in compliance with applicable building codes, electrical codes or other standards.

§29-3C-8. Required reporting of violations.

Any certified electrical inspector having knowledge of violations of this code or rules promulgated pursuant to this
§29-3C-9. Noncompliance with article; failure to obtain certification; penalty.

(a) Any person performing electrical inspections without being certified pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred fifty nor more than five hundred dollars, or confined in the county or regional jail for not more than ninety days, or both; and upon conviction of a second or subsequent offense, shall be fined not less than five hundred dollars nor more than one thousand dollars, or confined in the county or regional jail for not more than ninety days, or both.

(b) Any person who conducts an electrical inspection without the required certification is subject to being issued a citation or a civil action in the name of the state in the circuit court of the county where the inspection was or is being performed for an injunction. A circuit court by mandatory or prohibitory injunction may compel compliance with the provisions of this article, with the lawful orders of the state fire marshal and with any final decision of the state fire marshal or state fire commission. The state fire marshal shall be represented in all proceedings instituted pursuant to this subsection by the attorney general or his or her assistants.

§29-3C-10. Disposition of fees and other receipts.

All fees or moneys received as a result of actions under this article shall be deposited in the special account created pursuant to section twelve-b, article three of this chapter. Expenditures from the fund shall be for the purposes set forth in this article and article three of this chapter.
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 "Certificate of acceptance" means a certificate issued by the division of labor certifying that a newly installed elevator has been inspected and was found to be installed in compliance with the safety standards set forth in the American National
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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.
(a) No person may serve as an elevator inspector unless he or she successfully completes the examination required by this section and holds a certificate of competency for elevator inspections issued by the division.

(b) The application for examination for elevator inspector shall be in writing, accompanied by a fee of ten dollars, upon a form furnished by the division. The applicant shall state his or her social security number, level of education, previous employers, the period of employment, the position held with each employer, and other information required by the division. The applicant shall also submit a letter from one of his or her previous employers concerning his or her character and experience.

(c) Applications which contain any willfully submitted false or untrue information shall be rejected.

(d) The division shall administer a written examination to a qualified applicant testing the applicant’s knowledge of the construction, installation, operation, maintenance and repair of elevators and accessories.

(e) The division shall issue a certificate of competency for elevator inspections to any applicant who successfully completes the examination and agrees to comply with requirements established by legislative rules promulgated by the division, as authorized by this article.

(f) An applicant who fails to successfully complete an initial examination may submit an application for a second examination ninety days or more after the initial examination and upon payment of the ten dollar examination fee. Should an applicant fail to successfully complete the prescribed examination on the second trial, he or she shall not be permitted to submit an application for another examination for a period of one year after the second failure.
(g) Any person hired as an elevator inspector by a county or municipality shall possess a certificate of competency issued by the division.

(h) The division may hire certified inspectors or enter into a contract to hire inspectors who are certified by the division. The division shall hire an inspector supervisor who shall supervise the inspection activities under this article.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.

(a) A county or municipality may hire its own elevator inspector or contract with any person who possesses a West Virginia elevator inspector’s certificate of competency issued by the division.

(b) The county or municipality shall ensure that every elevator which has been in use for five years or more is inspected annually.

(c)(1) Beginning the first day of July, two thousand two, the county or municipality shall ensure that no newly installed elevator shall be placed in service prior to being inspected and a certificate of acceptance issued by the division of labor.

(2) A certificate of acceptance shall only be issued if the elevator was installed in compliance with the safety standards set forth in the American National Standards Institute (ANSI) Code A17.1-3, “Safety Code for Elevators.”

(3) The acceptance inspection shall be subject to the same procedures and requirements as any other elevator inspection.

§21-3C-8. Certificate of operation; renewal.
A certificate of operation for any elevator may not be issued until the elevator has been inspected for safety and the inspection report filed with the division. With the exception of the acceptance inspection, only elevators which have been installed for five years or more shall be required to be inspected. The certificate of operation shall list the date of inspection and shall expire one year after the date of inspection. The certificate of operation shall be conspicuously posted in the elevator at all times. An expired certificate of operation shall be renewed in the manner that the prior certificate was obtained.

CHAPTER 136

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
ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-13. Confidentiality of certain calls to county answering points and records; retention of records.

(a) Except as provided by the provisions of this section, calls for emergency service to a county answering point are not confidential. All calls for emergency service reporting alleged criminal conduct which are recorded electronically, in writing or in any other form are to be kept confidential by the county answering point receiving the call and may be released only pursuant to an order entered by a court of competent jurisdiction, a valid subpoena or through the course of discovery in a criminal action requiring the release of the information: Provided, That nothing contained in this section may be construed as preventing the county answering point from releasing information to a responding agency as may be necessary for that agency’s response on a call or the completion of necessary reports relating to that call.

(b) Upon proper request and payment of a reasonable fee set by the center director to cover the cost of production, a person or entity may obtain, without court order or a valid subpoena, a transcription of a call for emergency service reporting alleged criminal conduct. The answering point shall exclude from the transcription any information relating to the identity of the caller including, but not limited to, the caller’s name, address, telephone number or his or her location in relation to the alleged offense or the alleged perpetrator. If the transcript of a call is such that it cannot be successfully redacted so as to protect the identity of the caller, the answering point may decline to provide the transcript. In that case, the person requesting the transcription may apply to a court of competent jurisdiction for a court order releasing the transcript.

(c) All calls for emergency service which are recorded electronically, in writing or in any other form are to be main-
tained for a period of at least ninety days or longer if required by an order entered by a court of competent jurisdiction or a valid subpoena.

(d) A county answering point may release information to bonafide law-enforcement agencies, the prosecuting attorney of a county or a United States attorney pursuant to a lawful criminal investigation. Nothing in this article may be construed as prohibiting a freedom of information request under chapter twenty-nine-b of this code for information relating to the operation of the center or to calls for emergency service which do not involve reporting of alleged criminal conduct.

(e) Nothing in this article requires disclosure of any information that is specifically exempt from disclosure by statute. Except as otherwise provided in this article, nothing prohibits disclosure of information that is not specifically exempted from disclosure under a provision of this code.

(f) Every county answering point shall, within ninety days of the effective date of this section, promulgate a written policy, available to the public, reflecting its compliance with the provisions of this section.

(g) No answering point or center personnel shall be civilly liable for any injury arising from disclosure of information pursuant to the provisions of this section.

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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.

(a) The special revenue fund designated the “Water Quality Management Fund” established in the state treasury on the first day of July, one thousand nine hundred eighty-nine is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the water quality management fund. The secretary shall expend the proceeds of the water quality management fund for the review of initial permit applications, renewal permit applications and permit issuance activities.
(c) The secretary shall propose for promulgation, legislative rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of application fees for all applications except for surface coal mining operations as defined in article three of this chapter. The appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the department pursuant to the provisions of this article and the rules promulgated under this article: Provided, That no initial application fee may exceed fifteen thousand dollars for any facility nor may any permit renewal application fee exceed five thousand dollars. The department may not process any permit application pursuant to this article until the required permit application fee has been received.

(d) The secretary shall propose for promulgation legislative rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article except for permits held by surface coal mining operations as defined in article three of this chapter. Each person holding a permit shall pay the prescribed annual permit fee to the department pursuant to the rules promulgated under this section: Provided, That no person holding a permit for a home aerator of six hundred gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: Provided, however, That no annual permit fee may exceed five thousand dollars. The secretary may declare any permit issued pursuant to this article void when the annual permit fee is more than ninety days past due pursuant to
the rules promulgated under this section. Voiding of the permit will only become effective upon the date the secretary mails, by certified mail, written notice to the permittee’s last known address notifying the permittee that the permit has been voided.

(e) The secretary shall file a quarterly report with the joint committee on government and finance setting forth the fees established and collected pursuant to this section.

(f) On the first day of July, two thousand two, and each year thereafter, a one thousand dollar fee shall be assessed for permit applications and renewals submitted pursuant to this article for surface coal mining operations, as defined in article three of this chapter. On the first day of July, two thousand two, and each year thereafter, a five hundred dollar fee shall be assessed for application for permit modifications submitted pursuant to this article for surface coal mining operations, as defined in article three of this chapter. Beginning the first day of July, two thousand two and every year thereafter, an annual permit fee shall be assessed on the issuance anniversary dates of all permits issued pursuant to this article for surface coal mining operations as defined in article three of this chapter. The annual permit fee shall be collected as follows: Five hundred dollars for the fiscal year beginning on the first day of July, two thousand two and one thousand dollars for each fiscal year 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.

(a) The secretary may recover through civil action or cooperative agreements with responsible persons, the actual, reasonable and necessary amounts expended by the department for the purpose of responding to, evaluating or overseeing a response to a spill or accidental discharge of any pollutant that enters the waters of the state, or taking measures required to prevent a spill or accidental discharge of any pollutant from entering the waters of the state. The department shall provide the responsible party an itemized invoice of the expenditures that the department seeks to recover.

(b) All moneys recovered by the secretary shall be deposited into the water quality management fund created in section ten of this article and shall be used for future responses to, evaluation or oversight of a response to a spill or accidental discharge of any pollutant that enters the waters of the state, or measures required to be taken to prevent a spill or accidental discharge of any pollutant from entering the waters of the state.

(c) The amounts that may be collected by the secretary pursuant to subsection (a) of this section may include any
reasonable and necessary costs incurred by a third party who is not a responsible party and who, with the prior authorization of the secretary or the chief inspector, responds to a spill or accidental discharge that enters or threatens to enter the waters of the state. The department is not responsible for or may not be held liable for costs incurred by the third party responder.

(d) Any civil action instituted pursuant to this section may be brought in the county in which the spill or accidental discharge occurred or the county in which the response occurred.

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 crimi­
nal penalties.

(a) If the secretary, upon inspection or investigation by duly
authorized representatives or through other means observes,
discovers or learns of a violation of this article, its rules, article
eleven of this chapter or its rules, or any permit or order issued
under this article, he or she shall:

(1) Issue an order stating with reasonable specificity the
nature of the alleged violation and requiring compliance
immediately or within a specified time. An order under this
section includes, but is not limited to, any or all of the follow-
ing: Orders suspending, revoking or modifying permits, orders
requiring a person to take remedial action or cease and desist
orders;

(2) Seek an injunction in accordance with subsection (e) of
this section;

(3) Institute a civil action in accordance with subsection (e)
of this section; or

(4) Request the attorney general, or the prosecuting attorney
of the county wherein the alleged violation occurred, to bring
an appropriate action, either civil or criminal in accordance
with subsection (b) of this section.

(b) Any person who violates this article, or permits issued
pursuant to this article or rules or orders issued by the secretary
or board is subject to administrative, civil and criminal sanc-
tions as follows:

(1) Any person who fails or refuses to discharge any duty
imposed upon him or her by this article or by any rule of the
secretary promulgated pursuant to the provisions and intent of
this article or by an order of the secretary or board, or who fails
or refuses to apply for and obtain a permit as required by the
provisions of this article, or who fails or refuses to comply with
any term or condition of the permit, is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not less than one
hundred dollars nor more than one thousand dollars, or impris-
oned in the county or regional jail not more than six months, or
both fined and imprisoned.

(2) Any person who intentionally misrepresents any
material fact in an application, record, report, plan or other
document filed or required to be maintained under the provi-
sions of this article or any rules promulgated by the secretary
thereunder is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than one thousand dollars nor
more than ten thousand dollars, or imprisoned in a county or
regional jail not more than six months, or both fined and
imprisoned.

(3) Any person who willfully or negligently violates any
provision of any permit issued under or subject to the provi-
sions of this article or who willfully or negligently violates any
provision of this article or any rule of the secretary or any order
of the secretary or board is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than two thousand
five hundred dollars nor more than twenty-five thousand dollars
per day of violation, or imprisoned in a county or regional jail
not more than one year, or both fined and imprisoned.

(4) Any person convicted of a second offense or subsequent
willful violation of subdivision (2) or (3) of this subsection or
knowingly and willfully violating any provision of any permit,
rule or order issued under or subject to the provisions of this
article or knowingly and willfully violating any provision of
this article, is guilty of a felony and, upon conviction thereof,
shall be imprisoned in a state correctional facility not less than
one nor more than three years, or fined not more than fifty
thousand dollars for each day of violation, or both fined and
imprisoned.

(5) Any person convicted of accumulating or disposing of
one thousand or more tires in violation of this article is guilty
of a felony and, upon conviction thereof, shall be imprisoned in
a state correctional facility for not less than one nor more than
five years and shall be required to clean up and properly
dispose of the waste tires or reimburse the state agency or
agencies for costs incurred in cleaning up the waste tires. In
addition, any person so convicted may be fined not more than
fifty thousand dollars for each day of the continued violation.

(6) A person may be prosecuted and convicted under the
provisions of this section, notwithstanding that the administra-
tive remedies provided in this article have not been pursued or
invoked against the person and notwithstanding that civil action
for the imposition and collection of a civil penalty or an
application for an injunction under the provisions of this article
has not been filed against the person.

(7) Where a person holding a permit is carrying out a
program of pollution abatement or remedial action in compli-
ance with the conditions and terms of the permit, that person is
not subject to criminal prosecution for pollution recognized and
authorized by the permit.

(c) Any person who violates any provision of this article,
any permit or any rule or order issued pursuant to this article is
subject to a civil administrative penalty, to be levied by the
secretary, of not more than five thousand dollars for each day
of the violation, not to exceed a maximum of twenty thousand
dollars:

(1) In assessing a penalty, the secretary shall take into
account the seriousness of the violation and any good faith
efforts to comply with the applicable requirements as well as
any other appropriate factors as may be established by the secretary by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator’s right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the secretary shall inform the alleged violator of the time and place of the hearing. The secretary may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the secretary concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the secretary shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the secretary’s decision, the alleged violator may request a formal hearing before the environmental quality board in accordance with the provisions of section sixteen of this article. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator under this section shall exceed twenty-five thousand dollars for each day of a violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this
section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules issued pursuant to subsection (a), section five of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the solid waste reclamation and environmental response fund established in subdivision (3), subsection (h), section eleven of this article;

(2) No assessment levied pursuant to subdivision (1) of this subsection becomes due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(d) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed twenty-five thousand dollars for each day of the violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(e) The secretary may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the secretary to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom relief is sought.
(f) Upon request of the secretary, the attorney general or the
prosecuting attorney of the county in which the violation occurs
shall assist the secretary in any civil action under this section.

(g) In any civil action brought pursuant to the provisions of
this section, the state, or any agency of the state which prevails
may be awarded costs and reasonable attorney’s fees.

(h) In addition to all other grounds for revocation, the
secretary shall revoke a permit for any of the following reasons:

(1) Fraud, deceit or misrepresentation in securing the
permit, or in the conduct of the permitted activity;

(2) Offering, conferring or agreeing to confer any benefit to
induce any other person to violate the provisions of this chapter,
or of any other law relating to the collection, transportation,
treatment, storage or disposal of solid waste, or of any rule
adopted pursuant thereto;

(3) Coercing a customer by violence or economic reprisal
or the threat thereof to utilize the services of any permittee; or

(4) Preventing, without authorization of the secretary, any
permittee from disposing of solid waste at a licensed treatment,
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.


(a) Any sludge or other material determined by the secretary to have beneficial properties similar to sewage sludge may be beneficially used in accordance with the applicable requirements governing sewage sludge, and any other requirements determined to be necessary by the secretary to protect human health and the environment. Persons seeking to beneficially use sludge must meet the requirements of this article and the rules promulgated thereunder.

(b) In order to enhance the resource recovery and recycling goals of this act and to encourage the beneficial use of sludge or other materials, the secretary shall propose for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, emergency and legislative rules to effectuate the purposes of this section. The secretary shall at a minimum include the following in the proposed rules:

(1) A mechanism to determine beneficial use characteristics;
(2) A method to determine pollutant content of the material proposed for beneficial use;

(3) A method to determine that the beneficial properties of the material are derived from the raw material rather than additives;

(4) Buffer zones or other criteria necessary to adequately protect ground and surface water;

(5) Necessary restrictions of pollutant levels in the material;

(6) Analytical methods, loading rates and storage requirements for the material;

(7) Permit requirements; and

(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.


(a) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by article XII, section 5 of the constitution of West Virginia. For the purposes of this section, the net proceeds of the fines, penalties and forfeitures shall be considered the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article. All permit application fees collected under this article shall be paid into the state treasury into a special fund designated “The Hazardous Waste Management Fund.” In making the appropriation for defraying the cost of administering this article, the Legislature shall first take into account the sums included in that special fund prior to deducting additional sums as may be needed from the fines, penalties and forfeitures collected pursuant to this article.

(b) Effective on the first day of July, two thousand three, and each year after, there is imposed an annual certification fee for facilities that manage hazardous waste, as defined by the federal Resource Conservation and Recovery Act, as amended. The fee will be set by rule promulgated by the secretary in accordance with the provisions of article three, chapter twenty-nine-a of this code. The rule shall be a product of a negotiated rule-making process with the facilities subject to the rule. The rule shall, at a minimum, establish different fee rates for facilities based on criteria established in the rule. The total amount of fees generated shall raise no more funds than are necessary and adequate to meet the matching requirements for
all federal grants which support the hazardous waste management program, but shall not exceed seven hundred thousand dollars per year.

(c) The revenues collected from the annual certification fee shall be deposited in the state treasury to the credit of the "Hazardous Waste Management Fee Fund," which is hereby established. Moneys of the fund, together with any interest or other return earned thereon, shall be expended to meet the matching requirements of federal grant programs which support the hazardous waste management program. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand four, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts 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. Appraisement of real estate and probate personal property of decedents; disposition; and hiring of experts.

(a) The personal representative of an estate of a deceased person shall appraise the deceased's real estate and personal probate property, or any real estate or personal probate property in which the deceased person had an interest at the time of his or her death, as provided in this section.

(b) After having taken the appropriate oath, the personal representative shall, on the appraisement form prescribed by the tax commissioner, list the following items owned by the decedent or in which the decedent had an interest and the fair market value of the items at the date of the decedent's death:

(1) All probate and nonprobate real estate including, but not limited to, real estate owned by the decedent, as a joint tenant with right of survivorship with one or more parties, as a life estate, subject to a power of appointment of the decedent, or in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent; and

(2) All probate personal property, whether tangible or intangible, including, but not limited to, stocks and bonds, bank accounts, mortgages, notes, cash, life insurance payable to the executor or administrator of the decedent's estate and all other items of probate personal property.

(c) Any real estate or interest in real estate so appraised must be identified with particularity and description. The personal representative shall identify the source of title in the decedent and the location of the realty for purposes of real property ad valorem taxation.

(d) For purposes of this section, the term "probate personal property" means all property which passes by or under the decedent's will or by the laws of intestate descent and distribution or is otherwise subject to administration in a decedent's estate under common law.

*Clerk's Note: This section was also amended by SB 661 (Chapter 305), which passed prior to this act.*
(e) The personal representative shall complete, under oath, a questionnaire included in the appraisement form designed by the tax commissioner for the purpose of reporting to the tax commissioner whether the estate of the decedent is subject to estate tax as provided in article eleven, chapter eleven of this code and whether the decedent owned or had an interest in any nonprobate personal property: Provided, That the tax commissioner shall design a questionnaire that is as much as possible phrased in understandable English.

(f) The appraisement form must be executed and signed by the personal representative. The original appraisement form and two copies thereof, together with the completed and notarized nonprobate inventory form required by section seven, article eleven, chapter eleven of this code, shall be returned to the clerk of the county commission by whom the personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. The clerk or supervisor shall inspect the appraisement form to determine whether it is in proper form. If the appraisement form is returned to a fiduciary supervisor, within ten days after being received and approved, the supervisor shall deliver the documents to the clerk of the county commission. Upon receipt of the appraisement form, the clerk of the county commission shall record it with the certificate of approval of the supervisor and mail a certified copy of the appraisement form, together with the unrecorded nonprobate inventory form, to the tax commissioner. The date of return of an appraisement form must be entered by the clerk of the county commission in his or her record of fiduciaries. The nonprobate inventory form shall be considered confidential tax return information subject to the provisions of section five-d, article ten, chapter eleven of this code and may not be disclosed by the clerk of the county commission and his or her officers and employees or former officers and employees, except to the tax commissioner as provided in this section. Nothing in this section shall be construed to hinder, abrogate, or prevent disclosure of information as authorized in section thirty-five, article eleven of said chapter.
An executed and signed appraisement form is prima facie evidence:

1. Of the value of the property listed;
2. That the property is subject to administration; and
3. That the property was received by the personal representative.

Any personal representative who refuses or declines, without reasonable cause, to comply with the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

Every personal representative has authority to retain the services of an expert as may be appropriate to assist and advise him or her concerning his or her duties in appraising any asset or property pursuant to the provisions of this section. An expert so retained shall be compensated a reasonable sum by the personal representative from the assets of the estate. The compensation and its reasonableness is subject to review and approval by the county commission, upon recommendation of the fiduciary supervisor.

Except as specifically provided in subdivision (1), subsection (b) of this section and in section seven, article eleven, chapter eleven of this code, the personal representative is not required to list and appraise nonprobate real estate or nonprobate personal property of the decedent on the forms required in this section or section seven of said article.

§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

(a) Within thirty days of the filing of the appraisement of any estate as required in section fourteen of this article, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:
(1) The name of the decedent;

(2) The name and address of the county commission before whom the proceedings are pending;

(3) The name and address of the personal representative;

(4) The name and address of any attorney representing the personal representative;

(5) The name and address of the fiduciary commissioner, if any;

(6) The date of first publication;

(7) A statement that claims against the estate must be filed in accordance with the provisions of article two or article three-a of this chapter;

(8) A statement that any person seeking to impeach or establish a will must make a complaint in accordance with the provisions of section eleven, twelve or thirteen, article five, chapter forty-one of this code;

(9) A statement that an interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court must be filed with the county commission within three months after the date of first publication or thirty days of service of the notice, whichever is later; and

(10) If the appraisement of the assets of the estate shows the value to be one hundred thousand dollars or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a statement substantially as follows: “Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within ninety days from the first publication of this notice a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner”.
(b) If no appraisement is filed within the time period established pursuant to section fourteen of this article, the county clerk shall send a notice to the personal representative by first class mail, postage prepaid, indicating that the appraisement has not been filed. Notwithstanding any other provision of this code to the contrary, the county clerk shall publish the notice required in subsection (a) of this section within six months of the qualification of the personal representative.

(c) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

(d) The personal representative shall, within ninety days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail, postage prepaid, or by personal service on the following persons:

(1) If the personal representative is not the decedent's surviving spouse and not the sole beneficiary or sole heir, the decedent's surviving spouse, if any;

(2) If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;

(3) If there is not a will and the personal representative is not the sole heir, any heirs;

(4) The trustee of any trust in which the decedent was a grantor, if any; and

(5) All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within ninety days after the date of the first publication as required in subsection (a) of this section or within thirty days after service of the notice as required by
subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(f) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable. The service of the notice in accordance with this subsection may not be construed to admit the validity or enforceability of a claim.

(g) The clerk of the county commission shall collect a fee of twenty dollars for the publication of the notice required in this section.

(h) For purposes of this section, the term beneficiary means a person designated in a will to receive real or personal property.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDEENT.

§44-2-1. Reference of decedents' estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent, by order of the county commission, must be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary for the settlement of the estate: Provided, That in counties where there are two or more commissioners, the estates of decedents must be referred to the commissioners in rotation, so there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than three hundred dollars and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission after a hearing that complicating
issues or problems attendant to the settlement substantiate the allowance of a greater fee.

(b) If the personal representative delivers to the clerk an appraisement of the assets of the estate showing their value to be one hundred thousand dollars or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, the clerk shall record the appraisement. If an unpaid creditor files a claim against the estate, the personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If the personal representative approves all claims as filed, then no reference may be made.

The personal representative shall, within a reasonable time after the date of recordation of the appraisement: (i) File a waiver of final settlement in accordance with the provisions of section twenty-nine of this article; or (ii) make a report to the clerk of his or her receipts, disbursements and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes and debts of the decedent have been paid in full. Upon receipt of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies to each beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for ten days to allow any beneficiary or creditor to appear before the county commission to request reference to a fiduciary commissioner. The clerk shall collect a fee of ten dollars for recording and mailing the waiver of final settlement or report.

If no request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, the personal representative and his or her surety shall be discharged; but if an objection or request is made, the county commission may confirm and record the accounting or may refer the estate to its fiduciary commissioners: Provided, That the personal representative has twenty days after the date of the filing of a claim against the
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.

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, dancing or other services conducted by persons while nude or seminude in a commercial setting or for profit.
(2) "Seminude" means the appearance of:

(A) The female breast below a horizontal line across the top of the areola at its highest point, including the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed, in whole or in part;

(B) A human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals or vulva, with less than a fully opaque covering; or

(C) A human male genital in a discernibly turgid state even if completely and opaquely covered.

(b) In the event a county has not created or designated a planning commission pursuant to the provisions of article twenty-four, chapter eight of this code, a county commission may, by order entered of record, adopt an ordinance that limits the areas of the county in which a business may offer "exotic entertainment" as that term is defined in subsection (a) of this section. Any such ordinance shall be subject to the provisions of section fifty, article twenty-four, chapter eight of this code:

Provided, That in the event of the partial or total loss of any existing business structure due to fire, flood, accident or any other unforeseen act, that business structure may be repaired or replaced and the business use of that structure may continue notwithstanding the existence of any ordinance authorized by this section. Any such repair or replacement will be limited to restoring or replacing the damaged or lost structure with one reasonably similar, or smaller, in size as measured in square footage, and any enlargement of the business structure will subject the structure to any existing ordinance authorized by this section. Notwithstanding any other provision of this code to the contrary, no ordinance enacted pursuant to the provisions
of this section may apply to or affect any municipal corporation
that either: (1) Has adopted and has in effect an ordinance
restricting the location of exotic entertainment or substantially
similar businesses pursuant to the authority granted in articles
twelve or twenty-four, chapter eight of this code; or (2) adopts
an ordinance to exempt itself from any county ordinance
enacted pursuant to this section.

(c) Any person adversely affected by an ordinance enacted
pursuant to the authority granted in subsection (b) of this
section is entitled to seek direct judicial review with regard to
whether the ordinance impermissibly burdens his or her right to
establish a business offering exotic entertainment.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED
REATIONS 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.

(a) For the purposes of this section, the term “exotic
entertainment” has the same meaning ascribed to it in section
three-jj, article one, chapter seven of this code.

(b) In the event a municipality has not created or designated
a planning commission in accordance with the provisions of
article twenty-four of this chapter, every municipality and the
governing body of the municipality may, in addition to all other
powers of municipalities, adopt an ordinance that limits the
areas of the municipality in which businesses may offer exotic
entertainment. Any such ordinance shall be subject to the
provisions of section fifty, article twenty-four of this chapter:
Provided, That in the event of the partial or total loss of any
existing business structure due to fire, flood, accident or any
other unforeseen act, that business structure may be repaired or
replaced and the business use of that structure may continue
notwithstanding the existence of any ordinance authorized by
this section. Any such repair or replacement will be limited to
restoring or replacing the damaged or lost structure with one
reasonably similar, or smaller, in size as measured in square
footage, and any enlargement of the business structure will
subject the structure to any existing ordinance authorized by
this section.

(c) Any person adversely affected by an ordinance enacted
pursuant to the authority granted in subsection (b) of this
section is entitled to seek direct judicial review with regard to
whether the ordinance impermissibly burdens his or her right to
establish a business offering exotic entertainment.

CHAPTER 144

(H. B. 4315 — By Delegates Varner, Stemple, Michael, Shaver,
Kominar, Colemon 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.

(a) Notwithstanding any provision of this code to the contrary, a person licensed to carry a concealed weapon pursuant to the provisions of section four, article seven, chapter sixty-one of this code who is not prohibited at the time from possessing a firearm pursuant to the provisions of section seven, article seven, chapter sixty-one of this code or by any applicable federal law may carry a handgun in a concealed manner for self defense purposes while afield hunting, hiking, camping or in or on a motor vehicle.

(b) The provisions of this section shall not exempt any person from obtaining any hunting or fishing license or stamp 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.]
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.

The county commission in any county may levy for and may erect, maintain and operate fire stations and fire prevention units and equipment therefor in the county: _Provided,_ That if a county commission establishes a separate fire protection unit in any city in West Virginia that is now operating under the provisions of the state civil service act for paid fire departments, then the new unit shall be operated in accordance with the provisions of the civil service act. Any county commission may render financial aid to any one or more public fire protection facilities in operation in the county for the general benefit of the public in the prevention of fires. Any county commission may also authorize volunteer fire companies or paid fire departments to charge reasonable reimbursement fees for personnel and equipment used in performing fire-fighting services, victim rescue or cleanup of debris or hazardous materials by department personnel. The rate for any such fees to be charged to property owners or other persons responsible or liable for payment for such services must be approved by the county commission and must be reasonable: _Provided, however,_ that no fee for any single incident or accident shall exceed five hundred dollars, except an incident or accident involving hazardous materials. The county commission shall require that any fees charged pursuant to the authority conferred by this section must be in writing and be itemized by specific services rendered and the rate for each service.
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 person, company or other organization who donates fire control or rescue equipment, including federal excess or surplus
property, to a volunteer fire department is subject to civil liability for any personal injury, property damages or death resulting from any defect in the equipment unless the person, company or organization acted with malice, gross negligence, recklessness or intentional misconduct which proximately caused the personal injury, property damages or death.

(b) For purposes of this section, “fire control or rescue equipment” means a vehicle, fire fighting tool, protective gear, breathing apparatus or other supply or tool used in fire fighting or fire rescue. No breathing apparatus may be donated unless, prior to the donation, it has been recertified to the manufacturer’s specifications by a technician approved by the manufacturer.

(c) Any insurance policy providing coverage for liability sold, issued or delivered in this state to any person, company or other organization who donates fire control or rescue equipment shall provide that the insurer be barred and estopped from relying upon the immunity granted in this section against claims or suits covered by the terms of the policy within the policy limits, unless the provision or endorsement is rejected in writing by the insured.

The limitation on civil liability set forth in the provisions of this section applies only to policies of insurance issued or renewed on or after July 1, 2001.

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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.

§8-15-22. Vacancies filled by promotions; eligibility for promotion.

1 Vacancies in positions in a paid fire department shall be filled, so far as practicable, by promotions from among individuals holding positions in the next lower grade in the department. Promotions shall be based upon experience and by competitive written examinations to be provided by the firemen’s civil service commission: Provided, That no individual
shall be eligible for promotion from the lower grade to the next
higher grade until such individual shall have completed at least
two years of continuous service in the next lower grade in the
department immediately prior to said examination and has
completed the registered apprenticeship and certification
program under article fifteen-a, chapter eight of this code:
Provided, however, That completion of the registered appren-
ticeship and certification program as a requirement for promo-
tion shall apply only to those firefighters employed since the
twelfth day of June, one thousand nine hundred eighty-seven.
The commission shall have the power to determine in each
instance whether an increase in salary constitutes a promotion.

ARTICLE 15A. STANDARDS FOR PROFESSIONAL FIREFIGHTERS
TRAINING; REGISTERED APPRENTICESHIP AND CERTIFICATION.

§8-15A-4. Duties of the professional firefighters certification board of apprentice-
ship and training.
§8-15A-5. Certification requirements.


For the purposes of this article, unless a different meaning
clearly appears in the context:

(a) "Bureau of apprenticeship and training" means the bureau of apprenticeship and training of the United States department of labor;
(b) "Certificate of certification" means a certificate issued by the bureau of apprenticeship and training stating that a person has complied with the standards set forth in this article;

(c) "Local training board" means the board of the local paid fire department required to be established by the standards set forth in section two of this article;

(d) "Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

(e) "Paid fire department" means those paid fire departments established under the provisions of section nine, article fifteen, chapter eight of this code;

(f) "Professional firefighter" means those persons who are employed by a municipality in the state that has a paid fire department;

(g) "State" means the state of West Virginia;

(h) "State board" means the professional firefighters certification board of apprenticeship and training as established in section three of this article;

(i) "West Virginia professional fire chiefs association" means the association representing paid fire chiefs in the state of West Virginia; and

(j) "Professional firefighters of West Virginia" means the association representing paid firefighters in the state of West Virginia.


All original appointments in a paid fire department subject to the civil service provisions of section sixteen, article fifteen,
chapter eight of this code, made after the twelfth day of June, one thousand nine hundred eighty-seven, shall enroll and complete the requirements as registered with the bureau of apprenticeship and training of the United States department of labor, for the craft of fire fighting.


(a) A professional firefighters certification board of apprenticeship and training is hereby created and assigned responsibility for review of programs and standards, for training of apprenticeship and certification of professional firefighters in the state. The state board shall be comprised of five members including two representatives appointed by each of the following: The professional firefighters of West Virginia; the West Virginia professional fire chiefs association, and one representative from the bureau of apprenticeship and training of the United States department of labor.

(b) The state board shall elect a chairperson. Meetings may be held upon the call of the chairperson. A majority of the members of the state board constitutes a quorum.

§8-15A-4. Duties of the professional firefighters certification board of apprenticeship and training.

The professional firefighters certification board of apprenticeship and training shall, by or pursuant to rule or regulation:

(a) Establish standards governing the quality of training of paid fire departments in the state pursuant to section two of this article.

(b) Establish the level of skill required for certification.
(c) Adopt procedures for the local training board to follow in securing certification of a paid firefighter by the bureau of apprenticeship and training of the United States department of labor.

(d) Certify the paid firefighter as provided in section five of this article and request a certificate of certification from the bureau of apprenticeship and training of the United States department of labor to the person that has qualified.

§8-15A-5. Certification requirements.

Standards for certification must meet or exceed those of the National Fire Protection Association Standards No. 1001 as amended and updated from year to year.


The state board shall annually review the training curriculum of local training boards offered pursuant to the provisions of this article, and shall make recommendations to improve the quality and sufficiency of training to secure certification of paid firefighters.


The state board shall ensure employer and employee compliance with this article. The chief of the paid fire department and the local training board shall see and assure compliance with all established criteria.

The provisions of this article shall be liberally construed to accomplish its objectives and purposes.
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 employees, agents or guides, or as an employee, agent or guide of any other person, shall at any time build or use any fire in any field, in any public or private road, or in any area adjacent to or in any forest land in this state, shall, before leaving the fire for any period of time, totally extinguish the same.
(b) A person shall not at any time throw or place any lighted match, cigar, cigarette, firecracker or lighted material on any forest land, private road, public highway or railroad right-of-way within this state.

(c) In addition to any other law-enforcement agencies that have jurisdiction over criminal violations, the state fire marshal shall enforce this section as provided in section twelve, article three, chapter twenty-nine of this code.

(d) Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to one or more of the following penalties: (1) Fined not less than one hundred dollars nor more than two thousand dollars; (2) confined in the county or regional jail not less than ten days nor more than two hundred days; or (3) sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property or waters of the state, as designated by the court, for not less than thirty-two hours nor more than sixty-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.]
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.

(a) Enforcement of laws. — The state fire marshal and any other person authorized to enforce the provisions of this article under the supervision and direction of the state fire marshal has the authority to enforce all laws of the state having to do with:
(1) Prevention of fire;

(2) The storage, sale and use of any explosive, combustible or other dangerous article or articles in solid, flammable liquid or gas form;

(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires;

(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;

(5) The suppression of arson; and

(6) Any other thing necessary to carry into effect the provisions of this article including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed or used in direct violation of the state fire code.

(b) Assistance upon request. — Upon request, the state fire marshal shall assist any chief of any recognized fire company or department. Upon the request of any federal law-enforcement officer, state police officer, conservation officer or any county or municipal law-enforcement officer, the state fire marshal, any deputy state fire marshal or assistant state fire marshal employed pursuant to section eleven of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer's official duties: Provided, That the state fire marshal or other person authorized to act under this subsection shall at all times work under the direct supervision of the requesting officer.

(c) Enforcement of rules. — The state fire marshal shall enforce the rules promulgated by the state fire commission as authorized by this article.
(d) Inspections generally. — The state fire marshal shall inspect all structures and facilities, other than one- and two-family dwelling houses, subject to the state fire code and this article, including, but not limited to, state, county and municipally owned institutions, all public and private schools, health care facilities, theaters, churches and other places of public assembly to determine whether the structures or facilities are in compliance with the state fire code.

(e) Right of entry. — The state fire marshal may, at all reasonable hours, enter any building or premises, other than dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The state fire marshal and any deputy state fire marshal or assistant state fire marshal approved by the state fire marshal may enter upon any property, or enter any building, structure or premises, including dwelling houses during construction and prior to occupancy, for the purpose of ascertaining compliance with the conditions set forth in any permit or license issued by the office of the state fire marshal pursuant to subdivision (1), subsection (a), section twelve-b of this article or of article three-b of this chapter.

(f) Investigations. — The state fire marshal may, at any time, investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The state fire marshal has the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or explosions or attempt to cause fires or explosions may have occurred, or which at the time may be burning. Notwithstanding the above provisions of this subsection, prior to entering any building or premises for the purposes of such investigation, the state fire marshal shall obtain a proper search warrant: Provided, That a search warrant is not necessary where there is permissive waiver or the state fire marshal is an invitee of the individual having legal custody and control of the property, building or premises to be searched.
(g) **Testimony.** — The state fire marshal, in making an inspection or investigation when in his or her judgment such proceedings are necessary, may take the statements or testimony under oath of all persons who may be cognizant of any facts or have any knowledge about the matter to be examined and inquired into and may have the statements or testimony reduced to writing; and shall transmit a copy of such statements or testimony so taken to the prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred. Notwithstanding the above, no person may be compelled to testify or give any such statement under this subsection.

(h) **Arrests; warrants.** — The state fire marshal, any full-time deputy fire marshal or any full-time assistant fire marshal employed by the state fire marshal pursuant to section eleven of this article is hereby authorized and empowered and any person deputized pursuant to subsection (j) of this section may be authorized and empowered by the state fire marshal:

(1) To arrest any person anywhere within the confines of the state of West Virginia, or have him or her arrested, for any violation of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter: *Provided,* That any and all persons so arrested shall be forthwith brought before the magistrate or circuit court.

(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute an arrest warrant when knowing or having reason to believe that anyone has committed an offense under any provision of this article, of the arson-related offenses of article three, chapter sixty-one of this code or of the explosives-related offenses of article three-e of said chapter. Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over such violation.

(3) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute a
warrant for the search of any premises that may possess
evidence or unlawful contraband relating to violations of this
article, of the arson-related offenses of article three, chapter
sixty-one of this code or of the explosives-related offenses of
article three-e of said chapter. Proper return shall be made on
all search warrants before the tribunal having jurisdiction over
such violation.

(i) Witnesses and oaths. — The state fire marshal is
empowered and authorized to issue subpoenas and subpoenas
duces tecum to compel the attendance of persons before him to
testify in relation to any matter which is, by the provision of
this article, a subject of inquiry and investigation by the state
fire marshal and cause to be produced before him or her such
papers as he or she may require in making such examination.
The state fire marshal is hereby authorized to administer oaths
and affirmations to persons appearing as witnesses before him
or her. False swearing in any matter or proceeding aforesaid
shall be considered perjury and shall be punishable as such.

(j) Deputizing members of fire departments in this state. —
The state fire marshal may deputize a member of any fire
department, duly organized and operating in this state, who is
approved by the chief of his or her department and who is
properly qualified to act as his or her assistant for the purpose
of making inspections with the consent of the property owner
or the person in control of the property and such investigations
as may be directed by the state fire marshal, and the carrying
out of such orders as may be prescribed by him or her, to
enforce and make effective the provisions of this article and any
and all rules promulgated by the state fire commission under
authority of this article: Provided, That in the case of a volun-
teer fire department, only the chief thereof or his or her single
designated assistant may be so deputized.

(k) Written report of examinations. — The state fire
marshal shall, at the request of the county commission of any
county or the municipal authorities of any incorporated munici-
pality in this state, make to them a written report of the exami-
nation made by him or her regarding any fire happening within
their respective jurisdictions.

(1) Report of losses by insurance companies. — It is the
duty of each fire insurance company or association doing
business in this state, within ten days after the adjustment of
any loss sustained by it that exceeds fifteen hundred dollars, to
report to the state fire marshal information regarding the
amount of insurance, the value of the property insured and the
amount of claim as adjusted. This report is in addition to any
such information required by the state insurance commissioner.
Upon the request of the owner or insurer of any property
destroyed or injured by fire or explosion, or in which an attempt
to cause a fire or explosion may have occurred, the state fire
marshal shall report in writing to the owner or insurer the result
of the examination regarding the property.

(m) Issuance of permits and licenses. — The state fire
marshal is authorized to issue permits, documents and licenses
in accordance with the provisions of this article or of article
three-b of this chapter. The state fire marshal may require any
person who applies for a permit to use explosives, other than an
applicant for a license to be a pyrotechnic operator under
section twenty-four of this article, to be fingerprinted and to
authorize the state fire marshal to conduct a criminal records
check through the criminal identification bureau of the West
Virginia state police and a national criminal history check
through the federal bureau of investigation. The results of any
criminal records or criminal history check shall be sent to the
state fire marshal.

(n) Issuance of citations for fire and life safety violations.
— The state fire marshal, any deputy fire marshal and any
assistant fire marshal employed pursuant to section eleven of
this article are hereby authorized, and any person deputized
pursuant to subsection (j) of this section may be authorized by
the state fire marshal to issue citations, in his or her jurisdiction,
for fire and life safety violations of the state fire code and as
provided for by the rules promulgated by the state fire commis-
sion in accordance with article three, chapter twenty-nine-a of
Provided, That a summary report of all citations issued pursuant to this section by persons deputized under subsection (j) of this section shall be forwarded monthly to the state fire marshal in such form and containing information as he or she may by rule require, including the violation for which the citation was issued, the date of issuance, the name of the person issuing the citation and the person to whom the citation was issued. The state fire marshal may at any time revoke the authorization of a person deputized pursuant to subsection (j) of this section to issue citations, if in the opinion of the state fire marshal, the exercise of authority by the person is inappropriate.

Violations for which citations may be issued include, but are not limited to:

1. Overcrowding places of public assembly;
2. Locked or blocked exits in public areas;
3. Failure to abate a fire hazard;
4. Blocking of fire lanes or fire department connections;
5. Tampering with, or rendering inoperable except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment and fire alarm systems.

Required training; liability coverage. No person deputized pursuant to subsection (j) of this section may be authorized to issue a citation unless that person has satisfactorily completed a law-enforcement officer training course designed specifically for fire marshals. The course shall be approved by the law-enforcement training subcommittee of the governor's committee on criminal justice and highway safety and the state fire commission. In addition, no person deputized pursuant to subsection (j) of this section may be authorized to issue a citation until evidence of liability coverage of such person has been provided, in the case of a paid municipal fire
department by the municipality wherein the fire department is
located, or in the case of a volunteer fire department, by the
county commission of the county wherein the fire department
is located or by the municipality served by the volunteer fire
department and that evidence of liability coverage has been
filed with the state fire marshal.

(p) Penalties for violations. — Any person who violates
any fire and life safety rule of the state fire code is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
less than one hundred dollars nor more than one thousand
dollars or imprisoned in the county or regional jail not more
than ninety days, or both fined and imprisoned.

Each and every day during which any violation of the
provisions of this article continues after knowledge or official
notice that same is illegal is a separate offense.

§29-3-12b. Fees.

(a) The state fire marshal may establish fees in accordance
with the following:

(1) For blasting. — Any person storing, selling or using
explosives shall first obtain a permit from the state fire marshal.
The permit shall be valid for one year. The state fire marshal
may charge a fee for the permit.

(2) For inspections of schools or day care facilities. — The
state fire marshal may charge a fee of up to twenty-five dollars
per annual inspection for inspection of schools or day care
facilities: Provided, That only one such fee may be charged per
year for any building in which a school and a day care facility
are co-located: Provided, however, That any school or day care
facility may not be charged for an inspection more than one
time per twelve-month period.

(3) For inspections of hospitals or nursing homes. — The
state fire marshal may charge an inspection fee of up to one
hundred dollars per annual inspection of hospitals or nursing
Provided, That any hospital or nursing home may not be charged for an inspection more than one time per twelve-month period.

(4) For inspections of personal care homes or board and care facilities. — The state fire marshal may charge an inspection fee of up to fifty dollars per annual inspection for inspections of personal care homes or board and care facilities: Provided, That any personal care home or board and care facility may not be charged for an inspection more than one time per twelve-month period.

(5) For inspections of residential occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for each inspection of a residential occupancy. For purposes of this subdivision, “residential occupancies” are those buildings in which sleeping accommodations are provided for normal residential purposes.

(6) For inspections of mercantile occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of mercantile occupancies: Provided, That if the inspection is in response to a complaint made by a member of the public, the state fire marshal shall obtain from the complainant an advance inspection fee of twenty-five dollars. This fee shall be returned to the complainant if, after the state fire marshal has made the inspection, he or she finds that the complaint was accurate and justified, and he or she shall thereafter collect an inspection fee of up to one hundred dollars from the mercantile occupancy. If, after the inspection has been performed, it appears to the state fire marshal that the complaint was not accurate or justified, the state fire marshal shall keep the twenty-five dollar advance inspection fee obtained from the complainant and may not collect any fees from the mercantile occupant. For purposes of this section, “mercantile occupancy” includes stores, markets and other rooms, buildings or structures for the display and sale of merchandise.
(7) For business occupancies. — The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of business occupancies: Provided, That the provisions in subdivision (6) of this section shall apply regarding complaints by members of the public. For purposes of this section, "business occupancies" are those buildings used for the transaction of business, other than mercantile occupancies, for the keeping of accounts and records and similar purposes.

(8) For inspections of assembly occupancies. — The state fire marshal may charge an inspection fee not more than one time per twelve-month period for the inspection of assembly occupancies. The inspection fee shall be assessed as follows: For Class C assembly facilities, an inspection fee not to exceed fifty dollars; for Class B assembly facilities, an inspection fee not to exceed seventy-five dollars; and for Class A facilities, an inspection fee not to exceed one hundred dollars.

For purposes of this subdivision, an "assembly occupancy" includes, but is not limited to, all buildings or portions of buildings used for gathering together fifty or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement or awaiting transportation. For purposes of this section, a "Class C assembly facility" is one that accommodates fifty to three hundred persons; a "Class B facility" is one which accommodates more than three hundred persons but less than one thousand persons; and a "Class A facility" is one which accommodates more than one thousand persons.

(b) The state fire marshal may collect fees for the fire safety review of plans and specifications for new and existing construction. Fees shall be paid by the party or parties receiving the review.

(1) Structural barriers and fire safety plans review. — The fee is one dollar for each one thousand dollars of construction cost up to the first one million dollars. Thereafter, the fee is forty cents for each one thousand dollars of construction cost.
(2) Sprinkler system review. — The fee charged for the review of an individual sprinkler system is as follows: Number of heads: One to two hundred — eighty-five dollars; two hundred one to three hundred — one hundred dollars; three hundred one to seven hundred fifty — one hundred twenty dollars; over seven hundred fifty — one hundred twenty dollars plus ten cents per head over seven hundred fifty.

(3) Fire alarm systems review. — The fee charged for the review of a fire alarm system is fifty dollars for each ten thousand square feet of space with a fifty dollar minimum charge.

(4) Range hood extinguishment system review. — The fee is twenty-five dollars per individual system reviewed.

(5) Carpet specifications. — The fee for carpet review and approval is twenty dollars per installation.

(c) All fees authorized and collected pursuant to this article and article three-b of this chapter shall be paid to the state fire marshal and thereafter deposited into a special account to be appropriated by the Legislature for the operation of the state fire commission in administering this article and article three-b of this chapter. Beginning on the first day of July, one thousand nine hundred ninety-two, and every fiscal year thereafter, at the end of each fiscal year there shall be transferred from the special account, to the general revenue fund of the state, ten percent of all money collected by the fire marshal during the year: Provided, That any balance remaining in the special account at the end of any fiscal year, after the transfer of the ten percent, shall be reappropriated to the next fiscal year: Provided, however, That in addition to said ten percent, amounts collected which are found from time to time to exceed the funds needed for purposes for which the fees are collected may be transferred to other accounts or redesignated for other purposes by appropriation of the Legislature.

d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the state fire marshal and
is not ready for the occupancy to be inspected at the appointed
time and place, the owner or occupant thereof shall be charged
the inspection fee provided in this section unless at least forty-
eight hours prior to the scheduled inspection the owner or
occupant requests the state fire marshal to reschedule the
inspection. In the event a second inspection is required by the
state fire marshal as a result of the owner or occupant failing to
be ready for the inspection when the state fire marshal arrives,
the state fire marshal shall charge the owner or occupant of the
occupancy the inspection fees set forth above for each inspec-
tion trip required.

(e) The fees provided for in this section shall remain in
effect until such time as the Legislature has approved rules
promulgated by the state fire marshal, in accordance with the
provisions of article three, chapter twenty-nine-a of this code,
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.

(a) On or before the first day of July, one thousand nine
hundred ninety-one, an operational smoke detector shall be
installed in the immediate vicinity of each sleeping area within
all one- and two-family dwellings, including any “manufactured
home” as that term is defined in subsection (j), section two,
article nine, chapter twenty-one of this code. The smoke
detector shall be capable of sensing visible or invisible particles
of combustion and shall meet the specifications and be installed
as provided in the national fire protection association standard
72, “Standard for the Installation, Maintenance and Use of
Household Fire Warning Equipment”, 1996 edition, and in the
manufacturer's specifications. When activated, the smoke
detector shall provide an alarm suitable to warn the occupants
of the danger of fire.

(b) The owner of each dwelling described in subsection (a)
of this section shall provide, install and replace the operational
smoke detectors required by this section. So as to assure that the
smoke detector continues to be operational, in each dwelling described in subsection (a) of this section which is not occupied by the owner thereof, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing impaired, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the national fire protection association standard 13D, “Standard for the Installation of Sprinkler Systems in Residential Occupancies”, 1989 edition, may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) After the first day of July, one thousand nine hundred ninety-eight, an operational carbon monoxide detector with a suitable alarm shall be installed in accordance with the manufacturer’s direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove; and

(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed or bar, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove.
(g) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.

(h) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(i) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

(j) A violation of this section may not be considered by virtue of the violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(k) A violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.

(l) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.
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 cremation and the subsequent burial or cremation thereof has serious public health and safety considerations and should only be practiced by a person who has specific training in those fields.

2. Therefore, the Legislature hereby finds that to protect the public interest a person must have a license, as provided in this article, to practice embalming, funeral directing and cremation and to operate a funeral establishment and crematory in the state of West Virginia.
§30-6-2. Short title.

This article shall be known and may be cited as the "West Virginia Funeral Service Examiners Act".

§30-6-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Apprentice" means a person who is preparing to become a licensed funeral director and embalmer and is learning the practice of embalming, funeral directing or cremation under the direct supervision and personal instruction of a duly licensed embalmer or funeral director.

(b) "Authorized representative" means a person legally authorized or entitled to order the cremation of the deceased, as established by rule. An authorized representative may include the following:

(1) The deceased;

(2) The deceased's next of kin;

(3) A court order;

(4) A public official who is charged with arranging the final disposition of an indigent deceased; or

(5) A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science.

(c) "Board" means the West Virginia board of funeral service examiners.

(d) "Certificate" means a certification by the board to be a crematory operator.

(e) "Courtesy card holder" means a person who only practices funeral directing periodically in West Virginia and is
a licensed embalmer and funeral director in a state which
borders West Virginia.

(f) "Cremated remains" or "cremains" means all human
remains, including foreign matter cremated with the human,
recovered after the completion of cremation.

(g) "Cremation" means the mechanical or thermal process
whereby a dead human body is reduced to ashes and bone
fragments and then further reduced by additional pulverization,
burning or re-cremating when necessary.

(h) "Crematory" means a licensed place of business where
a deceased human body is reduced to ashes and bone fragments
and includes a crematory that stands alone or is part of or
associated with a funeral establishment.

(i) "Crematory operator" means a person certified by the
board to operate a crematory.

(j) "Crematory operator in charge" means a certified
crematory operator who accepts responsibility for the operation
of a crematory.

(k) "Deceased" means a dead human being for which a
death certificate is required.

(l) "Embalmer" means a person licensed to practice
embalming.

(m) "Embalming" means the practice of introducing
chemical substances, fluids or gases used for the purpose of
preservation or disinfection into the vascular system or hollow
organs of a dead human body by arterial or hypodermic
injection for the restoration of the physical appearance of a
deceased.

(n) "Funeral" means a service, ceremony or rites performed
for the deceased with a body present.

(o) "Funeral directing" means the business of engaging in
the following:
(1) The shelter, custody or care of a deceased;

(2) The preparation of a deceased for burial or other disposition;

(3) The arranging or supervising of a funeral or memorial service for a deceased; and

(4) The maintenance of a funeral establishment for the preparation, care or disposition of a deceased.

(p) "Funeral director" means a person licensed to practice funeral directing.

(q) "Funeral establishment" means a licensed place of business devoted to: The care, preparation and arrangements for the transporting, embalming, funeral, burial or other disposition of a deceased. A funeral establishment can include a licensed crematory.

(r) "Funeral service licensee" means a person licensed after the first day of July, two thousand three, to practice embalming and funeral directing.

(s) "License" means a license, which is not transferable or assignable, to:

(1) Practice embalming and funeral directing;

(2) Operate a crematory or a funeral establishment.

(t) "Licensee" means a person holding a license issued under the provisions of this article.

(u) "Licensee in charge" means a licensed embalmer and funeral director who accepts responsibility for the operation of a funeral establishment.

(v) "Memorial service" means a service, ceremony or rites performed for the deceased without a body present.

(w) "Mortuary" means a licensed place of business devoted solely to the shelter, care and embalming of the deceased.
(x) "Person" means an individual, partnership, association, corporation, not-for-profit organization or any other organization.

(y) "Registration" means a registration issued by the board to be an apprentice to learn the practice of embalming, funeral directing or cremation.

(z) "State" means the state of West Virginia.

§30-6-4. Board of funeral service examiners.

(a) The "West Virginia Board of Embalmers and Funeral Directors" is hereby continued and shall, after the thirtieth day of June, two thousand two, be known as the "West Virginia Board of Funeral Service Examiners". The members of the board in office on the first day of July, two thousand two shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) Commencing with the board terms beginning the first day of July, two thousand two, the board shall consist of seven members appointed for terms of four years by the governor, by and with the advice and consent of the Senate. Five members must be licensed embalmers and funeral directors, and one member must be a citizen member who is not licensed, certified or registered under the provisions of this article and who is not a person who performs any services related to the practice of embalming or funeral directing. Commencing with the board terms beginning the first day of July, two thousand two, the governor shall appoint, by and with the advice and consent of the Senate, one person who operates a crematory in West Virginia which person shall replace the current board member whose term ended on the thirtieth day of June, two thousand two. The crematory operator who is appointed for the term commencing the first day of July, two thousand two, shall register and be certified, pursuant to the provisions of this
article. Any crematory operator appointed thereafter shall be certified, pursuant to the provisions of this article.

(c) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than five years immediately preceding the appointment and each member must be a resident of this state during the appointment term. Each certified member must abide by the provisions of subsection (b) of this section. Board members must represent at least four different geographic regions of the state.

(d) No member may serve more than two consecutive full terms and any member having served two full terms may not be appointed for one year after completion of his or her second full term. A member shall continue to serve until his or her successor has been appointed and qualified.

(e) The governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(f) Any member of the board immediately and automatically forfeits his or her membership if he or she has his or her license or certificate to practice suspended or revoked by the board, is convicted of a felony under the laws of any state or the United States or becomes a nonresident of this state.

(g) The board shall annually elect one of its members as president and one of its members as secretary.

(h) Each member of the board shall receive compensation and expense reimbursement in accordance with section eleven, article one of this chapter.

§30-6-5. Powers of the board.

The board has all the powers set forth in article one of this chapter and in addition may:

(1) Sue and be sued in its official name as an agency of this state;
(2) Hire, fix the compensation of and discharge an executive director;

(3) Hire, fix the compensation of and discharge the employees necessary to enforce the provisions of this article;

(4) Set the requirements to be an inspector;

(5) Examine and determine the qualifications of any applicant for a license;

(6) Determine the qualifications of any applicant for a certificate;

(7) Set cremation procedures and requirements;

(8) Set the fees charged under the provisions of this article;

(9) Set the fines assessed under the provisions of this article;

(10) Issue, renew, deny, suspend, revoke or reinstate licenses and certificates and discipline licensees and certificate holders;

(11) Set the continuing education requirements for licensees and certificate holders;

(12) Investigate alleged violations of the provisions of this article and the rules promulgated hereunder, and orders and final decisions of the board;

(13) Conduct hearings upon charges calling for discipline of a licensee or revocation or suspension of a license;

(14) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(15) Take all other actions necessary and proper to effectuate the purposes of this article.
§30-6-6. Rule-making authority.

(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article including, but not limited to, the following:

(1) The general practice of embalming, funeral directing and cremating, and operating a funeral establishment and crematory: Provided, That the board cannot require that an applicant for a license to operate a funeral establishment or crematory have either an embalmer's or funeral director's license, or a certificate to operate a crematory.

(2) The examinations administered under this article;

(3) The issuing and renewing of licenses, certificates and courtesy cards, including establishing a staggered biennial renewal schedule;

(4) The requirements for inactive licensees;

(5) The registration and regulation of apprentices;

(6) Establish a cremation procedure and crematory requirements;

(7) Establish inspection requirements for funeral establishments and crematories, including an inspection of a new facility and annual inspections of existing facilities;

(8) Establish inspector and investigator requirements;

(9) Setting the fees charged under the provisions of this article;

(10) Setting the fines assessed under the provisions of this article;

(11) Implementing requirements for continuing education for licensees;
(12) Denying, suspending, revoking, reinstating or limiting the practice of a licensee or certificate of qualification;

(13) The investigation and resolution of complaints against persons licensed, certified or registered under this article;

(14) Establish advertising standards; and

(15) Propose any other rules necessary to effectuate the provisions of this article.

(b) All rules in effect on the effective date of this article shall remain in effect until they are withdrawn, revoked or amended.

§30-6-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the state treasury and be used for the administration of this article. Except as may be provided in section eleven, article one of this chapter, the board shall retain the amounts in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the general revenue fund.

(b) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the general revenue fund of the state treasury.

§30-6-8. Embalmer license requirements.

(a) The board shall issue a license to practice embalming to an applicant who meets the following requirements:

(1) Is of good moral character;

(2) Is eighteen years of age or over;

(3) Is a citizen of the United States or is eligible for employment in the United States;
(4) Holds a high school diploma or its equivalent;

(5) Has completed one of the following education requirements:

(A) Holds an associate degree from an accredited college or university or has successfully completed not less than sixty semester hours or ninety quarter hours of academic work in an accredited college or university toward a baccalaureate degree with a declared major field of study, as evidenced by a transcript submitted for evaluation prior to beginning a one-year course of apprenticeship and prior to obtaining a diploma of graduation from a school of mortuary science; has completed a one-year course of apprenticeship under the supervision of a licensed embalmer and funeral director actively and lawfully engaged in the practice of embalming and funeral directing in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment, and under which the apprentice shall have taken an active part in the operation of embalming not less than thirty-five dead human bodies and an active part in conducting not less than thirty-five funeral services; and possesses a diploma of graduation from a school of mortuary science which requires as a prerequisite to graduation the completion of a course of study not less than twelve months' duration, and which said school of mortuary science must be one accredited by the American board of funeral service education, inc., and duly approved by the board; or

(B) Holds a bachelor degree in mortuary science from an accredited college or university as evidenced by a transcript submitted for evaluation prior to beginning a one-year course of apprenticeship; and has completed a one-year course of apprenticeship under the supervision of a licensed embalmer and funeral director actively and lawfully engaged in the practice of embalming and funeral directing in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment, and under which the apprentice shall have taken an active part in the operation of embalming not less
than thirty-five dead human bodies and an active part in conducting not less than thirty-five funeral services;

(6) Passes with an average score of not less than seventy-five percent the national conference of funeral services examination at a testing site provided by the national conference, passes with a score of not less than seventy-five percent the state law examination administered by the board and passes such further examination as the board may deem necessary to ascertain qualification and ability to engage in the practice of embalming. Successfully passing the national conference of funeral services examination is a condition precedent to taking the state law examination administered by the board. The board shall offer the state law examination at least twice each year; and

(7) Has paid all the appropriate fees.

(b) A license to practice embalming issued by the board prior to the first day of July, two thousand two, shall for all purposes be considered a license issued under this section: Provided, That a person holding a license issued prior to the first day of July, two thousand two, must renew the license pursuant to the provisions of this article.

§30-6-9. Funeral director license requirements.

(a) The board shall issue a license to practice funeral directing to an applicant who meets the following requirements:

(1) Holds an embalmer's license issued by the board; and

(2) Has paid all the appropriate fees.

(b) A license to practice funeral directing issued by the board prior to the first day of July, two thousand two, shall for all purposes be considered a license issued under this section: Provided, That a person holding a license issued prior to the first day of July, two thousand two, must renew the license pursuant to the provisions of this article.
§30-6-10. Funeral service license requirements.

(a) Commencing the first day of July, two thousand three, the board shall issue a license to practice embalming and funeral directing, which license shall be known as a funeral service license, to an applicant who meets the following requirements:

(1) Is of good moral character;

(2) Is eighteen years of age or over;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) Holds a high school diploma or its equivalent;

(5) Has completed one of the education requirements for an embalmer’s license, set out in subdivision (5), subsection (a), section eight of this article; and

(6) Has paid all the appropriate fees.

(b) A license to practice embalming and funeral directing issued by the board prior to the first day of July, two thousand three, shall for all purposes be considered a license issued under this section.

(c) A person holding a license to practice embalming and funeral directing issued prior to the first day of July, two thousand three, must after the first day of July, two thousand three, renew his or her license pursuant to the provisions of this section.

(d) After the first day of July, two thousand three, where ever the terms “license to practice embalming and funeral directing” or “embalming and funeral directing license” are used in the code, the term “funeral service license” shall apply.

§30-6-11. Crematory operator certificate requirements.
(a) All crematory operators shall be certified by the board. The board shall issue a certificate to be a crematory operator to an applicant who meets the following requirements:

(1) Has completed a class, authorized by the board, on cremation and operating a crematory;

(2) Has paid all the appropriate fees; and

(3) Has completed such other requirements as prescribed by the board.

(b) All persons currently operating crematories shall by the first day of January, two thousand three, register with the board. By the first day of July, two thousand three, all persons currently operating crematories shall obtain a certificate to operate a crematory, pursuant to the provisions of this section.

(c) All certificates must be renewed biennially upon or before the first day of July.

(d) After the first day of July, two thousand three, all licensed crematories must have a certified crematory operator in charge.

§30-6-12. Licenses or equivalent from another state; license or certificate to practice in this state.

The board may issue a license to practice embalming and funeral directing or a certificate to be a crematory operator to an applicant of good moral character who holds a valid license or its equivalent to practice from another state if the applicant demonstrates that:

(1) He or she holds a license or its equivalent to practice in another state which was granted after completion of educational requirements substantially equivalent to those required in this state;

(2) He or she holds a license or its equivalent to practice in another state which was granted after passing, in that or another
(3) Reciprocal rights are provided by such other state to holders of funeral director’s or embalmer’s licenses granted in this state. Such reciprocal licenses may be renewed biennially upon payment of the renewal license fee;

(4) He or she is not currently being investigated by a disciplinary authority of another state, does not have charges pending against his or her license or something equivalent to practice and has never had a license or something equivalent to practice revoked;

(5) He or she has not previously failed an examination for licensure as an embalmer or funeral director in this state;

(6) He or she has paid the application fee specified by rule; and

(7) Has completed such other action as required by the board.

§30-6-13. Courtesy cards.

(a) The board may issue biennial courtesy cards, on the first day of July, to licensed funeral directors and licensed embalmers in the states bordering on West Virginia, after the:

(1) Application for a courtesy card is made on a form prescribed by the board;

(2) Payment of a fee; and

(3) Adherence to such other requirements as specified by the board.

(b) A courtesy card may be issued under the following conditions:
(1) Holders of courtesy cards shall not be permitted to open or operate a place of business for the purpose of conducting funerals, embalming bodies or cremating in the state of West Virginia; and

(2) Holders of courtesy cards shall not be permitted to maintain an office or agency in this state for the purpose of conducting funerals, embalming bodies or cremating in the state of West Virginia.

(c) A violation of this section shall be sufficient cause for the board to immediately revoke or cancel the courtesy card of the violator.

§30-6-14. License and certificate renewal; conditions of renewal.

(a) The board shall biennially on the first day of July, and pursuant to a staggered schedule, renew a license to practice embalming and funeral directing or a certificate to be a crematory operator to every licensee or certificate holder desiring to continue in active practice or service.

(b) The board shall charge a fee for each renewal and a late fee for nonrenewal of a license or certificate.

(c) The board shall require as a condition for the renewal of a license to practice embalming and funeral directing or a certificate to be a crematory operator that each licensee participate in continuing education: Provided, That any licensed embalmer or funeral director sixty-five years or older with at least ten years experience as a licensed embalmer or licensed funeral director, is entitled to be issued, after payment of a fee, a license as an embalmer emeritus or funeral director emeritus and is exempt from all continuing education requirements. The emeritus license shall entitle the holder to all the rights and privileges of the license previously held by the licensee.

(d) Any person licensed to practice embalming and funeral directing or certified to be a crematory operator who does not desire to continue in active practice shall notify the board, in a
manner specified by the board, and pay a fee, and shall, during
such period, be listed by the board as being inactive. At such
time a person desires to return to active practice, he or she must
notify the board, in a manner specified by the board, and
complete all the continuing education requirements.

§30-6-15. Continuing education.

(a) The board shall conduct annually a school of instruction
to apprize funeral directors and embalmers of the most recent
scientific knowledge and developments affecting their profes-
sion. This school shall qualify as continuing education and shall
fulfill as many continuing education required hours as the board
specifies. Qualified lecturers and demonstrators may be
employed by the board for this purpose. The board shall give
notice of the time and place at which the school will be held for
all licensed funeral directors and embalmers: Provided, That the
location of any school of continuing education shall accommo-
date the geographic diversity of the embalmers and funeral
directors of this state.

(b) Hours of continuing education may be obtained by
attending and participating in board-approved programs,
meetings, seminars or activities. It is the responsibility of each
licensee to finance his or her costs of continuing education.

(c) Compliance with the requirements of continuing
education, as specified by the board, is a prerequisite for license
renewal.

§30-6-16. Inspector and inspection requirements.

(a) All inspectors employed by the board to inspect funeral
establishments and crematories, pursuant to the provisions of
this article, shall have a West Virginia embalmer’s license and
a West Virginia funeral director’s license.

(b) Each inspector shall inspect a specific region, as
designated by the board. Any person being employed as an
inspector is prohibited from inspecting in the region in which
he or she practices. If there is only one inspector, a board member, who is not from the region where the inspector practices, is authorized to inspect the facilities in the region where the inspector practices.

(c) All inspections shall be conducted in a manner so as not to interfere with the conduct of business within the funeral establishment or crematory. The board has the authority to enter, at all reasonable hours, for the purpose of inspecting the premises in which the business of embalming, funeral directing or cremating is conducted.

(d) All of an inspector’s expenses, per diem and compensation shall be paid out of the receipts of the board, but the allowances shall at no time exceed the receipts of the board.

(e) The board is authorized to set fees for inspections: Provided, That there shall be no fee for an annual inspection.

§30-6-17. Apprenticeship.

(a) After the first day of January, two thousand three, the board shall issue a registration to be an apprentice funeral director or apprentice embalmer to an applicant who meets the following requirements:

(1) Is of good moral character and temperate habits;

(2) Is eighteen years of age or over;

(3) A citizen of the United States or be eligible for employment in the United States;

(4) Has a high school diploma or its equivalent;

(5) Has completed one of the education requirements for an embalmer’s license, as set out in subdivision (5), subsection (a), section eight of this article;

(6) Is not attending school and will not be attending school during the apprenticeship period; and
(7) Has paid the appropriate fees.

(b) Any person that commences an apprenticeship prior to the first day of January, two thousand three, may continue to serve such apprenticeship and is not subject to the requirements set forth in this section, but is subject to board approval.

c) The board may set the requirements for an apprenticeship, including the manner in which it shall be served and the length of time, which shall not be more than one year.

d) No licensed funeral director or licensed embalmer shall be permitted to register or have registered more than five apprentices under his or her license at the same time.

§30-6-18. Funeral establishment license requirements.

(a) Every funeral establishment in West Virginia shall be licensed prior to opening a funeral establishment for business to the public. The board shall issue a license to operate a funeral establishment to an applicant who meets the following requirements:

(1) The place of business has been approved by the board as having met all the requirements and qualifications to be a funeral establishment as are required by this article;

(2) Notify the board, in writing, at least thirty days before the proposed opening date, so there can be an inspection of the funeral establishment;

(3) Show proof that the funeral establishment passed the inspection;

(4) Show that the funeral establishment has employed a licensee in charge;

(5) Show that the licensee in charge is a licensed funeral director;
(6) Show that the licensee in charge will manage the funeral establishment and be responsible for all business conducted and services performed therein;

(7) Pay all the appropriate fees; and

(8) Complete such other requirements as specified by the board.

(b) All funeral establishment licenses must be renewed biennially, by a staggered schedule, upon or before the first day of July and pay a renewal fee.

(c) Each funeral establishment license shall be valid for only one funeral establishment to be located at a specific street address. There shall be a separate license issued and a separate fee assessed to operate additional funeral establishments by the same applicant.

(d) A holder of a funeral establishment license that fails to pay fees for either the principal establishment or additional establishments by the first day of July of the renewal year is subject to a penalty, a reinstatement fee for each establishment and the required renewal fee.

(e) The holder of a funeral establishment license who ceases to operate the funeral establishment at the location specified in the application shall, within twenty days thereafter, surrender the funeral establishment license to the board and the license shall be canceled by the board. In the event of the death of an individual who was the holder of a funeral establishment license, it shall be the duty of the holder's personal representative to surrender the funeral establishment license within one hundred twenty days of qualifying as the personal representative.

(f) If a licensee in charge ceases to be employed by a funeral establishment, then the holder of the funeral establishment license shall notify the board within thirty days of the cessation. Within thirty days after such notification, the holder
of a funeral establishment license shall execute a new applica-
for a funeral establishment license specifying the name of
the new licensee in charge. A funeral establishment is prohib-
ited from operating more than thirty days without a licensee in
charge.

(g) A licensee whose embalmer’s or funeral director’s
license has been revoked or a holder of a license to operate a
funeral establishment whose license to operate has been
revoked shall not operate, either directly or indirectly, or hold
any interest in any funeral establishment or crematory: Pro-
vided, That a holder of a license to operate a funeral establish-
ment whose license to operate has been revoked is not prohib-
ited from leasing any property owned by him or her for use as
a funeral establishment, so long as the property owner does not
participate in the control or profit of the funeral establishment
except as lessor of the premises for a fixed rental not dependent
upon earnings.

(h) Failure to comply with any of these provisions shall be
grounds for revocation of a funeral establishment license.

(i) A license to operate a funeral establishment issued by
the board prior to the first day of July, two thousand two, shall
for all purposes be considered a license issued under this
section: Provided, That a funeral establishment holding a
license issued prior to the first day of July, two thousand two,
must renew the license pursuant to this section.

§30-6-19. Funeral establishment to be managed by a licensee in
charge; license displayed.

(a) Every separate funeral establishment in this state
offering the services set forth in this article shall be operated
under the supervision and management of a licensee in charge
who is licensed as a funeral director in this state.

(b) Each separate funeral establishment in this state offering
the services set forth in this article shall have its own license,
which license shall be prominently displayed within the funeral establishment.

(c) All funeral establishments shall display in all advertising the name of the licensee in charge of the establishment.

(d) All funeral establishments shall prominently display within the funeral establishment the license of the licensee in charge.

(e) A licensee in charge shall supervise each separate establishment.

§30-6-20. Crematory license requirements.

(a) Every crematory shall be licensed in West Virginia. The board shall issue a crematory license to an applicant who meets the following requirements:

(1) The place of business has been approved by the board as having met all the requirements and qualifications to be a crematory as are required by this article;

(2) The crematory conforms with all local building codes;

(3) The crematory meets all applicable environmental standards;

(4) Notify the board, in writing, at least thirty days before the proposed opening date so there can be an inspection of the crematory;

(5) Show proof that the crematory passed the inspection;

(6) Have a certified crematory operator in charge;

(7) Pay all the appropriate fees; and

(8) Complete such other requirements as specified by the board.
(b) All crematory licenses must be renewed biennially, by a staggered schedule, upon or before the first day of July and pay a renewal fee.

(c) Each crematory license shall be valid for only one crematory to be located at a specific street address. There shall be a separate license issued and a separate fee assessed to operate additional crematories by the same applicant.

(d) A holder of a crematory license that fails to pay fees for either the principal crematory or additional crematories by the first day of July of the renewal year is subject to a penalty, a reinstatement fee for each crematory and the required renewal fee.

(e) The holder of a crematory license who ceases to operate the crematory at the location specified in the application shall, within twenty days thereafter, surrender the crematory license to the board and the license shall be canceled by the board. In the event of the death of an individual who was the holder of a crematory license, it shall be the duty of the holder's personal representative to surrender the crematory license within one hundred twenty days of qualifying as the personal representative.

(f) A holder of a certificate to operate a crematory whose certificate to operate has been revoked or a holder of a crematory license whose license has been revoked shall not operate, either directly or indirectly, or hold any interest in any crematory or funeral establishment: Provided, That a holder of a crematory license whose license has been revoked is not prohibited from leasing any property owned by him or her for use as a crematory, so long as the property owner does not participate in the control or profit of the crematory except as lessor of the premises for a fixed rental not dependent upon earnings.

(g) Failure to comply with any of these provisions shall be grounds for revocation of a crematory license.
(h) All persons that operate crematories shall by the first
day of January, two thousand three, register with the board. By
the first day of July, two thousand three, all persons that operate
crematories shall obtain a crematory license, pursuant to the
provisions of this section.

(i) All crematory licenses must be renewed biennially upon
or before the first day of July.

(j) After the first day of July, two thousand three, all
licensed crematories must have a certified crematory operator
in charge.

(k) If a certified crematory operator in charge ceases to be
employed by a crematory, then the holder of the crematory
license shall notify the board within thirty days of the cessation.
Within thirty days after such notification, the holder of a
crematory license shall execute a new application for a crema-
tory license specifying the name of the new certified crematory
operator in charge. A crematory is prohibited from operating
more than thirty days without a certified crematory operator in
charge.

§30-6-21. Requirements for cremating.

(a) A crematory shall obtain written permission prior to
cremating a dead human body. The written permission shall be
obtained from persons authorized by the board as specified in
rules.

(b) The written permission shall be on a standard form,
prescribed by the board, and shall contain the following
information:

(1) The identity of the deceased;

(2) The name of the person authorizing the cremation and
the relationship, if any, to the deceased;

(3) Permission for the crematory to perform the cremation;
(4) The name of the person who will claim the cremains from the crematory; and

(5) Any other information required by the board.

(c) A crematory shall obtain a permit or authorization for cremation from the county medical examiner, the assistant county medical examiner or the county coroner of the county wherein the death occurred and do such other acts as required by section nine, article twelve, chapter sixty-one of this code:

Provided, That a crematory may obtain a permit or authorization for cremation from the chief medical examiner if:

(1) The crematory is unable to obtain a permit from the county medical examiner, the assistant county medical examiner or the county coroner of the county wherein the death occurred; or

(2) The crematory has concerns following authorization by county personnel regarding the identity or cause of death of the deceased.

(d) The permit or authorization for cremation shall be on forms prescribed by the chief medical examiner. A permit or authorization for cremation may be done by facsimile.

(e) All crematories shall implement a cremation procedure. The board, by rules, shall establish the cremation procedure which shall include:

(1) An identification process for bodies;

(2) A tracking process for bodies from the time a body is delivered to a crematory through the time the cremains are claimed by the authorized person;

(3) Obtaining all the required signatures, as specified by the board, on the written permission for cremation;

(4) Only cremating one human body at a time and prohibiting co-mingling of cremains;
(5) The specified time period a crematory is required to keep unclaimed cremains;

(6) How to dispose of unclaimed cremains;

(7) A record-keeping process for cremations; and

(8) Any other requirements necessary to effectuate the provisions of this article.

(f) The board shall establish requirements for:

(1) The equipment needed to complete the cremation process; and

(2) The containers needed to store the cremains.

§30-6-22. Disposition of body of deceased person; penalty.

(a) No public officer, employee, physician or surgeon, or any other person having a professional relationship with the deceased, shall send, or cause to be sent, to any embalmer, funeral director or crematory operator the body of any deceased without first inquiring the desires of the next of kin, or any persons who may be chargeable with the funeral expenses of the deceased. If any next of kin or person can be found, his or her authority and direction shall be used as to the disposal of the body of the deceased.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars, nor more than one thousand dollars, or imprisoned not less than ten days nor more than ninety days, or both.

§30-6-23. Refusal to issue or renew, suspension or revocation of license; disciplinary action.

(a) The board may refuse to renew, suspend, revoke or limit any license, certificate or registration or practice privilege of a licensee, or certificate or registration holder and may take
disciplinary action against a licensee, or certificate or registration holder after a hearing. The board may refuse to issue, refuse to renew, suspend, revoke or limit any license, certificate or registration or practice privilege of a licensee, or certificate or registration holder for any of the following reasons:

(1) Fraud or deceit in obtaining or maintaining a license;

(2) Failure by any licensee, or certificate or registration holder to maintain compliance with requirements for issuance or renewal of a license, certificate or registration or to timely notify the board as required in this article;

(3) Dishonesty, fraud, professional negligence in the performance of services, or a willful departure from accepted standards and professional conduct;

(4) Violation of any provision of this article or any rule, including the violation of any professional standard or rule of professional conduct, or public health laws;

(5) Conviction of a felony or any crime of which dishonesty or fraud under the laws of the United States or this state, or conviction of any similar crime under the laws of any other state if the underlying act or omission involved would have constituted a crime under the laws of this state;

(6) Any conduct adversely affecting upon the licensee’s, or certificate or registration holder’s fitness to perform professional services;

(7) The use of false, misleading or unethical advertising by any licensee, or certificate or registration holder, or applicant for a license or certificate of registration;

(8) Upon satisfactory proof that a licensed embalmer, a licensed funeral director, or a certified crematory operator has taken undue advantage of his or her patrons or has committed a fraudulent act in the conduct of business;
(9) Solicitation of business by the licensee, or certificate or registration holder, or any agents, assistants or employees, whether such solicitation occurs after death or while death is impending, as specified by the board: Provided, That this subdivision does not prohibit proper advertising;

(10) If a licensee, or certificate or registration holder, knowingly permits a person not licensed, not certified, or not registered to engage in the profession of embalming, funeral directing or cremation;

(11) If a licensee, or certificate or registration holder, knowingly permits a person not licensed, not certified, or not registered to use his or her license number or numbers for the purpose of practicing, or discharging any of the duties of, the professions of embalming, funeral directing or cremation;

(12) Employment by the licensee of persons as “cappers”, “steerers” or “solicitors”, or other such persons to obtain funeral or cremation business;

(13) Employment, directly or indirectly, of any apprentice, agent, assistant, embalmer, employee or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director, funeral establishment or crematory;

(14) The buying of business by the licensee, or certificate or registration holder, or any agents, assistants or employees, or the direct or indirect payment or offer of payment of a commission by the licensee, or certificate or registration holder, or any agent, assistants or employees, for the purpose of securing business;

(15) Gross immorality; and

(16) Chronic or persistent inebriety or addiction to alcohol, narcotics or other substance.
§30-6-24. Complaints; investigations.

(a) Upon receipt of a written complaint filed against any licensee, or certificate or registration holder, the board shall provide a copy of the complaint to the licensee, or certificate or registration holder.

(b) The board may investigate the complaint. If the board finds upon investigation that probable cause exists that the licensee, or certificate or registration holder, has violated any provision of this article or the rules promulgated hereunder, then the board shall serve the licensee, or certificate or registration holder, with a written statement of charges and a notice specifying the date, time and place of the hearing. The hearing shall be held in accordance with the provisions of this article.

(c) In addition to other sanctions imposed, the board may require a licensee, or certificate or registration holder to pay the costs of the proceeding if the licensee, or certificate or registration holder is in violation of any provision of this article or the rules promulgated hereunder.

§30-6-25. Hearing and judicial review.

(a) A hearing on a statement of charges shall be held in accordance with the provisions for hearing set forth in section
eight, article one of this chapter and procedures specified by
rule by the board.

(b) Any licensee, or certificate or registration holder,
adversely affected by any decision of the board entered after a
hearing, may obtain judicial review of the decision in accor-
dance with section four, article five, chapter twenty-nine-a of
this code and may appeal any ruling resulting from judicial
review in accordance with said article.

§30-6-26. Reinstatement.

If the board has suspended, revoked or refused to renew a
license, certificate or registration, the licensee, or certificate or
registration holder, shall be afforded an opportunity to demon-
strate the qualifications to resume practice. The application for
reinstatement shall be in writing and subject to the procedures
specified by the board.

§30-6-27. Unlawful acts.

It is unlawful for any person not licensed or certified under
the provisions of this article to practice or offer to practice
embalming, funeral directing or cremation, or to operate a
funeral establishment or crematory in this state.

§30-6-28. Injunctions.

When, as a result of an investigation under this article or
otherwise, the board or any other interested person believes that
any person: (1) Has engaged, is engaging or is about to engage
in the practice of embalming, funeral directing or cremating
without a license or certificate; (2) has operated, is operating or
is about to operate a funeral establishment or crematory; or (3)
is in violation of any of the provisions of this article, the board
or any other interested person may make application to any
court of competent jurisdiction for an order enjoining the acts
or practices and upon a showing that the person has engaged or
is about to engage in any act or practice, an injunction, restrain-
§30-6-29. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person has knowingly violated the provisions of this article, the board may bring its information to the attention of the attorney general or other appropriate law-enforcement officer who may cause appropriate criminal proceedings to be brought.

(b) Any person who knowingly violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars or confined in the county or regional jail not more than one year, or both fined and imprisoned.

§30-6-30. Single act evidence of practice.

In any action brought or any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

§30-6-31. Inapplicability of article.

The provisions of this article do not apply to or interfere with:

(1) The duties of an officer of any local or state board of health who, in compliance with local or state board of health rules, may be charged with the duty of preparation for burial of a human body when death was caused by a virulent, communicable disease;

(2) The duties of an officer of a medical college, county medical society, anatomical association or other recognized person carrying out his or her responsibilities of dealing with
indigent dead human bodies who are held subject for anatomical study; or

(3) The customs or rites of any religious sect in the burial of its dead: Provided, That embalming shall only be performed by a licensed embalmer.

§30-6-32. Termination date.

The board shall terminate on the first day of July, two thousand seven, pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-9. Permits required for cremation; fee.

(a) It is the duty of any person cremating, or causing or requesting the cremation of, the body of any dead person who died in this state, to secure a permit for the cremation from the chief medical examiner, the county medical examiner or county coroner of the county wherein the death occurred. Any person who willfully fails to secure a permit for a cremation, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars. A permit for cremation shall be acted upon by the chief medical examiner, the county medical examiner or the county coroner after review of the circumstances surrounding the death, as indicated by the death certificate. The person requesting issuance of a permit for cremation shall pay a reasonable fee, as determined by the chief medical examiner, to the county medical examiner or coroner or to the office of the chief medical examiner, as appropriate, for issuance of the permit.

(b) Any person operating a crematory who does not perform a cremation pursuant to the terms of a cremation contract, or pursuant to the order of a court of competent jurisdiction, within the time contractually agreed upon, or, if the
cremation contract does not specify a time period, within twenty-one days of receipt of the deceased person’s remains by the crematory, whichever time is less, is guilty of a misdemeanor.

(c) Any person operating a crematory who fails 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, within the time contractually agreed upon, or, if the cremation contract does not specify a time period, within thirty-five days of receipt of the deceased person’s remains by the crematory, whichever time is less, is guilty of a misdemeanor.

(d) Any person convicted of a violation of the provisions of subsection (b) or (c) of this section shall be fined not less than one thousand dollars nor more than five thousand dollars or confined in the county or regional jail for a period not to exceed six months, or both.

(e) In any criminal proceeding alleging that a person violated the time requirements of this section, it is a defense to the charge that a delay beyond the time periods provided for in this section were caused by circumstances wholly outside the control of the defendant.

(f) For purposes of this section, “cremation contract” means an agreement to perform a cremation, as a “cremation” is defined in subsection (g), section three, article six, chapter thirty of this code. A cremation contract is an agreement between a crematory and any authorized person or entity, including, but not limited to:

(1) The deceased person, prior to his or her death;

(2) The deceased person’s next of kin;

(3) A public official charged with arranging the final disposition of an indigent deceased person or an unclaimed corpse;
(4) A representative of an institution who is charged with arranging the final disposition of a deceased who donated his or her body to science;

(5) A public officer required by statute to arrange the final disposition of a deceased person;

(6) Another funeral establishment; or

(7) An executor, administrator or other personal representative 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.
The interstate compact on licensure of participants in live racing with pari-mutuel wagering is enacted into law and entered into with all other jurisdictions legally joining in the compact in the form substantially as follows:

ARTICLE I. PURPOSES.

§1. Purposes.

The purposes of this compact are to:

1. Establish uniform requirements among the party states for the licensing of participants in live racing with pari-mutuel wagering and ensure that all the participants who are licensed pursuant to this compact meet a uniform minimum standard of honesty and integrity.

2. Facilitate the growth of the racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live racing with pari-mutuel wagering.

3. Authorize the West Virginia racing commission to participate in this compact.

4. Provide for participation in this compact by officials of the party states and permit those officials, through the compact committee established by this compact, to enter into contracts with governmental agencies and nongovernmental persons to carry out the purposes of this compact.

5. Establish the compact committee created by this compact as an interstate governmental entity duly authorized to request and receive criminal history record information from the federal bureau of investigation and other state and local law-enforcement agencies.

ARTICLE II. DEFINITIONS.

§2. Definitions.
"Compact committee" means the organization of officials from the party states that is authorized and empowered by this compact to carry out the purposes of this compact.

"Official" means the appointed, elected, designated or otherwise duly selected member of a racing commission or the equivalent of a racing commission in a party state who represents that party state as a member of the compact committee.

"Participants in live racing" means participants in live racing with pari-mutuel wagering in the party states.

"Party state" means each state that has enacted this compact.

"State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and each territory or possession of the United States.

ARTICLE III. ENTRY INTO FORCE, ELIGIBLE PARTIES AND WITHDRAWAL.

§3. Entry into force.

This compact shall come into force when enacted by any four states. Thereafter, this compact shall become effective as to any other state upon: (i) That state's enactment of this compact; and (ii) the affirmative vote of a majority of the officials on the compact committee as provided in section eight.

§4. States eligible to join compact.

Any state that has adopted or authorized racing with pari-mutuel wagering is eligible to become party to this compact.

§5. Withdrawal from compact and impact thereof on force and effect of compact.
Any party state may withdraw from this compact by enacting a statute repealing this compact, but the withdrawal does not become effective until the head of the executive branch of the withdrawing state has given notice in writing of the withdrawal to the head of the executive branch of all other party states. If as a result of withdrawals participation in this compact decreases to less than three party states, this compact is no longer in force and effect unless and until there are at least three or more party states again participating in this compact.

ARTICLE IV. COMPACT COMMITTEE.

§6. Compact committee established.

There is hereby created an interstate governmental entity to be known as the “compact committee”, which shall be comprised of one official from the racing commission or its equivalent in each party state who shall be appointed, serve and is subject to removal in accordance with the laws of the party state he or she represents. Pursuant to the laws of his or her party state, each official shall have the assistance of his or her state’s racing commission or the equivalent of a racing commission in considering issues related to licensing of participants in live racing and in fulfilling his or her responsibilities as the representative from his or her state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent from his or her state shall designate another of its members as an alternate who shall serve in his or her place and represent the party state as its official on the compact committee until that racing commission or equivalent determines that the original representative official is able once again to perform his or her duties as that party state’s representative official on the compact committee. The designation of an alternate shall be communicated by the affected state’s racing commission or equivalent to the compact committee as the committee’s bylaws may provide.
§7. Powers and duties of compact committee.

1. Determine which categories of participants in live horse racing, including, but not limited to, owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians and farriers, and determine which comparable categories of participants in live dog racing and other forms of live racing with pari-mutuel wagering in two (2) or more of the party states, should be licensed by the committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category and the requirements for renewal of licenses in each category: Provided, That with regard to requests for criminal history record information on each applicant for a license and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements.

2. Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on the applicants, including criminal history record information from the federal bureau of investigation and relevant state and local law-enforcement agencies and, where appropriate, from the royal Canadian mounted police and law-enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the committee as provided in paragraph one above. Only officials on, and employees of, the compact committee may receive and review the criminal history record information and those officials and employees may use that
34 information only for the purposes of this compact. No such official or employee may disclose or disseminate the information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees or its designee and, pursuant to Public Law 92-544 or Public Law 100-413, shall be forwarded to a state identification bureau, or to the association of racing commissioners, international, an association of state officials regulating pari-mutuel wagering designated by the attorney general of the United States, for submission to the federal bureau of investigation for a criminal history record check. The fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the federal bureau of investigation or other receiving law-enforcement agency.

3. Issue licenses to, and renew the licenses of, participants in live racing listed in paragraph one of this section who are found by the committee to have met the licensure and renewal requirements established by the committee. The compact committee does not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the applicant that it will not be able to process his or her application further. The notification does not constitute and shall not be considered to be the denial of a license. Any such applicant has the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the compact committee using the requirements established pursuant to paragraph one of this section.

4. Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and other services as may be necessary to effectuate the purposes of this compact.

5. Create, appoint and abolish those offices, employments and positions, including an executive director, as it considers
necessary for the purposes of this compact, prescribe their
powers, duties and qualifications, hire persons to fill those
offices, employments and positions and provide for the re-
moval, term, tenure, compensation, fringe benefits, retirement
benefits and other conditions of employment of its officers,
employees and other positions.

6. Borrow, accept or contract for the services of personnel
from any state, the United States, any other governmental
agency or from any person, firm, association, corporation or
other entity.

7. Acquire, hold and dispose of real and personal property
by gift, purchase, lease, license or in other similar manner, in
furtherance of the purposes of this compact.

8. Charge a fee to each applicant for an initial license or
renewal of a license.

9. Receive other funds through gifts, grants and appropria-
tions.

§8. Voting requirements.

A. Each official shall be entitled to one vote on the compact
committee.

B. All action taken by the compact committee with regard
to the addition of party states as provided in section three, the
licensure of participants in live racing, and the receipt and
disbursement of funds requires a majority vote of the total
number of officials, or their alternates, on the committee. All
other action by the compact committee requires a majority vote
of those officials, or their alternates, present and voting.

C. No action of the compact committee may be taken unless
a quorum is present. A majority of the officials, or their
alternates, on the compact committee constitutes a quorum.

§9. Administration and management.
A. The compact committee shall elect annually from among its members a chairman, a vice chairman and a secretary/treasurer.

B. The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials, or their alternates, on the committee at that time and shall have the power by the same vote to amend and rescind these bylaws. The committee shall publish its bylaws in convenient form and shall file a copy of the bylaws and a copy of any amendments to the bylaws with the secretary of state or equivalent agency of each of the party states.

C. The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and his or her support staff.

D. Employees of the compact committee shall be considered governmental employees.

§10. Immunity from liability for performance of official responsibilities and duties.

No official of a party state or employee of the compact committee may be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his or her responsibilities and duties under this compact.

ARTICLE V. RIGHTS AND RESPONSIBILITIES OF EACH PARTY STATE.

§11. Rights and responsibilities of each party state.

A. By enacting this compact, each party state:

1. Agrees: (i) To accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing pursuant to the committee’s licensure requirements; and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his or her alternate.
2. Agrees not to treat a notification to an applicant by the compact committee under paragraph three of section seven that the compact committee will not be able to process his or her application further as the denial of a license, or to penalize such an applicant in any other way based solely on such a decision by the compact committee.

3. Reserves the right: (i) To charge a fee for the use of a compact committee license in that state; (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked; (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee; and (iv) to establish its own licensure standards for the licensure of nonracing employees at horse and dog racetracks and employees at separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.

B. No party state may be held liable for the debts or other financial obligations incurred by the compact committee.

ARTICLE VI. CONSTRUCTION AND SEVERABILITY.

§12. Construction and severability.

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable and, if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of the United States or of any party state, or the applicability of this compact to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If all or some
portion of this compact is held to be contrary to the constitution
of any party state, the compact shall remain in full force and
effect as to the remaining party states and in full force and
effect as to the state affected as to all severable matters.

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.]
(a) The commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the licensing of lottery sales agents for the sale and dispensing of lottery tickets, materials and lottery games, and the operations of electronic computer terminals therefor, subject to the following:

1. The commission shall issue its annual license to the lottery sales agents for each lottery outlet and for a fee established by the commission to cover its costs, but not to exceed one thousand dollars. Application for licensing as a lottery sales agent shall be on forms prescribed and furnished by the director;

2. No licensee may engage in business exclusively as a lottery sales agent;

3. The commission shall ensure geographic distribution of lottery sales agents throughout the state;

4. Before issuance of a license to an applicant, the commission shall consider factors such as the financial responsibility, security, background, accessibility of the place of business or activity to the public, public convenience and the volume of expected sales;

5. No person under the age of twenty-one may be licensed as an agent. No licensed agent may employ any person under the age of eighteen for sales or dispensing of lottery tickets or materials or operation of a lottery terminal;

6. A license is valid only for the premises stated on the license;

7. The director may issue a temporary license when determined necessary;

8. A license is not assignable or transferable;
(9) Before a license is issued, an agent shall be bonded for an amount and in the form and manner determined by the director, or shall provide other security, in an amount, form and manner determined by the director, that will ensure the performance of the agent’s duties and responsibilities as a licensed lottery agent or the indemnification of the commission;

(10) The commission may issue licenses to any legitimate business, organization, person or entity, including, but not limited to, civic or fraternal organizations; parks and recreation commissions or similar authorities; senior citizen centers, state-owned stores, persons lawfully engaged in nongovernmental business on state property, persons lawfully engaged in the sale of alcoholic beverages; political subdivisions or their agencies or departments, state agencies, commission-operated agencies; persons licensed under the provisions of article twenty-three, chapter nineteen of this code; and religious, charitable or seasonal businesses;

(11) Licensed lottery sales agents shall receive seven percent of gross sales as commission for the performance of their duties: Provided, That a portion of the commission not to exceed one and one quarter percent of gross sales may be paid from unclaimed prize moneys accumulated under section sixteen of this article. In addition, the commission may promulgate a bonus-incentive plan as additional compensation not to exceed one percent of annual gross sales. The method and time of payment shall be determined by the commission;

(12) Licensed lottery sales agents shall prominently display the license on the premises where lottery sales are made; and

(13) No person or entity or subsidiary, agent or subcontractor of that person or entity may receive or hold more than twenty-five percent of the licenses to act as licensed lottery sales agent in any one county or municipality nor more than five percent of the licenses issued throughout this state: Provided, That the limitations of twenty-five percent and five
percent in this subdivision do not apply if it is determined by
the commission that there are not a sufficient number of
qualified applicants for licenses to comply with these require-
ments.

(b) The commission shall propose rules for legislative
approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code specifying the terms and
conditions for contracting with lottery retailers for sale of
preprinted instant type lottery tickets and may provide for the
dispensing of the tickets through machines and devices. Tickets
may be sold or dispensed in any public or private store,
operation or organization, without limitation. The commission
may establish an annual fee not to exceed fifty dollars for those
persons, per location or site, and shall issue a certificate of
authority to act as a lottery retailer to them. The commission
shall establish procedures to ensure the security, honesty and
integrity of the lottery and distribution system. The commission
shall establish the method of payment, commission structure,
methods of payment of winners, including payment in merchan-
dise and tickets, and may require prepayment by lottery
retailers, require bond or security for payment and require
deposit of receipts in accounts established therefor. Retailers
shall prominently display the certificate of authority issued by
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.

(a) A public water system is any water supply or system that regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) Any collection, treatment, storage and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system; and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system does not include a system that meets all of the following conditions: (1) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) obtains all of its water from, but is not owned or operated by, a public water system that otherwise meets the definition; (3) does not sell water to any person; and (4) is not a carrier conveying passengers in interstate commerce.
(b)(1) The secretary shall prescribe by legislative rule the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals and, if the secretary considers appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer.

(2) The secretary shall further prescribe by legislative rule minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; recordkeeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations.

(3) In addition, the secretary shall establish by legislative rule, in accordance with article three, chapter twenty-nine-a of this code, requirements covering the production and distribution of bottled drinking water and may by legislative rule, in accordance with article three, chapter twenty-nine-a of this code, establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water.

(c) Authorized representatives of the bureau have right of entry to any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspecting, sampling or testing and shall be furnished records or information reasonably required for a complete inspection. The right of entry includes the right for a bureau representative
or a designee of a bureau representative to conduct an evaluation necessary to assure the public water system meets federal safe drinking water requirements. The public water system shall provide a written response to the bureau within forty-five days of receipt of the evaluation by the public water system, addressing corrective actions to be taken as a result of the evaluation.

(d) (1) Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any entity recognized by law who violates any provision of this section, or any of the rules or orders issued pursuant to this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and each day's violation shall constitute a separate offense. The commissioner or his or her authorized representative may also seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations.

(2) For a willful violation of a provision of this section, or of any of the rules or orders issued under this section for which a penalty is not otherwise provided under subdivision (3) of this subsection, an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or entity recognized by law, upon a finding of a willful violation by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars and each day's violation shall be grounds for a separate penalty.

(3) The commissioner or his or her authorized representative shall have authority to assess administrative penalties and initiate any proceedings necessary for the enforcement of drinking water rules. The administrative penalty for a violation
of any drinking water rule is a minimum of one thousand
dollars per day per violation and a maximum of two thousand
five hundred dollars per day per violation for systems serving
more than ten thousand persons, a minimum of two hundred
fifty dollars per day per violation and a maximum of five
hundred dollars per day per violation for systems serving over
three thousand three hundred persons up to and including ten
thousand persons, a minimum of one hundred dollars per day
per violation and a maximum of two hundred dollars per day
per violation for systems serving three thousand three hundred
or fewer persons and each day’s violation shall be grounds for
a separate penalty. Penalties are payable to the commissioner.
All moneys collected under this section shall be deposited into
a restricted account known as the safe drinking water penalty
fund previously created in the office of the state treasurer. All
money deposited into the fund shall be used by the commis-
sioner to provide technical assistance to public water systems.

CHAPTER 154

(H. B. 4509—By Delegates Douglas, Kuhn, Perdue,
Marshall, Ennis, Flanigan and Eilem)

[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 practitio-
ners 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.

Notwithstanding any provision of this code to the contrary, the secretary of the department of health and human resources and the insurance commissioner, on or before the first day of June, two thousand two, shall jointly propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which set forth uniform application forms for credentialing, recredentialing or updating information and to specify the health care practitioners who shall utilize the forms.

§16-1A-3. Advisory committee.

(a) The secretary of the department of health and human resources and the insurance commissioner shall jointly establish an advisory committee to assist them in the development and implementation of the uniform credentialing process in this state. The advisory committee shall consist of eleven appointed members. Six members shall be appointed by the secretary of the department of health and human resources: One member shall represent a hospital with one hundred beds or less; one member shall represent a hospital with more than one hundred
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-I, 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-I, 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 employ one or more regional long-term care ombudsmen to effect the purposes of this article. The regional long-term care ombudsman shall have either: (1) At least a bachelor’s degree in gerontology, social work, health, or a related field and demonstrated experience in one of the following areas: (A) The field of aging; (B) health care or social service programs; (C) community programs; or (D) long-term care issues; or (2) at least a bachelor’s degree in any field and at least three years of experience in gerontology, social work, health or a related field.
Experience in gerontology, social work, health or a related field may be substituted for up to two years (sixty hours) of college on a year-for-year basis. The supervising ombudsman must have at least a bachelor's degree in gerontology, social work, health or a related field and demonstrated experience in one of the following areas: (A) The field of aging; (B) health care or social service programs; (C) community programs; and (D) long-term care issues. Persons employed in a designated regional long-term care ombudsman program on the date of enactment of this article may be given a waiver from these requirements provided that within one year from the date of enactment of this article they enter into a program leading to a degree in gerontology, social work, health or a related field or complete fifty hours of continuing education units in gerontology, social work, health or a related field every two calendar year periods. The regional long-term care ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities. The regional long-term care ombudsman may not have been employed within the past two years prior to the date of his or her employment under this section by any association of long-term care facilities. If a regional long-term care ombudsman has been employed within the past two years prior to the date of his or her employment under this section by a long-term care facility, or by any organization or corporation that directly or indirectly regulates, owns or operates a long-term care facility, that ombudsman may not act with the authority of a regional long-term care ombudsman in the facility of prior employment or in any other facility regulated, owned or operated by the same ownership as the facility of prior employment.

(b) Neither the regional long-term care ombudsman nor any member of his or her immediate family may have, or have had within the two years preceding his or her employment under this section, any pecuniary interest in the provision of long-term care. For the purposes of this section, the term "immediate
family" shall mean the spouse, children, natural mother, natural
father, natural brothers or natural sisters of the regional long-
term care ombudsman.

(c) The duties of the regional long-term care ombudsman
shall include, but are not limited to, the following:

(1) Regularly monitoring long-term care facilities and
investigating complaints filed on behalf of a resident, or filed
on the regional long-term care ombudsman’s own initiative,
relating to the health, safety, welfare and rights of such resi-
dents, in accordance with complaint investigation procedures
developed by the state long-term ombudsman care program:
Provided, That nothing in this section shall be construed as to
grant a regional long-term care ombudsman the right of entry
to a long-term care facility’s drug rooms or to treatment rooms
occupied by a resident unless prior consent has been obtained
from the resident;

(2) Monitoring the development and implementation of
federal, state and local laws, regulations and policies with
respect to long-term care facilities;

(3) Training certified volunteers in accordance with the
training and certification program developed by the state long-
term care ombudsman program;

(4) Encouraging, cooperating with, and assisting the
development and operation of referral services which can
provide current, valid and reliable information on long-term
care facilities and alternatives to institutionalization to persons
in need of these services and the general public;

(5) Submitting reports as required by the state long-term
care ombudsman program; and
(6) Other duties as mandated by the Older Americans Act of 1965, as amended.

d) The state long-term care ombudsman shall develop and implement procedures for training and certification of regional long-term care ombudsmen. Regional long-term care ombudsmen who satisfactorily complete the training requirements shall be certified by the state commission on aging and shall be given identification cards which shall be presented to employees of a long-term care facility upon request. No regional long-term care ombudsman may investigate any complaint filed with the West Virginia long-term care ombudsman program unless the person has been certified by the state commission on aging. Consistent with the provisions of this article and any rules promulgated pursuant to section twenty-one, certified regional long-term ombudsmen shall be representatives of the state long-term care ombudsman program.

CHAPTER 156

(S. B. 727 — By Senators Craigo, Jackson, Chafin, Preziosso, 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.


(a) There is hereby created in the state treasury a fund to be known as the "West Virginia Birth-to-Three Fund" that shall be an interest-bearing account established and maintained to pay costs, fees and expenses incurred, or to be incurred, for early intervention services for children who are developmentally delayed.

(b) Funds deposited into this account shall be derived from the following sources:

(1) Any appropriations by the Legislature;

(2) Fund transfers from any fund of the divisions of the department of health and human resources that, in whole or in part, supports early intervention services;

(3) All public funds transferred by any public agency as permitted by applicable law;

(4) Any private funds contributed, donated or bequeathed by corporations, individuals or other entities; and

(5) All interest or return on investments accruing to the fund.

(c) Moneys deposited in this fund shall be used exclusively to provide early intervention services to accomplish the purposes of this article. Expenditures of moneys deposited in
this fund are to be made in accordance with appropriation by
the Legislature and in accordance with article three, chapter
twelve of this code and upon the fulfillment of the provisions of
article two, chapter five-a of this code: Provided, That for the
fiscal year ending the thirtieth day of June, two thousand three,
expenditures are authorized from deposits rather than pursuant
to appropriation by the Legislature.

(d) Any balance remaining in this fund at the end of any
state fiscal year shall not revert to the state treasury but shall
remain in this fund and shall be used only in a manner consis-
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.

(a) The U.S. department of health and human services has established a federal grant program to encourage innovative integrated health care delivery systems to serve uninsured and underinsured persons with greater efficiency and improved quality of care and to further maximize reimbursements to health care providers which provide these services. The "Community Access Program" (CAP) grants as authorized in the federal register: February 4, 2000 (volume 65, number 24), allow for the establishment of local programs to reorganize and reintegrate local health care delivery systems. This section authorizes, on a trial basis, the establishment of pilot programs in the state which receive a grant under CAP to coordinate health care provider reimbursements, to allow an opportunity for innovations in payment for health care services to be tested and, if successful, to be permanently implemented.

(b) An entity receiving a CAP grant may initiate a program that comports to the federal grant requirements and meets the requirements of this section. The pilot program may enroll persons to participate in this pilot program who currently do not have insurance and whose income does not exceed two hundred and fifty percent of the federal poverty level. The pilot program may coordinate payments from enrollees and businesses employing enrollees to be utilized to capture available federal moneys to assist in providing reimbursements to enrollee's health care providers. The pilot program is to coordinate reimbursements limited to areas not covered by other federal reimbursement programs such as the children's health insurance agency within the department of administration and the federal medicaid program. In no instance may the pilot program allow 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-
ments, enrollee services utilized and other information as requested by the commission.

(g) The authorization for the creation and existence of a pilot program as established pursuant to this section shall expire on the thirtieth day of June, two thousand four.

CHAPTER 158

(S. B. 658 — By Senators Wooton, CaIdwell, 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

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.
§16-30-9. 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.
For the purposes of this article:

(a) "Actual knowledge" means the possession of information of the person’s wishes communicated to the health care provider orally or in writing by the person, the person’s medical power of attorney representative, the person’s health care surrogate or other individuals resulting in the health care provider’s personal cognizance of these wishes. Constructive notice and other forms of imputed knowledge are not actual knowledge.

(b) "Adult" means a person who is eighteen years of age or older, an emancipated minor who has been established as such pursuant to the provisions of section twenty-seven, article seven, chapter forty-nine of this code or a mature minor.

(c) "Advanced nurse practitioner" means a registered nurse with substantial theoretical knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge in implementing the nursing process, and who has met the further requirements of title 19, legislative rules for West Virginia board of examiners for registered professional nurses, series 7, who has a mutually agreed upon association in writing with a physician and has been selected by or assigned to the person and has primary responsibility for treatment and care of the person.

(d) "Attending physician" means the physician selected by or assigned to the person who has primary responsibility for treatment and care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article.

(e) "Capable adult" means an adult who is physically and mentally capable of making health care decisions and who is
not considered a protected person pursuant to the provisions of chapter forty-four-a of this code.

(f) "Close friend" means any adult who has exhibited significant care and concern for an incapacitated person who is willing and able to become involved in the incapacitated person's health care and who has maintained regular contact with the incapacitated person so as to be familiar with his or her activities, health and religious and moral beliefs.

(g) "Death" means a finding made in accordance with accepted medical standards of either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible cessation of all functions of the entire brain, including the brain stem.

(h) "Guardian" means a person appointed by a court pursuant to the provisions of chapter forty-four-a of this code who is responsible for the personal affairs of a protected person and includes a limited guardian or a temporary guardian.

(i) "Health care decision" means a decision to give, withhold or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care and organ or tissue donation.

(j) "Health care facility" means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians' office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice, home health care and other facility
established to administer health care in its ordinary course of business or practice.

(k) "Health care provider" means any licensed physician, dentist, nurse, physician's assistant, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(l) "Incapacity" means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented and to communicate that choice in an unambiguous manner.

(m) "Life-prolonging intervention" means any medical procedure or intervention that, when applied to a person, would serve to artificially prolong the dying process or to maintain the person in a persistent vegetative state. Life-prolonging intervention includes, among other things, nutrition and hydration administered intravenously or through a feeding tube. The term "life-prolonging intervention" does not include the administration of medication or the performance of any other medical procedure considered necessary to provide comfort or to alleviate pain.

(n) "Living will" means a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of section four of this article.

(o) "Mature minor" means a person less than eighteen years of age who has been determined by a qualified physician, a qualified psychologist or an advanced nurse practitioner to have the capacity to make health care decisions.
(p) "Medical information" or "medical records" means and includes without restriction any information recorded in any form of medium that is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school or university or health care clearinghouse that relates to the past, present or future physical or mental health of the person, the provision of health care to the person, or the past, present or future payment for the provision of health care to the person.

(q) "Medical power of attorney representative" or "representative" means a person eighteen years of age or older appointed by another person to make health care decisions pursuant to the provisions of section six of this article or similar act of another state and recognized as valid under the laws of this state.

(r) "Parent" means a person who is another person's natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

(s) "Persistent vegetative state" means an irreversible state as diagnosed by the attending physician or a qualified physician in which the person has intact brain stem function but no higher cortical function and has neither self-awareness or awareness of the surroundings in a learned manner.

(t) "Person" means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency or any other legal entity.

(u) "Physician orders for scope of treatment (POST) form" means a standardized form containing orders by a qualified physician that details a person's life-sustaining wishes as provided by section twenty-five of this article.
(v) “Principal” means a person who has executed a living will or medical power of attorney.

(w) “Protected person” means an adult who, pursuant to the provisions of chapter forty-four-a of this code, has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events and environments to an extent that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

(x) “Qualified physician” means a physician licensed to practice medicine who has personally examined the person.

(y) “Qualified psychologist” means a psychologist licensed to practice psychology who has personally examined the person.

(z) “Surrogate decisionmaker” or “surrogate” means an individual eighteen years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions and is identified or selected by the attending physician or advanced nurse practitioner in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

(aa) “Terminal condition” means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging intervention will serve only to prolong the dying process.
§16-30-4. Executing a living will or medical power of attorney.

(a) Any competent adult may execute at any time a living will or medical power of attorney. A living will or medical power of attorney made pursuant to this article shall be: (1) In writing; (2) executed by the principal or by another person in the principal’s presence at the principal’s express direction if the principal is physically unable to do so; (3) dated; (4) signed in the presence of two or more witnesses at least eighteen years of age; and (5) signed and attested by such witnesses whose signatures and attestations shall be acknowledged before a notary public as provided in subsection (d) of this section.

(b) In addition, a witness may not be:

(1) The person who signed the living will or medical power of attorney on behalf of and at the direction of the principal;

(2) Related to the principal by blood or marriage;

(3) Entitled to any portion of the estate of the principal under any will of the principal or codicil thereto: Provided, That the validity of the living will or medical power of attorney shall not be affected when a witness at the time of witnessing such living will or medical power of attorney was unaware of being a named beneficiary of the principal’s will;

(4) Directly financially responsible for principal’s medical care;

(5) The attending physician; or

(6) The principal’s medical power of attorney representative or successor medical power of attorney representative.

(c) The following persons may not serve as a medical power of attorney representative or successor medical power of
attorney representative: (1) A treating health care provider of
the principal; (2) an employee of a treating health care provider
not related to the principal; (3) an operator of a health care
facility serving the principal; or (4) any person who is an
employee of an operator of a health care facility serving the
principal and who is not related to the principal.

(d) It shall be the responsibility of the principal or his or her
representative to provide for notification to his or her attending
physician and other health care providers of the existence of the
living will or medical power of attorney or a revocation of the
living will or medical power of attorney. An attending physi-
cian or other health care provider, when presented with the
living will or medical power of attorney, or the revocation of a
living will or medical power of attorney, shall make the living
will, medical power of attorney or a copy of either or a revoca-
tion of either a part of the principal's medical records.

(e) At the time of admission to any health care facility, each
person shall be advised of the existence and availability of
living will and medical power of attorney forms and shall be
given assistance in completing such forms if the person desires:
Provided, That under no circumstances may admission to a
health care facility be predicated upon a person having com-
pleted either a medical power of attorney or living will.

(f) The provision of living will or medical power of
attorney forms substantially in compliance with this article by
health care providers, medical practitioners, social workers,
social service agencies, senior citizens centers, hospitals,
nursing homes, personal care homes, community care facilities
or any other similar person or group, without separate compen-
sation, does not constitute the unauthorized practice of law.

(g) The living will may, but need not, be in the following
form and may include other specific directions not inconsistent
with other provisions of this article. Should any of the other
specific directions be held to be invalid, such invalidity shall
not affect other directions of the living will which can be given
effect without the invalid direction and to this end the directions
in the living will are severable.

STATE OF WEST VIRGINIA
LIVING WILL

The Kind of Medical Treatment I Want and Don’t Want
If I Have a Terminal Condition or
Am In a Persistent Vegetative State

Living will made this ______________
 day of ______________(month, year).

I, ___________________________________________,
being of sound mind, willfully and voluntarily declare that I
want my wishes to be respected if I am very sick and not able
to communicate my wishes for myself. In the absence of my
ability to give directions regarding the use of life-prolonging
medical intervention, it is my desire that my dying shall not be
prolonged under the following circumstances:

If I am very sick and not able to communicate my wishes
for myself and I am certified by one physician, who has
personally examined me, to have a terminal condition or to be
in a persistent vegetative state (I am unconscious and am
neither aware of my environment nor able to interact with
others), I direct that life-prolonging medical intervention that
would serve solely to prolong the dying process or maintain me
in a persistent vegetative state be withheld or withdrawn. I want
to be allowed to die naturally and only be given medications or
other medical procedures necessary to keep me comfortable. I
I give the following SPECIAL DIRECTIVES OR LIMITATIONS: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis and mental health treatment may be placed here. My failure to provide special directives or limitations does not mean that I want or refuse certain treatments.)

It is my intention that this living will be honored as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences resulting from such refusal.

I understand the full import of this living will.

I did not sign the principal’s signature above for or at the direction of the principal. I am at least eighteen years of age and am not related to the principal by blood or marriage, entitled to any portion of the estate of the principal to the best of my knowledge under any will of principal or codicil thereto, or directly financially responsible for principal’s medical care. I am not the principal’s attending physician or the principal’s medical power of attorney representative or successor medical
A medical power of attorney may, but need not, be in the following form, and may include other specific directions not inconsistent with other provisions of this article. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the medical power of attorney which can be given effect without invalid direction.
and to this end the directions in the medical power of attorney are severable.

STATE OF WEST VIRGINIA
MEDICAL POWER OF ATTORNEY

The Person I Want to Make Health Care Decisions For Me When I Can’t Make Them for Myself

Dated: ______________________ , 20___

I, ________________________________, hereby (Insert your name and address)
appoint my representative to act on my behalf to give, withhold or withdraw informed consent to health care decisions in the event that I am not able to do so myself.

The person I choose as my representative is:

(Insert the name, address, area code and telephone number of the person you wish to designate as your representative)

The person I choose as my successor representative is:

If my representative is unable, unwilling or disqualified to serve, then I appoint:

(Insert the name, address, area code and telephone number of the person you wish to designate as your successor representative)

This appointment shall extend to, but not be limited to, health care decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, care and treatment in a nursing home or other facility, and home health
The representative appointed by this document is specifically authorized to be granted access to my medical records and other health information and to act on my behalf to consent to, refuse or withdraw any and all medical treatment or diagnostic procedures, or autopsy if my representative determines that I, if able to do so, would consent to, refuse or withdraw such treatment or procedures. Such authority shall include, but not be limited to, decisions regarding the withholding or withdrawal of life-prolonging interventions.

I appoint this representative because I believe this person understands my wishes and values and will act to carry into effect the health care decisions that I would make if I were able to do so and because I also believe that this person will act in my best interest when my wishes are unknown. It is my intent that my family, my physician and all legal authorities be bound by the decisions that are made by the representative appointed by this document and it is my intent that these decisions should not be the subject of review by any health care provider or administrative or judicial agency.

It is my intent that this document be legally binding and effective and that this document be taken as a formal statement of my desire concerning the method by which any health care decisions should be made on my behalf during any period when I am unable to make such decisions.

In exercising the authority under this medical power of attorney, my representative shall act consistently with my special directives or limitations as stated below.

I am giving the following SPECIAL DIRECTIVES OR LIMITATIONS ON THIS POWER: (Comments about tube feedings, breathing machines, cardiopulmonary resuscitation, dialysis, funeral arrangements, autopsy and organ donation may be placed here. My failure to provide special directives or
limitations does not mean that I want or refuse certain treatments)

\[\text{THIS MEDICAL POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY UPON MY INCAPACITY TO GIVE, WITHHOLD OR WITHDRAW INFORMED CONSENT TO MY OWN MEDICAL CARE.}\]

Signature of the Principal

I did not sign the principal’s signature above. I am at least eighteen years of age and am not related to the principal by blood or marriage. I am not entitled to any portion of the estate of the principal or to the best of my knowledge under any will of the principal or codicil thereto, or legally responsible for the costs of the principal’s medical or other care. I am not the principal’s attending physician, nor am I the representative or successor representative of the principal.

Witness

Witness

STATE OF

COUNTY OF

I, a Notary Public of said County, do certify that, as principal, and witnesses, whose names are signed to the writing above bearing
§16-30-5. Applicability and resolving actual conflict between advance directives.

(a) The provisions of this article which directly conflict with the written directives contained in a living will or medical power of attorney executed prior to the effective date of this statute shall not apply. An expressed directive contained in a living will or medical power of attorney or by any other means the health care provider determines to be reliable shall be followed.

(b) If there is a conflict between the person’s expressed directives, the physician orders for scope of treatment form and the decisions of the medical power of attorney representative or surrogate, the person’s expressed directives shall be followed.

(c) In the event there is a conflict between two advance directives executed by the person, the one most recently completed takes precedence only to the extent needed to resolve the inconsistency.

(d) If there is a conflict between the decisions of the medical power of attorney representative or surrogate and the person’s best interests as determined by the attending physician when the person’s wishes are unknown, the attending physician shall attempt to resolve the conflict by consultation with a qualified physician, an ethics committee or by some other means. If the attending physician cannot resolve the conflict with the medical power of attorney representative, the attending
§16-30-6. Private decision-making process; authority of living will, medical power of attorney representative and surrogate.

(a) Any capable adult may make his or her own health care decisions without regard to guidelines contained in this article.

(b) Health care providers and health care facilities may rely upon health care decisions made on behalf of an incapacitated person without resort to the courts or legal process, if the decisions are made in accordance with the provisions of this article.

(c) The medical power of attorney representative or surrogate shall have the authority to release or authorize the release of an incapacitated person’s medical records to third parties and make any and all health care decisions on behalf of an incapacitated person, except to the extent that a medical power of attorney representative’s authority is clearly limited in the medical power of attorney.

(d) The medical power of attorney representative or surrogate’s authority shall commence upon a determination, made pursuant to section seven of this article, of the incapacity of the adult. In the event the person no longer is incapacitated or the medical power of attorney representative or surrogate is unwilling or unable to serve, the medical power of attorney representative or surrogate’s authority shall cease. However, the authority of the medical power of attorney representative or surrogate may recommence if the person subsequently becomes incapacitated as determined pursuant to section seven of this article unless during the intervening period of capacity the person executes an advance directive which makes a surrogate unnecessary or expressly rejects the previously appointed surrogate as his or her surrogate. A medical power of attorney
representative or surrogate's authority terminates upon the
death of the incapacitated person except with respect to
decisions regarding autopsy, funeral arrangements or cremation
and organ and tissue donation: Provided, That the medical
power of attorney representative or surrogate has no authority
after the death of the incapacitated person to invalidate or
revoke a preneed funeral contract executed by the incapacitated
person in accordance with the provisions of article fourteen,
chapter forty-seven of this code prior to the onset of the
incapacity and either paid in full before the death of the
incapacitated person or collectible from the proceeds of a life
insurance policy specifically designated for that purpose.

(e) The medical power of attorney representative or
surrogate shall seek medical information necessary to make
health care decisions for an incapacitated person. For the sole
purpose of making health care decisions for the incapacitated
person, the medical power of attorney representative or
surrogate shall have the same right of access to the incapacitated
person's medical information and the same right to
discuss that information with the incapacitated person's health
care providers that the incapacitated person would have if he or
she was not incapacitated.

(f) If an incapacitated person previously expressed his or
her wishes regarding autopsy, funeral arrangements or cremation,
organ or tissue donation or the desire to make an anatomical
gift by a written directive such as a living will, medical
power of attorney, donor card, driver's license or other means,
the medical power of attorney representative or surrogate shall
follow the person's expressed wishes regarding autopsy, funeral
arrangements or cremation, organ and tissue donation or
anatomical gift. In the absence of any written directives, any
decision regarding anatomical gifts shall be made pursuant to
the provisions of article nineteen of this chapter.
(g) If a person is incapacitated at the time of the decision to withhold or withdraw life-prolonging intervention, the person’s living will or medical power of attorney executed in accordance with section four of this article is presumed to be valid. For the purposes of this article, a physician or health facility may presume in the absence of actual notice to the contrary that a person who executed a living will or medical power of attorney was a competent adult when it was executed. The fact that a person executed a living will or medical power of attorney is not an indication of the person’s mental incapacity.

§16-30-7. Determination of incapacity.

(a) For the purposes of this article, a person may not be presumed to be incapacitated merely by reason of advanced age or disability. With respect to a person who has a diagnosis of mental illness or mental retardation, such a diagnosis is not a presumption that the person is incapacitated. A determination that a person is incapacitated shall be made by the attending physician, a qualified physician, a qualified psychologist or an advanced nurse practitioner who has personally examined the person.

(b) The determination of incapacity shall be recorded contemporaneously in the person’s medical record by the attending physician, a qualified physician, advanced nurse practitioner or a qualified psychologist. The recording shall state the basis for the determination of incapacity, including the cause, nature and expected duration of the person’s incapacity, if these are known.

(c) If the person is conscious, the attending physician shall inform the person that he or she has been determined to be incapacitated and that a medical power of attorney representative or surrogate decisionmaker may be making decisions regarding life-prolonging intervention or mental health treatment for the person.
§16-30-8. Selection of a surrogate.

(a) When a person is or becomes incapacitated, the attending physician or the advanced nurse practitioner with the assistance of other health care providers as necessary, shall select, in writing, a surrogate. The attending physician or advanced nurse practitioner shall reasonably attempt to determine whether the incapacitated person has appointed a representative under a medical power of attorney, in accordance with the provisions of section four of this article, or if the incapacitated person has a court-appointed guardian in accordance with the provisions of article one, chapter forty-four-a of this code. If no representative or court-appointed guardian is authorized or capable and willing to serve, the attending physician or advanced nurse practitioner is authorized to select a health care surrogate. In selecting a surrogate, the attending physician or advanced nurse practitioner must make a reasonable inquiry as to the existence and availability of a surrogate from the following persons:

(1) The person's spouse;

(2) The person's adult children;

(3) The person's parents;

(4) The person's adult siblings;

(5) The person's adult grandchildren;

(6) The person's close friends;

(7) Any other person or entity, including, but not limited to, public agencies, public guardians, public officials, public and private corporations and other persons or entities which the department of health and human resources may from time to time designate in rules promulgated pursuant to chapter twenty-nine-a of this code.
(b) After inquiring about the existence and availability of a medical power of attorney representative or a guardian as required by subsection (a) of this section and determining that such persons either do not exist or are unavailable, incapable or unwilling to serve as a surrogate, the attending physician or an advanced nurse practitioner shall select and rely upon a surrogate in the order of priority set forth in subsection (a) of this section, subject to the following conditions:

(1) Where there are multiple possible surrogate decisionmakers at the same priority level, the attending physician or the advanced nurse practitioner shall, after reasonable inquiry, select as the surrogate the person who reasonably appears to be best qualified. The following criteria shall be considered in the determination of the person or entity best qualified to serve as the surrogate:

(A) Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the person or in accordance with the person’s best interests;

(B) The proposed surrogate’s regular contact with the person prior to and during the incapacitating illness;

(C) The proposed surrogate’s demonstrated care and concern;

(D) The proposed surrogate’s availability to visit the incapacitated person during his or her illness; and

(E) The proposed surrogate’s availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process;

(2) The attending physician or the advanced nurse practitioner may select a proposed surrogate who is ranked lower in priority if, in his or her judgment, that individual is best qualified, as described in this section, to serve as the incapac...
tated person's surrogate. The attending physician or the advanced nurse practitioner shall document in the incapacitated person's medical records his or her reasons for selecting a surrogate in exception to the priority order provided in subsection (a) of this section.

(c) The surrogate is authorized to make health care decisions on behalf of the incapacitated person without a court order or judicial involvement.

(d) A health care provider or health care facility may rely upon the decisions of the selected surrogate if the provider believes, after reasonable inquiry, that:

(1) A guardian or representative under a valid, applicable medical power of attorney is unavailable, incapable or unwilling to serve;

(2) There is no other applicable advance directive;

(3) There is no reason to believe that such health care decisions are contrary to the incapacitated person's religious beliefs; and

(4) The attending physician or advanced nurse practitioner has not received actual notice of opposition to any health care decisions made pursuant to the provisions of this section.

(e) If a person who is ranked as a possible surrogate pursuant to subsection (a) of this section wishes to challenge the selection of a surrogate or the health care decision of the selected surrogate, he or she may seek injunctive relief or may file a petition for review of the selection of, or decision of, the selected surrogate with the circuit court of the county in which the incapacitated person resides or the supreme court of appeals. There shall be a rebuttable presumption that the selection of the surrogate was valid and the person who is challenging the selection shall have the burden of proving the invalidity of that selection. The challenging party shall be
responsible for all court costs and other costs related to the proceeding, except attorneys' fees, unless the court finds that the attending physician or advanced nurse practitioner acted in bad faith, in which case the person so acting shall be responsible for all costs. Each party shall be responsible for his or her own attorneys' fees.

(f) If the attending physician or advanced nurse practitioner is advised that a person who is ranked as a possible surrogate pursuant to the provisions of subsection (a) of this section has an objection to a health care decision to withhold or withdraw a life-prolonging intervention which has been made by the selected surrogate, the attending physician or advanced nurse practitioner shall document the objection in the medical records of the patient. Once notice of an objection or challenge is documented, the attending physician or advanced nurse practitioner shall notify the challenging party that the decision shall be implemented in seventy-two hours unless the attending physician receives a court order prohibiting or enjoining the implementation of the decision as provided in subsection (e) of this section. In the event that the incapacitated person has been determined to have undergone brain death and the selected surrogate has authorized organ or tissue donation, the decision shall be implemented in twenty-four hours unless the attending physician receives a court order prohibiting or enjoining the implementation of the decision as provided in said subsection.

(g) If the surrogate becomes unavailable for any reason, the surrogate may be replaced by applying the provisions of this section.

(h) If a person who ranks higher in priority relative to a selected surrogate becomes available and willing to be the surrogate, the person with higher priority may be substituted for the identified surrogate unless the attending physician determines that the lower-ranked person is best qualified to serve as the surrogate.
(i) The following persons may not serve as a surrogate: (1) a treating health care provider of the person who is incapacitated; (2) an employee of a treating health care provider not related to the person who is incapacitated; (3) an owner, operator or administrator of a health care facility serving the person who is incapacitated; or (4) any person who is an employee of an owner, operator or administrator of a health care facility serving the person who is incapacitated and who is 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.

(a) A physician, licensed health care professional, health care facility or employee thereof shall not be subject to criminal or civil liability for good-faith compliance with or reliance upon the directions of the medical power of attorney representative in accordance with this article.

(b) A health care provider shall not be subject to civil or criminal liability for surrogate selection or good faith compliance and reliance upon the directions of the surrogate in accordance with the provisions of this article.

(c) A health care provider, health care facility or employee thereof shall not be subject to criminal or civil liability for good-faith compliance with or reliance upon the orders in a physician orders for scope of treatment form.

(d) No health care provider or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-prolonging intervention from a person pursuant to a living will made in accordance with this article shall, as a result thereof, be subject to criminal or civil liability.
(e) An attending physician who cannot comply with the living will or medical power of attorney of a principal pursuant to this article shall, in conjunction with the medical power of attorney representative, health care surrogate or other responsible person, effect the transfer of the principal to another physician who will honor the living will or medical power of attorney of the principal. Transfer under these circumstances does not constitute abandonment.

§16-30-13. Interinstitutional transfers.

(a) In the event that a person admitted to any health care facility in this state has been determined to lack capacity and that person's medical power of attorney has been declared to be in effect or a surrogate decisionmaker has been selected for that person all in accordance with the requirements of this article and that person is subsequently transferred from one health care facility to another, the receiving health care facility may rely upon the prior determination of incapacity and the activation of the medical power of attorney or selection of a surrogate decisionmaker as valid and continuing until such time as an attending physician, a qualified physician, a qualified psychologist or advanced nurse practitioner in the receiving facility assesses the person's capacity. Should the reassessment by the attending physician, a qualified physician, a qualified psychologist or an advanced nurse practitioner at the receiving facility result in a determination of continued incapacity, the receiving facility may rely upon the medical power of attorney representative or surrogate decisionmaker who provided health care decisions at the transferring facility to continue to make all health care decisions at the receiving facility until such time as the person regains capacity.

(b) If a person admitted to any health care facility in this state has been determined to lack capacity and the person's medical power of attorney has been declared to be in effect or a surrogate decisionmaker has been selected for that person all
in accordance with the requirements of this article and that
person is subsequently discharged home in the care of a home
health care agency or hospice, the home health care agency or
hospice may rely upon the prior determination of incapacity.
The home health care agency or hospice may rely upon the
medical power of attorney representative or health care surro-
gate who provided health care decisions at the transferring
facility to continue to make all health care decisions until such
time as the person regains capacity.

(c) If a person with an order to withhold or withdraw
life-prolonging intervention is transferred from one health care
facility to another, the existence of such order shall be commu-
nicated to the receiving facility prior to the transfer and the
written order shall accompany the person to the receiving
facility and shall remain effective until a physician at the
receiving facility issues admission orders.

(d) If a person with a physician orders for scope of treat-
ment form is transferred from one health care facility to
another, the health care facility initiating the transfer shall
communicate the existence of the physician orders for scope of
treatment form to the receiving facility prior to the transfer. The
physician orders for scope of treatment form shall accompany
the person to the receiving facility and shall remain in effect.
The form shall be kept at the beginning of the patient's transfer
records unless otherwise specified in the health care facility's
policy and procedures. After admission, the physician orders for
scope of treatment form shall be reviewed by the attending
physician and one of three actions shall be taken:

(1) The physician orders for scope of treatment form shall
be continued without change;

(2) The physician orders for scope of treatment form shall
be voided and a new form issued; or
(3) The physician orders for scope of treatment form shall 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.

(a) A health care provider or health care facility without actual knowledge of a living will or medical power of attorney completed by a person is not civilly or criminally liable for failing to act in accordance with the directives of a principal’s living will or medical power of attorney.

(b) A health care provider or a health care facility is subject to review and disciplinary action by the appropriate licensing board for failing to act in accordance with a principal’s directives in a living will or medical power of attorney, or the decisions of a medical power of attorney representative or health care surrogate: Provided, That the provider or facility had actual knowledge of the directives or decisions.

(c) Once a principal has been determined to be incapacitated in accordance with the provisions of this article and his or her living will or medical power of attorney has become effective, any health care provider or health care facility which refuses to follow the principal’s directives in a living will or medical power of attorney or the decisions of a medical power of attorney representative or health care surrogate, because the principal has asked the health care provider or health care facility not to follow such directions or decisions, shall have two physicians, one of whom may be the attending physician, or one physician and a qualified psychologist, or one physician and an advanced nurse practitioner, certify that the principal has regained capacity to make the request. If such certification occurs, the provisions of the applicable living will or medical power of attorney, or the statute creating the authority of the
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.

(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.

(b) Physician orders for scope of treatment forms shall be
5 standardized forms used to reflect orders by a qualified physi-
6 cian for medical treatment of a person in accordance with that
7 person’s wishes or, if that person’s wishes are not reasonably
8 known and cannot with reasonable diligence be ascertained, in
9 accordance with that person’s best interest. The form shall be
10 bright pink in color to facilitate recognition by emergency
11 medical services personnel and other health care providers and
12 shall be designed to provide for information regarding the care
13 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 acknowled-
26 ging 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.
(c) The physician orders for scope of treatment form shall be kept as the first page in a person's medical record in a health care facility unless otherwise specified in the health care facility's policies and procedures and shall be transferred with 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-3. Definitions.

As used in this article, unless the context clearly requires otherwise, the following definitions apply:

(a) “Attending physician” means the physician selected by or assigned to the person who has primary responsibility for treatment or care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under the provisions of this article.

(b) “Cardiopulmonary resuscitation” means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.

(c) “Do-not-resuscitate identification” means a standardized identification necklace, bracelet, card or physician orders for scope of treatment form as set forth in this article that signifies that a do-not-resuscitate order has been issued for the possessor.
(d) "Do-not-resuscitate order" means an order issued by a licensed physician that cardiopulmonary resuscitation should not be administered to a particular person.

(e) "Emergency medical services personnel" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics or other emergency services personnel, providers or entities acting within the usual course of their professions.

(f) "Health care decision" means a decision to give, withhold or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, nursing care, hospitalization, treatment in a nursing home or other extended care facility, home health care and the gift or donation of a body organ or tissue.

(g) "Health care facility" means a facility established to administer and provide health care services and which is commonly known by a wide variety of titles, including, but not limited to, hospitals, medical centers, ambulatory health care facilities, physicians' offices and clinics, extended care facilities operated in connection with hospitals, nursing homes and extended care facilities operated in connection with rehabilitation centers.

(h) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(i) "Home" means any place of residence other than a health care facility and includes residential board and care homes and personal care homes.

(j) "Incapacity" or words of like import means the inability because of physical or mental impairment, to appreciate the nature and implications of a health care decision, to make an
informed choice regarding the alternatives presented and to communicate that choice in an unambiguous manner.

(k) "Physician orders for scope of treatment (POST) form" means a standardized form containing orders by a qualified physician that details a person's life-sustaining wishes as provided by section twenty-five, article thirty of this chapter.

(l) "Qualified physician" means a physician licensed to practice medicine who has personally examined the person.

(m) "Representative" means a person designated by a principal to make health care decisions in accordance with article thirty-a of this chapter.

(n) "Surrogate decision maker" or "surrogate" means an individual eighteen years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions and is identified or selected by the attending physician or advanced nurse practitioner in accordance with applicable provisions of article thirty of this chapter as the person or persons who is to make decisions pursuant to this article: Provided, That a representative named in the incapacitated person's medical power of attorney, if such document has been completed, shall have priority over a surrogate decision maker.

(o) "Trauma" means blunt or penetrating bodily injuries from impact which occur in situations, including, but not limited to, motor vehicle collisions, mass casualty incidents and industrial accidents.

§16-30C-5. Presumed consent to cardiopulmonary resuscitation; health care facilities not required to expand to provide cardiopulmonary resuscitation.

(a) Every person shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of
cardiac or respiratory arrest, unless one or more of the follow-
ing conditions, of which the health care provider has actual
knowledge, apply:

(1) A do-not-resuscitate order in accordance with the
provisions of this article has been issued for that person;

(2) A completed living will for that person is in effect,
pursuant to the provisions of article thirty of this chapter, and
the person is in a terminal condition or a persistent vegetative
state; or

(3) A completed medical power of attorney for that person
is in effect, pursuant to the provisions of article thirty of this
chapter, in which the person indicated that he or she does not
wish to receive cardiopulmonary resuscitation, or his or her
representative has determined that the person would not wish to
receive cardiopulmonary resuscitation.

(4) A completed physician orders for scope of treatment
form in which a qualified physician has ordered do-not-resusci-
tate.

(b) Nothing in this article shall require a nursing home,
personal care home, hospice or extended care facility operated
in connection with hospitals to institute or maintain the ability
to provide cardiopulmonary resuscitation or to expand its
existing equipment, facilities or personnel to provide
cardiopulmonary resuscitation: Provided, That if a health care
facility does not provide cardiopulmonary resuscitation, this
policy shall be communicated in writing to the person, repre-
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.

(a) An attending physician may issue a do-not-resuscitate
order for persons who are present in or residing at home or in
a health care facility if the person, representative or surrogate
has consented to the order. A do-not-resuscitate order shall be
issued in writing in the form as described in this section for a
person not present or residing in a health care facility. For
persons present in health care facilities, a do-not-resuscitate
order shall be issued in accordance with the policies and
procedures of the health care facility or in accordance with the
provisions of this article.

(b) Persons may request their physicians to issue do-not-
resuscitate orders for them.

(c) The representative or surrogate decision maker may
consent to a do-not-resuscitate order for a person with incapaci-
ty. A do-not-resuscitate order written by a physician for a
person with incapacity with the consent of the representative or
surrogate decision maker is valid and shall be respected by
health care providers.

(d) A parent may consent to a do-not-resuscitate order for
his or her minor child, provided that a second physician who
has examined the child concurs with the opinion of the attend-
ing physician that the provision of cardiopulmonary resusci-
tation would be contrary to accepted medical standards. If the
minor is between the ages of sixteen and eighteen and, in the
opinion of the attending physician, the minor is of sufficient
maturity to understand the nature and effect of a do-not-
resuscitate order, then no such order shall be valid without the
consent of such minor. In the event of a conflict between the
wishes of the parents or guardians and the wishes of the mature
minor, the wishes of the mature minor shall prevail. For
purposes of this section, no minor less than sixteen years of age
shall be considered mature. Nothing in this article shall be
interpreted to conflict with the provisions of the child abuse
prevention and treatment act and implementing regulations at
45 CFR 1340. In the event conflict is unavoidable, federal law
and regulation shall govern.
(e) If a surrogate decision maker is not reasonably available or capable of making a decision regarding a do-not-resuscitate order, an attending physician may issue a do-not-resuscitate order for a person with incapacity in a health care facility: Provided, That a second physician who has personally examined the person concurs in the opinion of the attending physician that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

(f) For persons not present or residing in a health care facility, the do-not-resuscitate order shall be noted on a physician orders for scope of treatment form or in the following form on a card suitable for carrying on the person:

Do-Not-Resuscitate Order

"As treating physician of ______________ and a licensed physician, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest. This order has been discussed with ______________ or his/her representative ______________ or his/her surrogate decision maker ______________ who has given consent as evidenced by his/her signature below.

Physician Name ______________
Physician Signature ______________
Address ______________
Person Signature ______________
Address ______________
Surrogate Decision Maker Signature ______________
Address ______________"

(g) For persons residing in a health care facility, the do-not-resuscitate order shall be reflected in at least one of the following forms:

(1) Forms required by the policies and procedures of the health care facility;
§16-30C-7. Compliance with a do-not-resuscitate order.

(a) Health care providers shall comply with the do-not-resuscitate order when presented with one of the following:

(1) A do-not-resuscitate order completed by a physician on a form as specified in section six of this article;

(2) Do-not-resuscitate identification as set forth in section thirteen of this article;

(3) A do-not-resuscitate order for a person present or residing in a health care facility issued in accordance with the health care facility’s policies and procedures; or

(4) A physician orders for scope of treatment form in which a qualified physician has documented a do-not-resuscitate order.

(b) Pursuant to this article, health care providers shall respect do-not-resuscitate orders for persons in health care facilities, ambulances, homes and communities within this state.

§16-30C-11. Interinstitutional transfers.

If a person with a do-not-resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of a do-not-resuscitate order to the receiving facility prior to the transfer. The written do-not-resuscitate order, the do-not-resuscitate card as described in section six of this article or the physician orders for scope of treatment form shall accompany the person to the health care facility receiving the person and shall remain effective until a physician at the receiving facility issues admission orders. The do-not-resuscit-
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11 the state 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
resources, no later than the first day of July, one thousand nine
hundred ninety-four, shall implement the statewide distribution
of do-not-resuscitate forms as described in section six of this
article.

6 (b) Do-not-resuscitate identification as set forth in this
article may consist of either a medical condition bracelet or
necklace with the inscription of the patient's name, date of birth
in numerical form and "WV do-not-resuscitate" on it. Such
identification shall be issued only upon presentation of a
properly executed do-not-resuscitate order form as set forth in
section six of this article, a physician orders for scope of
treatment form in which a qualified physician has documented
a do-not-resuscitate order, or a do-not-resuscitate order properly
executed in accordance with a health care facility's written
policy and procedure.

(c) The secretary of the department of health and human
resources, no later than the first day of July, one thousand nine
hundred ninety-four, shall be responsible for establishing a
system for the distribution of the do-not-resuscitate identifica-
tion bracelets and necklaces.

(d) The secretary of the department of health and human
resources, no later than the first day of July, one thousand nine
hundred ninety-four, shall develop and implement a statewide
educational effort to inform the public of their right to accept or
refuse cardiopulmonary resuscitation and to request their
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.


(a) The director shall establish a program for early identification of cases of lead poisoning. The program shall include a systematic screening of all children under six years of age for the presence of lead poisoning. The director shall, after consultation with recognized professional medical groups and such other sources as he deems appropriate, propose legislative rules establishing: (1) The means by which and the intervals at which children under six years of age shall be screened for lead 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.

(b) The director shall maintain comprehensive records of all
27 screenings conducted pursuant to this section. The records shall
28 be geographically indexed in order to determine the location of
29 areas of relatively high incidence of lead poisoning. The records
30 shall be public records, except that the names of screened
31 individuals may not be public. A summary of the results of all
32 screenings conducted pursuant to this section shall be released
33 quarterly, or more frequently if the director so determines, to all
34 interested parties.

(c) All cases or probable cases of lead poisoning, as defined
35 by legislative rule proposed by the director, found in the course
36 of screenings conducted pursuant to this section shall be
37 reported immediately to the affected individual, to a child’s
38 parent or legal guardian if the child is a minor, and to the
39 director. The director shall inform such persons or agencies as
40 the director determines is advisable of the existence of the case
41 or probable case of lead poisoning.
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.


§16-40-5. Parent or legal guardian may require removal of information concerning child from system.

§16-40-6. Advisory council.


§16-40-8. Reports by commissioner.

§16-40-1. Definitions.

As used in this article:
(1) "Commissioner" means the commissioner of the bureau for public health.

(2) "Freestanding birthing center" means any health care facility in which births routinely occur, regardless of whether the facility is located on the campus of another health care facility, and which is not licensed under article five-b of this chapter.

(3) "Hospital" means a hospital licensed under the provisions of article five-b of this chapter.

(4) "Nurse-midwife" means an individual authorized under article fifteen, chapter thirty of this code to practice nurse-midwifery.

(5) "Physician" means an individual authorized under article three or fourteen, chapter thirty of this code to practice medicine and surgery or osteopathic medicine and surgery.

§16-40-2. Expansion and implementation of statewide birth defects information system.

(a) The commissioner shall establish and implement a statewide birth defects information system for the collection of information concerning congenital anomalies, stillbirths and abnormal conditions of newborns.

(b) The commissioner may require each physician, nurse-midwife, hospital and freestanding birthing center to report to the system information concerning all patients under six years of age with a primary diagnosis of a congenital anomaly or abnormal condition: Provided, That the commissioner may not require the reporting of personal identifying information or enter into the system any personal identifying information regarding congenital anomalies or abnormal conditions of a child whose parent or legal guardian objects on
the basis of religious belief. The commissioner may not require a hospital, freestanding birthing center, nurse-midwife or physician to report to the system any information that is required to be reported to the commissioner or the bureau for public health under another provision of this code.

(c) On request, each physician, nurse-midwife, hospital and freestanding birthing center shall give the commissioner or authorized employees of the bureau access to the medical records of any patient described in subsection (b) of this section. The bureau shall pay the costs of copying any medical records pursuant to this section.

(d) A physician, nurse-midwife, hospital or freestanding birthing center that provides information to the system under subsection (b) of this section is not subject to criminal or civil liability for providing the information.

§16-40-3. Purposes of system.

The birth defects information system may be used for all of the following purposes:

1 (1) To identify and describe congenital anomalies, stillbirths and abnormal conditions of newborns;

2 (2) To detect trends and epidemics in congenital anomalies, stillbirths and abnormal conditions of newborns;

3 (3) To quantify morbidity and mortality of congenital anomalies and abnormal conditions of newborns;

4 (4) To stimulate epidemiological research regarding congenital anomalies, stillbirths and abnormal conditions of newborns;
12 (5) To identify risk factors for congenital anomalies, stillbirths and abnormal conditions of newborns;

14 (6) To facilitate intervention in and prevention of congenital anomalies, stillbirths and abnormal conditions of newborns;

16 (7) To facilitate access to treatment for congenital anomalies and abnormal conditions of newborns;

18 (8) To inform and educate the public about congenital anomalies, stillbirths and abnormal conditions of newborns.


(a) Except as provided in this section, records received and information assembled by the birth defects information system pursuant to section two of this article are confidential medical records.

(b) (1) The commissioner may use information assembled by the system to notify parents, guardians and custodians of children with congenital anomalies or abnormal conditions of medical care and other services available for the child and family.

(2) The commissioner may disclose information assembled by the system with the written consent of the parent or legal guardian of the child who is the subject of the information.

(c) (1) Access to information assembled by the system is limited to the following persons and government entities:

(A) The commissioner;

(B) Authorized employees of the bureau; and
(C) Qualified persons or government entities that are engaged in demographic, epidemiological or similar studies related to health and health care provision.

(2) The commissioner shall give a person or government entity described in subparagraph (C), subdivision (1) of this subsection access to the system only for informational requests of data and only if the person or a representative of the person or government entity signs an agreement to maintain the system's confidentiality.

(3) The commissioner shall maintain a record of all persons and government entities given access to the information in the system. The record shall include all of the following information:

(A) The name of the person who authorized access to the system;

(B) The name, title and organizational affiliation of the person or government entity given access to the system;

(C) The dates the person or government entity was given access to the system; and

(D) The specific purpose for which the person or government entity intends to use the information.

(4) The record maintained pursuant to subdivision (3) of this subsection is a public record as defined in chapter twenty-nine-b of this code.

(5) A person who violates an agreement described in subdivision (2) of this subsection shall be denied further access to confidential information maintained by the commissioner.

(d) The commissioner may disclose information assembled by the system in summary, statistical or other form that does
§16-40-5. Parent or legal guardian may require removal of information concerning child from system.

(a) As used in this section, "local board of health" means a local board of health established under the provisions of article two of this chapter.

(b) A child's parent or legal guardian who wants information concerning the child removed from the birth defects information system shall request from the local board of health or the child's physician a form prepared by the commissioner. On request, a local board of health or physician shall provide the form to the child's parent or legal guardian. The individual providing the form shall discuss with the child's parent or legal guardian the information contained in the system. If the child's parent or legal guardian signs the form, the local board of health or physician shall forward it to the commissioner. On receipt of the signed form, the commissioner shall remove from the follow-up system any information that identifies the child. All personal identifying information may be removed from the record: Provided, That the record itself shall remain in the system for reporting and analysis purposes.

§16-40-6. Advisory council.

(a) Not later than thirty days after the effective date of this article, the commissioner shall appoint a council to advise on the establishment and implementation of the birth defects information system.

(b) The council shall include, at a minimum, persons representing each of the following interests:

(1) Obstetrics and gynecology;

(2) Pediatrics;
(3) Genetics;

(4) Epidemiology;

(5) Biostatistics;

(6) Hospital administration;

(7) The department of education;

(8) Parents of children with congenital anomalies or abnormal conditions;

(9) The march of dimes West Virginia state chapter; and

(10) The public.

(c) (1) Not later than thirty days after the initial appointments are made under subsection (b) of this section, the commissioner shall convene the first meeting of the council. In consultation with and with the approval of the council, the commissioner shall appoint, at the first meeting of the council, the chairperson and vice chairperson of the council from among the members of the council. The chairperson may call additional meetings as the chairperson considers appropriate.

(2) The council may establish rules of procedure as necessary to facilitate the council's orderly conduct of business.

(3) Council members serve without compensation but, to the extent funds are available, shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(d) The council shall recommend to the commissioner a list of congenital anomalies and abnormal conditions of newborns to be reported to the system.

Not later than the first day of July, two thousand three, the commissioner shall, in consultation with the council created under section six of this article, propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to do all of the following:

(1) Implement the birth defects information system;

(2) Specify the types of congenital anomalies and abnormal conditions of newborns to be reported to the system under section two of this article;

(3) Establish reporting requirements for information concerning diagnosed congenital anomalies and abnormal conditions of newborns;

(4) Establish standards that are required to be met by persons or government entities that seek access to the system; and

(5) Establish a form for use by parents or legal guardians who seek to have information regarding their children removed from the system and a method of distributing the form to local boards of health and to physicians. The method of distribution must include making the form available on the internet.

§16-40-8. Reports by commissioner.

Prior to the first day of January, three years after the date a birth defects information system is implemented pursuant to this article, and by the first day of January of each year after that, the commissioner shall prepare a report regarding the birth defects information system. The council created under section six of this article shall, not later than two years after the date a birth defects information system is implemented, specify the information the commissioner is to include in each report. The commissioner shall file the report with the governor and the 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 Improvement Act”.

2
§16-41-2. Oral health program and director.

(a) The commissioner of the bureau for public health shall establish and maintain an oral health program.

(b) The commissioner of the bureau for public health shall appoint a dentist licensed in this state as director of the oral health program who shall administer the program pursuant to the provisions of section three of this article.

§16-41-3. Duties and directives of oral health program.

(a) The director of the oral health program shall implement and maintain the oral health program to include, but not be limited to, the following goals and objectives:

(1) The development of comprehensive dental health plans within the framework of the state plan of operation, provided for in subsection (f), section six, article one of this chapter, to maximize use of all available resources;

(2) Providing the consultation necessary to coordinate federal, state, county and city agency programs concerned with dental health;

(3) Encouraging, supporting and augmenting the efforts of local boards of health and boards of education in the implementation of a dental health component in their program plans;

(4) Providing consultation and program information to, at a minimum, health professions, health professional educational institutions, school educators, extension specialists and volunteer agencies;

(5) Providing programs aimed at preventing and detecting oral cancer in the state, with a primary focus of meeting the needs of high-risk under-served populations, with the intent to reduce oral cancer mortality;

(6) Providing programs addressing oral health education and promotion, including:
(A) Public health education to promote the prevention of oral disease through self-help methods, including the initiation and expansion of preschool, school age and adult education programs;

(B) Organized continuing health education training programs for, at a minimum, health care providers, school educators and extension specialists; and

(C) Preventive health education information for the public;

(7) Facilitation of access to oral health services, including:

(A) The improvement of the existing oral health services delivery system for the provision of services to all West Virginia residents;

(B) Outreach activities to inform the public of the type and availability of oral health services to increase the accessibility of oral health care for all West Virginia residents; and

(C) Assistance and cooperation in promoting better distribution of dentists and other oral health professionals throughout the state;

(8) Providing programs specifically targeting prevention of tooth loss and the restoration of existing teeth to the extent that funds are available.

(9) Providing oral or dental health services to individuals in need, to the extent funds are available for the services; and

(10) Provide evaluation of these programs in terms of preventive services.

(b) In consultation with dental care providers, the commissioner shall develop and implement ongoing oral cancer educational programs in the state:

(1) To train health care providers to screen and properly refer patients with oral cancers; and
(2) To promote the cessation of the use of alcohol and tobacco products with a primary focus of meeting the needs of high-risk under-served populations.

(c) The programs developed and implemented under this section shall address:

(1) The risk factors that lead to oral cancer;
(2) The signs and symptoms of oral cancer;
(3) The high-risk behaviors that may lead to oral cancer; and
(4) The accessibility of screening to detect oral cancer.

(d) In addition to the duties and responsibilities required under this section, the director of the oral health program shall administer and supervise all dental health programs within the bureau for public health.

§16-41-4. Receipt of funds; special revenue account.

(a) The secretary of the department of health and human resources may, in his or her discretion, transfer funds from other programs within his or her control, to the special revenue account created in this section for the purposes established in this article.

(b) The director may apply for and receive for the oral health program any financial aid granted by any private, federal, state or local or other grant or source.

(c) There is hereby established in the state treasury a special revenue account designated the “Oral Health Program Fund”. All funds received by the director for the oral health program shall be deposited in the special revenue account.
(d) Moneys deposited in this fund shall be used exclusively to provide oral health services to accomplish the purposes of this article. Expenditures of moneys deposited in this fund are to be made in accordance with appropriation by the Legislature and in accordance with article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code: Provided, That for the fiscal year beginning the first day of July, two thousand two, expenditures are authorized from deposits rather than pursuant to appropriation by the Legislature. The director may disburse funds from the special revenue account as required by this article.

§16-41-5. Contracts.

The director may enter into contracts and agreements necessary to facilitate the efficient and economical provision of oral health services under this article, including contracts for the purchase of services, equipment, and supplies from qualified providers, if included in the plan.

§16-41-6. Reporting requirements.

On or before the first day of December of each year, the commissioner shall submit a report on the commissioner’s findings and recommendations to the governor and the joint committee on government and finance on the oral health programs established under this article. The report shall include the identification of existing barriers to proper oral health care in the state and recommendations addressing the removal of the barriers.

§16-41-7. Continuation of program.

Pursuant to the provisions of article ten, chapter four of this code, the oral health program shall continue until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact 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.

(a) Appointment of mental hygiene commissioners. — The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of such commissioner, take the oath required of other special commissioners as provided in article one, chapter six of this code.

All persons newly appointed to serve as mental hygiene commissioners shall attend and complete an orientation course, within one year of their appointment, consisting of at least three days of training provided annually by the supreme court of appeals. In addition, existing mental hygiene commissioners and any magistrates designated by the chief judge of a judicial circuit to hold probable cause and emergency detention hearings involving involuntary hospitalization shall attend and complete a course provided by the supreme court of appeals, which course shall include, but not be limited to, instruction on the manifestations of mental illness and addiction. Persons attending such courses outside the county of their residence...
shall be reimbursed out of the budget of the supreme court —
geneneral judicial for reasonable expenses incurred. The supreme
court shall establish rules for such courses, including rules
providing for the reimbursement of reasonable expenses as
authorized herein.

(b) Duties of mental hygiene commissioners. —

(1) Mental hygiene commissioners may sign and issue
summons for the attendance, at any hearing held pursuant to
section four, article five of this chapter, of the individual sought
to be committed; may sign and issue subpoenas for witnesses,
including subpoenas duces tecum; may place any witness under
oath; may elicit testimony from applicants, respondents and
witnesses regarding factual issues raised in the petition; and
may make findings of fact on evidence and may make conclu-
sions of law, but such findings and conclusions shall not be
binding on the circuit court. The circuit court, by order entered
of record, shall allow the commissioner a reasonable fee for
services rendered in connection with each case. Mental hygiene
commissioners shall discharge their duties and hold their
offices at the pleasure of the chief judge of the judicial circuit
in which he or she is appointed and may be removed at any time
by such chief judge. It shall be the duty of a mental hygiene
commissioner to conduct orderly inquiries into the mental
health of the individual sought to be committed concerning the
advisability of committing the individual to a mental health
facility. The mental hygiene commissioner shall safeguard, at
all times, the rights and interests of the individual as well as the
interests of the state. The mental hygiene commissioner shall
make a written report of his or her findings to the circuit court.
In any proceedings before any court of record as set forth in this
article, the court of record shall appoint an interpreter for any
individual who is deaf or cannot speak or who speaks a foreign
language and who may be subject to involuntary commitment
to a mental health facility.
(2) A mental hygiene commissioner appointed by the circuit court of one county or multiple county circuit may serve in such capacity in a jurisdiction other than that of his or her original appointment if such be agreed upon by the terms of a cooperative agreement between the circuit courts and county commissions of two or more counties entered into to provide prompt resolution of mental hygiene matters during noncourt hours or on nonjudicial days.

(c) Duties of prosecuting attorney. — It shall be the duty of the prosecuting attorney or one of his or her assistants to represent the applicants in all final commitment proceedings filed pursuant to the provisions of this article. The prosecuting attorney may appear in any proceeding held pursuant to the provisions of this article if he or she deems it to be in the public interest.

(d) Duties of sheriff. — Upon written order of the circuit court, mental hygiene commissioner or magistrate in the county where the individual formally accused of being mentally ill or addicted is a resident or is found, the sheriff of that county shall take said individual into custody and transport him or her to and from the place of hearing and the mental health facility. The sheriff shall also maintain custody and control of the accused individual during the period of time in which the individual is waiting for the involuntary commitment hearing to be convened and while such hearing is being conducted: Provided, That an individual who is a resident of a state other than West Virginia shall, upon a finding of probable cause, be transferred to his or her state of residence for treatment pursuant to the provisions of subsection (p), section four of this article: Provided, however, That where an individual is a resident of West Virginia but not a resident of the county in which he or she is found and there is a finding of probable cause, the county in which the hearing is held may seek reimbursement from the county of residence for reasonable costs incurred by the county attendant
to the mental hygiene proceeding. Notwithstanding any provision of this code to the contrary, sheriffs may enter into cooperative agreements with sheriffs of one or more other counties, with the concurrence of their respective circuit courts and county commissions, whereby transportation and security responsibilities for hearings held pursuant to the provisions of this article during noncourt hours or on nonjudicial days may be shared in order to facilitate prompt hearings and to effectuate transportation of persons found in need of treatment.

(e) Duty of sheriff upon presentment to mental health care facility. — Where a person is brought to a mental health care facility for purposes of evaluation for commitment under the provisions of this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.

(f) Duties of supreme court of appeals. — The supreme court of appeals shall provide uniform petition, procedure and order forms which shall be used in all involuntary hospitalization proceedings brought in this state.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual who is not incarcerated at the time the application is filed when the person making the application has reason to believe that:
The individual to be examined is addicted, as defined in section eleven, article one of this chapter; or

(2) The individual is mentally ill and, because of his or her mental illness, the individual is likely to cause serious harm to himself or herself or to others if allowed to remain at liberty while awaiting an examination and certification by a physician or psychologist.

(b) The person making the application shall make the application under oath.

(c) Application for involuntary custody for examination may be made to the circuit court or a mental hygiene commissioner of the county in which the individual resides or of the county in which he or she may be found. When no circuit court judge or mental hygiene commissioner is available for immediate presentation of the application, the application may be made to a magistrate designated by the chief judge of the judicial circuit to accept applications and hold probable cause hearings. A designated magistrate before whom an application or matter is pending may upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings, unless otherwise ordered by the chief judge of the judicial circuit.

(d) The person making the application shall give information and state facts in the application as may be required by the form provided for this purpose by the supreme court of appeals.

(e) The circuit court, mental hygiene commissioner or designated magistrate may enter an order for the individual named in the application to be detained and taken into custody for the purpose of holding a probable cause hearing as provided for in subsection (g) of this section for the purpose of an
examination of the individual by a physician, psychologist, a
licensed independent clinical social worker practicing in
compliance with article thirty, chapter thirty of this code, or
advanced nurse practitioner with psychiatric certification,
practicing in compliance with article seven of said chapter:

Provided, That a licensed independent clinical social worker or
an advanced nurse practitioner with psychiatric certification
may only perform the examination if he or she has previously
been authorized by an order of the circuit court to do so, said
order having found that the licensed independent clinical social
worker or advanced nurse practitioner with psychiatric certifi-
cation has particularized expertise in the areas of mental health
and mental hygiene sufficient to make such determinations as
are required by the provisions of this section. The examination
is to be provided or arranged by a community mental health
center designated by the secretary of the department of health
and human resources to serve the county in which the action
takes place. The order is to specify that the hearing be held
forthwith and is to provide for the appointment of counsel for
the individual: Provided, however, That the order may allow the
hearing to be held up to twenty-four hours after the person to be
examined is taken into custody rather than forthwith if the
circuit court of the county in which the person is found has
previously entered a standing order which establishes within
that jurisdiction a program for placement of persons awaiting a
hearing which assures the safety and humane treatment of
persons: Provided further, That the time requirements set forth
in this subsection shall only apply to persons who are not in
need of medical care for a physical condition or disease for
which the need for treatment precludes the ability to comply
with said time requirements. During periods of holding and
detention authorized by this subsection upon consent of the
individual or in the event of a medical or psychiatric emer-
gency, the individual may receive treatment. The medical
provider shall exercise due diligence in determining the
individual's existing medical needs and provide such treatment
as the individual requires, including previously prescribed medications. As used in this section, "psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself or others. Where a physician, psychologist, licensed independent clinical social worker or advanced nurse practitioner with psychiatric certification has within the preceding seventy-two hours performed the examination required by the provisions of this subdivision, the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding the provisions of this subsection, subsection (r), section four of this article applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or addicted, or is determined to be mentally ill but not likely to cause harm to himself, herself or others, the individual shall be immediately released without the need for a probable cause hearing and absent a finding of professional negligence such examiner shall not be civilly liable for the rendering of such opinion absent a finding of professional negligence. The examiner shall immediately provide the mental hygiene commissioner, circuit court or designated magistrate before whom the matter is pending, the results of the examination on the form provided for this purpose by the supreme court of appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing is to be held before a magistrate designated by the chief judge of the judicial circuit, the mental hygiene commissioner or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed forty-eight hours.
The individual must be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her and to examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the rules of evidence of the supreme court of appeals, except as provided for in section twelve, article one of this chapter. At the conclusion of the hearing, the magistrate, mental hygiene commissioner or circuit court judge shall find and enter an order stating whether or not there is probable cause to believe that the individual, as a result of mental illness, is likely to cause serious harm to himself or herself or to others or is addicted.

(g) The magistrate, mental hygiene commissioner or circuit court judge at a probable cause hearing or at a final commitment hearing held pursuant to the provisions of section four of this article finds that the individual, as a result of mental illness, is likely to cause serious harm to himself, herself or others or is addicted and because of mental illness or addiction requires treatment, the magistrate, mental hygiene commissioner or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. The agreement is to be in writing and approved by the individual, his or her counsel and the magistrate, mental hygiene commissioner or circuit judge. If the magistrate, mental hygiene commissioner or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary
treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness remains likely to cause serious harm to himself, herself or others or remains addicted, the entry of an order requiring admission under involuntary hospitalization pursuant to the provisions of section three of this article may be entered. In the event a person released pursuant to a voluntary treatment agreement is unable to pay for the outpatient treatment and has no applicable insurance coverage, including, but not limited to, private insurance or medicaid, the secretary of health and human resources may transfer funds for the purpose of reimbursing community providers for services provided on an outpatient basis for individuals for whom payment for treatment is the responsibility of the department: Provided, That the department may not authorize payment of outpatient services for an individual subject to a voluntary treatment agreement in an amount in excess of the cost of involuntary hospitalization of the individual. The secretary shall establish and maintain fee schedules for outpatient treatment provided in lieu of involuntary hospitalization. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: Provided, however, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous
two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section may affect the appellate and habeas corpus rights of any individual subject to any commitment order.

(h) If the certifying physician or psychologist determines that a person requires involuntary hospitalization for an addiction to a substance which, due to the degree of addiction, creates a reasonable likelihood that withdrawal or detoxification from the substance of addiction will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(i) The supreme court of appeals and the secretary of the department of health and human resources shall collect data and report to the Legislature at its regular annual sessions in two thousand three and two thousand four of the effects of the changes made in the mental hygiene judicial process along with any recommendations which they may deem proper for further
revision or implementation in order to improve the administration and functioning of the mental hygiene system utilized in this state, to serve the ends of due process and justice in accordance with the rights and privileges guaranteed to all citizens, to promote a more effective, humane and efficient system and to promote the development of good mental health. The supreme court of appeals and the secretary of the department of health and human resources shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the secretary of the department of health and human resources shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

(a) Admission to a mental health facility for examination. — Any individual may be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in section two of this article and upon certification by one physician or one psychologist that he or she has examined the individual and is of the opinion that the individual is mentally ill and, because of such mental illness, is likely to cause serious harm to himself or herself or to others if not immediately restrained, or is addicted.

(b) Three-day time limitation on examination. — If said examination does not take place within three days from the date the individual is taken into custody, the individual shall be released. If the examination reveals that the individual is not mentally ill or addicted, the individual shall be released.
(c) *Three-day time limitation on certification.* — The certification required in subsection (a) of this section shall be valid for three days. Any individual with respect to whom such certification has been issued may not be admitted on the basis thereof at any time after the expiration of three days from the date of such examination.

(d) *Findings and conclusions required for certification.* — A certification under this section must include findings and conclusions of the mental examination, the date, time and place thereof and the facts upon which the conclusion that involuntary commitment is necessary is based.

(e) *Notice requirements.* — When an individual is admitted to a mental health facility pursuant to the provisions of this section, the chief medical officer thereof shall immediately give notice of the individual's admission to the individual's spouse, if any, and one of the individual's parents or guardians, or if there be no such spouse, parents or guardians, to one of the individual's adult next of kin: *Provided,* That such next of kin shall not be the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual's residence. Such notices other than to the community mental health facility shall be in writing and shall be transmitted to such person or persons at his, her or their last known address by certified or registered mail, return receipt requested.

(f) *Five-day time limitation for examination and certification at mental health facility.* — After the individual's admission to a mental health facility, he or she may not be detained more than five days, excluding Sundays and holidays, unless, within such period, the individual is examined by a staff physician and such physician certifies that in his or her opinion the patient is mentally ill and is likely to injure himself or
herself or others or will remain addicted if allowed to be at liberty.

(g) **Fifteen-day time limitation for institution of final commitment proceedings.** — If, in the opinion of the examining physician, the patient is mentally ill and because of such mental illness is likely to injure himself or herself or others or will continue to abuse a substance to which he or she is addicted if allowed to be at liberty, the chief medical officer shall, within fifteen days from the date of admission, institute final commitment proceedings as provided in section four of this article. If such proceedings are not instituted within such fifteen-day period, the patient shall be immediately released. After the request for hearing is filed, the hearing shall not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) **Thirty-day time limitation for conclusion of all proceedings.** — If all proceedings as provided in articles three and four of this chapter are not completed within thirty days from the date of institution of such proceedings, the patient shall be immediately released.

**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.

(a) The following days are legal holidays:

1. The first day of January is “New Year’s Day”;

2. The third Monday of January is “Martin Luther King’s Birthday”;

3. The second Monday of February is “Washington’s Birthday”;

4. The twelfth day of February is “Lincoln’s Birthday”;

5. The third Monday of February is “Washington’s Birthday”;

6. The last Monday in May is “Memorial Day”;

7. The twentieth day of June is “West Virginia Day”;

8. The fourth day of July is “Independence Day”;
(8) The first Monday of September is "Labor Day";

(9) The second Monday of October is "Columbus Day";

(10) The eleventh day of November is "Veterans' Day";

(11) The fourth Thursday of November is "Thanksgiving Day";

(12) The twenty-fifth day of December is "Christmas Day";

(13) Any day on which a general, primary or special election is held is a holiday throughout the state, a political subdivision of the state, a district or an incorporated city, town or village in which the election is conducted;

(14) General election day on even years shall be designated Susan B. Anthony Day, in accordance with the provisions of subsection (b), section one-a of this article; and

(15) Any day proclaimed or ordered by the governor or the president of the United States as a day of special observance or Thanksgiving, or a day for the general cessation of business, is a holiday.

(b) If a holiday otherwise described in subsection (a) of this section falls on a Sunday, then the following Monday is the legal holiday. If a holiday otherwise described in subsection (a) of this section falls on a Saturday, then the preceding Friday is the legal holiday: Provided, That this subsection (b) shall not apply to subdivision (13), subsection (a) of this section.

(c) Any day or part thereof designated by the governor as time off, without charge against accrued annual leave, for state employees statewide may also be time off for county employees if the county commission elects to designate the day or part thereof as time off, without charge against accrued annual leave for county employees. Any entire or part statewide day off
designated by the governor may, for all courts, be treated as if it were a legal holiday.

(d) In computing any period of time prescribed by any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code, the day of the act, event, default or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off.

(e) If any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code designates a particular date on, before or after which an act, event, default or omission is required or allowed to occur, and if the particular date designated falls on a Saturday, Sunday, legal holiday or designated day off, then the date on which the act, event, default or omission is required or allowed to occur is the next day that is not a Saturday, Sunday, legal holiday or designated day off.

(f) With regard to the courts of this state, the computation of periods of time, the specific dates or days when an act, event, default or omission is required or allowed to occur and the relationship of those time periods and dates to Saturdays, Sundays, legal holidays, or days designated as weather or other emergency days pursuant to section two of this article are governed by rules promulgated by the supreme court of appeals.

(g) The provisions of this section do not increase or diminish the legal school holidays provided for in section two, article five, chapter eighteen-a of this code.

§2-2-1a. Special memorial days.
(a) The governor shall, by proclamation, declare the week beginning with the Sunday before Thanksgiving as a special memorial week to be known as Native American Indian Heritage Week.

(b) The first Tuesday after the first Monday of November is designated Susan B. Anthony Day and shall only be a legal holiday in all years ending in an even number. The governor shall annually issue a proclamation calling on all schools, civic organizations, government departments and citizens to undertake activities on the designated day and surrounding days to pay tribute to the accomplishments of Susan B. Anthony in securing the civil and political rights of all Americans, including 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.

The Legislature finds that it is a public necessity that trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and supplemental rebates that are contained in records, as well as any meetings at which this information is negotiated or discussed need confidentiality to insure the most significant rebates available for the state. Information pertaining to similar agreements with the federal government and negotiated by pharmaceutical manufacturers is confidential pursuant to 42 U.S.C. 1396r-8. A rebate as a percentage of average manufacture price is confidential under federal law and the federal rebate could be made known if not protected by state law. Because of the protection afforded by federal law, if this information is not protected by state law, manufacturers will not be willing to offer a rebate in West Virginia. Further, the Legislature finds that the number and value of supplemental rebates obtained by the department will increase, to the benefit of Medicaid recipients, if information related to the supplemental rebates is protected in the records of the department and in meetings in which this information is disclosed because manufacturers will be assured they will not to be placed at a competitive disadvantage by exposure of this information.

The secretary of the department of health and human resources has the authority to develop a preferred drug list, in accordance with federal law, which shall consist of federally approved drugs. The department, through administration of the medicaid program, may reimburse, where applicable and in accordance with federal law, entities providing and dispensing prescription drugs from the preferred drug list.
The secretary of the department is hereby authorized to negotiate and enter into agreements with pharmaceutical manufacturers for supplemental rebates for medicaid reimbursable drugs.

The provisions of article three, chapter five-a of this code shall not apply to any contract or contracts entered into under this section.

Trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and supplemental rebates which are contained in the department's records and those of its agents with respect to supplemental rebate negotiations and which are prepared pursuant to a supplemental rebate agreement are confidential and exempt from all of article one, chapter twenty-nine-b of this code.

Those portions of any meetings of the committee at which trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and supplemental rebates are disclosed for discussion or negotiation of a supplemental rebate agreement are exempt from all of article nine-a, chapter six of this code.

The secretary of the department will monitor and evaluate the effects of this provision on medicaid recipients, the medicaid program, physicians and pharmacies.

The commissioner shall implement a drug utilization review program to assure that prescribing and dispensing of drug products result in the most rational cost-effective medication therapy for medicaid patients.

Any moneys received in supplemental rebates will be deposited in the medical services fund established in section two, article four, chapter nine of this code.
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.

(a) Any person or corporation or any governmental agency intending to act as a child welfare agency shall apply for a license, statement of certification, approval or registration certificate to operate child care facilities regulated by this article. Applications for licensure, certification, approval or
registration shall be made separately for each child care facility
to be licensed, approved, certified or registered.

(b) The commissioner shall prescribe forms and reasonable
application procedures including, but not limited to, fingerprinting
of applicants and other persons responsible for the care of
children for submission to the state police and, if necessary, to
the federal bureau of investigation for criminal history record
checks.

(c) Before issuing a license, certification or approval, the
commissioner shall investigate the facility, program and
persons responsible for the care of children. The investigation
shall include, but not be limited to, review of resource need,
reputation, character and purposes of applicants, a check of
personnel criminal records, if any, and personnel medical
records, the financial records of applicants and consideration of
the proposed plan for child care from intake to discharge.

(d) Before a family day care home registration is granted,
the commissioner shall make inquiry as to the facility, program
and persons responsible for the care of children. The inquiry
shall include self-certification by the prospective family day
care home of compliance with standards including, but not
limited to:

(1) Physical and mental health of persons present in the
home while children are in care;

(2) Criminal and child abuse or neglect history of persons
present in the home while children are in care;

(3) Discipline;

(4) Fire and environmental safety;

(5) Equipment and program for the children in care;
(6) Health, sanitation and nutrition.

e) Further inquiry and investigation may be made as the commissioner may direct.

(f) The commissioner shall make a decision on each application within sixty days of its receipt and shall provide to 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.
At any time during any proceedings brought pursuant to articles five and six of this chapter, the court may upon its own motion, or upon a motion of any party, order the West Virginia department of health and human resources to pay for professional services rendered by a psychologist, psychiatrist, physician, therapist or other health care professional to a child or other party to the proceedings. Professional services include, but are not limited to, treatment, therapy, counseling, evaluation, report preparation, consultation and preparation of expert testimony. The West Virginia department of health and human resources shall set the fee schedule for such services in accordance with the Medicaid rate, if any, or the customary rate and adjust the schedule as appropriate. Every such psychologist, psychiatrist, physician, therapist or other health care professional shall be paid by the West Virginia department of health and human resources upon completion of services and submission of a final report or other information and documentation as required by the policies and procedures implemented by the West Virginia department of health 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.]
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.

(a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance
plan or plans, a group major medical insurance plan or plans and a group life and accidental death insurance plan or plans for those employees herein made eligible, and to establish and promulgate rules for the administration of these plans, subject to the limitations contained in this article. Those plans shall include:

1. Coverages and benefits for X-ray and laboratory services in connection with mammograms and pap smears when performed for cancer screening or diagnostic services;

2. Annual checkups for prostate cancer in men age fifty and over;

3. For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child: Provided, That no plan may deny payment for a mother or her newborn child prior to forty-eight hours following a vaginal delivery, or prior to ninety-six hours following a caesarean section delivery, if the attending physician considers discharge medically inappropriate;

4. For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (3) of this subsection if inpatient care is determined to be medically necessary by the attending physician. Those plans may also include, among other things, medicines, medical equipment, prosthetic appliances, and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

5. Coverage for treatment of serious mental illness.
(A) The coverage does not include custodial care, residential care or schooling. For purposes of this section, "serious mental illness" means an illness included in the American psychiatric association's diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to any covered individual who has not yet attained the age of nineteen years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, in the event that the agency can demonstrate actuarially that its total anticipated costs for the treatment of mental illness for any plan will exceed or have exceeded two percent of the total costs for such plan in any experience period, then the agency may apply whatever cost containment measures may be necessary, including, but not limited to, limitations on inpatient and outpatient benefits, to maintain costs below two percent of the total costs for the plan.

(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness, and it may use recognized health care quality and cost management tools, including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-
(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent; and with full authorization to the agency to make the optional coverage available and provide an opportunity of purchase to each employee.

(c) The finance board may cause to be separately rated for claims experience purposes: (1) All employees of the state of West Virginia; (2) all teaching and professional employees of state public institutions of higher education and county boards of education; (3) all nonteaching employees of the university of West Virginia board of trustees or the board of directors of the state college system and county boards of education; or (4) any other categorization which would ensure the stability of the overall program.

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3a. Same — Mental health.

(a)(1) Notwithstanding the requirements of subsection (b) of this section, any health benefits plan described in this article...
that is delivered, issued or renewed in this state shall provide
benefits to all individual subscribers and members and to all
group members for expenses arising from treatment of serious
mental illness. The expenses do not include custodial care,
residential care or schooling. For purposes of this section,
"serious mental illness" means an illness included in the
American psychiatric association’s diagnostic and statistical
manual of mental disorders, as periodically revised, under the
diagnostic categories or subclassifications of: (i) Schizophrenia
and other psychotic disorders; (ii) bipolar disorders; (iii)
depressive disorders; (iv) substance-related disorders with the
exception of caffeine-related disorders and nicotine-related
disorders; (v) anxiety disorders; and (vi) anorexia and bulimia.

(2) Notwithstanding any other provision in this section to
the contrary, in the event that an insurer can demonstrate
actuarially to the insurance commissioner that its total antici-
pated costs for treatment for mental illness, for any plan will
exceed or have exceeded two percent of the total costs for such
plan in any experience period, then the insurer may apply
whatever cost containment measurers may be necessary,
including, but not limited to, limitations on inpatient and
outpatient benefits, to maintain costs below two percent of the
total costs for the plan: Provided, That for any group with
twenty-five members or less, the insurer may apply such
additional cost containment measures as may be necessary if
the total anticipated actual costs for the treatment of mental
illness will exceed one percent of the total costs for the group.

(3) The insurer shall not discriminate between medical-
surgical benefits and mental health benefits in the administra-
tion of its plan. With regard to both medical-surgical and
mental health benefits, it may make determinations of medical
necessity and appropriateness, and it may use recognized health
care quality and cost management tools, including, but not
limited to, utilization review, use of provider networks,
implementation of cost containment measures, preauthorization for certain treatments, setting coverage levels including the number of visits in a given time period, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, and using patient cost sharing in the form of copayments, deductibles and coinsurance.

(4) The provisions of this subsection shall apply with respect to group health plans for plan years beginning on or after the first day of January, two thousand three. The provisions of this section shall cease to be effective on and after the thirty-first day of March, two thousand seven, unless further extended by the Legislature.

(5) The commissioner on or before the thirty-first day of December, two thousand five, and annually thereafter, shall report to the Legislature's joint committee on government and finance and the committees on insurance of the respective houses of the Legislature regarding the fiscal impact of this subsection on the expenses of insurers affected thereby, and which insurers expenses of providing mental health benefits have exceeded the percentage limits established by this subsection.

(b) With respect to mental health benefits furnished to an enrollee of a health benefit plan offered in connection with a group health plan, for a plan year beginning on or after the first day of January, one thousand nine hundred ninety-eight, the following requirements shall apply to aggregate lifetime limits and annual limits.

(1) Aggregate lifetime limits:

(A) If the health benefit plan does not include an aggregate lifetime limit on substantially all medical and surgical benefits, as defined under the terms of the plan but not including mental
health benefits, the plan may not impose any aggregate lifetime limit on mental health benefits; (B) If the health benefit plan limits the total amount that may be paid with respect to an individual or other coverage unit for substantially all medical and surgical benefits (in this paragraph, “applicable lifetime limit”), the plan shall either apply the applicable lifetime limit to medical and surgical benefits to which it would otherwise apply and to mental health benefits, as defined under the terms of the plan, and not distinguish in the application of the limit between medical and surgical benefits and mental health benefits, or not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit; (C) If a health benefit plan not previously described in this subdivision includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code under which paragraph (B) of this subdivision shall apply, substituting an average aggregate lifetime limit for the applicable lifetime limit.

(2) Annual limits:

(A) If a health benefit plan does not include an annual limit on substantially all medical and surgical benefits, as defined under the terms of the plan but not including mental health benefits, the plan may not impose any annual limit on mental health benefits, as defined under the terms of the plan; (B) If the health benefit plan limits the total amount that may be paid in a twelve-month period with respect to an individual or other coverage unit for substantially all medical 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
107 (C) If a health benefit plan not previously described in this
108 subdivision includes no or different annual limits on different
109 categories of medical and surgical benefits, the commissioner
110 shall propose rules for legislative approval in accordance with
111 the provisions of article three, chapter twenty-nine-a of this
112 code under which paragraph (B) of this subdivision shall apply,
113 substituting an average annual limit for the applicable annual
114 limit.

115 (3) If a group health plan or a health insurer offers a
116 participant or beneficiary two or more benefit package options,
117 this subsection shall apply separately with respect to coverage
118 under each option.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


1 (1) "Basic health care services" means physician, hospital,
2 out-of-area, podiatric, chiropractic, laboratory, X ray, emerg-
3 ency, 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.
(2) "Capitation" means the fixed amount paid by a health maintenance organization to a health care provider under contract with the health maintenance organization in exchange for the rendering of health care services.

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

(4) "Consumer" means any person who is not a provider of care or an employee, officer, director or stockholder of any provider of care.

(5) "Copayment" means a specific dollar amount, or percentage, except as otherwise provided for by statute, that the subscriber must pay upon receipt of covered health care services and which is set at an amount or percentage consistent with allowing subscriber access to health care services.

(6) "Employee" means a person in some official employment or position working for a salary or wage continuously for no less than one calendar quarter and who is in such a relation to another person that the latter may control the work of the former and direct the manner in which the work shall be done.

(7) "Employer" means any individual, corporation, partnership, other private association, or state or local government that employs the equivalent of at least two full-time employees during any four consecutive calendar quarters.

(8) "Enrollee", "subscriber" or "member" means an individual who has been voluntarily enrolled in a health maintenance organization, including individuals on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(9) "Evidence of coverage" means any certificate, agreement or contract issued to an enrollee setting out the coverage and other rights to which the enrollee is entitled.
(10) "Health care services" means any services or goods included in the furnishing to any individual of medical, mental or dental care, or hospitalization or incident to the furnishing of the care or hospitalization, osteopathic services, chiropractic services, podiatric services, home health, health education or rehabilitation, as well as the furnishing to any person of any and all other services or goods for the purpose of preventing, alleviating, curing or healing human illness or injury.

(11) "Health maintenance organization" or "HMO" means a public or private organization which provides, or otherwise makes available to enrollees, health care services, including at a minimum basic health care services and which:

(a) Receives premiums for the provision of basic health care services to enrollees on a prepaid per capita or prepaid aggregate fixed sum basis, excluding copayments;

(b) Provides physicians' services primarily: (i) Directly through physicians who are either employees or partners of the organization; or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice arrangement; or (iii) through some combination of paragraphs (i) and (ii) of this subdivision;

(c) Assures the availability, accessibility and quality, including effective utilization, of the health care services which it provides or makes available through clearly identifiable focal points of legal and administrative responsibility; and

(d) Offers services through an organized delivery system in which a primary care physician or primary care provider is designated for each subscriber upon enrollment. The primary care physician or primary care provider is responsible for coordinating the health care of the subscriber and is responsible for referring the subscriber to other providers when necessary:
Provided, That when dental care is provided by the health maintenance organization the dentist selected by the subscriber from the list provided by the health maintenance organization shall coordinate the covered dental care of the subscriber, as approved by the primary care physician or the health maintenance organization.

(12) "Impaired" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the health maintenance organization's annual statement, the assets of the health maintenance organization are less than the sum of all of its liabilities and required reserves including any minimum capital and surplus required of the health maintenance organization by this chapter so as to maintain its authority to transact the kinds of business or insurance it is authorized to transact.

(13) "Individual practice arrangement" means any agreement or arrangement to provide medical services on behalf of a health maintenance organization among or between physicians or between a health maintenance organization and individual physicians or groups of physicians, where the physicians are not employees or partners of the health maintenance organization and are not members of or affiliated with a medical group.

(14) "Insolvent" or "insolvency" means a financial situation in which, based upon the financial information that would be required by this chapter for the preparation of the health maintenance organization's annual statement, the assets of the health maintenance organization are less than the sum of all of its liabilities and required reserves.

(15) "Medical group" or "group practice" means a professional corporation, partnership, association or other organization composed solely of health professionals licensed to
practice medicine or osteopathy and of other licensed health professionals, including podiatrists, dentists and optometrists, as are necessary for the provision of health services for which the group is responsible: (a) A majority of the members of which are licensed to practice medicine or osteopathy; (b) who as their principal professional activity engage in the coordinated practice of their profession; (c) who pool their income for practice as members of the group and distribute it among themselves according to a prearranged salary, drawing account or other plan; and (d) who share medical and other records and substantial portions of major equipment and professional, technical and administrative staff.

(16) "Premium" means a prepaid per capita or prepaid aggregate fixed sum unrelated to the actual or potential utilization of services of any particular person which is charged by the health maintenance organization for health services provided to an enrollee.

(17) "Primary care physician" means the general practitioner, family practitioner, obstetrician/gynecologist, pediatrician or specialist in general internal medicine who is chosen or designated for each subscriber who will be responsible for coordinating the health care of the subscriber, including necessary referrals to other providers.

(18) "Primary care provider" means a person who may be chosen or designated in lieu of a primary care physician for each subscriber, who will be responsible for coordinating the health care of the subscriber, including necessary referrals to other providers, and includes:

(a) An advanced nurse practitioner practicing in compliance with article seven, chapter thirty of this code and other applicable state and federal laws, who develops a mutually agreed upon association in writing with a primary care physician on the
panel of and credentialed by the health maintenance organization; and

(b) A certified nurse-midwife, but only if chosen or designated in lieu of a subscriber's primary care physician or primary care provider during the subscriber's pregnancy and for a period extending through the end of the month in which the sixty-day period following termination of pregnancy ends.

(c) Nothing in this subsection may be construed to expand the scope of practice for advanced nurse practitioners as governed by article seven, chapter thirty of this code or any legislative rule, or for certified nurse-midwives, as defined in article fifteen, chapter thirty of this code.

(19) "Provider" means any physician, hospital or other person or organization which is licensed or otherwise authorized in this state to furnish health care services.

(20) "Uncovered expenses" means the cost of health care services that are covered by a health maintenance organization, for which a subscriber would also be liable in the event of the insolvency of the organization.

(21) "Service area" means the county or counties approved by the commissioner within which the health maintenance organization may provide or arrange for health care services to be available to its subscribers.

(22) "Statutory surplus" means the minimum amount of unencumbered surplus which a corporation must maintain pursuant to the requirements of this article.

(23) "Surplus" means the amount by which a corporation's assets exceeds its liabilities and required reserves based upon the financial information which would be required by this chapter for the preparation of the corporation's annual state-
ment except that assets pledged to secure debts not reflected on the books of the health maintenance organization shall not be included in surplus.

(24) "Surplus notes" means debt which has been subordinated to all claims of subscribers and general creditors of the organization.

(25) "Qualified independent actuary" means an actuary who is a member of the American academy of actuaries or the society of actuaries and has experience in establishing rates for health maintenance organizations and who has no financial or employment interest in the health maintenance organization.

(26) "Quality assurance" means an ongoing program designed to objectively and systematically monitor and evaluate the quality and appropriateness of the enrollee’s care, pursue opportunities to improve the enrollee’s care and to resolve identified problems at the prevailing professional standard of care.

(27) "Utilization management" means a system for the evaluation of the necessity, appropriateness and efficiency of the use of health care services, 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.
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7c. Required coverage for reconstruction surgery following mastectomies.

(a) The plan shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for:

1. All stages of reconstruction of the breast on which the mastectomy has been performed;

2. Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

3. Prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Coverage shall be provided for a minimum stay in the hospital of not less than forty-eight hours for a patient following a radical or modified mastectomy and not less than twenty-four hours of inpatient care following a total mastectomy or partial mastectomy with lymph node dissection for the treatment of breast cancer.

Nothing in this section shall be construed as requiring inpatient coverage where inpatient coverage is not medically necessary or where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the
plan. Written notice of the availability of such coverage shall be
delivered to the participant upon enrollment and annually
thereafter in the summary plan description or similar document.

(b) The plan may not:

(1) Deny to a patient eligibility, or continued eligibility, to
enroll or to renew coverage under the terms of the plan, solely
for the purpose of avoiding the requirements of this section; and

(2) Penalize or otherwise reduce or limit the reimbursement
of an attending provider, or provide incentives (monetary or
otherwise) to an attending provider, to induce such provider to
provide care to an individual participant or beneficiary in a
manner inconsistent with this section.

(c) Nothing in this section shall be construed to prevent a
health benefit plan policy or a health insurer offering health
insurance coverage from negotiating the level and type of
reimbursement with a provider for care provided in accordance
with this section.

(d) The provisions of this section shall be included under
any policy, contract or plan delivered after the first day of July,
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.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.
§33-15-4g. Required coverage for reconstruction surgery following mastectomies.

(a) Any policy of insurance described in this article which provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a policyholder who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for:

1. (1) All stages of reconstruction of the breast on which the mastectomy has been performed;

2. (2) Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

3. (3) Prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Coverage shall be provided for a minimum stay in the hospital of not less than forty-eight hours for a patient following a radical or modified mastectomy and not less than twenty-four hours of inpatient care following a total mastectomy or partial mastectomy with lymph node dissection for the treatment of breast cancer.

Nothing in this section shall be construed as requiring inpatient coverage where inpatient coverage is not medically necessary or where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the health benefit plan policy or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

(b) A health benefit plan policy, and a health insurer providing health insurance coverage in connection with a health
benefit plan policy, shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the issuer of the health benefit plan policy.

(c) A health benefit plan policy and a health insurer offering health insurance coverage in connection with a health benefit plan policy, may not:

(1) Deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

(2) Penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(d) Nothing in this section shall be construed to prevent a health benefit plan policy or a health insurer offering health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(e) The provisions of this section shall be included under any policy, contract or plan delivered after the first day of July, two thousand two.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3p. Required coverage for reconstruction surgery following mastectomies.

(a) Any policy of insurance described in this article which provides medical and surgical benefits with respect to a
3 mastectomy shall provide, in a case of a participant or beneficiar
4y who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for:
5
6 (1) All stages of reconstruction of the breast on which the
7 mastectomy has been performed;
8
9 (2) Surgery and reconstruction of the other breast to
10 produce a symmetrical appearance; and
11
12 (3) Prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Coverage shall be provided for a minimum stay in the hospital of not less than forty-eight hours for a patient following a radical or modified mastectomy and not less than twenty-four hours of inpatient care following a total mastectomy or partial mastectomy with lymph node dissection for the treatment of breast cancer. Nothing in this section shall be construed as requiring inpatient coverage where inpatient coverage is not medically necessary or where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the health benefit plan policy or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.
13
14 (b) A health benefit plan policy, and a health insurer providing health insurance coverage in connection with a health benefit plan policy, shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section. Such notice shall be in writing and prominently
positioned in any literature or correspondence made available or distributed by the issuer of the health benefit plan policy.

(c) A health benefit plan policy and a health insurer offering health insurance coverage in connection with a health benefit plan policy, may not:

(1) Deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

(2) Penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(d) Nothing in this section shall be construed to prevent a health benefit plan policy or a health insurer offering health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(e) The provisions of this section shall be included under any policy, contract or plan delivered after the first day of July, two thousand two.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7g. Required coverage for reconstruction surgery following mastectomies.

(a) Any policy of insurance described in this article which provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastec-
tomy and who elects breast reconstruction in connection with such mastectomy, coverage for:

(1) All stages of reconstruction of the breast on which the mastectomy has been performed;

(2) Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

(3) Prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Coverage shall be provided for a minimum stay in the hospital of not less than forty-eight hours for a patient following a radical or modified mastectomy and not less than twenty-four hours of inpatient care following a total mastectomy or partial mastectomy with lymph node dissection for the treatment of breast cancer.

Nothing in this section shall be construed as requiring inpatient coverage where inpatient coverage is not medically necessary or where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the health benefit plan policy or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

(b) A health benefit plan policy, and a health insurer providing health insurance coverage in connection with a health benefit plan policy, shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the issuer of the health benefit plan policy.
(c) A health benefit plan policy and a health insurer offering health insurance coverage in connection with a health benefit plan policy, may not:

(1) Deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

(2) Penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(d) Nothing in this section shall be construed to prevent a health benefit plan policy or a health insurer offering health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(e) The provisions of this section shall be included under any policy, contract or plan delivered after the first day of July, two thousand two.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8f. Required coverage for reconstruction surgery following mastectomies.

(a) Any policy of insurance described in this article which provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for:
(1) All stages of reconstruction of the breast on which the
mastectomy has been performed;

(2) Surgery and reconstruction of the other breast to
produce a symmetrical appearance; and

(3) Prostheses and physical complications of mastectomy,
including lymphedemas in a manner determined in consultation
with the attending physician and the patient. Coverage shall be
provided for a minimum stay in the hospital of not less than
forty-eight hours for a patient following a radical or modified
mastectomy and not less than twenty-four hours of inpatient
care following a total mastectomy or partial mastectomy with
lymph node dissection for the treatment of breast cancer.
Nothing in this section shall be construed as requiring inpatient
coverage where inpatient coverage is not medically necessary
or where the attending physician in consultation with the patient
determines that a shorter period of hospital stay is appropriate.
Such coverage may be subject to annual deductibles and
coinsurance provisions as may be deemed appropriate and as
are consistent with those established for other benefits under the
health benefit plan policy or coverage. Written notice of the
availability of such coverage shall be delivered to the partici-
pant upon enrollment and annually thereafter.

(b) A health benefit plan policy, and a health insurer
providing health insurance coverage in connection with a health
benefit plan policy, shall provide notice to each participant and
beneficiary under such plan regarding the coverage required by
this section. Such notice shall be in writing and prominently
positioned in any literature or correspondence made available
or distributed by the issuer of the health benefit plan policy.

(c) A health benefit plan policy and a health insurer
offering health insurance coverage in connection with a health
benefit plan policy, may not:
(1) Deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

(2) Penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(d) Nothing in this section shall be construed to prevent a health benefit plan policy or a health insurer offering health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(e) The provisions of this section shall be included under any policy, contract or plan delivered after the first day of July, 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

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 requires:

3 (a) "Board" means the state board of risk and insurance management.
(b) "Company" means and includes corporations, associations, partnerships and individuals.

(c) "Insurance" means all forms of insurance and bonding services available for protection and indemnification of the state and its officials, employees, properties, activities and responsibilities against loss or damage or liability, including fire, marine, casualty, and surety insurance.

(d) "Insurance company" means all insurers or insurance carriers, including, but not limited to, stock insurance companies, mutual insurance companies, reciprocal and interinsurance exchanges, and all other types of insurers and insurance carriers, including life, accident, health, fidelity, indemnity, casualty, hospitalization and other types and kinds of insurance companies, organizations and associations, but excepting and excluding workers' compensation coverage.

(e) "State property activities" and "state responsibilities" means and includes all operations, boards, commission, works, projects and functions of the state, its properties, officials, agents and employees which, within the scope and in the course of governmental employment, may be subject to liability, loss, damage, risks and hazards recognized to be and normally included within insurance and bond coverages.

(f) "State property" means all property belonging to the state of West Virginia and any boards or commissions thereof wherever situated and which is the subject of risk or reasonably considered to be subject to loss or damage or liability by any single occurrence of any event insured against.

§29-12-5. Powers and duties of board.

(a) The board shall have general supervision and control over the insurance of all state property, activities and responsibilities, including the acquisition and cancellation thereof;
determination of amount and kind of coverage, including, but
not limited to, deductible forms of insurance coverage, inspec-
tions or examinations relating thereto, reinsurance, and any and
all matters, factors and considerations entering into negotiations
for advantageous rates on and coverage of all such state
property, activities and responsibilities. The board shall have
the authority to employ an executive director for an annual
salary of seventy thousand dollars and such other employees,
including legal counsel, as may be necessary to carry out its
duties. The legal counsel may represent the board before any
judicial or administrative tribunal and perform such other duties
as may be requested by the board. Any policy of insurance
purchased or contracted for by the board shall provide that the
insurer shall be barred and estopped from relying upon the
constitutional immunity of the state of West Virginia against
claims or suits: Provided, That nothing herein shall bar the
insurer of political subdivisions from relying upon any statutory
immunity granted such political subdivisions against claims or
suits. The board may enter into any contracts necessary to the
execution of the powers granted to it by this article. It shall
endeavor to secure the maximum of protection against loss,
damage or liability to state property and on account of state
activities and responsibilities by proper and adequate insurance
coverage through the introduction and employment of sound
and accepted methods of protection and principles of insurance.
It is empowered and directed to make a complete survey of all
presently owned and subsequently acquired state property
subject to insurance coverage by any form of insurance, which
survey shall include and reflect inspections, appraisals, expo-
sures, fire hazards, construction, and any other objectives or
factors affecting or which might affect the insurance protection
and coverage required. It shall keep itself currently informed on
new and continuing state activities and responsibilities within
the insurance coverage herein contemplated. The board shall
work closely in cooperation with the state fire marshal’s office
in applying the rules of that office insofar as the appropriations and other factors peculiar to state property will permit. The board is given power and authority to make rules governing its functions and operations and the procurement of state insurance.

The board is hereby authorized and empowered to negotiate and effect settlement of any and all insurance claims arising on or incident to losses of and damages to state properties, activities and responsibilities hereunder and shall have authority to execute and deliver proper releases of all such claims when settled. The board may adopt rules and procedures for handling, negotiating and settlement of all such claims. Any discussion or consideration of the financial or personal information of an insured may be held by the board in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.

(b) If requested by a political subdivision, a charitable or public service organization, or an emergency medical services agency, the board is authorized to provide property and liability insurance to insure their property, activities and responsibilities. The board is authorized to enter into any necessary contract of insurance to further the intent of this subsection.

The property insurance provided by the board, pursuant to this subsection, may also include insurance on property leased to or loaned to the political subdivision, a charitable or public service organization or an emergency medical services agency which is required to be insured under a written agreement.

The cost of this insurance, as determined by the board, shall be paid by the political subdivision, the charitable or public service organization or the emergency medical services agency and may include administrative expenses. For purposes of this section: Provided, That if an emergency medical services
agency is a for-profit entity its claims history may not adversely affect other participant’s rates in the same class. All funds received by the board (including, but not limited to, state agency premiums, mine subsidence premiums, and political subdivision premiums) shall be deposited with the West Virginia investment management board with the interest income and returns on investment a proper credit to such property insurance trust fund or liability insurance trust fund, as applicable.

“Political subdivision” as used in this subsection shall have the same meaning as in section three, article twelve-a of this chapter.

Charitable or public service organization as used in this subsection means a bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

“Emergency medical service agency” as used in this subsection shall have the same meaning as in section three, article four-c, chapter sixteen of this code.

(c) (1) The board shall have general supervision and control over the optional medical liability insurance programs providing coverage to health care providers as authorized by the provisions of article twelve-b of this chapter. The board is hereby granted and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article.
(2) The board shall:

(A) Administer the preferred medical liability program and the high risk medical liability program and exercise and perform other powers, duties and functions specified in this article;

(B) Obtain and implement, at least annually, from an independent outside source, such as a medical liability actuary or a rating organization experienced with the medical liability line of insurance, written rating plans for the preferred medical liability program and high risk medical liability program on which premiums shall be based;

(C) Prepare and annually review written underwriting criteria for the preferred medical liability program and the high risk medical liability program. The board may utilize review panels, including but not limited to, the same specialty review panels to assist in establishing criteria;

(D) Prepare and publish, before each regular session of the Legislature, separate summaries for the preferred medical liability program and high risk medical liability program activity during the preceding fiscal year, each summary to be included in the Board of Risk and Insurance Management audited financial statements as "other financial information", and which shall include a balance sheet, income statement and cash flow statement, an actuarial opinion addressing adequacy of reserves, the highest and lowest premiums assessed, the number of claims filed with the program by provider type, the number of judgments and amounts paid from the program, the number of settlements and amounts paid from the program and the number of dismissals without payment;

(E) Determine and annually review the claims history debit or surcharge for the high risk medical liability program;
(F) Determine and annually review the criteria for transfer from the preferred medical liability program to the high risk medical liability program;

(G) Determine and annually review the role of independent agents, the amount of commission, if any, to be paid therefor, and agent appointment criteria;

(H) Study and annually evaluate the operation of the preferred medical liability program and the high risk medical liability program, and make recommendations to the Legislature, as may be appropriate, to ensure their viability, including but not limited to, recommendations for civil justice reform with an associated cost-benefit analysis, recommendations on the feasibility and desirability of a plan which would require all health care providers in the state to participate with an associated cost-benefit analysis, recommendations on additional funding of other state run insurance plans with an associated cost-benefit analysis and recommendations on the desirability of ceasing to offer a state plan with an associated analysis of a potential transfer to the private sector with a cost-benefit analysis, including impact on premiums;

(I) Establish a five-year financial plan to ensure an adequate premium base to cover the long tail nature of the claims-made coverage provided by the preferred medical liability program and the high risk medical liability program. The plan shall be designed to meet the program’s estimated total financial requirements, taking into account all revenues projected to be made available to the program, and apportioning necessary costs equitably among participating classes of health care providers. For these purposes, the board shall:

(i) Retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group malpractice plans, to estimate the total financial requirements
of the program for each fiscal year and to review and render
written professional opinions as to financial plans proposed by
the board. The actuary shall also assist in the development of
alternative financing options and perform any other services
requested by the board or the executive director. All reasonable
fees and expenses for actuarial services shall be paid by the
board. Any financial plan or modifications to a financial plan
approved or proposed by the board pursuant to this section shall
be submitted to and reviewed by the actuary and may not be
finally approved and submitted to the governor and to the
Legislature without the actuary’s written professional opinion
that the plan may be reasonably expected to generate sufficient
revenues to meet all estimated program and administrative
costs, including incurred but not reported claims, for the fiscal
year for which the plan is proposed. The actuary’s opinion for
any fiscal year shall include a requirement for establishment of
a reserve fund;

(ii) Submit its final, approved five-year financial plan, after
obtaining the necessary actuary’s opinion, to the governor and
to the Legislature no later than the first day of January preced-
ing the fiscal year. The financial plan for a fiscal year becomes
effective and shall be implemented by the executive director on
the first day of July of the fiscal year. In addition to each final,
approved financial plan required under this section, the board
shall also simultaneously submit an audited financial statement
based on generally accepted accounting practices (GAAP) and
which shall include allowances for incurred but not reported
claims: *Provided, That* the financial statement and the accrual-
based financial plan restatement shall not affect the approved
financial plan. The provisions of chapter twenty-nine-a of this
code shall not apply to the preparation, approval and implemen-
tation of the financial plans required by this section;

(iii) Submit to the governor and the Legislature a prospec-
tive five-year financial plan beginning on the first day of
January, two thousand three, and every year thereafter, for the programs established by the provisions of article twelve-b of this chapter. Factors that the board shall consider include, but shall not be limited to, the trends for the program and the industry; claims history, number and category of participants in each program; settlements and claims payments; and judicial results;

(iv) Obtain annually, certification from participants that they have made a diligent search for comparable coverage in the voluntary insurance market and have been unable to obtain the same;

(J) Meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the medical liability programs established in article twelve-b of this chapter. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of these programs for the current fiscal year are met;

(K) To analyze the benefit of and necessity for excess verdict liability coverage;

(L) Consider purchasing reinsurance, in the amounts as it may from time to time determine is appropriate, and the cost thereof shall be considered to be an operating expense of the board;

(M) Make available to participants, optional extended reporting coverage or tail coverage: Provided, That, at least five working days prior to offering such coverage to a participant or participants, the board shall notify the president of the Senate and the speaker of the House of Delegates in writing of its
intention to do so, and such notice shall include the terms and conditions of the coverage proposed;

(N) Review and approve, reject or modify rules that are proposed by the executive director to implement, clarify or explain administration of the preferred medical liability program and the high risk medical liability program. Notwithstanding any provisions in this code to the contrary, rules promulgated pursuant to this paragraph are not subject to the provisions of sections nine through sixteen, article three, chapter twenty-nine-a of this code. The board shall comply with the remaining provisions of article three and shall hold hearings or receive public comments before promulgating any proposed rule filed with the secretary of state: Provided, That the initial rules proposed by the executive director and promulgated by the board shall become effective upon approval by the board notwithstanding any provision of this code;

(O) Enter into settlements and structured settlement agreements whenever appropriate. The policy may not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the policy holder. The board may own or assign any annuity purchased by the board to a company licensed to do business in the state;

(P) Refuse to provide insurance coverage for individual physicians whose prior loss experience or current professional training and capability are such that the physician represents an unacceptable risk of loss if coverage is provided;

(Q) Terminate coverage for nonpayment of premiums upon written notice of the termination forwarded to the health care provider not less than thirty days prior to termination of coverage;
(R) Assign coverage or transfer all insurance obligations and/or risks of existing or in-force contracts of insurance to a third party medical professional liability insurance carrier with the comparable coverage conditions as determined by the board. Any transfer of obligation or risk shall effect a novation of the transferred contract of insurance and if the terms of the assumption reinsurance agreement extinguish all liability of the board and the state of West Virginia such extinguishment shall be absolute as to any and all parties; and

(S) Meet and consult with and consider recommendations from the medical malpractice advisory panel established by the provisions of article twelve-b of this chapter.

(d) If, after the first day of September, two thousand two, the board has assigned coverages or transferred all insurance obligations and/or risks of existing or in-force contracts of insurance to a third party medical professional liability insurance carrier, and the board otherwise has no covered participants, then the board shall not thereafter offer or provide professional liability insurance to any health care provider pursuant to the provisions of subsection (c) of this section or the provisions of article twelve-b of this chapter unless the Legislature adopts a concurrent resolution authorizing the board to reestablish medical liability insurance programs.

ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFESSIONAL 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.

(a) There is hereby established through the board of risk and insurance management optional insurance for health care
(b) Each of the programs described in subsection (a) of this section shall provide claims-made coverage for any covered act or omission resulting in injury or death arising out of medical professional liability as defined in subsection (d), section two, article seven-b, chapter fifty-five of this code.

(c) Each of the programs described in subsection (a) of this section shall offer optional prior acts coverage from and after a retroactive date established by the policy declarations. The premium for prior acts coverage may be based upon a five-year maturity schedule depending on the years of prior acts exposure, as more specifically set forth in a written rating manual approved by the board.

(d) Each of the programs described in subsection (a) of this section shall further provide an option to purchase an extended reporting endorsement or tail coverage.

(e) Each of the programs described in subsection (a) of this section shall offer limits for each health care provider in the amount of one million dollars per claim, including repeated exposure to the same event or series of events, and all derivative claims, and three million dollars in the annual aggregate. Health care providers have the option to purchase higher limits of up to two million dollars per claim, including repeated exposure to the same event or series of events, and all derivative claims, and up to four million dollars in the annual aggregate. In addition, hospitals covered by the plan shall have available limits of three million dollars per claim, including repeated exposure to the same event or series of events, and all derivative claims, and five million dollars in the annual
aggregate. Installment payment plans as established in the rating manual shall be available to all participants.

(f) Each of the programs described in subsection (a) of this section shall cover any act or omission resulting in injury or death arising out of medical professional liability as defined in subsection (d), section two, article seven-b, chapter fifty-five of this code. The board shall exclude from coverage sexual acts as defined in subdivision (e), section three of this article, and shall have the authority to exclude other acts or omission from coverage.

(g) Each of the programs described in subsection (a) of this section shall apply to damages, except punitive damages, for medical professional liability as defined in subsection (d), section two, article seven-b, chapter fifty-five of this code.

(h) The board may, but is not required, to obtain excess verdict liability coverage for the programs described in subsection (a) of this section.

(i) Each of the programs shall be liable to the extent of the limits purchased by the health care provider as set forth in subsection (e) of this section. In the event that a claimant and a health care provider are willing to settle within those limits purchased by the health care provider, but the board refuses or declines to settle, and the ultimate verdict is in excess of the purchased limits, the board shall not be liable for the portion of the verdict in excess of the coverage provided in subsection (e) of this section unless the board acts in bad faith, with actual malice, in declining or refusing to settle: Provided, That if the board has in effect applicable excess verdict liability insurance, the health care provider shall not be required to prove that the board acted with actual malice in declining or refusing to settle in order to be indemnified for that portion of the verdict in excess of the limits of the purchased policy and within the
limits of the excess liability coverage. Notwithstanding any provision of this code to the contrary, the board shall not be liable for any verdict in excess of the combined limit of the purchased policy and any applicable excess liability coverage unless the board acts in bad faith with actual malice.

(j) Rates for each of the programs described in subsection (a) of this section may not be excessive, inadequate or unfairly discriminatory: Provided, That the rates charged for the preferred professional liability insurance program shall not be less than the highest approved comparable base rate for a licensed carrier providing five percent of the malpractice insurance coverage in this state for the previous calendar year on file with the insurance commissioner: Provided, however, That if there is only one licensed carrier providing five percent or more of the malpractice insurance coverage in the state offering comparable coverage, the board shall have discretion to disregard the approved comparable base rate of the licensed carrier.

(k) The premiums for each of the programs described in subsection (a) of this section are subject to premium taxes imposed by article three, chapter thirty-three of this code.

(l) Nothing in this article shall be construed to preclude a health care provider from obtaining professional liability insurance coverage for claims in excess of the coverage made available by the provisions of this article.

(m) General liability coverage that may be required by a health care provider may be offered as determined by the board.

§29-12B-10. Deposit, expenditure and investment of premiums.

(a) The premiums charged and collected by the board under this article shall be deposited into a special revenue account hereby created in the state treasury known as the “Medical
Liability Fund', and shall not be part of the general revenues of the state. Disbursements from the special revenue fund shall be upon requisition of the executive director and in accordance with the provisions of chapter five-a of this code. Disbursements shall pay operating expenses of the board attributed to these programs and the board's share of any judgments or settlements of medical malpractice claims. Funds shall be invested with the consolidated fund managed by the West Virginia investment management board and interest earned shall be used for purposes of this article.

(b) Start-up operating expenses of the medical liability fund, not to exceed five hundred thousand dollars, may be transferred to the medical liability fund pursuant to an appropriation by the Legislature from any special revenue funds available. The medical liability fund shall reimburse the board within twenty-four months of the date of the transfer.

(c) For purposes of establishing a pool from which settlements and judgments may be paid, notwithstanding any other provision of this code to the contrary, a portion of the initial capitalization of the pool may be provided through a transfer of no greater than four million dollars from the state special insurance fund established in section five, article twelve of this chapter. All funds transferred pursuant to this section are to be repaid by transfer from the medical liability fund to the state special insurance fund, together with interest that would have accrued in the state special insurance fund, by the first day of July, two thousand six. Funds are to be transferred only as needed for expenditures from the medical liability fund created in this section. The treasurer shall effect these transfers pursuant to this section upon written request of the director of the board of risk and insurance management.
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.

(a) The purpose of this section is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this section are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be considered appropriate and necessary for the administration of the insurance and insurance related laws of this state.
(b) For purposes of this section, the following definitions shall apply:

(1) "Commissioner" means the commissioner of insurance of this state;

(2) "Company" or "insurance company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner, including, but not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers mutual fire companies, fraternal benefit society, reciprocal or inter-insurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group or other insurer, regardless of the type of coverage written, benefits provided or guarantees made by each;

(3) "Department" means the department of insurance of this state; and

(4) "Examiners" means the commissioner of insurance or any individual or firm having been authorized by the commissioner to conduct an examination pursuant to this section, including, but not limited to, the commissioner's deputies, other employees, appointed examiners or other appointed individuals or firms who are not employees of the department of insurance.

(c) The commissioner or his or her examiners may conduct an examination under this section of any company as often as the commissioner in his or her discretion considers appropriate. The commissioner or his or her examiners shall at least once
every five years visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The commissioner may also examine the affairs of any insurer applying for a license to transact any insurance business in this state.

(d) The commissioner or his or her examiners shall, at a minimum, conduct an examination of every foreign or alien insurer licensed in this state not less frequently than once every five years. The examination of an alien insurer may be limited to its United States business: Provided, That in lieu of an examination under this section of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company’s state of domicile or port-of-entry state until the first day of January, one thousand nine hundred ninety-four. Thereafter, the reports may only be accepted if:

(1) The insurance department was at the time of the examination accredited under the national association of insurance commissioners’ financial regulation standards and accreditation program; or

(2) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(e) In scheduling and determining the nature, scope and frequency of examinations conducted pursuant to this section, the commissioner may consider such matters as the results of financial statement analyses and ratios, changes in management
or ownership, actuarial opinions, reports of independent
certified public accountants and other criteria as set forth in the
examiners’ handbook adopted by the national association of
insurance commissioners and in effect when the commissioner
exercises discretion under this section.

(f) For purposes of completing an examination of any
company under this section, the commissioner may examine or
investigate any person, or the business of any person, insofar as
the examination or investigation is, in the sole discretion of the
commissioner, necessary or material to the examination of the
company.

(g) The commissioner may also cause to be examined, at
the times as he or she considers necessary, the books, records,
papers, documents, correspondence and methods of doing
business of any agent, broker, excess lines broker or solicitor
licensed by this state. For these purposes, the commissioner or
his or her examiners shall have free access to all books, records,
papers, documents and correspondence of all the agents,
brokers, excess lines brokers and solicitors wherever the books,
records, papers, documents and records are situate. The
commissioner may revoke the license of any agent, broker,
excess lines broker or solicitor who refuses to submit to the
examination.

(h) In addition to conducting an examination, the commis-
sioner or his or her examiners may, as the commissioner
considers necessary, analyze or review any phase of the
operations or methods of doing business of an insurer, agent,
broker, excess lines broker, solicitor or other individual or
corporation transacting or attempting to transact an insurance
business in the state of West Virginia. The commissioner may
use the full resources provided by this section in carrying out
these responsibilities, including any personnel and equipment
provided by this section as the commissioner considers necessary.

(i) Examinations made pursuant to this section shall be conducted in the following manner:

(1) Upon determining that an examination should be conducted, the commissioner or his or her designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. The appointment of any examiners pursuant to this section by the commissioner shall not be subject to the requirements of article three, chapter five-a of this code, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the attorney general. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ any other guidelines or procedures as the commissioner may consider appropriate;

(2) Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subdivision (1) of this subsection timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so;

(3) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, refusal or nonrenewal of any license or authority held by the company to engage in an
insurance or other business subject to the commissioner’s jurisdiction. Any proceedings for suspension, revocation, refusal or nonrenewal of any license or authority shall be conducted pursuant to section eleven, article two of this chapter;

(4) The commissioner or his or her examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination, analysis or review. The subpoenas shall be enforced pursuant to the provisions of section six, article two of this chapter;

(5) When making an examination, analysis or review under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, professionals or specialists with training or experience in reinsurance, investments or information systems, or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination, analysis or review or, in the commissioner’s discretion, paid from the commissioner’s examination revolving fund. The commissioner may recover costs paid from the commissioner’s examination revolving fund pursuant to this subdivision from the company upon which the examination, analysis or review is conducted unless the subject of the examination, analysis or review is an individual, described in subdivision (2), subsection (q) of this section;

(6) Nothing contained in this section may be construed to limit the commissioner’s authority to terminate or suspend any examination, analysis or review in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. The commissioner or his or her examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, analysis or
review, whether or not a written report of the examination has
at that time either been made, served or filed in the commis-
sioner’s office;

(7) Nothing contained in this section may be construed to
limit the commissioner’s authority to use and, if appropriate, to
make public any final or preliminary examination report, any
examiner or company workpapers or other documents or any
other information discovered or developed during the course of
any examination, analysis or review in the furtherance of any
legal or regulatory action which the commissioner may, in his
or her sole discretion, consider appropriate. An examination
report, when filed, shall be admissible in evidence in any action
or proceeding brought by the commissioner against an insur-
ance company, its officers or agents and shall be prima facie
evidence of the facts stated therein.

(j) Examination reports prepared pursuant to the provisions
of this section shall comply with the following requirements:

(1) All examination reports shall be comprised of only facts
appearing upon the books, records or other documents of the
company, its agents or other persons examined or as ascertained
from the testimony of its officers or agents or other persons
examined concerning its affairs and any conclusions and
recommendations the examiners find reasonably warranted
from the facts;

(2) No later than sixty days following completion of the
examination, the examiner in charge shall file with the commis-

sioner a verified written report of examination under oath. Upon
receipt of the verified report, the commissioner shall transmit
the report to the company examined, together with a notice
which shall afford the company examined a reasonable oppor-
tunity of not more than ten days to make a written submission or
rebuttal with respect to any matters contained in the examination report;

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner’s workpapers, and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation; or

(B) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refiling pursuant to subdivision (2) above; or

(C) Calling for an investigatory hearing with no less than twenty days notice to the company for purposes of obtaining additional documentation, data, information and testimony;

(4) All orders entered pursuant to this subsection shall be accompanied by findings and conclusions resulting from the commissioner’s consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any order issued pursuant to paragraph (A), subdivision (3) of this subsection shall be considered a final administrative decision and may be appealed pursuant to section fourteen [§§ 33-2-14], article two of this chapter and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall
file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(k) Hearings conducted pursuant to this section shall be subject to the following requirements:

(1) Any hearing conducted pursuant to this section by the commissioner or the commissioner’s authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner’s review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any hearing, the commissioner shall enter an order pursuant to paragraph (A), subdivision (3), subsection (j) of this section;

(2) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner’s workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner’s representative may issue subpoenas for the attendance of any witnesses or the production of any documents considered relevant to the investigation whether under the control of the commissioner, the company or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner’s representative shall be under oath and preserved for the record. Nothing contained in this section shall require the commissioner to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency;
(3) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the commissioner shall be permitted to make closing statements and may be represented by counsel of their choice.

(1) Adoption of the examination report shall be subject to the following requirements:

(1) Upon the adoption of the examination report under paragraph (A), subdivision (3), subsection (j) of this section, the commissioner may continue to hold the content of the examination report as private and confidential information for a period of ninety days except to the extent provided in subdivision (6), subsection (i) of this section. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication;

(2) Nothing contained in this section may prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results or any matter relating thereto or the results of any analysis or review to the insurance department of this or any other state or country or to law-enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this section;

(3) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, analysis or review, he or she may initiate any proceedings or actions as provided by law;
(4) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination, analysis or review made under this section must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subdivision (5), subsection (i) of this section. Access may also be granted to the national association of insurance commissioners. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

(m) The commissioner may require any examiner to furnish a bond in such amount as the commissioner may determine to be appropriate, and the bond shall be approved, filed and premium paid, with suitable proof submitted to the commissioner, prior to commencement of employment by the commissioner. No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this section. This section shall not be construed to automatically preclude an examiner from being:

(1) A policyholder or claimant under an insurance policy;

(2) A grantor of a mortgage or similar instrument on the examiner’s residence to a regulated entity if done under customary terms and in the ordinary course of business;

(3) An investment owner in shares of regulated diversified investment companies; or
A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed;

(5) Notwithstanding the requirements of this subsection, the commissioner may retain, from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this section.

(n) Personnel conducting examinations, analyses or reviews of either a domestic, foreign or alien insurer shall be compensated for each day worked at a rate set by the commissioner. The personnel shall also be reimbursed for their travel and living expenses at the rate set by the commissioner. Other individuals who are not employees of the department of insurance shall all be compensated for their work, travel and living expenses at rates approved by the commissioner, or as otherwise provided by law. As used in this section the costs of an examination, analysis or review means:

(1) The entire compensation for each day worked by all personnel, including those who are not employees of the department of insurance, the conduct of the examination, analysis or review calculated as hereinbefore provided;

(2) Travel and living expenses of all personnel, including those who are not employees of the department of insurance, directly engaged in the conduct of the examination, analysis or review calculated at the rates as hereinbefore provided for;

(3) All other incidental expenses incurred by or on behalf of the personnel in the conduct of any authorized examination, analysis or review.
(o) All insurers subject to the provisions of this section shall annually pay to the commissioner on or before the first day of July, one thousand nine hundred ninety-one, and every first day of July thereafter an examination assessment fee of eight hundred dollars. Four hundred fifty dollars of this fee shall be paid to the treasurer of the state to the credit of a special revolving fund to be known as the “Commissioner’s Examination Revolving Fund” which is hereby established and three hundred fifty dollars shall be paid to the treasurer of the state. The commissioner may at his or her discretion, upon notice to the insurers subject to this section, increase this examination assessment fee or levy an additional examination assessment fee of two hundred fifty dollars. In no event may the total examination assessment fee including any additional examination assessment fee levied exceed one thousand five hundred dollars per insurer in any calendar year.

(p) The moneys collected by the commissioner from an increase or additional examination assessment fee shall be paid to the treasurer of the state to be credited to the commissioner’s examination revolving fund. Any funds expended or obligated by the commissioner from the commissioner’s examination revolving fund may be expended or obligated solely for defrayment of the costs of examinations, analyses or reviews of the financial affairs and business practices of insurance companies, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state made by the commissioner pursuant to this section or for the purchase of equipment and supplies, travel, education and training for the commissioner’s deputies, other employees and appointed examiners necessary for the commissioner to fulfill the statutory obligations created by this section.

(q) The commissioner may require other individuals who are not employees of the department of insurance who have
been appointed by the commissioner to conduct or participate
in the examination, analysis or review of insurers, agents,
brokers, excess lines brokers, solicitors or other individuals or
corporations transacting or attempting to transact an insurance
business in this state to:

(1) Bill and receive payments directly from the insurance
company being examined, analyzed or reviewed for their work,
travel and living expenses as previously provided for in this
section; or

(2) If an individual agent, broker or solicitor is being
examined, analyzed or reviewed, bill and receive payments
directly from the commissioner’s examination revolving fund
for their work, travel and living expenses as previously pro-
vided for in this section. The commissioner may recover costs
paid from the commissioner’s examination revolving fund
pursuant to this subdivision from the person upon whom the
examination, analysis or review is conducted.

(r) The commissioner and his or her examiners shall be
entitled to immunity to the following extent:

(1) No cause of action shall arise nor shall any liability be
imposed against the commissioner or his or her examiners for
any statements made or conduct performed in good faith while
carrying out the provisions of this section;

(2) No cause of action shall arise, nor shall any liability be
imposed, against any person for the act of communicating or
delivering information or data to the commissioner or his or her
examiners pursuant to an examination, analysis or review made
under this section if the act of communication or delivery was
performed in good faith and without fraudulent intent or the
intent to deceive;
(3) The commissioner or any examiner shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this section and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated;

(4) This subsection does not abrogate or modify in any way any constitutional immunity or common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (1) of this subsection.

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:
§33-3-15. Annuity tax.

(a) Every life insurer transacting insurance in West Virginia shall make a return to the commissioner annually on a form prescribed by the commissioner, on or before the first day of March, under the oath of its president or secretary, of the gross amount of annuity considerations collected and received by it during the previous calendar year on its annuity business transacted in this state and stating the amount of tax due under this section, together with payment in full for the tax due. The tax is the sum equal to one per centum of the gross amount of the annuity considerations, less annuity considerations returned and less termination allowances on group annuity contracts. All the taxes received by the commissioner shall be paid into the insurance tax fund created in subsection (b), section fourteen of this article. In the case of funds accepted by a life insurer under an agreement which provides for an accumulation of money to purchase annuities at future dates, annuity considerations may be either considered by the life insurer to be collected and received upon receipt or upon actual application to the purchase of annuities. Any earnings credited to money accumulated while under the latter alternative will also be considered annuity considerations. For purposes of this election, the alternative which the life insurer elected to file its tax return for the two thousand one tax year or which it elects when it enters the state, whichever is later, shall be considered the life insurer’s election between these alternatives. A life insurer filing a year two thousand one tax return shall provide written notice to the commissioner of its election within ninety days of the effective date of this enactment. Otherwise, a life insurer shall provide written notice to the commissioner of its election within ninety days after it enters the state. Thereafter, a life insurer may not change its election without the consent of the insurance commissioner. The insurance commissioner may develop forms to assure compliance with this subsection.
(b) The amendment to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight is effective on the first day of July, one thousand nine hundred ninety-eight.

CHAPTER 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.

Any domestic insurer which moves or maintains its principal office or place of business outside the state of West Virginia after the first day of June, one thousand nine hundred sixty-nine, shall not thereafter be licensed as a domestic insurer in this state.
For purposes of this article, "principal office or place of business" means the single state in which the direction, control and coordination of the operations of the insurer as a whole are primarily exercised, with consideration being given to, but not limited to:

(1) The state in which the primary executive and administrative headquarters of the insurer is located;

(2) The state in which the principal office of the chief executive officer of the insurer is located;

(3) The state in which the assets and books and records of the insurer are located;

(4) The state in which the board of directors (or similar governing body) of the insurer conducts the majority of its meetings;

(5) The state in which the executive or management committee of the board of directors (or similar governing body) of the insurer conducts the majority of its meetings; and

(6) The state from which the management of the overall 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.

(a) Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended or modified by any rider, endorsement or application attached to and made a part of the policy: Provided, That the word "physician" when used in any accident and sickness policy or other contract providing for the payment of surgical procedures shall be construed to include a physician, dentist or chiropodist-podiatrist performing surgical procedures or chiropractor performing other health care services within the scope of his or her professional license: Provided, however, That any policy of insurance or medical or health service contract providing for payment or reimbursement for any professional services pertaining to eye examination, refractions or the fitting of corrective lenses shall be construed to include payment or reimbursement for professional services rendered by either a duly licensed physician or a duly licensed optometrist, within the scope of their respective professional licenses, and that the insured or subscriber have freedom of choice to select either a physician or an optometrist to render or perform professional services.

(b) The Legislature finds:
That consumers and insurers both benefit from the legislative mandate that the insurance commissioner approve the forms used and the rates charged by insurance companies in this state;

(2) That certain classes of persons are seeking refunds of insurance premiums and seeking to void exclusions and other policy provisions on the basis that insurance companies allegedly failed to provide or demonstrate a reduction in premiums charged in relation to certain terms or exclusions incorporated into policies of insurance;

(3) That historically, as a prerequisite to a rate or form being approved, neither the Legislature nor the insurance commissioner has ever required that the insurer demonstrate that there was a specific premium reduction for certain exclusions incorporated into policies of insurance;

(4) That the provisions of this chapter were enacted with the intent of requiring the filing of all rates and forms with the insurance commissioner to enable the insurance commissioner to review and regulate rates and forms in a fair and consistent manner;

(5) That the provisions of this chapter do not provide and were not intended to provide the basis for monetary damages in the form of premium refunds or partial premium refunds when the form used and the rates charged by the insurance company have been approved by the insurance commissioner;

(6) That actions seeking premium refunds or partial premium refunds have a severe and negative impact upon insurers operating in this state by imposing unexpected liabilities when insurers have relied upon the insurance commissioner’s approval of the forms used and the rates charged insureds; and
(7) That it is in the best interest of the citizens of this state to ensure a stable insurance market.

(c) Nothing in this chapter may be construed as requiring specific line item premium discounts or rate adjustments corresponding to any exclusion, condition, definition, term or limitation in any policy of insurance, including policies incorporating statutorily mandated benefits or optional benefits which as a matter of law must be offered. Where any insurance policy form, including any endorsement thereto, has been approved by the commissioner, and the corresponding rate has been approved by the commissioner, there is a presumption that the policy forms and rate structure are in full compliance with the requirements of this chapter. It is the intent of the Legislature that the amendments in this section enacted during the regular session of two thousand two are:

(1) A clarification of existing law as previously enacted by the Legislature, including, but not limited to, the provisions of subsection (k), section thirty-one of this article; and, (2) specifically intended to clarify the law and correct a misinterpretation and misapplication of the law that was expressed in the holding of the Supreme Court of Appeals of West Virginia in the case of Mitchell v. Broadnax, 537 S.E.2d 882 (W.Va. 2000). These amendments are a clarification of the 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.

(a) For purposes of this section, the following definitions apply:

(1) A "substandard risk" means an applicant for insurance who presents a greater exposure to loss than that contemplated by commonly used rate classifications, as evidenced by one or more of the following conditions:

(A) A record of traffic accidents;

(B) A record of traffic law violations;

(C) Undesirable occupational circumstances; or

(D) Any other valid underwriting consideration.
(2) "Substandard risk rate" means a rate or premium charge that reflects the greater than normal exposure to loss which is assumed by an insurer writing insurance for a substandard risk.

(b) Every application for a motor vehicle insurance policy to be issued in this state and written on the basis of a substandard risk rate schedule shall have printed on the application, in bold-faced type in a contrasting color or in reverse print, a statement reading substantially as follows: THE POLICY FOR WHICH YOU ARE APPLYING HAS BEEN RATED IN ACCORDANCE WITH A SPECIAL RATING SCHEDULE FILED WITH THE COMMISSIONER OF INSURANCE PROVIDING FOR HIGHER PREMIUM CHARGES THAN THOSE GENERALLY APPLICABLE FOR AVERAGE RISKS. IF THE COVERAGE OR PREMIUM IS NOT SATISFACTORY, YOU MAY BE ELIGIBLE FOR OTHER INSURANCE. IF THIS COVERAGE OR PREMIUM IS SATISFACTORY, YOU MAY BE ELIGIBLE FOR COVERAGE UNDER A STANDARD OR PREferred POLICY IF DURING THE NEXT THREE YEARS YOU HAVE NO TRAFFIC VIOLATIONS OR ACCIDENTS AND YOU MAINTAIN CONTINUOUS INSURANCE COVERAGE.

(c) Every motor vehicle insurance policy issued in this state and written on the basis of a substandard risk rate schedule shall have printed on the policy, in bold-faced type in a contrasting color or in reverse print, a statement reading substantially as follows: THIS POLICY HAS BEEN RATED IN ACCORDANCE WITH A SPECIAL RATING SCHEDULE FILED WITH THE COMMISSIONER OF INSURANCE PROVIDING FOR HIGHER PREMIUM CHARGES THAN THOSE GENERALLY APPLICABLE FOR AVERAGE RISKS. IF THE COVERAGE OR PREMIUM IS NOT SAT-
ISFACTOR Y, YOU MAY BE ELIGIBLE FOR OTHER
INSURANCE. IF THIS COVERAGE OR PREMIUM IS
SATISFACTORY, YOU MAY BE ELIGIBLE FOR COV-
ERAGE UNDER A STANDARD OR PREFERRED POL-
ICY IF DURING THE NEXT THREE YEARS YOU HAVE
NO TRAFFIC VIOLATIONS OR ACCIDENTS AND YOU
MAINTAIN CONTINUOUS INSURANCE COVERAGE.

(d) All insurers licensed or registered in this state to mar-
ket or sell substandard risk motor vehicle insurance policies
shall submit all applications and policies for substandard risk
insurance to the commissioner of insurance for approval prior
to being used by the insurer.

(e) All insurers selling or which have in force substan-
dard risk motor vehicle insurance policies shall provide a
one-time notice in writing to the policyholders who have
maintained continuous insurance coverage for three years,
have not been convicted of any moving traffic violations and
had no at fault accidents that they may be eligible for cover-
age under a standard or preferred policy. The commissioner
may levy an administrative penalty not to exceed one thou-
sand dollars for each incidence where an insurer fails to give
notice in accordance with the provisions in this subsection.

(f) The commissioner shall promulgate rules in accor-
dance with the provisions of article three, chapter
twenty-nine-a of this code regarding the format, style, design
and approval of substandard risk insurance applications, no-
tices and policies and any other procedures that are required
by this section.

(g) This section, as amended in the year two thousand
two, shall take effect on the first day of July, two thousand
two.
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 the most recent version of an “official used car guide” approved by the insurance commissioner as a guide for setting the minimum value of any motor vehicle involved in a claim settlement arising from a motor vehicle accident. In addition to any cash settlement value so agreed to by the claimant, there shall be added an amount equal to five percent of the cash settlement value as reimbursement to the claimant for the excise tax imposed under section four, article three, chapter seventeen-a of the code of West Virginia.
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 seventy-five dollars for every rate or rule filing shall be submitted with each filing. If a form filing or rate or rule filing is made on behalf of more than one insurer, other than a filing made by a rating organization licensed by the commissioner pursuant to section six, article twenty of this chapter, the fee shall be submitted as if the filing were made by each individual insurer. Fees submitted pursuant to this section shall not be refunded if the form filing or rate or rule filing, for which the fee was submitted, is disapproved, in whole or in part, by the commissioner. The refiling of a form filing or rate or rule
filing previously disapproved by the commissioner shall be
considered a new filing for the purposes of the filing fee:
Provided, That any request by the commissioner for addi-
tional information pertaining to a form filing shall not be
considered a new filing for purposes of the filing fee. All fees
collected pursuant to this section shall be used by the com-
missioner for the operation of the division of insurance.

(b) This section as amended in the year two thousand two
applies to filings submitted after the thirtieth day of June, two
thousand two. When there is a refiling after that date of a
filing denied before the first day of July, two thousand two,
the new filing fee structure applies and the fee shall be remit-
ted when the form, rate or rule is refiled after the thirtieth day
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.]
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.


25D. Prepaid Limited Health Service Organization.

ARTICLE 8A. USE OF CLEARING CORPORATIONS AND FEDERAL RESERVE BOOK-ENTRY SYSTEM.

§33-8A-1. Purpose.


§33-8A-4. Deposit of securities by domestic insurance companies.

§33-8A-5. Deposit of securities by foreign insurance companies.


§33-8A-7. Deposit with affiliates: requirements.

§33-8A-8. Effective date.

§33-8A-1. Purpose.
The purpose of this article is to authorize domestic insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulation of the commissioner.


As used in this article, the term:

(a) "Agent" means a national bank, state bank or trust company that maintains an account in its name in a clearing corporation or that is a member of the federal reserve system and through which a custodian participates in a clearing corporation or the federal reserve book-entry system, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "agent" may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities.

(b) "Clearing corporation" means a corporation as defined in subdivision (5), subsection (a), section one hundred two, article eight, chapter forty-six of this code, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, clearing corporation may include a corporation which is organized or existing under the laws of any foreign country and is legally qualified under such laws to effect the transactions in securities by computerized book entry.

(c) "Custodian" means a national bank, state bank or trust company that shall at all times during which it acts as a cus-
todian pursuant to this regulation be no less than adequately
capitalized as determined by the standards adopted by United
States banking regulators and that is regulated by either state
banking laws or is a member of the federal reserve system
and that is legally qualified to accept custody of securities in
accordance with the standards set forth below, except that
with respect to securities issued by institutions organized or
existing under the laws of a foreign country, or securities
used to meet the deposit requirements pursuant to the laws of
a foreign country as a condition of doing business therein,
"custodian" may include a bank or trust company incorpo-
rated or organized under the laws of a country other than the
United States that is regulated as such by that country's gov-
ernment or an agency thereof that shall at all times during
which it acts as a custodian pursuant to this regulation be no
less than adequately capitalized as determined by the stan-
dards adopted by international banking authorities and that is
legally qualified to accept custody of securities.

(d) "Direct participant" means a bank or trust company
or other institution which maintains an account in its name in
a clearing corporation and through which an insurance com-
pany participates in a clearing corporation.

(e) "Federal reserve book-entry system" means the com-
puterized systems sponsored by the United States department
of the treasury and certain agencies and instrumentalities of
the United States for holding and transferring securities of the
United States government and such agencies and instrumen-
talities, respectively, in federal reserve banks, through banks
which are members of the federal reserve system or which
otherwise have access to such computerized systems.

(f) "Member bank" means a national bank, state bank or
trust company which is a member of the federal reserve sys-

(a) Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the federal reserve book-entry system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited with the clearing corporation by any person, regardless of the ownership of the securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of a member bank through which an insurance company holds securities in the federal reserve book-entry system and the records of any custodian banks through which an insurance company holds securities in a clearing corporation shall at all times show that the securities are held for the insurance company and for which accounts. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of such clearing corporation or in the federal reserve book-entry system without, in either case, physical delivery of certificates representing the securities.

(b) The insurance commissioner is authorized to promulgate rules and regulations governing the deposit by insurance...
companies of securities with clearing corporations and in the federal reserve book-entry system.

§33-8A-4. Deposit of securities by domestic insurance companies.

Notwithstanding any other provision of law, the securities qualified for deposit under this section may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements set forth in this section shall be under the control of the commissioner and may not be withdrawn by the insurance company without the approval of the commissioner. An insurance company holding securities in this manner shall provide to the commissioner evidence issued by its custodian or member bank through which the insurance company has deposited the securities in a clearing corporation or through which the securities are held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and that the records of the custodian, other participant or member bank reflect that the securities are held subject to the order of the commissioner.

§33-8A-5. Deposit of securities by foreign insurance companies.

Notwithstanding any other provision of law, securities eligible for deposit under the insurance law of this state relating to deposit of securities by an insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the de-
§33-8A-6. Custody agreements; requirements.

(a) An insurance company may, by written agreement with a custodian, provide for the custody of its securities with a custodian. The securities may be held by the custodian or its agent or in a clearing corporation or in the federal reserve book-entry system. Securities so held, whether held by the custodian or its agent or in a clearing corporation or in the federal reserve book-entry system, are referred to herein as "custodied securities".

(b) The agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee of the board. The terms of the agreement shall comply with the following:

(1) Certificated securities held by the custodian shall be held either separate from the securities of the custodian and of all of its other customers or in a fungible bulk of securities as part of a filing of securities by issue (FOSBI) arrangement.
(2) Securities held in a fungible bulk by the custodian and securities in a clearing corporation or in the federal reserve book-entry system shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which custodied securities are held by the custodian or by its agent and which securities are in a clearing corporation or in the federal reserve book-entry system. If the securities are in a clearing corporation or in the federal reserve book-entry system, the records shall also identify where the securities are and if in a clearing corporation, the name of the clearing corporation and, if through an agent, the name of the agent.

(3) All custodied securities that are registered shall be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

(4) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in section six, article three of this chapter shall, to the extent required by said section, be under the control of the state treasurer and shall not be withdrawn by the insurance company without the approval of the insurance commissioner.

(5) The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at times and containing information reasonably requested by the insurance company.
The custodian's trust committee's annual reports of its review of the insurer's trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper form.

(6) During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company and a representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.

(7) The custodian and its agents shall be required to send to the insurance company:

(A) All reports which they receive from a clearing corporation or the federal reserve book-entry system on their respective systems of internal accounting control; and

(B) Reports prepared by outside auditors on the custodians or its agent's internal accounting control of custodied securities that the insurance company may reasonably request.

(8) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company.

(9) The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form attached to this regulation, with respect to custodied securities.
(10) The custodian shall secure and maintain insurance protection in an adequate amount covering the custodian's duties and activities as custodian for the insurer's assets and shall state in the custody agreement that protection is in compliance with the requirements of the custodian's banking regulator. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.

(11) The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction.

(12) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in subdivision (11) of this subsection, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from the loss of securities.

(13) The agreement may provide that the custodian will not be liable for a failure to take an action required under the agreement in the event and to the extent that the taking of the action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.

(14) In the event that the custodian gains entry in a clearing corporation or in the federal reserve book-entry system
through an agent, there shall be an agreement between the
custodian and the agent under which the agent shall be sub-
ject to the same liability for loss of custodied securities as the
custodian. However, if the agent shall be subject to regulation
under the laws of a jurisdiction that is different from the ju-
risdiction the laws of which regulate the custodian, the insur-
ance commissioner of the state of domicile of the insurance
company may accept a standard of liability applicable to the
agent that is different from the standard of liability applicable
to the custodian.

(15) The custodian shall provide written notification to
the insurer's domiciliary commissioner if the custodial agree-
ment with the insurer has been terminated or if one hundred
percent of the account assets in any one custody account have
been withdrawn. This notification shall be remitted to the
insurance commissioner within three business days of the
receipt by the custodian of the insurer's written notice of
termination or within three business days of the withdrawal
of one hundred percent of the account assets.

§33-8A-7. Deposit with affiliates; requirements.

(a) Nothing in this regulation shall prevent an insurance
company from depositing securities with another insurance
company with which the depositing insurance company is
affiliated, provided that the securities are deposited pursuant
to a written agreement authorized by the board of directors of
the depositing insurance company or an authorized commit-
tee thereof and that the receiving insurance company is orga-
nized under the laws of one of the states of the United States
of America or of the District of Columbia. If the respective
states of domicile of the depositing and receiving insurance
companies are not the same, the depositing insurance com-
pany shall have given notice of the deposit to the insurance
commissioner in the state of its domicile and the insurance
commissioner shall not have objected to it within thirty days
of the receipt of the notice.

(b) The terms of the agreement shall comply with the
following:

(1) The insurance company receiving the deposit shall
maintain records adequate to identify and verify the securities
belonging to the depositing insurance company.

(2) The receiving insurance company shall allow repre-
sentatives of an appropriate regulatory body to examine re-
cords relating to securities held subject to the agreement.

(3) The depositing insurance company may authorize the
receiving insurance company:

(A) To hold the securities of the depositing insurance
company in bulk, in certificates issued in the name of the
receiving insurance company or its nominee, and to commin-
gle them with securities owned by other affiliates of the re-
ceiving insurance company; and

(B) To provide for the securities to be held by a custo-
dian, including the custodian of securities of the receiving
insurance company or in a clearing corporation or the federal
reserve book-entry system.

§33-8A-8. Effective date.

This article shall become effective on the first day of
July, two thousand two.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

Each company to the same extent that provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: Article one (definitions); article two (insurance commissioner); article four (general provisions) except that section sixteen of said article may not be applicable thereto; article seven (assets and liabilities); article eight-a (use of clearing corporations and federal reserve book-entry system); article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article assessments may not be levied against any former member of a farmers' mutual fire insurance company who is no longer a member of the company at the time the order to show cause was issued; article eleven (unfair trade practices); article twelve (agents, brokers and solicitors) except that the agent's license fee shall be five dollars: article twenty-six (West Virginia insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty (mine subsidence insurance) except that under the provisions of section six of said article, a farmers' mutual insurance company shall have the option of offering mine subsidence coverage to all of its policyholders but may not be required to do so; article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner's authority for companies considered to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-six (business transacted with producer-controlled property-casualty insurer); article thirty-seven (managing general agents); article thirty-nine (disclosure of material transactions); article forty (risk-based capital for insurers); and article forty-one (privileges and immunity); but only to the extent these provisions 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.

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as herein below indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article may not be applicable thereto; section twenty, article five (borrowing by insurers); section thirty-four, article six (fee for form and rate filing); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight-a (use of clearing corporations and federal reserve book-entry system); article eleven (unfair trade practices); article twelve (agents, brokers and solicitors), except that the agent's license fee shall be twenty-five dollars; section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with
medicaid); article fifteen-a (long-term care insurance); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-c, article sixteen (group accident and sickness insurance); section three-d, article sixteen (medicare supplement insurance); section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one; article twenty-seven (insurance holding company systems); article twenty-eight (individual accident and sickness insurance minimum standards); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner's authority for companies considered to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article forty-one (privileges and immunity) and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article. If, however, the corporation is converted into a corporation organized for a pecuniary
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.


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
any solicitation or advertising which identifies or refers to
any individual provider or makes any qualitative judgment
concerning any provider.

(c) Any health maintenance organization authorized un-
der this article may not be considered to be practicing medi-
cine and is exempt from the provisions of chapter thirty of
this code, relating to the practice of medicine.

(d) The provisions of sections fifteen and twenty, article
four (general provisions); section seventeen, article six (non-
complying forms); section twenty, article five (borrowing by
insurers); article six-c (guaranteed loss ratio); article seven
(assets and liabilities); article eight (investments); article
eight-a (use of clearing corporations and federal reserve
book-entry system); article nine (administration of deposits);
article twelve (agents, brokers, solicitors and excess line);
section fourteen, article fifteen (individual accident and sick-
ness insurance); section sixteen, article fifteen (coverage of
children); section eighteen, article fifteen (equal treatment of
state agency); section nineteen, article fifteen (coordination
of benefits with medicaid); article fifteen-b (uniform health
care administration act); section three, article sixteen (re-
quired policy provisions); section three-f, article sixteen
(treatment of temporomandibular disorder and
craniomandibular disorder); section eleven, article sixteen
(coverage of children); section thirteen, article sixteen (equal
treatment of state agency); section fourteen, article sixteen
(coordination of benefits with medicaid); article sixteen-a
(group health insurance conversion); article sixteen-d (mar-
teting and rate practices for small employers); article
twenty-five-c (health maintenance organization patient bill of
rights); article twenty-seven (insurance holding company
systems); article thirty-four-a (standards and commissioner’s
authority for companies considered to be in hazardous finan-
cial condition); article thirty-five (criminal sanctions for fail-
(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.
employer group contract is entered into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section ten of this article.

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

(c) Any prepaid limited health service organization authorized under this article is not considered to be practicing medicine and is exempt from the provision of chapter thirty of this code relating to the practice of medicine.

(d) The provisions of section nine, article two, examinations; section thirteen, article two, hearings; sections fifteen and twenty, article four, general provisions; section twenty, article five, borrowing by insurers; section seventeen, article six, noncomplying forms; article six-c, guaranteed loss ratio; article seven, assets and liabilities; article eight, investments; article eight-a, use of clearing corporations and federal reserve book-entry system; article nine, administration of deposits; article ten, rehabilitation and liquidation; article twelve, agents, brokers, solicitors and excess line; section fourteen, article fifteen, individual accident and sickness insurance; section sixteen, article fifteen, coverage of children; section eighteen, article fifteen, equal treatment of state agency; section nineteen, article fifteen, coordination of ben-
enfits with medicaid; article fifteen-b, uniform health care
administration act; section three, article sixteen, required
policy provisions; section eleven, article sixteen, coverage of
children; section thirteen, article sixteen, equal treatment of
state agency; section fourteen, article sixteen, coordination of
benefits with medicaid; article sixteen-a, group health insur-
ance conversion; article sixteen-d, marketing and rate prac-
tices for small employers; article twenty-seven, insurance
holding company systems; article thirty-three, annual audited
financial report; article thirty-four, administrative supervi-
sion; article thirty-four-a, standards and commissioner’s au-
thority for companies considered to be in hazardous financial
condition; article thirty-five, criminal sanctions for failure to
report impairment; article thirty-seven, managing general
agents; article thirty-nine, disclosure of material transactions;
and article forty-one, privileges and immunity, all of this
chapter are applicable to any prepaid limited health service
organization granted a certificate of authority under this arti-
cle. In circumstances where the code provisions made appli-
cable to prepaid limited health service organizations by this
section refer to the “insurer”, the “corporation” or words of
similar import, the language includes prepaid limited health
service organizations.

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

(f) A prepaid limited health service organization granted
a certificate of authority under this article is exempt from
paying municipal business and occupation taxes on gross
income it receives from its enrollees, or from their employers
or others on their behalf, for health care items or services
provided directly or indirectly by the prepaid limited health
service organization.
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.

The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

1. (1) Misrepresentation and false advertising of insurance policies. — No person shall make, issue, circulate, or cause to be made, issued or circulated, any estimate, circular, statement, sales presentation, omission or comparison which:
(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy; or

(b) Misrepresents the dividends or share of the surplus to be received on any insurance policy; or

(c) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; or

(d) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; or

(e) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or

(f) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy; or

(g) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) Misrepresents any insurance policy as being shares of stock.

(2) False information and advertising generally. — No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any asser-
tion, representation or statement with respect to the business
of insurance or with respect to any person in the conduct of
his or her insurance business, which is untrue, deceptive or
misleading.

(3) Defamation. — No person shall make, publish, dis-
seminate or circulate, directly or indirectly, or aid, abet or
encourage the making, publishing, disseminating or circulat-
ing of any oral or written statement or any pamphlet, circular,
article or literature which is false, or maliciously critical of or
derogatory to the financial condition of any person and which
is calculated to injure the person.

(4) Boycott, coercion and intimidation. — No person
shall enter into any agreement to commit, or by any con-
certed action commit, any act of boycott, coercion or intimi-
dation resulting in or tending to result in unreasonable re-
straint of, or monopoly in, the business of insurance.

(5) False statements and entries. — (a) No person shall
knowingly file with any supervisory or other public official,
or knowingly make, publish, disseminate, circulate or deliver
to any person, or place before the public, or knowingly cause
directly or indirectly, to be made, published, disseminated,
circulated, delivered to any person, or placed before the pub-
lc, any false material statement of fact as to the financial
condition of a person.

(b) No person shall knowingly make any false entry of a
material fact in any book, report or statement of any person
or knowingly omit to make a true entry of any material fact
pertaining to the business of any person in any book, report
or statement of such person.

(6) Stock operations and advisory board contracts. — No
person shall issue or deliver or permit agents, officers or
employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Unfair discrimination. — (a) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract.

(b) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium policy fees, or rates charged for any policy or contract of accident and sickness insurance or in the benefits payable thereunder, or in any of the terms or conditions of the contract, or in any other manner whatever.

(c) As to kinds of insurance other than life and accident and sickness, no person shall make or permit any unfair discrimination in favor of particular persons, or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charge therefor. This paragraph shall not apply as to any premium or premium rate in effect pursuant to article twenty of this chapter.

(8) Rebates. — (a) Except as otherwise expressly provided by law, no person shall knowingly permit or offer to make or make any contract of life insurance, life annuity, or accident and sickness insurance, or agreement as to any contract other than as plainly expressed in the insurance contract
issued thereon, or pay or allow or give or offer to pay, allow
or give, directly or indirectly, as inducement to any insurance
or annuity, any rebate of premiums payable on the contract,
or any special favor or advantage in the dividends or other
benefits thereon, or any valuable consideration or inducement
whatever not specified in the contract; or give or sell, or pur-
chase or offer to give, sell or purchase as inducement to any
insurance contract or annuity or in connection therewith, any
stocks, bonds or other securities of any insurance company or
other corporation, association or partnership, or any divi-
dends or profits accrued thereon, or anything of value what-
soever not specified in the contract.

(b) Nothing in subdivision (7) or paragraph (a) of subdi-
vision (8) of this section shall be construed as including
within the definition of unfair discrimination or rebates any
of the following practices:

(i) In the case of any contract of life insurance or life
annuity, paying bonuses to policyholders or otherwise abat-
ing their premiums in whole or in part out of surplus accumu-
lated from nonparticipating insurance: Provided, That any
such bonuses or abatement of premiums shall be fair and
equitable to policyholders and for the best interests of the
insurer and its policyholders;

(ii) In the case of life insurance policies issued on the
industrial debit plan, making allowance to policyholders who
have continuously for a specified period made premium pay-
ments directly to an office of the insurer in an amount which
fairly represents the saving in collection expenses;

(iii) Readjustment of the rate of premium for a group
insurance policy based on the loss or expense thereunder, at
the end of the first or any subsequent policy year of insurance
thereunder, which may be made retroactive only for such policy year;

(iv) Issuing life or accident and sickness policies on a salary savings or payroll deduction plan at a reduced rate commensurate with the savings made by the use of the plan.

(c) With respect to insurance other than life, accident and sickness, ocean marine or marine protection and indemnity insurance, no person shall knowingly charge, demand or receive a premium for the insurance except in accordance with an applicable filing on file with the commissioner. No person shall pay, allow or give, directly or indirectly, either as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. No insured named in a policy of insurance, nor any relative, representative or employee of the insured shall knowingly receive or accept directly or indirectly, any rebate, discount, abatement, credit or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents and brokers, nor as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word “insurance” includes suretyship and the word “policy” includes bond.

(9) Unfair claim settlement practices. — No person shall commit or perform with such frequency as to indicate a general business practice any of the following:
(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered;

(h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured;
(j) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(n) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(o) Failing to notify the first party claimant and the provider(s) of services covered under accident and sickness insurance and hospital and medical service corporation insurance policies whether the claim has been accepted or denied and if denied, the reasons therefor, within fifteen calendar days from the filing of the proof of loss: Provided, That should benefits due the claimant be assigned, notice to the claimant shall not be required: Provided, however, That should the benefits be payable directly to the claimant, notice to the health care provider shall not be required. If the insurer
needs more time to investigate the claim, it shall so notify the first party claimant in writing within fifteen calendar days from the date of the initial notification and every thirty calendar days, thereafter; but in no instance shall a claim remain unsettled and unpaid for more than ninety calendar days from the first party claimant’s filing of the proof of loss unless, as determined by the insurance commissioner: (1) There is a legitimate dispute as to coverage, liability or damages; or (2) the claimant has fraudulently caused or contributed to the loss. In the event that the insurer fails to pay the claim in full within ninety calendar days from the claimant’s filing of the proof of loss, except for exemptions provided above, there shall be assessed against the insurer and paid to the insured a penalty which will be in addition to the amount of the claim and assessed as interest on the claim at the then current prime rate plus one percent. Any penalty paid by an insurer pursuant to this section shall not be a consideration in any rate filing made by the insurer.

(10) Failure to maintain complaint handling procedures. — No insurer shall fail to maintain a complete record of all the complaints which it has received since the date of its last examination under section nine, article two of this chapter. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this subsection, “complaint” shall mean any written communication primarily expressing a grievance.

(11) Misrepresentation in insurance applications. — No person shall make false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.
FAILURE TO MAINTAIN PRIVACY OF CONSUMER FINANCIAL AND HEALTH INFORMATION

Any licensee who violates any provision of the commissioner's rule relating to the privacy of consumer financial and health information shall be deemed to have violated the provisions of this article. Provided, That any licensee who complies with the provisions of this subsection, a commissioner's rule, or a court order shall not be deemed to be in violation of any other provisions of sections three and four of this article by their compliance with this subsection, the rule or court order. For purposes of this subsection, "licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to this 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.

§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.
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§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, partnership, limited liability company, or other legal entity.

3 (b) "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

4 (c) "Individual" means any private or natural person as distinguished from a partnership, corporation, limited liability company or other legal entity.

5 (d) "Insurance" means any of the lines of authority in section ten, article one of this chapter.

6 (e) "Insurance agency" means an individual, corporation, partnership, association, limited liability company, or other legal entity except for an employee of the individual, corporation, partnership, association, limited liability company, or other legal entity, and other than an insurer or an adjuster as defined by section twelve-b, article one of this chapter, which employs individuals licensed to engage in activity or whose members engage in any activity be performed only by a licensed individual insurance producer or solicitor. It shall not include sole proprietor or partnerships in which there is only one licensed insurance producer.

7 (f) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. Wherever the word "agent" appears in this chapter, it shall mean an individual insurance producer.
(g) "Insurer" means every person engaged in the business of making contracts of insurance under section two, article one of this chapter.

(h) "License" means a document issued by this state's insurance commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

(i) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (gap) insurance and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of limited line credit insurance.

(j) "Limited line credit insurance producer" means an individual who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group or individual policy.

(k) "Limited lines insurance" means those lines of insurance defined in section thirty-two of this article or any other line of insurance that the insurance commissioner considers necessary to recognize for the purposes of complying with subsection (g), section twelve of this article.

(l) "Limited lines producer" means an individual authorized by the insurance commissioner to sell, solicit or negotiate limited lines insurance.
(m) "Negotiate" means the act of conferring directly with
or offering advice directly to a purchaser or prospective
purchaser of a particular contract of insurance concerning any
of the substantive benefits, terms or conditions of the contract:
Provided, That the individual engaged in that act either sells
insurance or obtains insurance from insurers for purchasers.

(n) "Person" means an individual or a business entity.

(o) "Sell" means to exchange a contract of insurance by any
means, for money or its equivalent, on behalf of an insurance
company.

(p) "Solicit" means attempting to sell insurance or asking
or urging a person to apply for a particular kind of insurance
from a particular company.

(q) "Terminate" means the cancellation of the relationship
between an insurance producer and the insurer or the termina-
tion of a producer’s authority to transact insurance.

(r) "Uniform application" means the current version of the
NAIC uniform application for resident and nonresident pro-
ducer licensing.

(s) "Uniform business entity application" means the current
version of the NAIC uniform business entity application for
resident and nonresident insurance agencies.

§33-12-3. License required.

(a) A person shall not sell, solicit or negotiate insurance in
this state for any class or classes of insurance unless the person
is licensed for that line of authority in accordance with this
article.
(b) No person shall in West Virginia act as or hold himself or herself out to be an agent or insurance agency or solicitor unless then licensed therefor pursuant to this article.

(c) No agent, insurance agency or solicitor or any representative or employee thereof shall solicit or take application for, negotiate, procure or place for others any kind of insurance for which that person is not then licensed.

(d) No insurer shall accept any business from any agent who does not then hold an appointment as agent for such insurer pursuant to this article.

§33-12-4. Exceptions to licensing.

(a) Nothing in this article shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries or affiliates.

(b) A license as an insurance producer shall not be required of the following:

(1) An officer, director or employee of an insurer or of an insurance producer: Provided, That the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(A) The officer, director or employee’s activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(B) The officer, director or employee’s function relates to underwriting, loss control, inspection or the processing,
(C) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer’s or association’s own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;
(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state: Provided, That the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(6) An individual who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract: Provided, That individual is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

(7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.

§33-12-5. Application for examination.

(a) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section fourteen of this article. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section may be developed and conducted under rules and regulations prescribed by the insurance commissioner.
(b) The insurance commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in subdivision (8), subsection (a), section six of this article.

(c) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the insurance commissioner as set forth in subdivision (8), subsection (a), section six of this article.

(d) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(e) An individual who fails to pass examination is limited to seven additional attempts to pass the examination.

§33-12-6. Application for license.

(a) An individual applying for a resident insurance producer license shall make application to the insurance commissioner on the Uniform Application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the insurance commissioner shall find that the individual:

(1) Is at least eighteen years of age;

(2) Has not committed any act that is a ground for denial, suspension or revocation set forth in section twenty-four of this article;
(3) Where required by the insurance commissioner, has completed a prelicensing course of study for the lines of authority for which the person has applied;

(4) Has paid the fees set forth in section thirteen, article three of this chapter; and section ten of this article;

(5) Has successfully passed the examinations for the lines of authority for which the person has applied;

(6) On or after the first day of June, one thousand nine hundred ninety, no solicitor’s license will be issued which is not a renewal of an existing license;

(7) Does not intend to use the license principally for the purpose, in the case of life or accident and sickness insurance, of procuring insurance on himself or herself, members of his or her family or his or her relatives; or, as to insurance other than life and accident and sickness, upon his or her property or insurable interests of those of his or her family or his or her relatives or those of his or her employer, employees or firm, or corporation in which he or she owns a substantial interest, or of the employees of the firm or corporation, or on property or insurable interests for which the applicant or any relative, employer, firm or corporation is the trustee, bailee or receiver. For the purposes of this provision, a vendor’s or lender’s interest in property sold or being sold under contract or which is the security for any loan, shall not be considered to constitute property or an insurable interest of the vendor or lender;

(8) Satisfies the commissioner that he or she is trustworthy and competent. The commissioner may test the competency of an applicant for a license under this section by examination. Each examinee shall pay a twenty-five dollar examination fee for each examination to the commissioner who shall deposit said examination fee into the state treasury for the benefit of the
state fund, general revenue. The commissioner may, at his or her discretion, designate an independent testing service to prepare and administer the examination subject to direction and approval by the commissioner, and examination fees charged by the service shall be paid by the applicant. In addition to examination fees charged by the independent testing service, the independent testing service shall collect and remit to the commissioner the twenty-five dollar examination fee; and

(9) For new agents first licensed on or after the first day of July, one thousand nine hundred eighty-nine, completes a program of insurance education as established in section seven of this article.

(b) A business entity acting as an insurance agency is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the insurance commissioner shall find that:

(1) The insurance agency has disclosed to the insurance commissioner all officers, partners, and directors, whether or not they are licensed as insurance producers;

(2) The insurance agency’s officers, directors, or partners are trustworthy, of good moral character, and of good business reputation;

(3) The insurance agency has paid the fees set forth as set forth in section ten of this article;

(4) The insurance agency has designated an individual licensed producer who is an officer, partner, or director responsible for the insurance agency’s or business entity’s compliance with the insurance laws and rules of this state;
(5) The insurance agency has registered with the commissioner the name of each natural person who, as an officer, director, partner, owner, or member of the agency, is acting as and is licensed as an insurance producer;

(6) The insurance agency has registered with the commissioner the name of each natural person who, as an officer, director, partner, owner, or member of the insurance agency or business entity, is acting as and is licensed as an insurance producer;

(7) The insurance agency or business entity has registered with the commissioner at least one individual who holds a valid insurance producer license for the line or lines of authority requested in the application;

(8) If the insurance agency’s filing status is nonresident, the insurance agency or business entity has complied with the qualification requirements of section twelve of this article; and

(9) An insurance agency may qualify as a resident if the agency has its principal office in this state.

(c) The insurance commissioner may require any documents reasonably necessary to verify the information contained in an application.

(d) Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that may be approved by the insurance commissioner.

§33-12-6a. Residency—Individuals—Agencies.

The commissioner may qualify an applicant as a resident of this state and shall issue an insurance producer license to any
qualified resident person of this state in accordance with the following:

1 (1) An individual applicant may qualify as a resident only if he or she resides in this state. Any license issued pursuant to any application claiming residency for licensing purposes shall constitute an election of residency in this state and shall be void if the licensee, while holding a resident license in this state, also holds or makes application for a license in or thereafter claims to be a resident of any other state or jurisdiction, or if the licensee ceases to be a resident of this state.

2 (2) An insurance agency or business entity may qualify as a resident if the agency has its principal office in this state;

3 (3) The resident person is in compliance with the requirements 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 article, an insurance agency shall be licensed as an insurance producer.

2 (b) The insurance agency shall maintain a current list with the name of every individual who, as a member, officer, director, stockholder, owner, or employee of the insurance agency, is acting as and is licensed as an insurance producer. Each insurance agency shall make such list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this chapter.

3 (c) The insurance agency shall, within ten days, notify the commissioner, on a form prescribed by the commissioner, of every change relative to the licensed individual insurance producers registered and authorized to act as insurance producers for the insurance agency.
(d) The insurance agency shall, within ten days, notify the commissioner, on a form prescribed by the commissioner, of any change relative to the insurance agency or business entity name, officers, directors, partners, or owners, to report a merger, or that the insurance agency or business entity has ceased doing business in this state.

(e) When an insurance agency ceases to do business in this state, the insurance agency shall return the producer license to the commissioner within ten days after ceasing to do business.

(f) When an insurance agency changes its principal address to another state, the insurance agency shall, within ten days, notify the commissioner and return the producer license for cancellation. Relicensing will be subject to section twelve of this article.

(g)(1) The insurance agency shall comply with section six of this article.

(2) A nonresident insurance agency shall also comply with the qualification requirements of section twenty-three of this article.

(h) The provisions of this section become effective on or after the first day of July, two thousand three.

§33-12-7. Board of insurance agent education.

The board of insurance agent education shall continue in existence. The board of insurance agent education shall consist of the commissioner of insurance and six members appointed by the commissioner. The members appointed by the commissioner shall be two licensed property and casualty insurance agents, one licensed life insurance agent, one licensed health and accident insurance agent, one representative of a domestic insurance company, and one representative of a foreign
Provided, That no board shall be appointed that fails to include companies or agents for companies representing at least two thirds of the net written insurance premiums in the state. Each member shall serve a term of three years and shall be eligible for reappointment.

(a) The board of insurance agent education shall establish the criteria for a program of insurance education and submit the proposal for the approval of the commissioner on or before the thirty-first day of December of each year.

(b) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this article.

§33-12-8. Continuing education required.

The purpose of this provision is to provide continuing education under guidelines set up under the insurance commissioner's office, with the guidelines to be set up under the board of insurance agent education. Nothing in this section prohibits an individual from receiving commissions which have been vested and earned while that individual maintained an approved insurance agent's license.

(a) This section applies to individual producers licensed to engage in the sale of the following types of insurance:

(1) Life insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;
(2) Accident and health or sickness.—insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income;

(3) Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) Casualty.—insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property;

(5) Variable life and variable annuity products.—insurance coverage provided under variable life insurance contracts and variable annuities;

(6) Personal lines—property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(7) Any other line of insurance permitted under state laws or regulations.

(b) This section does not apply to:

(i) Individual producers holding limited line credit insurance licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any limited or restricted license as the commissioner may exempt; and

(2) Individual producers selling credit life or credit accident and health insurance.

(c)(1) The board of insurance agent education as established by section seven of this article shall develop a program of continuing insurance education and submit the proposal for the
approval of the commissioner on or before the thirty-first day
of December of each year. No program may be approved by the
commissioner that includes a requirement that any agent
complete more than twenty-four hours of continuing insurance
education triennially. No program may be approved by the
commissioner that includes a requirement that any of the
following individual producers complete more than six hours of
continuing insurance education biennially:

(A) Individual insurance producers who sell only preneed
burial insurance contracts; and

(B) Individual insurance producers who engage solely in
telemarketing insurance products by a scripted presentation
which scripted presentation has been filed with and approved by
the commissioner.

(C) The biennium mandatory continuing insurance educa-
tion provisions of this section become effective on the reporting
period beginning the first day of July, two thousand three.

(2) The commissioner and the board, under standards
established by the board, may approve any course or program
of instruction developed or sponsored by an authorized insurer,
accredited college or university, agents' association, insurance
trade association or independent program of instruction that
presents the criteria and the number of hours that the board and
commissioner determine appropriate for the purpose of this
section.

(d) Individual insurance producers licensed to sell insurance
and who are not otherwise exempt shall satisfactorily complete
the courses or programs of instructions the commissioner may
prescribe.

(e) Every individual insurance producer subject to the
continuing education requirements shall furnish, at intervals
and on forms as may be prescribed by the commissioner, written certification listing the courses, programs or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs or seminars of instruction.

(f) Any individual insurance producer failing to meet the requirements mandated in this section, and who has not been granted an extension of time, with respect to the requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended and no further license may be issued to the person for any kind or kinds of insurance until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(g) The commissioner shall notify the individual insurance producer of his or her suspension pursuant to subsection (f) of this section by certified mail, return receipt requested, to the last address on file with the commissioner pursuant to subsection (e), section nine of this article. Any individual insurance producer who has had a suspension order entered against him or her pursuant to this section may, within thirty calendar days of receipt of the order, file with the commissioner a request for a hearing for reconsideration of the matter.

(h) Any individual insurance producer who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license automatically canceled and is subject to the education and examination requirements of section five of this article.
§33-12-9. Issuance of license.

(a) Unless denied licensure pursuant to article twenty-four of this chapter, individuals who have met the requirements of articles five and six of this chapter shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(1) Life insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) Accident and health or sickness.—insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income;

(3) Property insurance coverage for the direct or consequential loss or damage to property of every kind;
(4) Casualty—insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property;

(5) Variable life and variable annuity products—insurance coverage provided under variable life insurance contracts and variable annuities;

(6) Personal lines.—property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(7) Credit.—limited line credit insurance; or

(8) Any other line of insurance permitted under state laws or regulations.

(b) An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in section thirteen, article three of this chapter is paid and education requirements for resident individual producers are met by the due date.

(c) An individual insurance producer who allows his or her license to lapse may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.

(d) An individual licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.
(e) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date and any other information the insurance commissioner considers necessary.

(f) Licensees shall inform the insurance commissioner by any means acceptable to the insurance commissioner of a change of address or residency within thirty days of the change. Failure to timely inform the insurance commissioner of a change in legal name, residency or address may result in a penalty pursuant to section twenty-four of this article. The commissioner shall maintain the mailing address of each agent, insurance agency, solicitor and service representative on file.

(g) In order to assist in the performance of the insurance commissioner's duties, the insurance commissioner may contract with nongovernmental entities, including the national association of insurance commissioner (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the insurance commissioner and the nongovernmental entity may consider appropriate.

§33-12-10. Fees.

The fee for an agent's license shall be twenty-five dollars as provided in section thirteen, article three of this chapter, the fee for a solicitor's license shall be twenty-five dollars, and the fee for an insurance agency producer license shall be two hundred dollars. The commissioner shall receive the following fees from insurance agents, solicitors, insurance agencies and excess line brokers: For letters of certification, five dollars; for letters of clearance, ten dollars; for duplicate license, five dollars. All fees and moneys so collected shall be used for the purposes set forth in section thirteen, article three of this chapter.
§33-12-11. Countersignature.

No contract of insurance covering a subject of insurance, resident, located, or to be performed in this state, shall be executed, issued or delivered by any insurer unless the contract, or in the case of an interstate risk a countersignature endorsement carrying full information as to the West Virginia risk, is signed or countersigned in writing by a licensed resident agent of the insurer except that excess line insurance shall be countersigned by a duly licensed excess line broker. This section does not apply to: Reinsurance; credit insurance; any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance or operation thereof; any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto. Countersignature of a duly licensed resident agent of the company originating a contract of insurance participated in by other companies as cosureties or coindemnitors shall satisfy all countersignature requirements in respect to such contract of insurance.

§33-12-12. Nonresident licensing.

(a) Unless denied licensure pursuant to section twenty-four, a nonresident person shall receive a nonresident producer license if:

(1) The person is currently licensed as a resident and in good standing in his or her home state;

(2) The person has submitted the proper request for licensure and has paid the fees required by section thirteen, article three of this chapter;
(3) The nonresident person holds a similar license that is awarded on the same basis in the nonresident’s home state and for the same line or lines of authority applied for in this state;

(4) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed uniform application; and

(5) The person’s home state awards nonresident producer licenses to residents of this state on the same basis.

(b) An insurance agency may qualify as a nonresident if the agency has its principal office located in another state.

(c) The insurance commissioner may verify the producer’s licensing status through the producer database maintained by the national association of insurance commissioners, its affiliates or subsidiaries.

(d) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.

(e) If the insurance department of the nonresident insurance producer’s resident state suspends, terminates, or revokes the producer’s insurance license in that state, the nonresident insurance producer shall notify the commissioner and shall return the West Virginia nonresident license.

(f) Notwithstanding any other provision of this article, an individual licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to subsection (a) of this section. Except as to
subsection (a), nothing in this section otherwise amends or
supercedes any provision of sections one through fourteen,
article twelve-c of this chapter.

(g) Notwithstanding any other provision of this article, an
individual licensed as a limited line credit insurance or other
type of limited lines producer in his or her home state shall
receive a nonresident limited lines producer license, pursuant to
subsection (a) of this section, granting the same scope of
authority as granted under the license issued by the producer’s
home state. For the purposes of subsection (e), section twelve
of this article, limited line insurance is any authority granted by
the home state which restricts the authority of the license to less
than the total authority prescribed in the associated major lines
pursuant to subdivisions (1) through (6), subsection (a), section
nine of this article.

§33-12-13. Agent resident in contiguous municipalities.

An agent who has his or her residence in an urban commu-
nity composed of two immediately contiguous municipal
corporations not separated by a river or other stream, one of
which is located in this state and the other located in another
state, shall be considered a resident of this state for the purposes
of this article if his or her residence is in any part of such urban
community and the state wherein the other municipal corpora-
tion is located has established by law or regulation like require-
ments as to residence of agents in such urban community.

§33-12-14. Exemption from examination.

(a) An individual who applies for an insurance producer
license in this state who was previously licensed for the same
lines of authority in another state may not be required to
complete any prelicensing education or examination. This
exemption is only available if the individual is currently
licensed in that state or if the application is received within ninety days of the cancellation of the applicant’s previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state’s producer database records, maintained by the national association of insurance commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(b) An individual licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to section five of this article. No prelicensing education or examination shall be required of that individual to obtain any line of authority previously held in the prior state except where the insurance commissioner determines otherwise by regulation.

§33-12-15. Assumed names.

An insurance producer doing business under any name other than the producer’s legal name is required to notify the insurance commissioner prior to using the assumed name.

§33-12-16. Temporary licensing.

(a) The insurance commissioner may issue an individual a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the insurance commissioner considers that the temporary license is necessary for the servicing of an insurance business in the following cases:

(1) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or
for the recovery or return of the producer to the business or to
provide for the training and licensing of new personnel to
operate the producer's business;

(2) To the designee of a licensed insurance producer
entering active service in the armed forces of the United States
of America; or

(3) In any other circumstance where the insurance commis-
sioner considers that the public interest will best be served by
the issuance of this license.

(b) The insurance commissioner may by order limit the
authority of any temporary licensee in any way considered
necessary to protect insureds and the public. The insurance
commissioner may require the temporary licensee to have a
suitable sponsor who is a licensed producer or insurer and who
assumes responsibility for all acts of the temporary licensee and
may impose other similar requirements designed to protect
insureds and the public. The insurance commissioner may by
order revoke a temporary license if the interest of insureds or
the public are endangered. A temporary license may not
continue after the owner or the personal representative disposes
of the business.

§33-12-17. Expiration of license; renewal.

(a) The commissioner may, in his or her discretion, fix the
dates of expiration of respective licenses for individual insur-
ance producers and solicitors in any manner as is considered by
him or her to be advisable for an efficient distribution of the
work load of his or her office. If the expiration date so fixed
would upon first occurrence shorten the period for which
license fee has theretofore been paid, no refund of unearned fee
shall be made; and if the expiration date so fixed would upon
first occurrence lengthen the period for which license fee had
theretofore been paid, the commissioner shall charge no
additional fee for the lengthened period. If another date is not
so fixed by the commissioner, each license shall, unless
continued as herein above provided, expire at midnight on the
thirty-first day of May next following the date of issuance. The
commissioner shall renew annually on the date as provided for
in this section the license of the licensee who qualifies and
makes application therefor, and has paid the fees set forth in
section thirteen, article three of this chapter; and section ten of
this article.

(b) All producer licenses of insurance agencies shall expire
at midnight on the thirtieth day of June following the date of
issuance. The commissioner shall renew annually the license of
all licensees who qualify and make application therefor and
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 transacting business.

(a) An individual insurance producer may not act as an
agent of an insurer unless the insurance producer becomes an
appointed agent of that insurer. An insurance producer who is
not acting as an agent of an insurer is not required to become
appointed.

(b) To appoint an individual producer as its agent, the
appointing insurer shall file, in a format approved by the
insurance commissioner, a notice of appointment within fifteen
days from the date the agency contract is executed or the first
insurance application is submitted. An insurer may also elect to
appoint an individual producer to all or some insurers within the
insurer’s holding company system or group by the filing of a
single appointment request.
(c) Upon receipt of the notice of appointment, the insurance commissioner shall verify within a reasonable time not to exceed thirty days that the individual insurance producer is eligible for appointment. If the individual insurance producer is determined to be ineligible for appointment, the insurance commissioner shall notify the insurer within five days of its determination.

(d) An insurer shall pay a nonrefundable appointment processing fee, in the amount and method of payment set forth in section thirteen, article three of this chapter, for each appointment notification submitted by the insurer to the commissioner.

(e) An insurer shall remit, in a manner prescribed by the insurance commissioner, a renewal appointment fee in the amount set forth in section thirteen, article three of this chapter no later than midnight the thirty-first day of May annually.

(f) Each insurer shall maintain a current list of individual insurance producers appointed to accept applications on behalf of the insurer. Each insurer shall make a list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this chapter.

(g) Insurance agencies licensed as producers are not subject to the provisions of this section.

§33-12-19. Solicitor to act only through appointed agent.

A solicitor shall solicit and receive applications for insurance only for the duly licensed agent who appointed such solicitor, and shall report all business through the agent. The expiration, cancellation, suspension or revocation of the license of the appointing agent shall automatically expire, cancel, suspend or revoke the solicitor’s license in like manner, and the appointing agent may cancel a solicitor’s license at any time by
written request to the commissioner. No agent may apply for licenses for more than two solicitors. No solicitors shall be permitted for life insurance agents.

§33-12-20. Personal liability of agent.

Any agent who participates directly or indirectly in effecting any insurance contract, except authorized reinsurance, upon any subject of insurance resident, located or to be performed in this state, where the insurer is not licensed to transact insurance in this state, shall be personally liable upon the contract as though such agent were the insurer thereof. This section shall not apply to excess line insurance procured in the manner provided in article twelve-c of this chapter, nor to ocean marine insurance or marine protection and indemnity insurance.

§33-12-21. Coverage must be placed with a solvent insurer.

No agent, or excess line broker shall knowingly place any coverage in an insolvent insurer.

§33-12-22. Person soliciting insurance is agent of insurer.

Any person who shall solicit within this state an application for insurance shall, in any controversy between the insured or his or her beneficiary and the insurer issuing any policy upon such application, be regarded as the agent of the insurer and not the agent of the insured.

§33-12-23. Payment of commissions.

(a) The entire commission payable by any insurer licensed to transact insurance in this state on any insurance policy shall be paid directly to the licensed resident agent who countersigns the policy. The countersigning agent may not pay any part of the commission to any person other than a licensed agent: Provided, That the portion of such commission retained by the
countersigning resident agent may not be less than ten percent of the gross policy premium or fifty percent of the commission payable by the insurer as provided herein, whichever is the lesser amount. The term "commission" as used herein shall include engineering fees, service fees or any other compensation incident to the issuance of a policy payable by or to any insurer or agent.

(b) It shall be unlawful for any insurer or agent to pay, and any person to accept, directly or indirectly, any commission except as provided in this section: Provided, That any licensed resident agent may pay his or her commissions, or direct that his or her commissions be paid, to a business entity licensed as an insurance producer if:

1. The business entity is engaged, through its licensed resident agents, in conducting an insurance agency business with respect to the general public;

2. If a partnership licensed as an insurance agency producer, each partner satisfies the commissioner that he or she meets the licensing qualifications as set forth in section six of this article;

3. If a corporation licensed as an insurance agency producer, each officer, employee or any one or more stockholders owning, directly or indirectly, the controlling interest in the corporation satisfies the commissioner that he or she meets the licensing qualifications as set forth in section six of this article. The requirements set forth in this subdivision may not apply to clerical employees, or other employees not directly engaged in the selling or servicing of insurance;

4. If a limited liability company licensed as an insurance agency producer, each officer, employee or any one or more members owning, directly or indirectly, the controlling interest in a limited liability company satisfies the commissioner that he
or she meets the licensing qualifications as set forth in section six of this article. The requirements set forth in this subdivision shall not apply to clerical employees, or other employees not directly engaged in the selling or servicing of insurance; and

(5) If any other business entity licensed as an insurance agency producer, approval is granted by the commissioner.

(c) This section will not apply to reinsurance, or life insurance, or accident and sickness insurance; nor to excess line insurance procured in accordance with the provisions of article twelve-c relating thereto; nor to credit insurance, any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce, any liability or other risks incident to the ownership, maintenance or operation thereof, any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto.

(d) An insurance company or insurance producer may not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(e) A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(f) Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this article at the time of the sale, solicitation or negotiation and was so licensed at that time.
§33-12-24. Revocation, suspension or refusal to renew license; penalty.

(a) The commissioner may examine and investigate the business affairs and conduct of every person applying for or holding an insurance producer license, solicitor's license or excess line broker's license to determine whether such person has been or is engaged in any violation of the insurance laws or rules of this state or has engaged in unfair or deceptive acts or practices in any state.

(b) The insurance commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license, solicitor's license or excess line broker's license, or may levy a civil penalty or any combination of actions, for any one or more of the following causes:

1. Providing incorrect, misleading, incomplete or materially untrue information in the license application;

2. Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state's insurance commissioner;

3. Obtaining or attempting to obtain a license through misrepresentation or fraud;

4. Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

5. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

6. Having been convicted of or pleaded nolo contendere to any felony;
(7) Been convicted of or pleaded nolo contendere to a misdemeanor in connection with his or her activities as an agent, solicitor, or excess line broker;

(8) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(9) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(10) Having an insurance producer license, solicitor license, excess line broker license or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(11) Forging another's name to an application for insurance or to any document related to an insurance transaction or fraudulently procured a forged signature to an insurance application or any other document, knowing the signature to be forged;

(12) Improperly using notes or any other reference material to complete an examination for an insurance producer license;

(13) Knowingly accepting insurance business from an individual who is not licensed;

(14) Failing to comply with an administrative or court order imposing a child support obligation;

(15) Having a statutory lien recorded for failing to pay state income tax or comply with any administrative or court order directing payment of state income tax; or
(16) Obtained the license for the purpose of writing controlled business, as described in subdivision (7), subsection (a), section six of this article;

(c) In the event that the action by the insurance commissioner is to nonrenew or to deny an application for a license, the insurance commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant’s or licensee’s license. The applicant or licensee may make written demand upon the insurance commissioner within ten days for a hearing before the insurance commissioner to determine the reasonableness of the insurance commissioner’s action. The hearing shall be held within forty-five days and shall be held pursuant to section thirteen, article two of this chapter.

(d) The producer’s license of a business entity may be placed on probation, suspended, revoked, refused or have civil penalty or any combination of actions, if the insurance commissioner finds, after hearing, that an individual licensee’s violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership, corporation, limited liability company or other business entity and the violation was neither reported to the insurance commissioner nor corrective action taken.

(e) In addition to or in lieu of any applicable denial, probation, suspension or revocation of a license, a person may, after hearing, be subject to a civil penalty in a sum not to exceed five thousand dollars. Upon the failure of the licensee to pay such penalty by delivery of the sum to the commissioner within thirty days of notice thereof, the commissioner shall revoke or suspend such license.

(f) The insurance commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy
authorized by this article against any person even if the person’s license or registration has been surrendered or has lapsed by operation of law.

§33-12-25. Termination of authority to represent insurer.

(a) Termination for cause. — An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the insurance commissioner within thirty days following the effective date of the termination, using a format prescribed by the insurance commissioner, if the reason for termination is one of the reasons set forth in section twenty-four of this article or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in section twenty-four of this article. Upon the written request of the insurance commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.

(b) Termination without cause. — An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in section twenty-four of this article, shall notify the insurance commissioner within thirty days following the effective date of the termination, using a format prescribed by the insurance commissioner. Upon written request of the insurance commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

(c) Ongoing notification requirement. — The insurer or the authorized representative of the insurer shall promptly notify
the insurance commissioner in a format acceptable to the
insurance commissioner if, upon further review or investiga-
tion, the insurer discovers additional information that would
have been reportable to the insurance commissioner in acord-
dance with subsection (a) of this section had the insurer then
known of its existence.

(d) Copy of notification to be provided to producer. —

(1) At the time of making the notification required by
subsections (a), (b) and (c) of this section, the insurer shall
simultaneously mail a copy of the notification to the producer
at his or her last known address. If the producer is terminated
for cause for any of the reasons listed in section twenty-four of
this article, the insurer shall provide a copy of the notification
to the producer at his or her last known address by certified
mail, return receipt requested, postage prepaid or by overnight
delivery using a nationally recognized carrier.

(2) Within thirty days after the producer has received the
original or additional notification, the producer may file written
comments concerning the substance of the notification with the
insurance commissioner. The producer shall, by the same
means, simultaneously send a copy of the comments to the
reporting insurer, and the comments shall become a part of the
insurance commissioner’s file and accompany every copy of a
report distributed or disclosed for any reason about the producer
as permitted under subsection (f) of this section.

(e) Immunities. —

(1) In the absence of actual malice, an insurer, the author-
ized representative of the insurer, a producer, the insurance
commissioner, or an organization of which the insurance
commissioner is a member and that compiles the information
and makes it available to other insurance commissioners or regulatory or law-enforcement agencies may not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employes, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the insurance commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under subsection (a) of this section was reported to the insurance commissioner, provided that the propriety of any termination for cause under subsection (a) is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(2) In any action brought against a person that may have immunity under subdivision (1), subsection (e) of this section for making any statement required by this section or providing any information relating to any statement that may be requested by the insurance commissioner, the party bringing the action shall plead specifically in any allegation that subdivision (1), subsection (e) does not apply because the person making the statement or providing the information did so with actual malice.

(3) Subdivision (1), subsection (e) or subdivision (2), subsection (e) shall not abrogate or modify any existing statutory or common law privileges or immunities.

(f) Confidentiality.

(1) Any documents, materials or other information in the control or possession of the department of insurance that is furnished by an insurer, producer or an employee or agent
thereof acting on behalf of the insurer or producer, or obtained
by the insurance commissioner in an investigation pursuant to
this section shall be confidential by law and privileged, may not
be subject to chapter twenty-nine-b of this code, may not be
subject to subpoena, and may not be subject to discovery or
admissible in evidence in any private civil action. However, the
insurance commissioner is authorized to use the documents,
materials or other information in the furtherance of any
regulatory or legal action brought as a part of the insurance
commissioner's duties.

(2) Neither the insurance commissioner nor any person who
received documents, materials or other information while acting
under the authority of the insurance commissioner shall be
permitted or required to testify in any private civil action
concerning any confidential documents, materials, or informa-
tion subject to subdivision (1) of subsection (f).

(3) In order to assist in the performance of the insurance
commissioner's duties under this article, the insurance commis-
sioner:

(A) May share documents, materials or other information,
including the confidential and privileged documents, materials
or information subject to subdivision (1) of this subsection,
with other state, federal, and international regulatory agencies,
with the national association of insurance commissioners, its
affiliates or subsidiaries, and with state, federal, and interna-
tional law-enforcement authorities, provided that the recipient
agrees to maintain the confidentiality and privileged status of
the document, material or other information;

(B) May receive documents, materials or information,
including otherwise confidential and privileged documents,
materials or information, from the national association of
(C) May enter into agreements governing sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (3) of this subsection.

(5) Nothing in this article shall prohibit the insurance commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to chapter twenty-nine-b of this code to a database or other clearinghouse service maintained by the national association of insurance commissioners, its affiliates or subsidiaries of the national association of insurance commissioners.

(g) Penalties for failing to report. — An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with subsection (e), section twenty-four of this article.

§33-12-26. Insurance vending machines.
(a) A licensed resident agent may solicit applications for and issue policies for trip accident insurance by means of mechanical vending machines supervised by him or her, if:

1. The commissioner finds that the kind of insurance and form of policy to be so sold is reasonably suited for sale and issuance through vending machines and otherwise complies with this chapter, and that use of such machines therefor would be of convenience to the public; and

2. The commissioner finds that the type of vending machines to be used is reasonably suitable and practical for the purpose.

(b) The commissioner shall issue to the agent a special vending machine license as to each such machine to be used. The license shall specify name and address of the insurer and agent, kind of insurance and type of policy to be sold, and the place where the machine is to be in operation. The license shall expire, be renewable, and be suspended or revoked, coincidently with that of the agent. The license fee shall be five dollars for each year or part thereof for each vending machine. Proof of existence of the license shall be displayed on or about each machine in a manner as the commissioner may reasonably require. Fees so collected are subject to the provisions of section thirteen, article three of this chapter.

§33-12-27. Payment of commissions under assigned risk plan.

An insurer participating in a plan for assignment of personal injury liability insurance or property damage liability insurance on owner’s automobiles or operators, which plan has been approved by the commissioner, may pay a commission to a qualified agent who is licensed to act as agent for any insurer participating in the plan when the agent is designated by the
insured as the producer of record under an automobile assigned risk plan pursuant to which a policy is issued under the plan, and section eleven of this article shall not be applicable thereto.

§33-12-28. Service representative permit.

Individual nonresidents of West Virginia, employed on salary by an insurer, who enter the state to assist and advise resident agents in the solicitation, negotiation, making or procuring of contracts of insurance on risks resident, located or to be performed in West Virginia shall obtain a service representative permit. The commissioner may, upon receipt of a properly prepared application, issue the permit without requiring a written examination therefor. The fee for a service representative permit shall be twenty-five dollars and the permit shall expire at midnight on the thirty-first day of March next following the date of issuance. Issuance of a service representative permit may not entitle the holder to countersign policies. The representative may not in any manner solicit, negotiate, make or procure insurance in this state except when in the actual company of the licensed resident agent whom he or she has been assigned to assist. All fees collected under this section shall be used for the purposes set forth in section thirteen, article three of this chapter.

§33-12-29. Notice of hearing before the commissioner; failure to appear; entry of orders; appeal.

(a) When conducting any hearing authorized by section thirteen, article two of this chapter which concerns any insurance producer, solicitor, or service representative, the commissioner shall give notice of the hearing and the matters to be determined therein to the insurance producer, solicitor or service representative by certified mail, return receipt re-
quested, sent to the last address filed by the person or entity pursuant to subsection (e), section nine of this article.

(b) If an insurance producer, solicitor or service representative fails to appear at the hearing, the hearing may proceed, at which time the commissioner shall establish that notice was sent to the person pursuant to this section prior to the entry of any orders adverse to the interests of the insurance producer, solicitor or service representative based upon the allegations against a person which were set forth in the notice of hearing. Certified copies of all orders entered by the commissioner shall be sent to the person affected therein by certified mail, return receipt requested, at the last address filed by such person with the division.

(c) An insurance producer, solicitor or service representative who fails to appear at a hearing of which notice has been provided pursuant to this section, and who has had an adverse order entered by the commissioner against them as a result of their failure to so appear may, within thirty calendar days of the entry of an adverse order, file with the commissioner a written verified appeal with any relevant documents attached thereto, which demonstrates good and reasonable cause for the person's failure to appear, and may request reconsideration of the matter and a new hearing. The commissioner in his or her discretion, and upon a finding that the insurance producer, solicitor or service representative has shown good and reasonable cause for his or her failure to appear, shall issue an order that the previous order be rescinded, that the matter be reconsidered, and that a new hearing be set.

(d) Orders entered pursuant to this section are subject to the judicial review provisions of section fourteen, article two of this chapter.
§33-12-30. Termination of contractual relationship prohibited.

No insurance company may cancel, refuse to renew or otherwise terminate a written contractual relationship with any insurance agent who has been employed or appointed pursuant to that written contract by an insurance company as a result of any analysis of a loss ratio resulting from claims paid under the provisions of an endorsement for uninsured and underinsured motor vehicle coverage issued pursuant to the provisions of section thirty-one, article six of this chapter, nor may any provision of that contract, including the provisions for compensation therein, operate to deter or discourage the insurance agent from selling and writing endorsements for optional uninsured or underinsured motor vehicle coverage.

§33-12-31. Termination of contractual relationship; continuation of certain commissions; exceptions.

(a) In the event of a termination of a contractual relationship between a duly licensed insurance agent and an automobile insurer of private passenger automobiles who is withdrawing from writing private passenger automobile insurance within the state, the insurer shall pay the agent a commission, equal to the commission the agent would have otherwise been entitled to under his or her contract with the insurer, for a period of two years from the date of termination of the contractual relationship for those renewal policies that cannot otherwise be canceled or nonrenewed pursuant to law, which policies the agent continues to service. The insurer must continue the appointment of the agent for the duration of time the agent continues to service the business: Provided, That this requirement shall not obligate the withdrawing insurer to accept any new private passenger automobile insurance within the state.
16 (b) Subsection (a) of this section does not apply to an agent who is an employee of the insurer, or an agent as defined by article twelve-a of this chapter, or an agent, who by contractual agreement either represents only one insurer or group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to others.

§33-12-32. Limited licenses for rental companies.

1 (a) Purpose. — This section authorizes the insurance commissioner to issue limited licenses for the sale of automobile rental coverage.

4 (b) Definitions. — The following words when used in this section shall have the following meanings:

6 (1) “Authorized insurer” means an insurer that is licensed by the commissioner to transact insurance in West Virginia.

8 (2) “Automobile rental coverage” or “rental coverage” is insurance offered incidental to the rental of a vehicle as described in this section.

11 (3) “Limited license” means the authorization by the commissioner for a person to sell rental coverage as agent of an authorized insurer pursuant to the provisions of this section without the necessity of agent prelicensing education, examination, or continuing education.

16 (4) “Limited licensee” is an individual resident of this state who obtains a limited license.
(5) "Rental agreement" means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental company for rental or lease.

(6) "Rental company" means any person or entity in the business of providing private motor vehicles to the public under a rental agreement for a period not to exceed ninety days.

(7) "Renter" means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed ninety days.

(8) "Vehicle" or "rental vehicle" means a motor vehicle of the private passenger type including passenger vans, minivans and sport utility vehicles and of the cargo type, including cargo vans, pick-up trucks and trucks with a gross vehicle weight of twenty-six thousand pounds or less and which do not require the operator to possess a commercial driver's license.

(9) "Rental period" means the term of the rental agreement.

(c) The commissioner may issue a limited license for the sale of automobile rental coverage to an employee of a rental company, who has satisfied the requirements of this section.

(d) As a prerequisite for issuance of a limited license under this section, there shall be filed with the commissioner a written application for a limited license, signed by the applicant, in a form or forms and supplements thereto, and containing any information, as the commissioner may prescribe. The limited licensee shall pay to the insurance commissioner an annual fee of twenty-five dollars.

(e) The limited licensee shall be appointed by the licensed insurer or insurers for the sale of automobile rental coverage.
The employer of the limited licensee shall maintain at each insurance sales location a list of the names and addresses of employees which are selling insurance at the location.

(f) In the event that any provision of this section or applicable provisions of the insurance code is violated by a limited licensee or other employees operating under his or her direction, the commissioner may:

(1) After notice and a hearing, revoke or suspend a limited license issued under this section in accordance with the provisions of section thirteen, article two of this chapter; or

(2) After notice and hearing, impose any other penalties, including suspending the transaction of insurance at specific locations where applicable violations of the insurance code have occurred, as the commissioner considers to be necessary or convenient to carry out the purposes of this section.

(g) Any limited license issued under this section shall also authorize any other employee working for the same employer and at the same location as the limited licensee to act individually, on behalf, and under the supervision of the limited licensee with respect to the kinds of coverage authorized in this section. In order to sell insurance products under this section at least one employee who has obtained a limited license must be present at each location where insurance is sold. All other employees working at that location may offer or sell insurance consistent with this section without obtaining a limited license. However, the limited licensee shall directly supervise and be responsible for the actions of all other employees at that location related to the offer or sale of insurance as authorized by this section. No limited licensee under this section shall advertise, represent, or otherwise hold himself or herself or any
other employees out as licensed insurers, insurance agents or
insurance brokers.

(h) No automobile rental coverage insurance may be issued
by a limited licensee pursuant to this section unless:

(1) The rental period of the rental agreement does not
exceed ninety consecutive days; and

(2) At every rental location where rental agreements are
executed, brochures or other written material are readily
available to the prospective renter that:

(A) Summarize clearly and correctly, the material terms of
coverage offered to renters, including the identity of the insurer;

(B) Disclose that the coverage offered by the rental
company may provide a duplication of coverage provided by a
renter’s personal automobile insurance policy, homeowner’s
insurance policy, personal liability insurance policy, or other
source of coverage;

(C) State that the purchase by the renter of the kinds of
coverage specified in this section is not required in order to rent
a vehicle; and

(D) Describe the process for filing a claim in the event the
renter elects to purchase coverage and in the event of a claim.

(3) Any evidence of coverage on the face of the rental
agreement is disclosed to every renter who elects to purchase
the coverage.

(4) The limited licensee to sell automobile rental coverage
may offer or sell insurance only in connection with and
incidental to the rental of vehicles, whether at the rental office
or by preselection of coverage in a master, corporate, group
rental, or individual agreements in any of the following general
categories;

(A) Personal accident insurance covering the risks of travel,
including, but not limited to, accident and health insurance that
provides coverage, as applicable, to renters and other rental
vehicle occupants for accidental death or dismemberment and
reimbursement for medical expenses resulting from an accident
that occurs during the rental period;

(B) Liability insurance (which may include uninsured and
underinsured motorist coverage whether offered separately or
in combination with other liability insurance) that provides
coverage, as applicable, to renters and other authorized drivers
of rental vehicles for liability arising from the operation of the
rental vehicle;

(C) Personal effects insurance that provides coverage,
applicable to renters and other vehicle occupants of the loss of,
or damage to, personal effects that occurs during the rental
period;

(D) Roadside assistance and emergency sickness protection
programs; and

(E) Any other travel or auto-related coverage that a rental
company offers in connection with and incidental to the rental
of vehicles.

(i) Each rental company for which an employee has
received a limited license pursuant to this section shall conduct
a training program in which its employees being trained shall
receive basic instruction about the kinds of coverage specified
in this section and offered for purchase by prospective renters
of rental vehicles: Provided, That limited licensees and employees working hereunder are not subject to the agent prelicensing education, examination or continuing education requirements of this article.

(j) Notwithstanding any other provision of this section, or any rule adopted by the commissioner neither the rental company, the limited licensee, nor the other employees working with the limited licensee at the rental company, shall be required to treat moneys collected from renters purchasing such insurance when renting vehicles as funds received in a fiduciary capacity, provided that the charges for coverage shall be itemized and be ancillary to a rental transaction. The sale of insurance not in conjunction with a rental transaction may not be permitted.

§33-12-33. Reciprocity.

(a) The insurance commissioner shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by section twelve of this article, if the applicant’s home state awards nonresident licenses to residents of this state on the same basis.

(b) An individual nonresident producer’s satisfaction of his or her home state’s continuing education requirements for licensed insurance producers shall constitute satisfaction of this state’s continuing education requirements if the nonresident producer’s home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

§33-12-34. Reporting of actions.
(a) A producer shall report to the insurance commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(b) Within thirty days of the initial pretrial hearing date, a producer shall report to the insurance commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

§33-12-35. Regulations.

The insurance commissioner may, in accordance with article three, chapter twenty-nine-a of this code, promulgate reasonable regulations as are necessary or proper to carry out the purposes of this article. Any legislative rules promulgated under the former article twelve of this chapter shall remain in full force and effect but shall henceforth relate to the redesignated statutory provisions contained herein.

§33-12-36. Severability.

If any provisions of this article, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the article, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

ARTICLE 12C. EXCESS LINE.

§33-12C-1. Excess lines.
§33-12C-1. Excess lines.

Any portion or all of an insurance coverage against loss or damage to property or person from any cause which cannot be procured from licensed insurers, which coverages are hereinafter designated as “excess line,” may be procured from unlicensed insurers subject to the following conditions:

(a) The insurance must be procured only through a licensed excess line broker; and

(b) The insurance coverage must not be procurable, after diligent effort has been made to do so by the individual insurance producer from licensed insurers authorized to transact that kind of insurance in this state, or has been procured to the full extent the insurers are willing to insure, and the placing of insurance with an unlicensed insurer must not be for the purpose of securing advantages either as to premium rate or 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
recognition in all matters and respects to the same effect as like contracts issued by licensed insurers whose rates and terms have been filed and approved by the insurance commissioner.

§33-12C-4. Licensing of excess line brokers.

(a) Any licensed insurance agent determined by the commissioner to be competent and trustworthy for the purpose, may be licensed as an excess line broker.

(b) The license fee shall be two hundred dollars, all fees so collected are to be used for the purposes set forth in section thirteen, article three of this chapter.

(c) Prior to issuance of the license, the applicant therefor shall file with the commissioner and thereafter maintain in force for so long as the license or any renewal thereof remains in effect, a bond in favor of the state of West Virginia in the penal sum of two thousand dollars, with an authorized corporate surety approved by the commissioner, conditioned that he or she will conduct business under the license in accordance with this article, that he or she will promptly remit the taxes provided by section sixteen of this article, and that he or she will properly account to the person entitled thereto for funds received by him or her through transactions under the license. No bond shall be terminated unless at least thirty days' prior written notice thereof is filed with the commissioner.

§33-12C-5. License expiration and renewal.

All licenses of excess line brokers shall expire at midnight on the thirty-first day of May next following the date of issuance. The commissioner shall renew annually the license of 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 authorized excess line business from any insurance agent or broker licensed in this state for the kind of insurance involved, and may compensate an agent or broker therefor. The excess line broker shall have the right to receive from the insurer the customary commission.

§33-12C-7. Countersignature requirements.

1 Excess line insurance shall be countersigned by a duly 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 and true record of each excess line contract procured by him or her, and the record may be examined at any time thereafter by the commissioner. The record shall include such of the following 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 coverage;
(g) Effective date of the contract and the terms thereof; and

(h) Brief general description of the risks insured against and the property insured.

§33-12C-9. Excess line brokers; additional premium tax.

(a) Every excess line broker shall make an annual return, under oath, on or before the first day of March to the commissioner of the gross amount of premiums charged by the insurers and of the gross amount of the fees charged by the excess line broker for the insurance procured by the excess line broker during the previous calendar year. Every excess line policyholder obtaining insurance from an excess line broker shall pay and every excess line broker shall collect from the policyholder and remit to the commissioner a sum equal to four percent of the gross premiums and fees received on the excess line policies procured by the excess line broker on subjects of insurance, resident, located or to be performed in this state, including any so-called dividends on participating policies applied in reduction of premiums, but less premiums returned to policyholders because of cancellation of policy. This tax is imposed for the purpose of providing additional revenue for municipal policemen’s and firemen’s pension and relief funds and additional revenue for volunteer and part volunteer fire companies and departments. This tax is required to be paid and remitted, on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter, in respect of which taxes shall be due and payable and final computation of actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments prior made, and filed with the annual return to be made on or before the first day of March.
of the succeeding year. Provisions of this chapter relating to the
levy, imposition and collection of the regular premium tax are
applicable to the levy, imposition and collection of this tax to
the extent that the provisions are not in conflict with this
section.

All taxes remitted to the commissioner pursuant to this
section shall be paid by him or her into a special account in the
state treasury, designated "municipal pensions and protection
fund," and after appropriation by the Legislature, shall be
distributed in accordance with the provisions of subsection (c),
section fourteen-d, article three of this chapter. The excess line
broker shall return to the policyholder the tax on any unearned
portion of the premium returned to the policyholder because of
cancellation of policy.

(b) The excess line broker may not:

(1) Pay directly or indirectly the tax or any portion thereof,
either as an inducement to the policyholder to purchase the
insurance or for any other reason; or

(2) Rebate all or part of the tax or the excess line broker's
commission, either as an inducement to the policyholder to
purchase the insurance or for any reason.

c) The licensed excess line broker may charge the prospec-
tive policyholder a fee for the cost of underwriting, issuing,
processing, inspecting, service or auditing the policy for
placement with the excess line insurer if:

(1) The service is required by the excess line insurer;
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(2) The service is actually provided by the excess line broker or the cost of the service is actually incurred by the excess line broker; and

(3) The provision or cost of the service is reasonable, documented and verifiable.

(d) The excess line broker shall make a clear and conspicuous written disclosure to the policyholder of:

(1) The total amount of premium for the policy;

(2) Any fee charged;

(3) The total amount of any fee charged; and

(4) The total amount of tax on the premium and fee.

(e) The clear and conspicuous written disclosure required by subsection (d) of this section is subject to the record maintenance requirements of section eight of this article.

§33-12C-10. Fees.

The commissioner shall receive the following fees from excess line brokers: For letters of certification, five dollars; for letters of clearance, ten dollars; for duplicate license, five dollars. All fees and moneys so collected shall be used for the purposes set forth in section thirteen, article three of this chapter.

§33-12C-11. Coverage must be placed in solvent insurer.

No excess line broker shall knowingly place any coverage in an insolvent insurer.
§33-12C-12. Change of address.

An excess line broker shall notify the commissioner of any change in his or her mailing address within thirty days of such change. The commissioner shall maintain the mailing address of each excess line broker, and service representative on file. Failure to timely inform the insurance commissioner of a change in legal name or address may result in a penalty pursuant to section twenty-four of this article.

§33-12C-13. Service of process on excess line insurers and brokers.

As to every unlicensed insurer issuing or delivering an excess line policy through an excess line broker in this state, the secretary of state shall be, and is hereby constituted the attorney-in-fact of each such insurer and broker for service of process in the same manner as for licensed insurers as provided in section twelve, article four of this chapter.

§33-12C-14. Hearings.

(a) When conducting any hearing authorized by section thirteen, article two of this chapter which concerns any excess line broker, the commissioner shall give notice of the hearing and the matters to be determined therein to the excess line broker by certified mail, return receipt requested, sent to the last address filed by a person or entity pursuant to section twelve of this article.

(b) If an excess line broker fails to appear at the hearing, the hearing may proceed, at which time the commissioner shall establish that notice was sent to the person pursuant to this section prior to the entry of any orders adverse to the interests of an excess line broker based upon the allegations against the
person which were set forth in the notice of hearing. Certified
copies of all orders entered by the commissioner shall be sent
to the person affected therein by certified mail, return receipt
requested, at the last address filed by a person with the division.

(c) An excess line broker who fails to appear at a hearing of
which notice has been provided pursuant to this section, and
who has had an adverse order entered by the commissioner
against them as a result of their failure to so appear may, within
thirty calendar days of the entry of an adverse order, file with
the commissioner a written verified appeal with any relevant
documents attached thereto, which demonstrates good and
reasonable cause for the person's failure to appear, and may
request reconsideration of the matter and a new hearing. The
commissioner in his or her discretion, and upon a finding that
the excess line broker has shown good and reasonable cause for
his or her failure to appear, shall issue an order that the previous
order be rescinded, that the matter be reconsidered, and that a
new hearing be set.

(d) Orders entered pursuant to this section are subject to the
judicial review provisions of section fourteen, article two of this
chapter.

§33-12C-15. Severability.

If any provisions of this article, or the application of a
provision to any person or circumstances, shall be held invalid,
the remainder of the article and the application of the provision
to persons or circumstances other than those to which it is held
invalid, shall not be affected.
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 insurance in this state may issue group accident and sickness policies coming within any of the following classifications:

4 (a) A policy issued to an employer, who shall be considered the policyholder, insuring at least ten employees of such employer, for the benefit of persons other than the employer, and conforming to the following requirements:
1 (1) If the premium is paid by the employer the group shall comprise all employees or all of any class or classes thereof determined by conditions pertaining to the employment; or

(2) If the premium is paid by the employer and employees jointly, or by the employees, the group shall comprise not less than seventy percent of all employees of the employer or not less than seventy-five percent of all employees of any class or classes thereof determined by conditions pertaining to the employment;

(3) The term "employee" as used herein shall be considered to include the officers, managers and employees of the employer, the partners, if the employer is a partnership, the officers, managers and employees of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners and employees of individuals and firms, the business of which is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer" as used herein may be considered to include any municipal or governmental corporation, unit, agency or department thereof and the proper officers, as such, of any unincorporated municipality or department thereof, as well as private individuals, partnerships and corporations.

(b) A policy issued to an association which has been in existence for at least one year, which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring at least ten members of the association for the benefit of persons other than the association or its officers or trustees, as such;

(c) A policy issued to a bona fide association;

(d) A policy issued to a college, school or other institution of learning or to the head or principal thereof, insuring at least ten students, or students and employees, of the institution;
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.

(a) If within the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the require-
ments of this article, he or she shall send to the insurer or rating organization which made the filing written notice of disapproval of the filing specifying therein in what respects he or she finds the filing fails to meet the requirements of this article and stating that the filing shall not be effective. Within thirty days from the issuance of written notice of disapproval, any insurer or rating organization aggrieved by the disapproval of any filing may request a hearing pursuant to section thirteen, article two of this chapter.

(b) If at any time subsequent to the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he or she shall send to the insurer or rating organization which made the filing a written order specifying in what respect he or she finds that such filing fails to meet the requirements of this article and a date, not less than thirty days from the issuance of the order, when the filing shall be considered no longer effective. Within thirty days from the issuance of the order, any insurer or rating organization aggrieved by the order may request a hearing thereon pursuant to section thirteen, article two of this chapter. Any such order shall not affect any contract or policy made or issued prior to the expiration date set forth in the order.

(c) Any person or organization aggrieved by any filing which is in effect or the application thereof may request a hearing thereon pursuant to section thirteen, article two of this chapter. The insurer or rating organization which made the filing shall be notified in writing upon receipt of any request for hearing and thereby made a party to the hearing. Upon hearing, if the commissioner finds that the filing fails to meet the requirements of this article, he or she shall issue an order specifying in what respects he or she so finds and a
(d) Within the initial ninety-day waiting period, the commissioner shall hold a public hearing upon every filing which requests an increase in general rates of ten percent or more and upon every filing which, in the opinion of the commissioner, is of such import that it will affect the public. The insurer or rating organization which made the filing shall be notified in writing not less than fifteen days prior to the hearing date. Notice of the time, place and filing to be considered shall be published as a Class II legal advertisement in every county in the state in accordance with article three, chapter fifty-nine of this code.
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.

This article applies to malpractice insurance as defined in subdivision (9), subsection (e), section ten, article one of this chapter insuring a medical physician, osteopathic physician, podiatric physician, chiropractic physician, dentist, midwife, nurse practitioner or hospital which has been in effect for at least sixty days.

§33-20D-3. Tail insurance to be offered upon cancellation; availability of amortization; minimum premium rates; penalties for noncompliance.

(a) Upon cancellation, nonrenewal or termination of any claims made professional malpractice insurance policy, the insurer shall offer to the insured tail insurance coverage.

(b) Upon cancellation, nonrenewal or termination of any claims made professional malpractice insurance policy, the insurer shall offer to any professional licensed and practicing in the state of West Virginia, or who, upon retirement, last practiced in the state of West Virginia, the opportunity to amortize the payment of premiums for tail insurance over a period of not more than thirty-six months, in quarterly payments, at a rate to be established by the insurance commissioner: Provided, That quarterly premiums paid pursuant to this subsection shall not be less than seven hundred fifty dollars.
(c) The first quarterly payment shall be payable contemporaneous with the issuance of the tail coverage policy. Subsequent payments shall be due and payable quarterly thereafter. Each licensed malpractice insurer shall submit for approval, by the commissioner, a plan for determination of partial limits in the event of default on amortized payment.

(d) Any insurer who fails to offer tail insurance or in any other way violates the provisions of this article shall be assessed a penalty equal to the amount of the premium due.

(e) The offer of tail insurance coverage required by this section shall expire forty-five days after the cancellation, termination or other expiration of the claims made professional malpractice insurance policy, unless sooner accepted, 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.


1 No provider shall collect or attempt to collect from a health maintenance organization enrollee any money for services covered by the health maintenance organization. If a provider collects or attempts to collect from a health maintenance organization enrollee any money for services covered by the health maintenance organization, then the provider may be subjected to a civil money penalty to be imposed by the commissioner. Upon a determination that there is probable cause to believe that there has been a violation of this section, the commissioner may provide written notice to the alleged violator, stating the nature of the alleged violation and that failure to refund the amount of any improper billing within thirty days may result in imposition of a civil penalty pursuant to the provisions of this section. If the alleged violator fails to make a refund within thirty days, the commissioner shall issue a written notice of hearing stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed: Provided, That if the commissioner has previously found on three occasions that probable cause existed to support a violation, the alleged violator shall not be afforded the opportunity to make a refund before issuance of the notice of hearing for any subsequent violation.
If, after notice and hearing, the commissioner determines that a violation of this section has occurred, the commissioner may assess a civil penalty of not less than the amount charged the subscriber but not more than one thousand dollars. Subsequent violations of this section result in fines of not more than two thousand dollars. Any provider so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment. Any provider may waive the right to a hearing and receive a reduction in 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, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance tax returns 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.
(a) Any person who is subject to a tax in a given taxable year shall file a return for that tax and that taxable year, even if the person has no tax liability for that taxable year.

(1) Each return shall be filed by the applicable filing date. The commissioner, at his or her discretion, may accept a return after the filing date.

(2) Should a taxpayer file more than one return for the same tax, only the return last filed shall be effective. The commissioner, at his or her discretion, may approve the withdrawal of a return by the taxpayer.

(b) Each return shall be executed by the taxpayer in a manner prescribed by the commissioner. Each return so executed shall constitute a sworn statement by the signatory that, to the best of his or her knowledge and belief, the information provided in the return or in any supporting materials which accompany the return is true and accurate.

(c) All returns shall be prepared on forms prescribed by the commissioner. If no form has been prescribed for a particular tax, the return may be in a form chosen by the taxpayer but shall clearly set forth the following information: The taxpayer's name, address and telephone number; the identification number used by the taxpayer in filing federal income tax returns; the tax and taxable year to which the return applies; and all information used to calculate the tax liability of the taxpayer.

(d) For purposes of this article, a return is not regarded as filed if:

(1) It is not filed by the applicable filing date, unless the commissioner accepts the return; or

(2) It has not been received by the commissioner; or
(3) It has not been properly executed by the taxpayer; or

(4) It is not in the proper form; or

(5) It is incomplete or inaccurate in any material respect; or

(6) It is not accompanied by supporting material required by the commissioner; or

(7) It is withdrawn by the taxpayer with the approval of the commissioner; or

(8) It is not accompanied by the payment for any tax due.

e) If a tax is to be paid in installments, the taxpayer shall file an appropriate return for each period for which an installment payment is calculated, even if the taxpayer is not required to make an installment payment for that period. The returns shall satisfy all requirements established for annual returns by this section except that the filing date for an installment return is the date prescribed for the installment payment for the period described by the return. Failure of a taxpayer to make quarterly payments, if required, of at least one fourth of either the total tax paid during the preceding calendar year or eighty percent of the actual tax liability for the current calendar year is considered the same as a failure or refusal to pay the estimated taxes and subjects the taxpayer to the penalties provided in this article.

f) If a taxpayer has failed to file a return by the applicable filing date or has filed a false or fraudulent return, the commissioner may use any information which is available to him or her to determine the taxpayer’s tax liability: Provided, That a determination of tax liability by the commissioner pursuant to this subsection does not relieve the taxpayer of the duty to file a true, accurate and complete return and does
not reduce or preclude any penalty based upon the taxpayer’s failure to file.

(g) A taxpayer to whom a credit has been issued may apply the credit as payment for any like tax due to be remitted by the taxpayer upon written notice to the commissioner stating the amount of the credit to be so applied.

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.

Moneys in the fund created in the state treasury, designated the "James ‘Tiger’ Morton Catastrophic Illness Fund" shall be distributed in accordance with the provisions of this article. The purpose of this fund is to provide a source of economic assistance to the citizens of this state facing catastrophic illness. In addition to any funds appropriated by the Legislature, the Tiger Morton Fund may receive donations of cash or property from other sources, including gifts, grants, or donations from any source whatsoever. After appropriation by the Legislature, the catastrophic illness commission may make expenditures from the fund as necessary to accomplish the purposes of this article.

§16-5Q-2. Catastrophic illness commission; composition; meetings.

(a) The catastrophic illness commission shall consist of six members appointed for terms of five years by the governor, by and with the advice and consent of the Senate, and the ombudsman from the department of health and human resources, who shall serve as a nonvoting ex officio member. One member shall be a medical doctor licensed to practice medicine in this state, one member shall be an attorney licensed to practice law in this state, two members shall be from the public at large who are active in community affairs, one member shall be a nurse licensed to practice in this state, and one member shall be a social worker licensed in this state. The terms of office of the first appointments to the catastrophic illness commission shall be as follows: The
medical doctor and attorney shall be appointed for an initial
term of three years; the initial term of the nurse appointee
and the licensed social worker appointee shall be four years;
the initial term of the remaining members of the commission
appointed by the governor shall be five years. No more than
five of the members appointed by the governor may be from
the same political party. Members of the catastrophic illness
commission, other than the ex officio member, may receive
expenses only up to one hundred twenty-five dollars per day,
not to exceed fifteen thousand dollars in the aggregate per
year. The commission shall meet at least quarterly and annu-
ally elect a chairperson. Meetings shall be conducted in ac-
cordance with the provisions of article nine-a, chapter six of
this code. Special meetings may be called. Before discharg-
ing any duties, members shall comply with the oath or affir-
mation requirements of article one, chapter six of this code.
Members are subject to the ethical standards and financial
disclosure requirements of the West Virginia governmental
ethics act in chapter six-b of this code and serve at the will
and pleasure of the governor as provided in section four,
article six, chapter six of this code.

(b) The catastrophic illness commission shall make an
annual recommendation to the Legislature regarding appro-
priations from the catastrophic illness fund. This recommen-
dation shall be made annually, in writing, to the Legislature
no later than the second Wednesday of January.

(c) The commission shall appoint an executive director
whose compensation shall be fixed by the commission within
its budgetary appropriation. The executive director shall be
classified exempt and may not be a member of the commis-
sion. The executive director may attend all meetings of the
commission, as well as its committees, but has no vote on
decisions or actions of the commission or its committees. The
executive director shall carry out the decisions and actions of
the commission, administer all affairs of the commission in
(d) The secretary of the department of health and human resources shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to accomplish the purpose of the James “Tiger” Morton catastrophic illness fund including, but not limited to, establishing eligibility standards for the distribution of moneys from the fund. The secretary may propose emergency rules to establish the eligibility standards.

(e) The secretary shall assist the commission in the investigation of any suspected fraud related to an application for assistance through the catastrophic illness fund.

§16-5Q-3. Continuation of catastrophic illness commission.

1 The catastrophic illness commission shall continue to exist until the first day of July, two thousand five, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 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.

The Legislature finds that employers have the responsibility to check the residence status of their prospective employees and are precluded from hiring illegal aliens and can be penalized for doing so. Additionally, employers owe a duty to the legal residents of the state to uphold the intent and integrity of the general workforce due to the potential loss of revenue to the state by loss of taxes, unemployment premiums and workers' compensation premiums.

§21-1B-2. Definitions.

(a) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government, public benefit corporation, public
authority or political subdivision of the state, or other business entity which employs or seeks to employ an individual or individuals;

(b) "Commissioner" means the labor commissioner or his or her designated agent;

(c) "Alien" means any individual who is not a natural born or naturalized citizen of the United States; and

(d) "Records" means those records as may be required by the commissioner of labor for the purposes of compliance with the provisions of this article.

§21-1B-3. Unauthorized aliens; employment prohibited.

(a) It is unlawful for any employer to employ, hire, recruit, or refer, either for him or herself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the attorney general of the United States.

(b) Employers shall be required to verify a prospective employee's legal status or authorization to work prior to employing the individual or contracting with the individual for employment services.

(c) For purposes of this article, proof of legal status or authorization to work includes, but is not limited to, a valid social security card, a valid immigration visa, a valid birth certificate, a valid passport, a valid photo identification card issued by a government agency, valid permits issued by the department of justice or other valid document providing evidence of legal residence or authorization to work in the
United States: Provided, That for an alien, such identification must include some form of photo identification.

§21-1B-4. Record-keeping requirements; employer compliance.

Every employer, firm and corporation shall make such records of the persons he or she employs including records of proof of the legal status or authorization to work of all employees. Such records shall be preserved pursuant to the provisions of section five, article five-c of this chapter and shall be maintained at the place of employment. Pursuant to section three, article one of this chapter, such records shall be made available to the commissioner or his or her authorized representative for inspection and investigation as the commissioner deems necessary and appropriate for the purposes of determining whether any employer, firm or corporation has violated any provision of this article which may aid in the enforcement of the provisions of this article.

§21-1B-5. Penalties.

(a) The first violation of the provisions of this article is a misdemeanor and, upon conviction thereof, a employer shall be fined not less than one hundred dollars nor more than one thousand dollars for each violation.

(b) Any employer who has previously been convicted of a violation of this article and who thereafter violates the provisions of this article shall be deemed to have knowingly violated the provisions of this article and shall be guilty of a misdemeanor and shall be fined not less than five hundred or more than five thousand dollars for each violation.
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.

§21-9-3. 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.

1. (a) "Board" means the West Virginia manufactured housing construction and safety board created in this article.

2. (b) "Commissioner" means the commissioner of the West Virginia state division of labor.

3. (c) "Contractor" means any person who performs operations in this state at the occupancy site which render a manufactured home fit for habitation. The operations include, without limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments or assembling multiple or expandable units. The operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia public service commission.

4. Contractor does not include:

5. (1) A person who personally does work on a manufactured home which the person owns or leases; or

6. (2) A person who is licensed under article eleven of this chapter and is performing work on a manufactured home pursuant to a contract with a person licensed under section nine of this article.

7. (d) "Dealer" means any person engaged in this state in the sale, leasing or distributing of new or used manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

8. (e) "Defect" includes any defect in the performance, construction, components or material of a manufactured
home that renders the home or any part of the home not fit for the ordinary use for which it was intended.

(f) "Distributor" means any person engaged in this state in the sale and distribution of manufactured homes for resale.

(g) "Federal standards" means the National Manufactured Housing Construction and Safety Standards Act of 1974, and federal manufactured home construction and safety standards and regulations promulgated by the secretary of HUD to implement that act.

(h) "HUD" means the United States department of housing and urban development.

(i) "Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

(j) "Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty or more feet in length or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions mea-
sured at the largest horizontal projections when erected on site.

(k) "Purchaser" means the first person purchasing a manufactured 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.

(a) There is hereby continued the West Virginia board of manufactured housing construction and safety, which shall consist of six members and the commissioner, who shall be chairman. At least two of the six members of the board shall represent and be consumers who are not related or employed in the manufactured housing and construction industry. The six members shall be appointed by the governor by and with the advice and consent of the Senate. No more than three of the members appointed may be of the same political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section 5, article IV of the constitution of the state of West Virginia, and shall certify that he or she is and during the term of his or her appointment shall remain free of any conflict of interest. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the
unexpired term of the person vacating the office. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board constitutes a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his or her own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he or she is or was at any time in the preceding twelve months a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself or herself from participation in a proceeding for any other cause considered by him or her to be sufficient. Each member shall receive compensation not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his or her duties as a member of the board.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance as the board may reasonably require.

§21-9-10. Licensee to furnish bond or other form of assurance.
(a) Each manufacturer, dealer, distributor or contractor which applies for a license under section nine of this article shall, at the time of making application for the license, furnish a surety bond or any other form of assurance of the applicant's financial responsibility permitted by the board by rule or regulation, the surety bond or other form of assurance to be in the amount prescribed by rule or regulation. In the event of forfeiture of any bond or security, the proceeds thereof shall be deposited in the special account created under section nine of this article.

(b) The bond or other form of assurance shall cover any misappropriation of funds of a purchaser or prospective purchaser of a manufactured home, any deception or false or fraudulent representations or deceitful practices in selling or representing a product, any failure by a licensee, because of bankruptcy, insolvency or other reason, to fulfill warranty obligations and any failure of the licensee, its agents or employees, to comply with federal standards, this article or any rules or regulations promulgated by the board pursuant to this article: Provided, That any payment to purchasers or prospective purchasers by the board from licensee bonds or other forms of financial assurance shall not include punitive or exemplary damages, any compensation for property damage other than to the manufactured home, any recompense for any personal injury or inconvenience, any reimbursement for alternate housing, or any payments for attorney fees, legal expenses or court costs.

§21-9-13. Continuation of the board of manufactured housing construction and safety.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia board of manufactured housing construction and safety shall continue to exist until the first day of July, two thousand three, unless sooner terminated, continued or reestablished by act of the Legislature.