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 II
Chapters 189 — 326
Chapters 1 — 8
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Clerk of the House

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AN ACT to amend and reenact sections seven, eight, ten, thirteen and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to licenses issued by the contractor licensing board; deleting outdated language creating exemption from examination; clarifying right to a hearing before suspension or revocation of license; clarifying right to appeal board decisions to circuit court; requiring written contracts; requiring board to file procedural rule; allowing board to require financial assurance from contractors who violate act or rule; and providing for civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven, eight, ten, thirteen and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-7. Application for and issuance of license.

§21-11-8. Licenses; expiration date; fees; renewal.

§21-11-10. Prerequisites to obtaining building permit; mandatory written contracts.

§21-11-13. Violation of article; injunction; criminal penalties.


§21-11-7. Application for and issuance of license.
(a) A person desiring to be licensed as a contractor under this article shall submit to the board a written application requesting licensure, providing the applicant’s social security number and such other information as the board may require, on forms supplied by the board. The applicant shall pay a license fee not to exceed one hundred fifty dollars: Provided, That electrical contractors already licensed under section four, article three-b, chapter twenty-nine of this code shall pay no more than twenty dollars.

(b) A person holding a business registration certificate to conduct business in this state as a contractor on the thirtieth day of September, one thousand nine hundred ninety-one, may register with the board, certify by affidavit the requirements of subsection (c), section fifteen of this article, and pay such license fee not to exceed one hundred fifty dollars and shall be issued a contractor’s license without further examination: Provided, That no license may be issued without examination pursuant to this subsection after the first day of April, two thousand two.

§21-11-8. Licenses; expiration date; fees; renewal.

(a) A license issued under the provisions of this article expires one year from the date on which it is issued. The board shall establish application and annual license fees not to exceed one hundred fifty dollars.

(b) The board may propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to establish license and renewal fees.

§21-11-10. Prerequisites to obtaining building permit; mandatory written contracts.

(a) Any person making application to the building inspector or other authority of any incorporated municipality or other political subdivision in this state charged with the duty of issuing building or other permits for the construction of any building, highway, sewer or structure or for any removal
of materials or earth, grading or improvement, shall, before issuance of the permit, either furnish satisfactory proof to the inspector or authority that such person is duly licensed under the provisions of this article to carry out or superintend the same, or file a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in this article. The inspector or authority may not issue a building permit to any person who does not possess a valid contractor’s license when required by this article.

(b) Effective the first day of October, two thousand two, no person licensed under the provisions of this article may perform contracting work of an aggregate value of ten thousand dollars or more, including materials and labor, without a written contract, setting forth a description and cost of the work to be performed, signed by the licensee and the person for whom the work is to be performed.

(c) On or before the first day of June, two thousand two, the board shall file a procedural rule setting forth a standard contract form which meets the minimum requirements of this subsection for use by licensees. The board shall post the contract form on its website and shall assist licensees in the correct completion of the form. On or before the first day of August, two thousand two, the board shall mail a written notice of the requirements imposed by the rule to each licensed contractor at the address provided to the board by the contractor on his or her last application for licensure or renewal.

§21-11-13. Violation of article; injunction; criminal penalties.

(a) Upon a determination that a person is engaged in contracting business in the state without a valid license, the board or commissioner shall issue a cease and desist order requiring such person to immediately cease all operations in
the state. The order shall be withdrawn upon issuance of a license to such person. After a hearing, the board may impose a penalty of not less than two hundred dollars nor more than one thousand dollars upon any person engaging in contracting business in the state without a valid license.

(b) Any person continuing to engage in contracting business in the state without a valid license after service of a cease and desist order is guilty of a misdemeanor and, upon conviction, is subject to the following penalties:

(1) For a first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;

(2) For a second offense, a fine of not less than five hundred dollars nor more than five thousand dollars, or confinement in the county or regional jail for not more than six months, or both;

(3) For a third or subsequent offense, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in the county or regional jail for not less than thirty days nor more than one year.

c) The board may institute proceedings in the circuit court of the county in which the alleged violations of the provisions of this article occurred or are now occurring to enjoin any violation of any provision of this article.

d) Any person who undertakes any construction work without a valid license when such license is required by this article, when the total cost of the contractor's construction contract on any project upon which the work is undertaken is twenty-five thousand dollars or more, shall, in addition to any other penalty herein provided, be assessed by the board an
34 administrative penalty not to exceed two hundred dollars per
day for each day the person is in violation.

36 (e) The board shall, by rule, provide for an administrative
37 hearing before a penalty is levied and for review of any final
38 ruling issued pursuant to such hearing.


1 (a) The board has the power and authority to impose the
2 following disciplinary actions:
3
4 (1) Permanently revoke a license;
5 (2) Suspend a license for a specified period;
6 (3) Censure or reprimand a licensee;
7 (4) Impose limitations or conditions on the professional
8 practice of a licensee;
9 (5) Impose requirements for remedial professional educa-
10 tion to correct deficiencies in the education, training and skill
11 of a licensee;
12
13 (6) Impose a probationary period requiring a licensee to
14 report regularly to the board on matters related to the grounds
15 for probation; the board may withdraw probationary status if
16 the deficiencies that require the sanction are remedied; and
17
18 (7) Order a contractor who has been found, after hearing,
19 to have violated any provision of this article or the rules of
20 the board to provide, as a condition of licensure, assurance of
21 financial responsibility. The form of financial assurance may
22 include, but is not limited to, a surety bond, a cash bond, a
23 certificate of deposit, an irrevocable letter of credit or perfor-
24 mance insurance: Provided, That the amount of financial
assurance required under this subdivision may not exceed the
total of the aggregate amount of the judgments or liens levied
against the contractor or the aggregate value of any corrective
work ordered by the board or both: Provided, however, That
the board may remove this requirement for licensees against
whom no complaints have been filed for a period of five
continuous years.

(b) No license issued under the provisions of this article
may be suspended or revoked without a prior hearing before
the board: Provided, That the board may summarily suspend
a licensee pending a hearing or pending an appeal after hear-
ing upon a determination that the licensee poses a clear, sig-
nificant and immediate danger to the public health and safety.

(c) The board may reinstate the suspended or revoked
license of a person, if, upon a hearing, the board finds and
determines that the person is able to practice with skill and
safety.

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

(e) A person or contractor adversely affected by disci-
plinary action may appeal to the board within sixty days of
the date the disciplinary action is taken. The board shall hear
the appeal within thirty days from receipt of notice of appeal
in accordance with the provisions of chapter twenty-nine-a of
this code. Hearings shall be held in Charleston. The board
may retain a hearing examiner to conduct the hearings and
present proposed findings of fact and conclusions of law to
the board for its action.
Any party adversely affected by any action of the board may appeal that action in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner resides or does business, within thirty days after the date upon which the petitioner received notice of the final order or decision of the board.

The following are causes for disciplinary action:

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

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

3. Willful departure from or disregard of plans or specifications in any material respect without the consent of the parties to the contract;

4. Willful or deliberate violation of the building laws or regulations of the state or of any political subdivision thereof;

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

6. Willful or deliberate misrepresentation of a material fact by an applicant or licensee in obtaining a license, or in connection with official licensing matters;
(7) Willful or deliberate failure to comply in any material respect with the provisions of this article or the rules of the board;

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

(9) Willfully or deliberately acting with the intent to evade the provisions of this article by: (i) Aiding or abetting an unlicensed person to evade the provisions of this article; (ii) combining or conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be used by an unlicensed person; or (iv) attempting to assign, transfer or otherwise dispose of a license or permitting the unauthorized use thereof;

(10) Engaging in any willful, fraudulent or deceitful act in the capacity as a contractor whereby substantial injury is sustained by another;

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

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

(13) Failing to execute written contracts prior to performing contracting work, in accordance with section ten of this article; or

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

(i) On or before the first day of January, two thousand one, the board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under this chapter.

CHAPTER 190

(H. B. 4314 — By Delegates Swartzmiller and DeLong)

[Passed February 28, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing reserve officers to carry weapons other than firearms; requiring certification of completion of training; and providing for rule making to establish training requirements.

Be it enacted by the Legislature of West Virginia:

That section one-a, article three, chapter 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. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

§6-3-1a. Deputy sheriff’s reserve; purpose; appointment and qualifications of members; duties; attire; training; oath; bond; not employee of sheriff or county commission for certain purposes; limitation on liability.

(a) The sheriff of any county may, for the purposes hereinafter set forth, designate and appoint a deputy sheriffs’ reserve, hereinafter referred to as “reserve” or “reserves.” A reserve may not be designated or created without the prior approval of the county commission for the establishment of the reserve.

(b) Each sheriff may appoint as members of the reserve bona fide citizens of the county who are of good moral character and who have not been convicted of a felony or other crime involving moral turpitude. Any person so appointed shall serve at the will and pleasure of the sheriff and is not subject to the provisions of article fourteen, chapter seven of this code. A member of the reserve may not engage in any political activity or campaign involving the office of sheriff or from which activity or campaign the sheriff or candidates therefor appointing the member would directly benefit.

(c) Members of the reserves shall not serve as law-enforcement officers, nor carry firearms, but may carry other weapons, provided that the sheriff certifies in writing to the county commission that the reserve has met the special training requirements for the weapon as established by the governor’s committee on crime, delinquency and corrections. The governor’s committee on crime, delinquency and corrections is authorized to promulgate legislative rules and emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to establish appropriate training.
standards. The reserves may be provided with radio communication equipment for the purpose of maintaining contact with the sheriff’s department or other law-enforcement agencies. The duties of the reserves shall be limited to crowd control or traffic control and direction within the county. In addition, the reserves may perform such other duties of a nonlaw-enforcement nature as are designated by the sheriff or by a deputy sheriff designated and appointed by the sheriff for that purpose: Provided, That a member of the reserves may not aid or assist any law-enforcement officer in enforcing the statutes and laws of this state in any labor trouble or dispute between employer and employee.

(d) Members of the reserves may be uniformed; however, if so uniformed, the uniforms shall clearly differentiate these members from other law-enforcement deputy sheriffs.

(e) After appointment to the reserves but prior to service each member of the reserves shall receive appropriate training and instruction in their functions and authority as well as the limitations of authority. In addition, each member of the reserves shall annually receive in-service training.

(f) Each member of the reserve shall take the same oath as prescribed by section five, article IV of the constitution of the state of West Virginia, but the taking of the oath does not serve to make the member a public officer.

(g) The county commission of each county shall provide for the bonding and liability insurance of each member of the reserve.

(h) A member of the reserve is not an employee of either the sheriff or of the county commission for any purpose or purposes, including, but not limited to, the purposes of workers’ compensation, civil service, unemployment compensation, public employees retirement, public employees insurance or for any other purpose. A member of the reserves may
not receive any compensation or pay for any services per-
formed as a member nor may a member use the designated
uniform for any other similar work performed.

(i) Neither the county commission nor the sheriff is liable
for any of the acts of any member of the reserves except in
the case of gross negligence on the part of the county com-
mission or sheriff in the appointment of the member or in the
case of gross negligence on the part of either the sheriff or
any of his or her deputies in directing any action on the part
of the member.

CHAPTER 191

(Com. Sub. for H. B. 2808 — By Delegates Stemple, Mezzatesta, Wil-
liams, Warner, Fletcher, Butcher and Martin)

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

AN ACT to amend and reenact section twenty-four, article four-
teen-d, chapter seven of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to providing
that certain sheriffs with prior service as deputy sheriff and
sheriff may participate in the deputy sheriffs’ retirement sys-
tem.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-24. Service as sheriff.
(a) Any active member who after the effective date of this article is elected sheriff of a county in West Virginia may elect to continue as a member in this plan by paying the amounts required by section seven of this article. Upon the election, service as a sheriff shall be treated as covered employment and the sheriff is not entitled to any credit for that service under any other retirement system of the state.

(b) Any member retired as a deputy sheriff under this plan who, after the effective date of this article, is elected or appointed sheriff of a county in West Virginia, may elect to suspend the payment of his or her annuity from this system and again become a contributing member of this plan by paying the amounts required by section seven of this article. Upon such election, service as a sheriff shall be treated as covered employment, and the sheriff is not entitled to any credit for that period of elected service under any other retirement system of the state. At the end of his or her term as sheriff, the member making such election shall have his or her annuity recalculated, and shall be granted an adjustment to his or her previous annuity to include the period of elected service.

(c) Any person, who before the effective date of this article was elected sheriff of a county in West Virginia, and who, immediately prior to being so elected sheriff, was a deputy sheriff with at least twenty years of credited service under the public employees retirement system, with at least sixteen of those twenty years having been earned as a deputy sheriff, may elect to become a member of this plan by paying the amounts required by section seven of this article. Upon such election, service shall be transferred from the public employees retirement system pursuant to section eight of this article: Provided, That any service as a sheriff shall be treated as covered employment under this article and the sheriff is not entitled to any credit for that service as a sheriff or the prior service as a deputy sheriff under any other retirement system of the state. Persons making the election provided for
in this subsection shall do so within ten days of taking office
as sheriff or within ten days of the effective date of this pro-
vision.

(d) Any person who, before the effective date of this
article, was elected sheriff of a county of West Virginia, and
who, prior to being elected sheriff, was a deputy sheriff and
also a previously elected sheriff, with credited service under
the public employees retirement system, with at least sixteen
of those years having been earned as combined service as a
deputy sheriff and a previously elected sheriff, may elect to
become a member of this plan by paying the amounts re-
quired by section seven of the article. Upon such election,
service shall be transferred from the public employees retire-
ment system pursuant to section eight of this article: Pro-
vided, That a person's service as a sheriff shall be treated as
covered employment under this article, and that person is not
entitled to any credit for that service as a sheriff or deputy
sheriff under any other retirement system of this state. A
person making the election provided in this subsection shall
do so within thirty days of taking office as a sheriff or within
thirty days of the effective date of this provision.

CHAPTER 192

(Com. Sub. for H. B. 4268 — By Delegates C. White, Yeager, Caputo,
Hrutkay and Marshall)

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

AN ACT to amend and reenact section five, article twenty-nine,
chapter thirty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to law-enforcement
training and certification; permitting the certification in another
program of applicants who have completed minimum training requirements in the program to which he or she originally applied; permitting the conditional re-employment of certain persons as law-enforcement officers; and providing a one year period during which a person who was previously conditionally employed as a law-enforcement officer, but who failed to submit a timely application to an approved law-enforcement training academy, may submit an application to an approved law-enforcement training academy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-5. Certification requirements.

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

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

(c) Any person who is employed as a law-enforcement officer on the effective date of this article and is a graduate of the West Virginia basic police training course, the West Virginia state police cadet training program, or other approved law-enforcement training academy, is certifiable as having
met the minimum entry level law-enforcement training pro-
gram requirements and is exempt from the requirement of
attending a law-enforcement training academy. To receive
certification, the person shall make written application within
ninety calendar days of the effective date of this article to the
governor's committee requesting certification. The gover-
nor's committee shall review the applicant's relevant scho-
lastic records and, upon determining that the applicant has
met the requirements for certification, shall forward to the
applicant documentation of certification.

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

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

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

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

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

(i) Any person aggrieved by a decision of the governor's committee made pursuant to this article may contest such decision in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(j) Any person terminated from employment for not filing an application to the law-enforcement training academy within ninety days after commencing employment as a law-enforcement officer may appeal the termination to the governor's committee for reconsideration on an individual basis.

(k) Beginning the first day of July, two thousand two, until the thirtieth day of June, two thousand three, any appli-
cant who has been conditionally employed as a law-enforce-
ment officer who failed to submit a timely application pursu-
ant to the provisions of this section, may be conditionally
employed as a law-enforcement officer and may resubmit an
application pursuant to subsection (b) of this section to an
approved law-enforcement training academy. If the applicant
is accepted, the employer shall pay compensation to the em-
ployee for attendance at the law-enforcement training acad-
emy at the rate provided in section eight of this article.

CHAPTER 193

(Com. Sub. for H. B. 4119 — By Delegates C. White, Givens, Pino,
Stemple, Perry, Shelton and Hrutkay)

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

AN ACT to amend and reenact section six, article twenty-nine,
chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to in-service law-en-
forcement training requirements for certain law-enforcement officers who are members of the armed forces, national guard, or reserve of any such group.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.
§30-29-6. Review of certification.

Certification of each West Virginia law-enforcement officer shall be reviewed annually following the first certification and until such time as the officer may achieve exempt rank. Certification may be revoked or not renewed if any law-enforcement officer fails to attend annually an in-service approved law-enforcement training program, or if a law-enforcement officer achieving exempt rank fails to attend biennially an approved in-service supervisory level training program. When a law-enforcement officer is a member of the United States air force, army, coast guard, marines or navy, or a member of the national guard or reserve military forces of any such armed forces, and has been called to active duty, resulting in separation from a law-enforcement agency for more than twelve months but less than twenty-four months, he or she shall attend and complete the mandated in-service training for the period and rank and qualify with his or her firearm within ninety days from his or her reappointment as a law-enforcement officer by a law-enforcement agency.

CHAPTER 194

(H. B. 4289 — By Delegates Amores, Manuel, Marshall, Webster, Staton, Smirl and Webb)

[Passed February 25, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-nine, chapter thirty 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 prohibiting racial profiling by law-enforcement officers and agencies.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-10. Prohibition of racial profiling.

(a) The Legislature finds that the use by a law-enforcement officer of race, ethnicity, or national origin in deciding which persons should be subject to traffic stops, stops and frisks, questioning, searches, and seizures is a problematic law-enforcement tactic. The reality or public perception of racial profiling alienates people from police, hinders community policing efforts, and causes law-enforcement officers and law-enforcement agencies to lose credibility and trust among the people law-enforcement is sworn to protect and serve. Therefore, the West Virginia Legislature declares that racial profiling is contrary to public policy and should not be used as a law-enforcement investigative tactic.

(b) For purposes of this section:

(1) The term "law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof.

(2) The term "municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state.

(3) The term "racial profiling" means the practice of a law-enforcement officer relying, to any degree, on race, eth-
nicity, or national origin in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law-enforcement activity following the initial routine investigatory activity. Racial profiling does not include reliance on race, ethnicity, or national origin in combination with other identifying factors when the law-enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect.

(4) The term "state and local law-enforcement agencies" means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof.

(c) No law-enforcement officer shall engage in racial profiling.

(d) All state and local law-enforcement agencies shall establish and maintain policies and procedures designed to prevent racial profiling. Policies and procedures shall include the following:

(1) A prohibition on racial profiling;

(2) Independent procedures for receiving, investigating, and responding to complaints alleging racial profiling by law-enforcement officers;

(3) Procedures to discipline law-enforcement officers who engage in racial profiling; and

(4) Any other policies and procedures deemed necessary by state and local law-enforcement agencies to eliminate racial profiling.
CHAPTER 195

(Com. Sub. for S. B. 554 — By Senators Sharpe, Minard, Ross, Wooton, Anderson, Oliverio, Burnette, Sprouse, Minear, Kessler, Fanning, Snyder, Caldwell, Mitchell, Helmick, Edgell, Unger, McCabe, Plymale, Craigo, Prezioso, Bowman, Jackson, Bailey, Hunter, Rowe, Love, McKenzie, Tomblin, Mr. President, and Chafin)

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

AN ACT to amend and reenact section twenty-three, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three and four, article three, chapter fifty-nine of said code, all relating to legal advertising; increasing legal advertising rates; modifying requirements for publication, typesetting and circulation; and permitting qualified newspapers to charge usual and customary rates for notarizing and producing additional copies of affidavits and statements.

Be it enacted by the Legislature of West Virginia:

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

Chapter
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 8. MUNICIPAL CORPORATIONS.
ARTICLE 13. TAXATION AND FINANCE.

§8-13-23. Preparation, publication and disposition of financial statements.

(a) Every city, within ninety days 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 sworn statement revealing: (1) The receipts and expenditures of the city during the previous fiscal year; (2) the name of each person who received more than fifty dollars during the previous fiscal year, together with the amount received; and (3) all debts of the city, the purpose for which each debt was contracted, its due date and to what date the interest on the debt has been paid. The statement shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the city: Provided, That all salaries, receipts, payments to each individual vendor and expenditures to employees of municipal offices, companies and departments may be published in the aggregate.

(b) Every city shall transmit to any resident of the city who requests it a copy of any published statement for the fiscal year designated, supplemented by a document listing the names of each person who received less than fifty dollars from any fund during the fiscal year and showing the amount paid to each and the purpose for which paid and an itemization of the salaries, receipts, payments to each individual vendor and expenditures to employees of municipal offices, companies and departments otherwise published in the aggregate.

(c) Every town or village, within one hundred twenty days after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner a sworn statement revealing: (1) The receipts and expenditures
of the town or village during the previous fiscal year arranged under descriptive headings; (2) the name of each person who received money 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 town or village, the purpose for which each debt was contracted, its due date and to what date the interest on the debt has been paid: Provided, That all salaries, receipts, payments to each individual vendor and expenditures to employees of municipal offices, companies and departments may be published in the aggregate.

(d) Every town or village shall transmit to any resident of the town or village who requests it, a copy of any statement for the fiscal year designated. Any town or village may, if its governing body thereof elects, also publish the statement as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and in that event, the publication area for the publication shall be the town or village.

(e) The statement required by subsection (a) of this section and the statement required by subsection (c) of this section shall be sworn to by the recorder, the mayor and two members of the governing body of the municipality. As soon as practicable following the close of the fiscal year, a copy of any statement required by this section shall be filed by the municipality with the state tax commissioner, the clerk of the county commission of the county and the clerk of the circuit court of the circuit in which the municipality or the major portion of the territory of the municipality is located. If the governing body fails or refuses to perform any of the duties set forth in this section, every member of the governing body and the recorder of the governing body concurring in the failure or refusal shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten nor more
than one hundred dollars. If any of the provisions of this section are violated, it is the duty of the prosecuting attorney of the county in which the municipality or the major portion of the territory of the municipality is located to immediately present the evidence of the violation to the grand jury if in session, and if not in session he or she shall cause the violations to be investigated by the next succeeding grand jury.

(f) Where in subsections (a), (b) and (c) of this section, salaries, receipts, payments to each individual vendor and expenditures are published in the aggregate, the city, town or village shall, upon written request, provide to any resident of the city, town or village an itemized accounting of the salaries, receipts, payments to each individual vendor and expenditures.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.

§59-3-1. Definitions and general provisions.

1 As used in this article, elsewhere in this code or in any other provision of law:

2 (1) “Legal advertisement” means any notice, advertisement, statement, information or other matter required by law or court to be published.

3 (2) “Publication area” means the area or areas for which a legal advertisement is required by law or court to be made.
(3) "Once a week for two successive weeks" means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication.

(4) "Once a week for three successive weeks" means three publications of a legal advertisement in a qualified newspaper occurring within a period of twenty-one consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication and with at least an interval of six full days within the period between the date of the second publication and the date of the third publication.

(5) "Publication date" means the date on which a qualified newspaper is first placed in circulation.

(6) "General circulation" means not only a newspaper meeting the other qualifications specified in subsection (b) of this section and circulated among and of interest to the general public in the area in which it circulates, but also a newspaper meeting said other qualifications, the actual circulation of which throughout the publication area is large enough to give basis for a reasonable belief that publication of a legal advertisement in the newspaper will give effective notice to the residents of the publication area.

(b) Wherever the term "qualified newspaper" or "qualified newspapers" is used in this article, or the term "newspaper" or "newspapers" is used elsewhere in this code or in any other provision of law in connection with a legal advertisement as herein defined in this section, the terms shall be taken to mean only a newspaper or newspapers, as the case may be, published (unless otherwise expressly provided) in
the state of West Virginia and which meet the following qualifications:

(1) Any newspaper shall be of regular issue and must have a bona fide, general circulation in the publication area. A newspaper is considered to be of regular issue if it is published regularly, as frequently as once a week, for at least fifty weeks during the calendar year as prescribed by its mailing permit; and has been published for at least one year immediately preceding the date on which the legal advertisement is delivered to the newspaper for publication. A newspaper is considered to be of bona fide, general circulation in the publication area if it meets the definition of "general circulation" as defined in this section and is circulated to the general public at a definite price or consideration.

(2) Any newspaper shall bear a title or name, consist of not less than four pages without a cover, and be a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

(c) Notwithstanding any other provision of this code or law to the contrary, a qualified newspaper shall for all purposes be considered to be published where it is first placed in circulation.

§59-3-2. Classification of legal advertisements; designation of newspapers; frequency of publication; posting; manner of publishing.

(a) A Class I legal advertisement shall be published one time, a Class II legal advertisement shall be published once a week for two successive weeks and a Class III legal advertisement shall be published once a week for three successive weeks in a qualified newspaper published in the publication
area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in a qualified newspaper published outside the publication area; or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door of the county courthouse, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(b) A Class I-0 legal advertisement shall be published one time, a Class II-0 legal advertisement shall be published once a week for two successive weeks, and a Class III-0 legal advertisement shall be published once a week for three successive weeks, in two qualified newspapers of opposite politics published in the publication area; or if two qualified newspapers of opposite politics are not published in the publication area or if two qualified newspapers of opposite politics published in the publication area will not publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in one qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in one qualified newspaper published outside the publication area; or if no qualified newspaper is published...
outside the publication area or if no qualified newspaper
published outside the publication area will publish the legal
advertisement at the rates specified in section three of this
article, the legal advertisement shall be posted in at least
three public places in the publication area, one of which post-
ings shall be in the county courthouse, at or near the front
door thereof, if a county courthouse is located in the publica-
tion area and one of which postings shall be in the municipal
office building or municipal office or offices, at or near the
front door thereof, if the publication area is a municipality.

(c) A legal advertisement may be published in a qualified
newspaper published on any day of the week except Sunday.

(d) All legal advertisements shall be published together
in continuous columns on one page of the newspaper publish-
ing them under a general heading styled “Legal Advertise-
ments”, unless the number or size of the legal advertisements
requires the use of more than one page, in which event the
legal advertisements shall be published as near as practicable
in continuous columns on as many pages as necessary under
the same heading as above required.

§59-3-3. Rates for legal advertisements; computation; filing
affidavits with secretary of state.

(a) The rates which a publisher or proprietor of a quali-
fied newspaper in West Virginia may charge and receive for
a single or first publication of any legal advertisement set
solid depends on the bona fide circulation of the newspaper,
as follows:

(1) Four cents per word if the qualified newspaper has a
bona fide circulation of less than one thousand, except as
provided in subdivision (1), subsection (a) of this section;
(2) Eight and one-half cents per word if the qualified newspaper has a bona fide circulation of one thousand to five thousand;

(3) Nine cents per word if the qualified newspaper has a bona fide circulation of more than five thousand but less than ten thousand;

(4) Ten cents per word if the qualified newspaper has a bona fide circulation of more than ten thousand and less than thirty thousand; or

(5) Eleven cents per word if the qualified newspaper has a bona fide circulation of thirty thousand or more: Provided, That on the first day of July in the year two thousand three and on the first day of July in the year two thousand four and on the first day of July in the year two thousand five the allowable rate per word in each of the classifications of qualified newspapers with reference to circulation as set forth in this subsection shall, for each classification, increase one cent per word over the prior year's rate.

(b) In computing the number of words in a legal advertisement, not set solid, the basis is the size of type in which legal advertising is set by the qualified newspaper making the publication and shall be computed at the legal rate as though the matter were solid type, that is to say, on the basis of eighty-four words to the single column inch in six point type and fifty-four words to the single column inch in eight point type and any other size type in proportion.

(c) In determining the cost of a legal advertisement which is to appear more than once in the same qualified newspaper, the cost for the first publication shall be computed as specified in subsections (a) and (b) of this section and the cost of the second and each subsequent publication shall be seventy-five percent of the cost of the first publica-
(d) The average bona fide circulation stated by each qualified newspaper in the statement filed by the newspaper with the United States post office department in October of each year shall control the rate of circulation classification of the qualified newspaper for the period commencing the first day of July of each year until the last day of June of the following year. On or before the first day of November of each year, the publisher or proprietor of each newspaper desiring to publish any legal advertisement during the ensuing one year time period commencing the first day of July shall file with the secretary of state an affidavit stating the average bona fide circulation of the newspaper during the preceding twelve month time period ending the thirtieth day of September of each year and shall set forth sufficient facts in the affidavit to show whether the newspaper is a qualified newspaper. The average bona fide circulation stated in the affidavit by each qualified newspaper shall control the rate circulation classification for the ensuing twelve-month period commencing the first day of July. Any qualified newspaper for which the required affidavit is not filed on or before the first day of March of any calendar year shall be conclusively presumed to have for the ensuing twelve-month period commencing the first day of July of such year a bona fide circulation of less than one thousand. At the time a publisher or proprietor of a qualified newspaper files an affidavit with the secretary of state, as required by this subsection, the publisher or proprietor shall notify the clerk of the county commission and the board of education of the county in which the qualified newspaper is published of the circulation classification of the qualified newspaper and of the applicable rate for publishing legal advertisements in the qualified newspaper during the ensuing twelve-month period commencing the first day of July. If the qualified newspaper is published in a municipal-
ity, the publisher or proprietor shall at the same time also
furnish the same notification to the clerk or recorder of the
municipality.

(e) The rate charged for political advertising appearing in
a newspaper at any time or times during the time period com-
mencing thirty days prior to any primary or general election
and ending the day following the election may not exceed
one hundred five percent of the lowest commercial rate
charged by the newspaper in which the political advertising
appears.

(f) Nothing contained in this section prohibits qualified
newspapers from charging less than the specified rates for
any legal advertisement or from charging usual and custom-
ary rates for notarizing and producing additional copies of the
affidavits and statements required in section four of this arti-

§59-3-4. Proof of publication and posting.

(a) Any qualified newspaper publishing a legal advertise-
ment incident to any type of judicial proceeding or any provi-
sion in a deed of trust or contract, or incident to any other
case if required by the responsible party placing the legal
advertisement for publication, shall make and furnish under
oath an affidavit of publication of each legal advertisement
published, showing the number of times it was published in
the qualified newspaper, the dates of the publications and the
cost of the publications. When posting of any legal advertise-
ment is required in addition to publication of the legal adver-
tisement in a qualified newspaper, the posting shall be done
by the party responsible for causing the legal advertisement
to be published. In any case where any legal advertisement is
not required to be published in a qualified newspaper but is
required to be posted, an affidavit of the type provided for in
this section with respect to posting shall be made by the party
who would have been responsible for causing the legal adver-
tisement to be published in a qualified newspaper had it been
required.

(b) The affidavit of the publisher or proprietor of a quali-
fied newspaper required by this section, together with a copy
of the legal advertisement as published, constitutes prima
facie evidence that the legal advertisement was published or
published and posted as stated in the affidavit.

CHAPTER 196

(Com. Sub. for H. B. 4010 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed February 1, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter eleven of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section one-a; and to
amend article two, chapter thirty-one-a of said code by adding
thereto a new section, designated section four-b, all relating
generally to powers of the commissioner of banking and of the
tax commissioner; and providing that each commissioner has
discretion to employ staff attorneys, retain outside counsel or
request attorney general to provide representation in any judi-
cial or administrative proceeding or furnish any other legal
services.

Be it enacted by the Legislature of West Virginia:
That article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a; and that article two, chapter thirty-one-a of said code be amended by adding thereto a new section, designated section four-b, all to read as follows:

Chapter 11. Taxation.
31A. Banks and Banking.

CHAPTER 11. TAXATION.

ARTICLE 1. SUPERVISION.

§11-1-1a. Provision of legal services.

(a) The tax commissioner has plenary power and authority to acquire those legal services the commissioner deems necessary to carry out the functions and duties of the state tax division or the office of tax commissioner, including, but not limited to, representation of the tax division or the commissioner in any administrative or judicial proceeding.

(b) The commissioner may acquire legal services from attorneys licensed to practice law who are employed by the commissioner on a salary basis or retained by the commissioner on a reasonable fee basis.

(c) The commissioner may also request the assistance of the attorney general and be represented in an administrative or judicial proceeding by a deputy or assistant attorney general acceptable to the commissioner.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DIVISION OF BANKING.
§31A-2-4b. Provision of legal services.

(a) The commissioner of banking has plenary power and authority to acquire those legal services the commissioner deems necessary to carry out the functions and duties of the division of banking or the office of commissioner of banking, including, but not limited to, representation of the division or the commissioner in any administrative or judicial proceeding.

(b) The commissioner may acquire legal services from attorneys licensed to practice law who are employed by the commissioner on a salary basis or retained by the commissioner on a reasonable fee basis.

(c) The commissioner may also request the assistance of the attorney general and be represented in an administrative or judicial proceeding by a deputy or assistant attorney general acceptable to the commissioner.

CHAPTER 197

(Com. Sub. for H. B. 4172 — By Delegates Mahan, Wills, Cann, Kominar, Faircloth and Riggs)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]
ing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain legislative rules with amendments; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing department of administration to promulgate legislative rule relating to state purchasing card program; disapproving department of administration to promulgate legislative rule relating to parking; authorizing consolidated public retirement board to promulgate legislative rule relating to benefit determination and appeal; authorizing records management and preservation board to promulgate legislative rule relating to county records management and preservation grant program; authorizing consolidated public retirement board to promulgate legislative rule service credit for accrued and unused sick and annual leave; and authorizing board of risk and insurance management to promulgate legislative rule relating to mine subsidence insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.
Under the provisions of article three, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven, inclusive, of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. Legislative rules promulgated pursuant to the provisions of articles one through eleven, inclusive, of this chapter in effect at the effective date of this section shall continue in full force and effect until reauthorized in this chapter by legislative enactment or until amended by emergency rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.

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

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


§64-2-4. Board of risk and insurance management.

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

(a) The legislative rule filed in the state register on the first day of November, two thousand one, under the authority of section ten-a, article three, chapter twelve of this code, relating to the department of administration and the auditor (state purchasing card program, 148 CSR 7), is authorized with the following amendment:

On page two, section 2.17.c., line three, after the words ‘individuals where the’ by striking out the words ‘dues or’;

(b) The legislative rule filed in the state register on the thirteenth day of August, two thousand one, authorized under the authority of section five, article four, chapter five-a, of this code, modified by the department of administration to meet the objections of the legislative rule-making review
committee and refiled in the state register on the tenth day of January, two thousand two, relating to the department of administration (parking, 148 CSR 6), is disapproved.


(a) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the consolidated public retirement board (consolidated public retirement board benefit determination and appeal, 162 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of December, two thousand, relating to the consolidated public retirement board (service credit for accrued and unused sick and annual leave, 162 CSR 8), is authorized with the amendments set forth below:

On page one, section 1.1, by adding a new sentence at the end of the subdivision to read as follows: "Employees of the judicial and legislative branches of government are exempt from this rule."

On page one, section 4.1, line twenty-six, following the word "shall" by striking out the words "be deferential to" and inserting in lieu thereof the word "accept"; and

On page two, section 4.1, line three, following the word "policy" by striking out the words "shall have been formally adopted in writing by the employer" and inserting in lieu thereof the words "must be a written standard that is an accepted standard by the employer".

The legislative rule filed in the state register on the twenty-sixth day of July, two thousand one, under the authority of section fifteen, article eight, chapter five-a, of this code, modified by the records management and preservation board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, two thousand two, relating to the records management and preservation board (county records management and preservation grant program, 100 CSR 1), is authorized.

§64-2-4. Board of risk and insurance management.

The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section fifteen, article thirty, chapter thirty-three, of this code, modified by the board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, two thousand two, relating to the board of risk and insurance management (mine subsidence insurance, 115 CSR 1), is authorized.

CHAPTER 198

(Com. Sub. for H. B. 4163 — By Delegates Mahan, Wills, Cann, Kominar, Faircloth and Riggs)

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]
tion of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing department of environmental protection to promulgate legislative rule relating to ambient air quality standards for sulfur oxides and particulate matter; authorizing department of environmental protection to promulgate legislative rule relating to ambient air quality standards for carbon monoxide and ozone; authorizing department of environmental protection to promulgate legislative rule relating to emission standards for hazardous air pollutants; authorizing department of environmental protection to promulgate legislative rule relating to standard of performance for new stationary sources; authorizing department of environmental protection to promulgate legislative rule relating to prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing department of environmental protection to promulgate legislative rule relating to acid rain provisions and permits; authorizing department of environmental protection to promulgate legislative rule relating to nitrogen oxide budget trading program as means of control and reduction of nitrogen oxides; authorizing department of environmental protection to promulgate legislative rule relating to prevention and control of emissions from commercial and industrial solid waste incineration units; authorizing department of envi-
ronmental protection to promulgate legislative rule relating to nitrogen oxide budget trading program as means of control and reduction of nitrogen oxides from electric generating units; authorizing department of environmental protection to promulgate legislative rule relating to emission standards for hazardous air pollutants for source categories; authorizing department of environmental protection to promulgate legislative rule relating to awarding West Virginia stream partners program grants; authorizing department of environmental protection to promulgate legislative rule relating to voluntary remediation and redevelopment; authorizing department of environmental protection to promulgate legislative rule relating to surface mining and reclamation; authorizing department of environmental protection to promulgate legislative rule relating to coal-related dam safety; authorizing department of environmental protection to promulgate legislative rule relating to hazardous waste management; authorizing department of environmental protection to promulgate legislative rule relating to administrative proceedings and civil penalty assessment; authorizing department of environmental protection to promulgate legislative rule relating to state certification of activities requiring federal licenses and permits; authorizing department of environmental protection to promulgate legislative rule relating to underground injection control; authorizing department of environmental protection to promulgate legislative rule relating to groundwater protection standards at Dominion "Generation" steam electric generation facility at Mount Storm, West Virginia; authorizing department of environmental protection to promulgate legislative rule relating to WVNPDES rules for coal mining facilities; authorizing environmental quality board to promulgate legislative rule relating to requirements governing water quality standards; authorizing environmental quality board to promulgate legislative rule relating to requirements governing groundwater standards; and authorizing solid waste management board to promulgate legislative rule relating to disbursement of grants to solid waste authorities.
Be it enacted by the Legislature of West Virginia:

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

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

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

§64-3-2. Environmental quality board.

§64-3-3. Solid waste management board.

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

(a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (ambient air quality standards for sulfur oxides and particulate matter, 45 CSR 8), is authorized.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (ambient air quality standards for carbon monoxide and ozone, 45 CSR 9), is authorized.

(c) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (emission standards for hazardous air pollutants pursuant to 40 CFR Part 61, 45 CSR 15), is authorized.
(d) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (standards of performance for new stationary sources pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

(e) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(f) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (acid rain provisions and permits, 45 CSR 33), is authorized.

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

(h) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized
under the authority of section four, article five, chapter
twenty-two of this code, modified by the department of envi-
ronmental protection to meet the objections of the legislative
rule-making review committee and refiled in the state register
on the twenty-sixth day of December, two thousand one,
relating to the department of environmental protection (to
prevent and control emissions from commercial and indus-
trial solid waste incineration units, 45 CSR 18), is authorized.

(i) The legislative rule filed in the state register on the
twenty-seventh day of July, two thousand one, authorized
under the authority of section four, article five, chapter
twenty-two of this code, modified by the department of envi-
ronmental protection to meet the objections of the legislative
rule-making review committee and refiled in the state register
on the twenty-eighth day of November, two thousand one,
relating to the department of environmental protection (NOx
budget trading program as a means of control and reduction
of nitrogen oxides from electric generating units, 45 CSR
26), is authorized with the following amendments:

On page sixteen, subsection 40.1, by striking out the
words "37,125 tons" and inserting in lieu thereof the words
"the number of NOx tons apportioned to electric generating
units in the State of West Virginia as set forth in paragraph
(g)(2)(ii) of 40 CFR §51.121, as amended from time to
time, ";

On page eighteen, subsection 42.2, in the first sentence,
after the words "a total number of NOx allowances equal to,"
by striking out the remainder of the sentence and by inserting
in lieu thereof the words "95 percent of the portion of the
state NOx trading program budget under section 40, covering
such units.";
On page eighteen, subdivision 42.2.b, by striking out subdivision 42.2.b in its entirety and inserting in lieu thereof a new subdivision 42.2.b to read as follows:

"42.2.b. If the initial total number of NOx allowances allocated to all NOx Budget units under subsection 4.1. for an ozone season under subdivision 42.2.a. does not equal 95 percent of the portion of the state NOx trading program budget under section 40, covering such units, the Secretary will adjust the total number of NOx allowances allocated to all such NOx Budget units for the ozone season under subdivision 42.2.a. so that the total number of NOx allowances allocated equals 95 percent of the portion of the state NOx trading program budget under section 40, covering such units. This adjustment will be made by multiplying each unit's allocation by 95 percent of the portion of the state NOx trading program budget under section 40, covering such units; dividing by the total number of NOx allowances allocated under subdivision 42.2.a. for the ozone season; and rounding to the nearest whole number of NOx allowances as appropriate."

On page eighteen, subdivision 42.4.a, by striking out the number "5,833" and inserting in lieu thereof the words "5 percent of the";

And,

On page twenty, subsection 42.6, in the definition of the term "State NOx trading program budget excluding allocation set-aside," by striking out the words "less the allocation set-aside set forth in subdivision 42.4.a" and inserting in lieu thereof the words "multiplied by 95 percent, ".

(j) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article five, chapter
twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of December, two thousand one, relating to the department of environmental protection (emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

(k) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of section four, article thirteen, chapter twenty of this code, relating to the department of environmental protection (awarding of the West Virginia stream partners program grant, 60 CSR 4), is authorized.

(l) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand one, authorized under the authority of section three, article twenty-two, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of November, two thousand one, relating to the department of environmental protection (voluntary remediation and redevelopment, 60 CSR 3), is authorized with the following amendment:

On page forty-six, section 9.2.a. after the words "to the satisfaction of the" by striking out the word "director" and inserting in lieu thereof the word "secretary".

(m) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of sections four and twelve, article three, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the
state register on the sixteenth day of January, two thousand
two, relating to the department of environmental protection
(surface mining and reclamation rule, 38 CSR 2), is autho-
ized with the following amendments:

On page one hundred sixty-nine, at the beginning of the
second paragraph of subdivision 14.15.a. by designating the
second paragraph as 14.15.a.1. and the third paragraph as
14.15.a.2.;

On page one hundred sixty-nine, newly designated para-
graph 14.15.a.2., by striking out the word “Incorporate” and
by inserting in lieu thereof “All permit applications shall
incorporate”;

On page one hundred seventy, paragraph 14.15.b.5. at the
end of the paragraph by adding the following: “Regardless of
the allowable limits contained in this section, any disturbed
area other than those specified in subdivision 14.15.c. of this
rule must complete backfilling and rough grading within 180
days of final mineral removal.”;

On page one hundred seventy, at the end of subparagraph
14.15.b.6.A. by adding the following: “Where operations
contemplated under this section are approved with incidental
contour mining, which may include augering or highwall
mining, the acreage must be calculated in the allowable dis-
turbance authorized in this paragraph. The incidental contour
pit length cannot exceed 3000 feet and backfilling/grading
shall follow mineral removal within 180 days. Regardless of
the allowable limits contained in section fourteen of this rule,
any disturbed area other than those specified in subdivision
14.15.c. of this rule must complete backfilling and rough
grading within 180 days of final mineral removal. Operations
required to comply with AOC+ guidelines or approved spe-
cific post-mining land use requirements must complete back-
filling and rough grading within 270 days of final mineral removal unless a waiver is otherwise granted by the Secretary pursuant to this section.”;

On page one hundred seventy-one, by striking out part 14.15.b.6.B.1. in its entirety and inserting in lieu thereof a new part 14.15.b.6.B.1. to read as follows:

“14.15.b.6.B.1. Pre-stripping or benching operations cannot exceed four hundred (400) acres for any single permit and cannot precede dragline operations more than twenty-four (24) months unless otherwise approved by the Secretary or necessary to satisfy AOC+ requirements, specific post-mining land use requirements or special materials handling facilities requirements. All fill construction must occur during this phase of operation and be conducted in accordance with subdivision 14.15.d. of this rule.”;

On page one hundred seventy-one, at the end of subparagraph 14.15.c.1. by adding the following: “Provided, That with the exception of permanent haulroads, drainage control systems and material handling facilities (including but are not limited to such facilities as preparation plants, fixed coal stockpiles/transfer areas and commercial forestry topsoil areas) the total acreage of all other semi-permanent ancillary facilities cannot exceed ten percent of the total permit acreage.”;

On page one hundred seventy-one, at the end of paragraph 14.15.c.3. by adding the words: “The Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.”;

On page one hundred seventy-one, by striking out subdivision 14.15.d. in its entirety and inserting in lieu thereof a new subdivision 14.15.d. to read as follows:
14.15.d. Excess Spoil Disposal Fills. All fills must be constructed contemporaneously and contiguously with that segment of the operation that contains the material that is designated to be placed in the fill. In addition to all other standards in effect, the following shall apply to excess spoil disposal fills:

On pages one hundred seventy-one and one hundred seventy-two, by striking out the second paragraph of subdivision 14.15.d. in its entirety and inserting in lieu thereof a newly designated paragraph 14.15.d.1. to read as follows:

14.15.d.1. All fills must be planned for continuous material placement until designed capacity is reached and cannot have a period of inactivity that exceeds 180 days unless otherwise approved by the secretary on a permit specific basis to accommodate AOC+, post-mining land use or special material handling situations;

On page one hundred seventy-two, by striking out the third paragraph of subdivision 14.15.d. in its entirety and inserting in lieu thereof a newly designated paragraph 14.15.d.2. to read as follows:

14.15.d.2. The areas where contour mining is proposed within the confines of the fill are not eligible for the exemption contained in 14.15.c.2;

On page one hundred seventy-two, by striking out the fourth paragraph of subdivision 14.15.d. in its entirety and inserting in lieu thereof a newly designated paragraph 14.15.d.3. to read as follows:

14.15.d.3. Operations that propose fills that are designed to use single lift top-down construction shall bond the proposed fill areas based upon the maximum amount per acre specified in WV Code §22-3-12(c)(1).
On page one hundred seventy-two by inserting a newly designated subdivision 14.15.e. to read as follows:

"14.15.e. Applicability. Permit applications pending approval on the first day of January, two thousand three, shall within 120 days of permit approval have a mining and reclamation plan which is consistent with the criteria set forth in this subdivision. Permit applications which are submitted after the first day of January, two thousand three, shall not be issued a permit without a mining and reclamation plan which is consistent with the criteria set forth in this subdivision."

On page one hundred seventy-one and one hundred seventy-two, by inserting a newly designated paragraph 14.15.e.1. to read as follows:

"14.15.e.1. After the first day of January, two thousand three, the mining and reclamation plan for all active mining operations must be consistent with the applicable time criteria set forth in this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary’s approval."

On page one hundred seventy-two, by inserting a newly designated paragraph 14.15.e.2. to read as follows:

"14.15.e.2. After the first day of January, two thousand three, the mining and reclamation plan for mining operations which have approved inactive status or when permits have been issued but the operation has not started must be consistent with the applicable time criteria of this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised
mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary’s approval.”;

On page one hundred seventy-two, by inserting a newly designated paragraph 14.15.e.3. to read as follows:

“14.15.e.3. The Secretary may consider contemporaneous reclamation plans on multiple permitted areas with contiguous areas of disturbance to ensure that contemporaneous reclamation is practiced on a total operational basis. In order to establish a method of orderly transition between operations, plans submitted on multiple permitted areas cannot add allowable disturbed areas in such a manner as to result in increased disturbed areas on a single operation unless a variance is obtained pursuant to subdivision 14.15.g.”;

And by renumbering the remainder of the section;

On page one hundred seventy-two, by striking out current subdivision 14.15.f. in its entirety and by inserting a newly designated subdivision 14.15.g. in lieu thereof to read as follows:

“14.15.g. Variance - Permit Applications. The Secretary may grant approval of a mining and reclamation plan for a permit which seeks a variance to one or more of the standards set forth in this subsection, if on the basis of site specific conditions and sound scientific and/or engineering data, the applicant can demonstrate that compliance with one or more of these standards is not technologically or economically feasible. The Secretary shall make written findings in accordance with the applicable provisions of section 3.32 of this rule when granting or denying a request for variance under this section.”;

And by renumbering the remainder of this section;
On page one hundred seventy-two, newly designated paragraph 14.15.g.2., after the word “infeasible”, by adding a comma and the words “including a discussion and feasibility analysis of alternatives that were considered.”;

On page one hundred seventy-two, newly designated subdivision 14.15.h., after the word “subdivision”, by striking out “14.15.f.” and inserting in lieu thereof “14.15.g.”;

And,

On page one hundred seventy-two, by striking out subdivision 14.15.i. in its entirety and inserting in lieu thereof, a new subdivision 14.15.i. to read as follows:

“14.15.i. Notwithstanding any provision of this rule to the contrary, revision of the mining and reclamation plan contained in a permit is required prior to any change in mining methods which would substantially affect the standards contained in this section.”

(n) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of section four, article fourteen, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, two thousand two, relating to the department of environmental protection (coal related dam safety, 38 CSR 4), is authorized.

(o) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register
(p) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand one, authorized under the authority of section twenty-two, article eleven, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of October, two thousand one, relating to the department of environmental protection (administrative proceedings and civil penalty assessment, 47 CSR 1), is authorized.

(q) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand one, authorized under the authority of section four, article eleven, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, two thousand two, relating to the department of environmental protection (state certification of activities requiring federal licenses and permits, 47 CSR 5A), is authorized with the following amendments:

On page two, subsection 2.12, following the words “stream loss” by striking out the remainder of the sentence;

On page two, at the end of subsection 2.13 following the words “or longer” by inserting a comma and the following: “except for structures defined as temporary structures in this section.”;

On page two, following subsection 2.15 by adding a new subsection, to read as follows:
“2.16 ‘Temporary Structure’ means, for structures permitted under §22-3-1 et seq., any structure which will be removed before or upon final bond release; for structures not permitted under §22-3-1 et seq., temporary structure means any structure which will be removed upon completion of the project.”;

On page three, subsection 4.1, by striking the word “General” and inserting in lieu thereof, the following: “Information contained within environmental processes and reviews such as environmental assessments, environmental impact statements and mining and reclamation plans, may be used to meet part or all of the requirements of this rule.”

And, by renumbering the following subsection;

On page four, by striking out subdivision 4.2.a. in its entirety; and, by renumbering the remainder of the subsection;

On page six, after the newly designated subdivision 4.2.e. by adding a new subdivision 4.2.f. to read as follows:

“4.2.f. This subsection is only applicable to activities that meet the definition of a surface mining operation as defined in WV Code §22-3-3. This information shall accompany the state 401 water quality certification application:

4.2.f.1. A No Practical Alternative Demonstration. A demonstration containing, but not limited to, the following:

4.2.f.1.A. Demonstrate that there is not a practical alternative in the Water of the U.S., including other alternatives that were considered but eliminated.

4.2.f.1.B. That treatment facilities will be located as close as practical to the source(s) with which it is associated.
4.2.f.1.C. Such activity will impact Waters of the U.S. no more than is necessary to accommodate its proper construction and operation.

4.2.f.1.D. Maps, plans, specification and design analyses for the preferred alternative to the project.

4.2.f.2. An Impact Analysis. - A detailed analysis of the potential impacts, the extent applicable, of the proposed project on water quality and quantity, fish and wildlife, aquatic habitat, parks, recreation, in-stream and downstream uses.

4.2.f.3. A Biological Survey of the Stream. - Each applicant will follow established and accepted protocols for collection, analysis, documentation and presentation of biological data from Waters of the U.S., i.e., U.S. Environmental Protection Agency’s ‘Rapid Bioassessment Protocols for Use in Wadeable Streams and Rivers’. Station locations shall be located one (1) above the proposed activity, one (1) at the proposed activity and one (1) downstream of the proposed activity or other station locations necessary to assess the activity’s impact. The Secretary, may at his or her discretion, request from the applicant certain state preferred biologic indices to facility review. The survey requirement may be waived with the Department’s concurrence.

4.2.f.4. A Delineation of the Stream to be Impacted. - The length, width and depth of the stream segment impacted shall be measured. Width and depth measurements shall be made at one hundred (100) foot intervals. The stream delineation shall indicate the ephemeral and intermittent/perennial segments to be impacted. The stream shall be measured from the farthest downstream disturbance, excluding stream crossings associated with haul roads for surface mining operations, upstream to the beginning of an intermittent stream, as defined in 46 CSR 1-2.9 and/or 38 CSR 2-2.71. The applicant
shall provide a table listing the station number with the corresponding acreage including the drainage area from the toe of the pond and the toe of the fill.

4.2.f.4.A. Submit all findings in an appendix to the report including, but not limited to, the following:

4.2.f.4.B. Name of person(s) conducting the stream delineation and his or her qualifications (i.e., DEP representative, company representative, consultant, biologist, etc.).

4.2.f.4.C. Date delineation was conducted.

4.2.f.4.D. Recent weather conditions and those on the day of the delineation.

4.2.f.4.E. A statement verifying the October, 1999 DEP Stream Delineation Memorandum was followed in the determination process.

4.2.f.4.F. Method used for determination (i.e., post-hold or benthic).

4.2.f.4.G. A copy of field notes, photographs and stream delineation map that indicates the results in relation to the proposed activity, if possible.”

“5.1.a.1. The surface mining and NPDES permit numbers, if applicable and available.”

On page nine, after paragraph 6.2.c.4. by adding a new paragraph 6.2.c.5. to read as follows:

“6.2.c.5. An applicant for a proposed project who desires to provide compensatory in-kind mitigation prior to the disturbance of the mitigable resource, will comply with the following criteria:
A. Mitigation ration will be at one (1) unit created to every one (1) unit impacted.

B. Mitigation shall be completed 12 months prior to the impact of the resource.

C. Mitigation plans will meet the review and approval of the Department of Environmental Protection and Division of Natural Resources. Satisfactory completion will be determined by concurrence of DEP and DNR prior to final approval of mitigation obligation."

And,

By renumbering the remaining paragraphs in the subdivision.

(r) The legislative rule filed in the state register on the nineteenth day of July, two thousand one, authorized under the authority of section four, article eleven, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of September, two thousand one, relating to the department of environmental protection (underground injection control, 47 CSR 13), is authorized.

(s) The legislative rule filed in the state register on the nineteenth day of July, two thousand one, authorized under the authority of section five, article twelve, chapter twenty-two of this code, modified by the department of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of September, two thousand one, relating to the department of environmental protection (groundwater protection standards at Dominion “Generation”
steam electric generation facility, Mt. Storm, West Virginia, 47 CSR 57B), is authorized.

(t) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of section one, article eleven, chapter twenty-two of this code, relating to the department of environmental protection (WVNPDES rules for coal mining facilities, 47 CSR 30), is authorized with the following amendments:

On page one, subsection 1.1, after the word “Scope” by striking out the words “These rules establish” and inserting in lieu thereof the words “This rule establishes”;

On page one, subsection 1.9 after the word “his” by inserting the words “or her”;

On page one, the first paragraph in section 2 by striking out the word “shall”;

On page three, by inserting a newly designated subsection 2.15. to read as follows:

“2.15. ‘Director’ means the director of the Division of Water Resources.”; And, by renumbering the remainder of the section;

On page five, in newly designated subsection 2.52. after the word “Code” by striking through “§22-3” and inserting in lieu thereof “§22-3-1 et seq.”;

On page seven, paragraph 3.5.b.1., line six, after the words “granted for” by striking out the word “no”;

On page eight, subdivision 3.5.c. by striking through the last sentence in its entirety and inserting the following: “The
proposed permittee shall demonstrate that he or she has accepted all necessary permit responsibilities.”;

On page eight, subdivision 3.5.e. in the second sentence after the words “inclusion in” by striking out the word “that” and inserting in lieu thereof the word “the”;

On page eleven, subparagraph 4.5.a.6.L., after the words “must be” by inserting the words “notarized and”;

On page thirteen, part 4.5.b.1.A.2., line five after the words “request for” by striking out the word “such”;

On page thirteen, part 4.5.b.1.E.1., at the beginning of line one by striking out the word “He” and inserting in lieu thereof the words “The applicant”;

On page thirteen, subpart 4.5.b.1.E.2., at the beginning of line one by striking out the word “He” and inserting in lieu thereof the words “The applicant”;

On page fifteen, part 4.5.d.1.A.11., after the words “must be” by inserting the words “notarized and”;

On page sixteen, paragraph 4.5.d.3., after the words “required by” by striking out the words “Sections 4.5.a. of these rules” and inserting in lieu thereof the words “Section 4.5.a. of this rule”;

On page sixteen, part 4.5.d.4.A.3., in line three after the word “if” by striking out the word “such” and inserting in lieu thereof the word “the”;
On page seventeen, subparagraph 4.5.f.2.A., line two after the words “to the” by striking out the words “Regional Administrator” and by inserting in lieu thereof the words “Environmental Protection Agency Region III Administrator”;

On page eighteen, paragraph 4.7.a.1., line three after the words “purpose of” by striking out the words “Section 4.7 of these rules” and by inserting in lieu thereof the words “this section”;

On page nineteen, by striking out subsection 4.8 in its entirety.

On page twenty, subdivision 5.1.g., after the words “Environmental Quality Board” by inserting the words “Title 60”;

On page twenty-five, subsection 5.17., line seven after the word “wastewaters” by striking out the word “and”;

On page twenty-five, subdivision 5.18.d., after the words “the expiration of the WV/NPDES permit,” by striking out the word “then”; 

On page twenty-nine, paragraph 6.2.o.5., after the words “Section 6.2.e of” by striking out the words “these rules are” and by inserting in lieu thereof the words “this rule is”;

On page thirty-two, subparagraph 8.2.c.2.C., line one after the word “New” by striking the word “Regulations” and inserting in lieu thereof the word “Rules”;

On page thirty-two, subparagraph 8.2.c.2.C., line two after the word “standards” by striking the word “regulations” and inserting in lieu thereof the word “rules”;
On page thirty-two, subparagraph 8.2.c.2.C., line four after the word "standards" by striking the word "regulations" and inserting in lieu thereof a comma and the word "rules";

On page thirty-two, part 8.2.c.2.C.1., line two after the word "standards" by striking the word "regulations" and inserting in lieu thereof the word "rules";

On page thirty-two, part 8.2.c.2.C.2., line four after the word "promulgated" by striking the word "regulations" and inserting in lieu thereof the words "rules or";

On page thirty-three, part 8.2.c.2.C.2., line five after the words "that portion of the" by striking the word "regulations" and inserting in lieu thereof the word "rules";

On page thirty-four, subdivision 9.1.a., line four after the words "major facilities by the" by striking out the words "Regional Administrator" and by inserting in lieu thereof the words "Environmental Protection Agency Regional III Administrator";

On page thirty-five, subdivision 9.2.a. by striking out the words "Regional Administrator" and by inserting in lieu thereof the words "Environmental Protection Agency Regional III Administrator";

On page thirty-five, paragraph 9.2.a.2. by striking out the words "Regional Administrator" and by inserting in lieu thereof the words "Environmental Protection Agency Regional III Administrator";

On page forty-three, subdivision 15.1.a., line two after the words "in accordance with" by striking out the words "Sections 11, 12, 15, and 19 of Article 11;" and by inserting in lieu thereof "W.Va. Code §§ 22-11-11, 12, 15 and 19";
On page forty-three, subdivision 15.1.b., line three after the words “in accordance with” by striking out the words “Section 22 of Article 11; and” and by inserting in lieu thereof the words “W.Va. Code §22-11-22”; And,

On page forty-three, subdivision 15.1.c., line two after the words “in accordance with” by striking out the words “Section 24 of Article 11” and by inserting in lieu thereof the words “W.Va. Code §22-11-24”.

§64-3-2. Environmental quality board.

(a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article three, chapter twenty-two-b of this code, modified by the environmental quality board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, two thousand two, relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article twelve, chapter twenty-two of this code, modified by the environmental quality board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, two thousand two, relating to the environmental quality board (requirements governing groundwater standards 46 CSR 12), is authorized.

§64-3-3. Solid waste management board.
The legislative rule filed in the state register on the nineteenth day of July, two thousand one, authorized under the authority of section six, article three, chapter twenty-two-c of this code, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of October, two thousand one, relating to the solid waste management board (disbursement of grants to solid waste authorities, 54 CSR 5), is authorized.

CHAPTER 199

(Com. Sub. for H. B. 4205 — By Delegates Mahan, Wills, Cann, Kominar, Faircloth and Riggs)

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

AN ACT to amend and reenact article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and
as amended by the Legislature; authorizing bureau for public health to promulgate legislative rule relating to design standards for swimming pools; authorizing bureau for public health to promulgate legislative rule relating to public water systems; authorizing bureau for public health to promulgate legislative rule relating to public water systems operators; authorizing bureau for public health to promulgate legislative rule relating to reportable diseases, events and conditions; authorizing bureau for public health to promulgate legislative rule relating to recreational water facilities; authorizing bureau for public health to promulgate legislative rule relating to emergency medical services; authorizing bureau for public health to promulgate legislative rule relating to birth score program; and authorizing bureau for public health to promulgate legislative rule relating to Alzheimer/dementia special care units and programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.


(a) The legislative rule authorized under the authority of section four, article one, chapter sixteen, of this code, relating to the bureau for public health (design standards for swimming pools, 64 CSR 25), is hereby repealed.

(b) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, authorized under the authority of section nine-a, article one, chapter sixteen, of this code, modified by the bureau for public health to meet the objections of the legislative rule-making review commit-
The legislative rule filed in the state register on the twenty-sixth day of November, two thousand one, relating to the bureau for public health (public water systems, 64 CSR 3), is authorized.

(c) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the bureau for public health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of November, two thousand one, relating to the bureau for public health (public water systems operators, 64 CSR 4), is authorized.

(d) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section twelve, article three, chapter sixteen, of this code, modified by the bureau for public health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of November, two thousand one, relating to the bureau for public health (reportable diseases, events and conditions, 64 CSR 7), is authorized with the following amendments:

On page seven, paragraph 3.5.b.2. after the words “Autism Spectrum Disorder” by inserting the words “not reported to the Bureau according to the protocol in the West Virginia Reportable Diseases Protocol Manual.”;

And,

On page seven, paragraph 3.5.b.4. after the word “malignant” by striking out the word “brain” and inserting in lieu thereof the words “intracranial and central nervous system”.

(e) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, authorized under the authority of section four, article one, chapter sixteen, of
this code, modified by the bureau for public health to meet
the objections of the legislative rule-making review commit-
tee and refiled in the state register on the twenty-first day of
November, two thousand one, relating to the bureau for pub-
lic health (recreational water facilities, 64 CSR 16), is autho-
rized.

(f) The legislative rule filed in the state register on the
thirty-first day of July, two thousand one, authorized under
the authority of section twenty-three, article four-c, chapter
sixteen, of this code, modified by the bureau for public health
to meet the objections of the legislative rule-making review
committee and refiled in the state register on the eleventh day
of January, two thousand two, relating to the bureau for pub-
lic health (emergency medical services, 64 CSR 48), is autho-
rized.

(g) The legislative rule filed in the state register on the
twenty-first day of July, two thousand one, authorized under the
authority of section four, article twenty-two-b, chapter six-
teen, of this code, modified by the bureau for public health to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the sixteenth
day of August, two thousand one, relating to the bureau for
public health (birth score program, 64 CSR 83), is authorized.

(h) The legislative rule filed in the state register on the
twenty-fourth day of July, two thousand one, authorized under
the authority of section five, article five-r, chapter six-
teen, of this code, modified by the bureau for public health to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-first
day of November, two thousand one, relating to the bureau
for public health (Alzheimer/dementia special care units and
programs, 64 CSR 85), is authorized.
AN ACT to amend and reenact article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the fire commission to promulgate a legislative rule relating to the state fire code; authorizing the division of protective services to promulgate a legislative rule relating to qualification, training and certification requirements for members of the division; authorizing division of protective services to promulgate a legislative rule relating to ranks and duties of officers within membership of division; authorizing the division of protective services to promulgate a legislative rule relating to grievance procedure of the division; and authorizing the state police to promulgate a legislative rule relating to professional standards, investigations, employee rights, early
identification system, psychological assessment and progressive discipline.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Fire commission.
§64-6-2. Division of protective services.
§64-6-3. State police.

§64-6-1. Fire commission.

The legislative rule filed in the state register on the twenty-third day of July, two thousand one, under the authority of section five, article three, chapter twenty-nine of this code, modified by the fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, two thousand one, relating to the fire commission (state fire code, 87 CSR 1), is authorized with the following amendment:

On page one, by striking out section 2.2 in its entirety.

§64-6-2. Division of protective services.

The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section three, article two-d, chapter fifteen of this code, modified by the division of protective services to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, two thousand two, relating to the division of protective services (ranks and duties of officers within the membership of the division, 99 CSR 2), is authorized.

§64-6-3. State police.
The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, under the authority of section twenty-five, article two, chapter fifteen of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, two thousand two, relating to the state police (professional standards, investigations, employee rights, early identification system, psychological assessment and progressive discipline, 81 CSR 10), is authorized.

CHAPTER 201

(Com. Sub. for S. B. 397 — By Senators Ross, Anderson, Minard, Snyder, Boley and Minear)

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

AN ACT to amend and reenact article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and
as amended by the Legislature; authorizing tax commissioner to promulgate legislative rule relating to pollution control facilities; authorizing tax commissioner to promulgate legislative rule relating to payment of taxes by credit card or debit card; authorizing tax commissioner to promulgate legislative rule relating to senior citizen tax credit for property taxes paid; authorizing tax commissioner to promulgate legislative rule relating to tobacco products excise tax; authorizing insurance commissioner to promulgate legislative rule relating to medical malpractice loss experience and loss expense annual reporting requirements; authorizing insurance commissioner to promulgate legislative rule relating to privacy of consumer financial and health information; authorizing insurance commissioner to promulgate legislative rule relating to external review of coverage denials; and authorizing lottery commission to promulgate legislative rule relating to limited video lottery.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Tax commissioner.
§64-7-2. Insurance commissioner.
§64-7-3. Lottery commission.

§64-7-1. Tax commissioner.

(a) The legislative rule filed in the state register on the twenty-third day of July, two thousand one, authorized under the authority of section four, article six-a, chapter eleven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, two thousand one, relating to the tax commissioner (pollution control facilities, 110 CSR 6), is authorized.
(b) The legislative rule filed in the state register on the twenty-third day of July, two thousand one, authorized under the authority of sections five and five-n, article ten, chapter eleven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, two thousand one, relating to the tax commissioner (payment of taxes by credit card or debit card, 110 CSR 10B), is authorized.

(c) The legislative rule filed in the state register on the twenty-third day of July, two thousand one, authorized under the authority of section twenty-one, article twenty-one, chapter eleven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, two thousand one, relating to the tax commissioner (senior citizen tax for property taxes paid, 110 CSR 21B), is authorized with the following amendment:

On page three, section 5.1, line 2, after the word “that” by striking out the word “qualify” and inserting in lieu thereof the words “have qualified”.

(d) The legislative rule filed in the state register on the twenty-third day of July, two thousand one, authorized under the authority of section five, article ten and section one, article seventeen, chapter eleven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of November, two thousand one, relating to the tax commissioner (tobacco products excise tax, 110 CSR 17), is authorized with the following amendments:

On page 11, by adding a new subdivision 4.6.5. to read as follows:

“Every taxpayer that pays excise tax on tobacco products shall be allowed a discount of 4 percent on all tax due.”
On page 12, by striking out all of subdivision 4.7.4. and inserting in lieu thereof a new subdivision 4.7.4. to read as follows:

"Every taxpayer that pays excise tax on tobacco products shall be allowed a discount of 4 percent on all tax due."

§64-7-2. Insurance commissioner.

(a) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, authorized under the authority of section ten, article two and section six-a, article seventy-b, chapter thirty-three of this code, relating to the insurance commissioner (medical malpractice loss experience and loss expense annual reporting requirements, 114 CSR 23), is authorized.

(b) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, authorized under the authority of section ten, article two, section one, article six-f, and section four, article eleven-a, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of December, two thousand one, relating to the insurance commissioner (privacy of consumer financial and health information, 114 CSR 57), is authorized.

(c) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, authorized under the authority of section ten, article two and sections six and nine, article twenty-five-c, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of December, two thousand one, relating to the insurance commissioner (external review of coverage denials, 114 CSR 58), is authorized with the following amendments:
§64-7-3. Lottery commission.

The legislative rule filed in the state register on the twenty-sixth day of July, two thousand one, under the authority of section four hundred two, article twenty-two-b, chapter twenty-nine of this code, modified by the lottery commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, two thousand one, relating to the lottery commission (limited video lottery, 179 CSR 5), is authorized with the following amendments:

On page two, paragraph 2.5.c.2., after the word 'less' by changing the period to a colon and inserting the word 'or' and the following:

'2.5.d. The person was not able to comply with subdivision (a) of subsection 2.5. of this rule due to circumstances beyond the control of the person, and the inability to comply
was not, in the determination of the commission, the result of a willful act or neglect by the person;

2.5.d.1. If the commission determines that the applicant relied on a paid tax preparer, the return will be considered timely filed when filed within six months beyond the limit set forth in subdivision 2.5.a. if the paid preparer submits an affidavit to the commission, on a form acceptable to the commission, stating the applicant’s return was not filed within twelve months of the end of the taxable year due to an error or omission on the part of the paid preparer; or

2.5.d.2. If the commission determines that the applicant’s financial records were destroyed by fire, flood or other natural or man-made disaster, the return will be considered timely filed when filed.';

And,

On page five, by striking out all of §179-5-3 and by re-numbering the subsequent sections.

CHAPTER 202

(Com. Sub. for S. B. 305 — By Senators Ross, Anderson, Minard, Snyder, Boley and Minear)

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

AN ACT to amend and reenact article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legis-
lative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of highways to promulgate a legislative rule relating to transportation of hazardous wastes upon roads and highways; authorizing the division of motor vehicles to promulgate a legislative rule relating to the motor vehicle inspection manual; and authorizing the state rail authority to promulgate a legislative rule relating to the valuation of used rolling stock and equipment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of highways.
§64-8-2. Division of motor vehicles.

§64-8-1. Division of highways.

1 The legislative rule filed in the state register on the eighteenth day of July, two thousand one, under the authority of section seven, article eighteen, chapter twenty-two of this code, relating to the division of highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), is authorized.
§64-8-2. Division of motor vehicles.

The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, authorized under the authority of section four, article sixteen, chapter seventeen-c of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of August, two thousand one, relating to the division of motor vehicles (motor vehicle inspection manual, 91 CSR 12), is authorized.


The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, under the authority of section six, article eighteen, chapter twenty-nine of this code, modified by the state rail authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of October, two thousand one, relating to the state rail authority (valuation of used rolling stock and equipment, 172 CSR 2), is authorized.

CHAPTER 203

(Com. Sub. for H. B. 4219 — By Delegates Mahan, Wills, Cann, Kominar, Faircloth and Riggs)

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

AN ACT to amend and reenact article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one,
as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing development office to promulgate legislative rules relating to workforce development initiative; authorizing economic development authority to promulgate legislative rule relating to general administration of West Virginia capital company act; establishment of application procedures to implement act; authorizing economic development authority to promulgate legislative rule relating to general administration of West Virginia venture capital act; authorizing division of labor to promulgate legislative rule relating to steam boiler inspection; authorizing manufactured housing construction and safety standards board to promulgate legislative rule relating to board; authorizing division of natural resources to promulgate legislative rule relating to commercial whitewater outfitters; authorizing division of natural resources to promulgate legislative rule relating to small arms hunting; authorizing division of natural resources to promulgate legislative rule relating to special boating; authorizing division of natural resources to promulgate legislative rule relating to public use of West Virginia state parks, state forests and state wildlife management areas under division; authorizing division of natural resources to promulgate legislative rule relating to wild boar hunting; authorizing
division of natural resources to promulgate legislative rule relating to general trapping; and authorizing division of natural resources to promulgate legislative rule relating to issuance of hunting, trapping and fishing licenses by telephone and other electronic methods.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. AUTHORIZATION FOR THE BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Development office.

The legislative rule filed in the state register on the tenth day of July, two thousand one, under the authority of section five, article three-d, chapter eighteen-b of this code, relating to the development office (workforce development initiative program), is authorized with the following amendment:

On page four, subdivision 8.1.4 after the word “modernization” by striking out the word “of” and inserting in lieu thereof the word “and”.

§64-10-2. Economic development authority.

(a) The legislative rule filed in the state register on the twenty-fourth day July, two thousand one, under the authority of section five, article one, chapter five-e of this code, modified by the economic development authority to meet the ob-
5 objections of the legislative rule-making review committee and
6 refiled in the state register on the twenty-ninth day of No-
7 vember, two thousand one, relating to the economic develop-
8 ment authority (general administration of the West Virginia
capital company act; establishment of the application proce-
9 dures to implement the act, 117 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the
twenty-fourth day of July, two thousand one, authorized un-
der the authority of section three, article two, chapter five-e
of this code, modified by the economic development author-
ity to meet the objections of the legislative rule-making re-
view committee and refiled in the state register on the
twenty-ninth day of November, two thousand one, relating to
the economic development authority (general administration
of the West Virginia venture capital act, 117 CSR 3), is au-
thorized with the following amendments:

On pages one and two of the rule, Section 2. Definitions,
by inserting four new definitions as designated below and
renumbering the existing definitions in section two accord-
ingly:

“2.8. ‘Federal Program Participant’ means (a) An SBIC;
(b) a New Markets Venture Capital Company; or (c) an En-
tity which is not an ‘SBIC’ or a New Markets Venture Cap-
tal Company but which is designated by the Authority as a
Federal Program Participant due to the Entity’s participation
in a venture capital program administered by the United
States Small Business Administration or other federal
agency”;

“2.17. ‘New Markets Venture Capital Company’ means
an Entity which has been designated by the United States
Small Business Administration as a New Markets Venture
Capital Company pursuant to 13 C.F.R. §108 et seq.”;
2.19. ‘Participation Agreement’ means a written agreement executed by a Fund Manager and the applicable Fund or Governing Entity, as the case may require, setting forth the terms and conditions of the Fund Manager’s service to the Fund or Fund Share. In instances where the Fund or Fund Share purchases an ownership interest in its Fund Manager, ‘participation agreement’ may, as applicable, include the limited partnership agreement, limited liability company operating agreement or other applicable written agreement entered into by the Fund and other owners of the Fund Manager.”; and

2.22. ‘SBIC’ or ‘Small Business Investment Company’ means only an Entity which is licensed by the United States Small Business Administration as a Small Business Investment Company under the Small Business Investment Act of 1958, 15 U.S.C. §661 et seq., as amended.”;

On page 2, section 4.1 by following the words “or Entity” inserting a comma and the following: “including, without limitation, a Federal Program Participant,”

On page 4, section 4.4, in the third sentence, following the words “between the applicant and the” by inserting the words “Fund or”;

On page 11, section 7.1 by following the words “Fund Manager is assigned” by inserting the words “or which it receives”;

On page 11, by striking all of sections 7.1.a., 7.1.b., and 7.1.c.;

On page 11, section 7.2. By following the words “and the applicable” by inserting the words “Fund or”;
On page 11, section 7.3. By following the words “and the applicable” by inserting the words “Fund or”;

On page 11, section 7.4 before the words “Investment Restrictions.” by designating the paragraph number “7.4.1.”;

On page 11, section 7.4.1 by following the words “of the applicable” by inserting the words “Fund or”;

On page 11, following section 7.4.1, inserting a new section 7.4.2. to read as follows:

“Unless the prior written consent of the applicable Fund or Governing Entity is obtained, a Fund Manager may not invest any portion of or contribution from a Fund or Fund Share in any West Virginia Business where there is a direct or indirect economic relationship, in the form of ownership, compensation or otherwise, between the West Virginia Business, including the relatives, affiliates and members of the Managing Body of the West Virginia Business, and an investor in the Fund or Fund Share, including relatives, affiliates and members of the Managing Body of the investor.”

On page 11, following section 7.5, by inserting two new sections, sections 7.6 and 7.7 to read as follows:

“7.6 Purchase of Ownership Interest in a Fund Manager.

7.6.1. Structure.- At the discretion of the Authority or applicable Governing Entity, a Fund or Fund Share may invest its assets by purchasing an ownership interest in a Federal Program Participant or other Entity serving as the Fund Manager. Such purchase of an ownership interest in the Fund Manager may be by original issue from the Fund Manager or purchased on the secondary market from an owner of the Fund Manager.
7.6.2. Pooling of Assets. - The assets of the Fund or Fund Share used to purchase an ownership interest in its Fund Manager may be pooled with that of other private or public investors holding ownership interests in the Fund Manager so that the assets of the Fund or Fund Share contributed to the Fund Manager may become indistinguishable from those of the other owners of the Fund Manager.

7.6.3. Investments. - In situations where the Fund or Fund Share purchases an ownership interest in its Fund Manager, the Fund Manager may invest its assets, including those of the Fund or Fund Share, in businesses located in various states: Provided, That the Fund Manager must invest an amount equal to or exceeding the amount contributed by the Fund or Fund Share, net of reasonable management fees and operational expenses allocable to the Fund under the applicable Participation Agreement, in the form of debt or equity investments in West Virginia Businesses in accordance with this section.

7.6.4. Investment Guidelines. - In the Participation Agreement or other agreement executed by the applicable Fund or Governing Entity and the Fund Manager, the Fund or Governing Entity and the Fund Manager shall contractually agree on the investment guidelines to be followed by the Fund Manager when investing in West Virginia Businesses.

7.7. Where the Fund or Fund Share Does Not Purchase an Ownership Interest In Its Fund Manager. - In situations where the Fund or Fund Share does not purchase an ownership interest in its Fund Manager:

7.7.1. Unless the prior written consent of the Governing Entity is obtained, the Fund Manager shall not obtain ownership of assets of the Fund or the Fund Share. Rather, the Fund Manager, at least fifteen (15) days before the closing of an
investment in a West Virginia Business, shall advise the applicable Governing Entity in writing of the funds to be invested to allow the applicable Governing Entity to make the funds available for investment by the Fund Manager at closing;

7.7.2. Unless the prior written consent of the Governing Entity is obtained, the Fund Manager shall make, and at all times maintain, all investments on the name of the applicable Fund; and

7.7.3. The Fund Manager shall have discretion as to the selection of West Virginia Businesses for investment and the terms upon which such investments are made; however, the applicable Fund or Governing Entity may at all times revoke or restrict such discretion of the Fund Manager and submit investment guidelines to be followed by the Fund Manager.”

On page 12, section 8.2, lines fourteen and fifteen, following the words “Governing Entity and the investor” by striking out the remainder of the sentence, and inserting a period and the following sentence:

“Upon such repurchase of the investor’s ownership interest, the investor shall receive, in the discretion of the applicable Governing Entity, cash and/or a distribution in kind of assets of the Fund or Fund Share which collectively equals the value agreed to by the Governing Entity and the investor.”

And,

On page 12, section 9.2.a., by striking out “2.20” and inserting in lieu thereof “2.25”.

§64-10-3. Division of labor.
The legislative rule filed in the state register on the fourth day of September, two thousand one, authorized under the authority of section seven, article three, chapter twenty-one of this code, modified by the division of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, two thousand one, relating to the division of Labor (steam boiler inspection, 42 CSR 3), is authorized.


The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section four, article nine, chapter twenty-one of this code, modified by the manufactured housing construction and safety standards board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, two thousand one, relating to the manufactured housing construction and safety standards board (West Virginia manufactured housing construction and safety standards board, 42 CSR 19), is authorized.

§64-10-5. Division of natural resources.

(a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section twenty-three-a, article two, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (commercial whitewater outfitters, 58 CSR 12), is authorized with the following amendment:
On page eight, section 4.9.3, following the words “supplement the guide”, by striking out the word “trainee” and inserting in lieu thereof the words “Trip Leader”;

On page eight, following section 4.9.3, by inserting a new section, numbered 4.9.4 and the words “The licensee is responsible for keeping on file the original or a certified copy of the completed whitewater guide Trip Leader information sheet. These records shall be maintained by the licensee for two (2) years following the last date of employment. The licensee shall provide the guide Trip Leader with a certified copy of the guide Trip Leader information sheet and shall forward a copy to the Division of Natural Resources, Law Enforcement Section, Capitol Complex, Building 3, Charleston, West Virginia 25305 upon request.”;

On page thirteen, section 9.12.2, following the words “No duckie expeditions”, by striking out the words “or kayak instruction”;

And,

On page fourteen, by striking the provisions of section 9.12.4.b, in its entirety, and inserting in lieu thereof:

“From the confluence of Manns Creek to Teays Landing there shall be a minimum of one (1) trip guide in each watercraft except on a kayak clinic where the instructor and guests are in kayaks. Kayak clinics may be held by a commercial whitewater outfitter. Daily use is restricted to nine students per day per license and must have a ratio of one (1) trip guide per three (3) students. Kayak clinics are not permitted in this section of the New River on Saturdays between Memorial Day and Labor Day. There shall be a minimum of two (2) trip guides per trip on all other trips. Inflatable kayak expeditions or trips are not permitted in this section of the New River.”
(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (small arms hunting, 58 CSR 14), is authorized.

(c) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section twenty-two, article seven, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (special boating, 58 CSR 26), is authorized.

(d) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section two, article five, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, two thousand one, relating to the division of natural resources (public use of West Virginia state parks, state forests and state wildlife management areas under the division of natural resources, 58 CSR 31), is authorized with the amendments set forth below:

On page 3, subsection 2.21, after the words 'boundaries of' by inserting the words 'the following';

On page 3, subsection 2.1 by striking out the comma and the words 'which include';
On page 3, subsection 2.1 after the word ‘Audra’ by inserting a comma and the words ‘except in reserved picnic shelters’;

On page 3, subsection 2.21 by striking out the words ‘Tomlinson Run except in reserved picnic shelters, in all boat launch ramp parking areas, and all camping areas within the boundary of Bluestone State Park; all camping areas within the boundary of Beech Fork State Park; and in all of Hawks Nest State Park except the lodge and Hawks Nest golf course which is operated as part of Hawks Nest State Park’ and inserting in lieu thereof the following;

‘Tomlinson Run, except in reserved picnic shelters,

Bluestone State Park, in all boat launch ramp parking areas and all camping areas within its boundaries,

Beech Fork State Park, in all camping areas within its boundaries, and

Hawks Nest State Park, except the lodge and Hawks Nest golf course which is operated as part of Hawks Nest State Park;’

(e) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, two thousand one, relating to the division of natural resources (wild boar hunting, 58 CSR 52), is authorized.

(f) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized
under the authority of section seven, article one, chapter
twenty of this code, modified by the division of natural re-
sources to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-second day of August, two thousand one, relating to
the division of natural resources (general trapping, 58 CSR
53), is authorized.

(g) The legislative rule filed in the state register on the
twenty-seventh day of July, two thousand one, authorized
under the authority of section thirty-three, article two, chapter
twenty of this code, modified by the division of natural re-
sources to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-second day of August, two thousand one, relating to
the division of natural resources (issuance of hunting, trap-
ing and fishing licenses by telephone and other electronic
methods, 58 CSR 68), is authorized.

CHAPTER 204

(Com. Sub. for S. B. 407 — By Senator Sharpe)

[Passed February 18, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven, eight, nine, ten,
eleven, twelve and thirteen, article two, chapter thirty-eight of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, all relating to increasing the periods in which
a contractor, subcontractor, materialman and mechanic or la-
borer may perfect a lien for improvements to real property.

Be it enacted by the Legislature of West Virginia:
That sections seven, eight, nine, ten, eleven, twelve and thirteen, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. MECHANICS’ LIENS.

§38-2-7. Necessity and period for perfecting lien.
§38-2-10. Notice and recordation of lien for supplies furnished to owner.
§38-2-11. Notice and recordation of lien for supplies furnished to contractor or subcontractor.
§38-2-12. Notice and recordation of lien of mechanic or laborer working for owner.
§38-2-13. Notice and recordation of lien of mechanic or laborer working for contractor or subcontractor.

§38-2-7. Necessity and period for perfecting lien.

But the lien created and authorized by section one of this article shall be discharged from and after one hundred days from the completion of the contract and the lien created and authorized by section two of this article shall be discharged from and after one hundred days from the completion of the subcontract and the lien created and authorized by section three of this article shall be discharged from and after one hundred days from the furnishing of the last of the materials, machinery or other supplies and equipment and the lien created and authorized by section four of this article shall be discharged from and after one hundred days from the furnishing of the last of the materials, machinery or other equipment or supplies and the lien created and authorized by section five of this article shall be discharged from and after one hundred days from the date of the furnishing of the last of the materials, machinery or other equipment or supplies and the lien created and authorized by section six of this article shall be discharged from and after one hundred days from the date of the performing of the last of the work and labor and the lien created and authorized by section six of this article shall be discharged from and after one hundred days from the date of the performing of the last of the work and labor, unless, within the respective periods,

For the purpose of perfecting and preserving his lien, any such general contractor as is mentioned in section one of this article shall, within one hundred days after the completion of his work provided for in such contract, cause to be recorded, in the office of the clerk of the county court of the county wherein such property is situate, a notice of such lien, which notice shall be sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To .................................................................

Notice is hereby given, in accordance with the laws of the State of West Virginia, that the undersigned claims a lien to secure the payment of the sum of $.......................... upon your interest in and to lot number ...................... of block number ...................... as shown on the official map of the city of ...................... (or other adequate and ascertainable description of the real estate to be charged) and upon the following buildings, structures and improvements thereon: (List the buildings, structures or improvements sought to be charged.)

Given under my hand this ................. day of ........... , 20.........

State of West Virginia,

County of ......................, being first duly sworn, upon his oath says that the statements contained in the foregoing notice of lien are true, as he verily believes.

Taken, subscribed and sworn to before me this ...... day of............, 20.........

For the purpose of perfecting and preserving his or her lien, every subcontractor mentioned in section two of this article shall, within seventy-five days after the completion of his or her subcontract, give to the owner or his or her authorized agent, by any of the methods provided by law for the service of a legal notice or summons, a notice of lien, which notice shall be sufficient if in form and effect as follows:

Notice of Mechanic’s Lien.

To.................................................................

You will please take notice that the undersigned .......... was and is subcontractor with .......... who was and is general contractor for the furnishing of materials and doing of the work and labor, necessary to the completion of (here describe the nature of the subcontract) on that certain building (or other structure or improvement as the case may be), owned by you and situate on lot number ...... of block number ...... as shown on the official map of ............ (or other definite and ascertainable description of the real estate) and that the contract price and value of said work and materials is $....... You are further notified that the undersigned has not been paid therefor (or has been paid only $....... thereof) and that he claims and will claim a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of the said sum.

.................................................................
27 State of West Virginia,

28 County of ................., being first duly sworn, upon his oath
29 says that the statements in the foregoing notice of mechanic's
30 lien are true, as he verily believes.

31 Taken, subscribed and sworn to before me this ....... day
32 of .................., 20....

33 My commission expires ........................................

34 ..........................................................................
35 (Official Capacity)

36 But the lien shall be discharged and avoided, unless,
37 within one hundred days after the completion of his or her
38 subcontract as aforesaid, the subcontractor shall cause to be
39 recorded in the office of the clerk of the county commission
40 of the county wherein the property is situate a notice of the
41 lien, which notice shall be sufficient if in form and effect as
42 that provided in section eight of this article.

§38-2-10. Notice and recordation of lien for supplies furnished
to owner.

1 For the purpose of perfecting and preserving his lien,
2 every materialman or furnisher of machinery or other neces-
3 sary equipment, under a contract with the owner, as men-
4 tioned in section three of this article, shall cause to be re-
5 corded in the office of the clerk of the county court of the
6 county wherein such property is situate, within one hundred
7 days from the date when he shall have ceased to furnish ma-
8 terial or machinery or other necessary equipment, a notice of
9 such lien, which notice shall be sufficient if in form and ef-
10 fect as that provided in section eight of this article.

§38-2-11. Notice and recordation of lien for supplies furnished
to contractor or subcontractor.
For the purpose of perfecting and preserving his or her lien, every materialman or furnisher of machinery or other necessary equipment, who shall have furnished material, machinery or equipment under a contract with any contractor or with any subcontractor, as set forth in section four of this article, within seventy-five days after he or she shall have ceased to furnish such material or machinery or other equipment, shall give to the owner or his or her authorized agent, by any of the methods provided by law for the service of a legal notice or summons, a notice of such lien, which notice shall be sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To .......................................................... 

You will please take notice that the undersigned ............... has furnished and delivered to ............... who was contractor with you (or subcontractor with ............... , who was contractor with you, as the case may be) for use in the erection and construction (or repair, removal, improvement or otherwise, as the case may be) of (here list the buildings or other structure or improvement to be charged) on the real estate known as (here insert an adequate and ascertainable description of the real estate to be charged) and the said materials were of the nature and were furnished on the dates and in the quantities and at the price as shown in the following account thereof:

(Here insert itemized account.)

You are further notified that the undersigned has not been paid the sum of $ ..... (or that there is still due and owing to the undersigned thereon the sum of $ ......) and that he claims a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon, to secure the payment of the said sum.
State of West Virginia,

County of ................, being first duly sworn, upon his oath says that the statements in the foregoing notice of lien contained are true, as he verily believes.

Taken, subscribed and sworn to before me this ...... day of ............, 20.....

My commission expires ......................................

But the lien shall be discharged and avoided, unless, within one hundred days after such materialman or other furnisher of machinery or other necessary equipment shall have ceased to furnish such materials or machinery or other equipment, he or she shall cause to be recorded in the office of the clerk of the county commission of the county wherein such property is situate a notice of such lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article and which recorded notice need not include such itemized account.

§38-2-12. Notice and recordation of lien of mechanic or laborer working for owner.

For the purpose of perfecting and preserving his lien every such workman, artisan, mechanic, laborer or other person as is mentioned in section five of this article who shall have done any work or performed any labor upon any such building or improvement, under a contract with the owner thereof, shall cause to be recorded in the office of the clerk of the county court of the county wherein such property is situ-
ate, within one hundred days after he shall have ceased to
perform any such work or labor, a notice of his lien, which
notice shall be sufficient if in form and effect as that pro-
vided in section eight of this article.

§38-2-13. Notice and recordation of lien of mechanic or laborer
working for contractor or subcontractor.

For the purpose of perfecting and preserving his or her
lien, every workman, artisan, mechanic, laborer or other per-
son who shall have performed any work or labor upon the
building or improvement thereto, under a contract with any
general contractor or with any subcontractor, as set forth in
section six of this article, shall cause to be given to the
owner, or his or her authorized agent, by any of the methods
provided by law for the service of a legal notice or summons,
within seventy-five days after he or she shall have ceased to
perform any such work or labor, a notice of the lien, which
notice shall be sufficient, if in form and effect as follows:

Notice of Mechanic’s Lien.

To..........................................................

You will please take notice that the undersigned has per-
formed work and labor under a contract with ............... who
was general contractor with you (or who was subcontractor
with ...............), who was general contractor with you) in the
ercation and construction (or removal, repair, improvement
or otherwise, as the case may be) of a certain building (or
other structure or improvement) on real estate known as (here
insert an adequate and ascertainable description of the real
estate to be charged) and that the work and labor was of the
kind, was performed on the dates, for the purposes and at the
prices, as shown in the following itemized account thereof:

(Here insert itemized account.)
You are further notified that the undersigned has not been paid the sum of $...... (or that there is still due and owing to the undersigned thereon the sum of $ ......) and that he claims a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of the sum.

State of West Virginia,

County of ............., being first duly sworn, upon his oath says that the statements in the foregoing notice of mechanic’s lien contained are true, as he verily believes.

Taken, subscribed and sworn to before me this ............ day of ............., 20.....

My commission expires ......................................

(Official Capacity)

But the lien shall be discharged, unless such workman, artisan, mechanic, laborer or other person shall cause to be recorded in the office of the clerk of the county commission wherein such property is situate, within one hundred days after he or she shall have ceased to do work or perform labor upon the building or improvement thereto, a notice of the lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article and which records notice need not include such itemized account.
AN ACT to amend and reenact section four, article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions of property in bankruptcy proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

Pursuant to the provisions of 11 U.S.C. §522(b)(1), this state specifically does not authorize debtors who are domiciled in this state to exempt the property specified under the provisions of 11 U.S.C. §522(d).

Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:

(a) The debtor's interest, not to exceed twenty-five thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a
dependent of the debtor uses as a residence or in a burial plot
for the debtor or a dependent of the debtor.

(b) The debtor's interest, not to exceed two thousand four
hundred dollars in value, in one motor vehicle.

c) The debtor's interest, not to exceed four hundred
dollars in value in any particular item, in household furnish-
ings, household goods, wearing apparel, appliances, books,
animals, crops or musical instruments that are held primarily
for the personal, family or household use of the debtor or a
dependent of the debtor: Provided, That the total amount of
personal property exempted under this subsection may not
exceed eight thousand dollars.

d) The debtor's interest, not to exceed one thousand
dollars in value, in jewelry held primarily for the personal,
family or household use of the debtor or a dependent of the
debtor.

e) The debtor's interest, not to exceed in value eight
hundred dollars plus any unused amount of the exemption
provided under subsection (a) of this section in any property.

(f) The debtor's interest, not to exceed one thousand five
hundred dollars in value, in any implements, professional
books or tools of the trade of the debtor or the trade of a de-
pendent of the debtor.

(g) Any unmeasured life insurance contract owned by the
debtor, other than a credit life insurance contract.

(h) The debtor's interest, not to exceed in value eight
thousand dollars less any amount of property of the estate
transferred in the manner specified in 11 U.S.C. §542(d), in
any accrued dividend or interest under, or loan value of, any
unmeasured life insurance contract owned by the debtor un-
der which the insured is the debtor or an individual of whom
the debtor is a dependent.
(i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(j) The debtor’s right to receive:

(1) A social security benefit, unemployment compensation or a local public assistance benefit;

(2) A veterans’ benefit;

(3) A disability, illness or unemployment benefit;

(4) Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(5) A payment under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, and funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP) regardless of the amount of funds, unless:

(A) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor’s rights under the plan or contract arose;

(B) The payment is on account of age or length of service;

(C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code of 1986; and

(D) With respect to an individual retirement account, including a simplified employee pension, the amount is subject to the excise tax on excess contributions under Section
(k) The debtor's right to receive, or property that is traceable to:

(1) An award under a crime victim's reparation law;

(2) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(3) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(4) A payment, not to exceed fifteen thousand dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;

(5) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(6) Payments made to the prepaid tuition trust fund or to the savings plan trust fund, including earnings, in accordance with article thirty, chapter eighteen of this code on behalf of any beneficiary.
AN ACT to amend and reenact section three, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two hundred two, article two, chapter thirty-one-b of said code; to amend and reenact section one thousand two, article ten of said chapter; to amend and reenact section eight, article one-a, chapter thirty-eight of said code; to amend and reenact section five hundred twenty-five, article nine, chapter forty-six of said code; to amend and reenact sections thirty-one and thirty-three, article three, chapter fifty-six of said code; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to fees for articles of organization for limited liability companies and certificate of authority for foreign limited liability companies; deleting bond requirements by a plaintiff against a nonresident prior to filing a complaint and summons in circuit court; providing for the deposit of certain fees; and removing certain contradictory language.

Be it enacted by the Legislature of West Virginia:

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

Chapter
  11. Taxation.
  38. Liens.
  46. Uniform Commercial Code.
  56. Pleading and Practice.
  59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-3. Payment and collection of tax; deposit of money;
return required.

 1 (a) Payment and collection of tax. — When application is
 2 made to the secretary of state for a certificate of incorpora-
 3 tion or authority to do business in this state, the applicant
 4 shall pay all taxes and fees due under this article; and the
 5 secretary of state shall collect the corporate license tax for the
 6 first year before issuing the certificate. Thereafter, on or be-
 7 fore the first day of the license tax year next following the
 8 date of the certificate, and on or before the first day of each
 9 succeeding license tax year, the corporation shall pay and the
tax commissioner shall collect the tax for a full license tax
10 year together with the statutory attorney fee: Provided, That
11 if the application is made on or after the first day of the sec-
12 ond month preceding the beginning of the next license tax
13 year, and before the first day of the license tax year, the sec-
14 retary of state shall collect the tax for the full year beginning
16 on the first day of the next license tax year in addition to the
17 initial tax, together with the statutory attorney fee.

18 (b) Deposit of money. — The first year license tax re-
19 ceived by the secretary of state pursuant to the provisions of
20 this article shall be deposited by the secretary of state as fol-
21 lows: One-half shall be deposited in the state general revenue
22 fund and one-half shall be deposited in the services fees and
23 collections account established by section two, article one,
24 chapter fifty-nine of this code. The license tax received by
25 the tax commissioner every year after the initial registration
26 shall be deposited into the state general revenue fund.

27 (c) Returns. — Payment of the tax and statutory attorney
28 fee required under the provisions of this section shall be ac-
29 companied by a return on forms provided by the tax commis-
30 sioner for that purpose. The tax commissioner shall upon
31 completion of processing the return, forward it to the secre-
32 tary of state, together with a list of all corporations which
33 have paid the tax. The return shall contain: (1) The address of
34 the corporation's principal office; (2) the names and mailing
35 addresses of its officers and directors; (3) the name and mail-
36 ing address of the person on whom notice of process may be
37 served; (4) the name and address of the corporation's parent
38 corporation and of each subsidiary of the corporation li-
39 censed to do business in this state; and (5) any other informa-
40 tion the tax commissioner considers appropriate. Notwith-
41 standing any other provision of law to the contrary, the secre-
42 tary of state shall, upon request of any person, disclose: (A)
43 The address of the corporation's principal office; (B) the
44 names and addresses of its officers and directors; (C) the
45 name and mailing address of the person on whom notice of
46 process may be served; and (D) the name and address of each
47 subsidiary of the corporation and the corporation's parent
48 corporation.
CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

Article
2. Organization.
10. Foreign Limited Liability Companies.

ARTICLE 2. ORGANIZATION.


(a) One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the office of the secretary of state for filing, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

(b) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(c) The filing of the articles of organization by the secretary of state is conclusive proof that the organizers satisfied all conditions precedent to the creation of a limited liability company.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1002. Application for certificate of authority.

(a) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

The application shall set forth:
(1) The name of the foreign company or, if its name is unavailable for use in this state, a name that satisfies the requirements of section 10-1005 of this article;

(2) The name of the state or country under whose law it is organized;

(3) The street address of its principal office;

(4) The name and address of each member having authority to execute instruments on behalf of the limited liability company;

(5) The address of its initial designated office in this state;

(6) The name and street address of its initial agent for service of process in this state;

(7) Whether the duration of the company is for a specified term and, if so, the period specified;

(8) Whether the company is manager-managed, and, if so, the name and address of each initial manager; and

(9) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 3-303(c).

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of company records in the state or country under whose law it is organized.

CHAPTER 38. LIENS.

ARTICLE 1A. TRUSTEES OF SECURITY TRUSTS.
§38-1A-8. How service of process or notice made.

1  Service of process or notice shall be made by mailing or
delivering to the office of the secretary of state three copies
of the process or notice, with a notation on the process or
notice of the residence address of the trustee upon whom
service is being had, as stated in the security trust; if the ad-
dress of the trustee is not stated in the security trust, the nota-
tion shall state the address of the beneficiary of the trust as
given in the security trust; and service of the process or no-
tice is complete upon the receipt in the office of the secretary
of state of the notice or process bearing the notation and ac-
companied by the fee required by section two, article one,
chapter fifty-nine of this code, which shall be taxed as costs
in the suit, action or proceeding. The secretary of state shall
keep one copy of all process and notices, with a record of the
day and hour of service of the process or notice.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND
CHATTEL PAPER.

§46-9-525. Fees.

(a) Initial financing statement or other record: general
rule. — Except as otherwise provided in subsection (e) of
this section, the fee for filing and indexing a record under this
part, other than an initial financing statement of the kind
described in subsection (b) of this section, is the amount
specified in subsection (c) of this section, if applicable, plus:

(1) Ten dollars if the record is communicated in writing
and consists of one or two pages; and

(2) Ten dollars if the record is communicated in writing
and consists of more than two pages; and
(3) Ten dollars if the record is communicated by another medium authorized by filing-office rule.

(b) *Initial financing statement: Public-finance and manufactured housing transactions.* — Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing an initial financing statement of the following kind is the amount specified in subsection (c) of this section, if applicable, plus:

(1) Ten dollars if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) Ten dollars if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) *Number of names.* — The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) *Response to information request.* — The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(1) Five dollars if the request is communicated in writing;

(2) Five dollars if the request is communicated by another medium authorized by filing-office rule; and

(3) Fifty cents per page for each active lien.

(e) *Record of mortgage.* — This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber
to be cut under section 9-502(c) of this article. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) Deposit of funds. — All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state fund, general revenue, and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. Any balance remaining on the thirtieth day of June, two thousand one, in the existing special revenue account entitled “uniform commercial code” as established by chapter two hundred four, acts of the Legislature, regular session one thousand nine hundred eighty-nine, shall be transferred to the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article, unless otherwise provided by appropriation or other action by the Legislature.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.

§56-3-33. Actions by or against nonresident persons having certain contracts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.
§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.

(a) Every nonresident, for the privilege of operating a motor vehicle on a public street, road or highway of this state, either personally or through an agent, appoints the secretary of state, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state arising out of any accident or collision occurring in the state of West Virginia in which the nonresident was involved: Provided, That in the event process against a nonresident defendant cannot be effected through the secretary of state, as provided by this section, for the purpose only of service of process, the nonresident motorist shall be considered to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of automobile or liability insurance with the nonresident defendant.

(b) For purposes of service of process as provided in this section, every insurance company shall be considered the agent or attorney-in-fact of every nonresident motorist insured by that company if the insured nonresident motorist is involved in any accident or collision in this state and service of process cannot be effected upon the nonresident through the office of the secretary of state. Upon receipt of process as provided in this section, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident operating a motor vehicle in this state, either personally or through an agent, is considered to acknowledge the appointment of the secretary of state, or, as
the case may be, his or her automobile insurance company, as
his or her agent or attorney-in-fact, or the agent or attorney-
in-fact of his or her administrator, administratrix, executor or
executrix in the event the nonresident dies, and furthermore
is considered to agree that any process against him or her or
against his or her administrator, administratrix, executor or
executrix, which is served in the manner provided in this
section, shall be of the same legal force and validity as
though the nonresident or his or her administrator,
administratrix, executor or executrix were personally served
with a summons and complaint within this state.

Any action or proceeding may be instituted, continued or
maintained on behalf of or against the administrator,
administratrix, executor or executrix of any nonresident who
dies during or subsequent to an accident or collision resulting
from the operation of a motor vehicle in this state by the
nonresident or his or her duly authorized agent.

(d) At the time of filing a complaint against a nonresident
motorist who has been involved in an accident or collision in
the state of West Virginia and before a summons is issued on
the complaint, the plaintiff, or someone for him or her, shall
execute a bond in the sum of one hundred dollars before the
clerk of the court in which the action is filed, with surety to
be approved by the clerk, conditioned that on failure of the
plaintiff to prevail in the action he or she will reimburse the
defendant, or cause the defendant to be reimbursed, the nec-
essary expense incurred in the defense of the action in this
state. Upon the issue of a summons the clerk shall certify
thereon that the bond has been given and approved.

(e) Service of process upon a nonresident defendant shall
be made by leaving the original and two copies of both the
summons and complaint, together with the bond certificate of
the clerk, and the fee required by section two, article one,
chapter fifty-nine of this code with the secretary of state, or in his or her office, and the service shall be sufficient upon the nonresident defendant or, if a natural person, his or her administrator, administratrix, executor or executrix: Provided, That notice of service and a copy of the summons and complaint shall be sent by registered or certified mail, return receipt requested, by the secretary of state to the nonresident defendant. The return receipt signed by the defendant or his or her duly authorized agent shall be attached to the original summons and complaint and filed in the office of the clerk of the court from which process is issued. In the event the registered or certified mail sent by the secretary of state is refused or unclaimed by the addressee or if the addressee has moved without any forwarding address, the registered or certified mail returned to the secretary of state, or to his or her office, showing on the mail the stamp of the post-office department that delivery has been refused or not claimed or that the addressee has moved without any forwarding address, shall be appended to the original summons and complaint and filed in the clerk’s office of the court from which process issued. The court may order any reasonable continuances to afford the defendant opportunity to defend the action.

(f) The fee remitted to the secretary of state at the time of service, shall be taxed in the costs of the proceeding. The secretary of state shall keep a record in his or her office of all service of process and the day and hour of service of process.

(g) In the event service of process upon a nonresident defendant cannot be effected through the secretary of state as provided by this section, service may be made upon the defendant’s insurance company. The plaintiff shall file with the clerk of the circuit court an affidavit alleging that the defendant is not a resident of this state; that process directed to the secretary of state was sent by registered or certified mail, return receipt requested; that the registered or certified mail
was returned to the office of the secretary of state showing
the stamp of the post-office department that delivery was
refused or that the notice was unclaimed or that the defendant
addressee moved without any forwarding address; and that
the secretary of state has complied with the provisions of
subsection (e) of this section. Upon receipt of process the
insurance company may, within thirty days, file an answer or
other pleading and take any action allowed by law in the
name of the defendant.

(h) The following words and phrases, when used in this
article, for the purpose of this article and unless a different
intent on the part of the Legislature is apparent from the con-
text, have the following meanings:

(1) “Duly authorized agent” means and includes, among
others, a person who operates a motor vehicle in this state for
a nonresident as defined in this section and chapter, in pursuit
of business, pleasure or otherwise, or who comes into this
state and operates a motor vehicle for, or with the knowledge
or acquiescence of, a nonresident; and includes, among oth-
ers, a member of the family of the nonresident or a person
who, at the residence, place of business or post office of the
nonresident, usually receives and acknowledges receipt for
mail addressed to the nonresident.

(2) “Motor vehicle” means and includes any self-pro-
elled vehicle, including a motorcycle, tractor and trailer, not
operated exclusively upon stationary tracks.

(3) “Nonresident” means any person who is not a resident
of this state or a resident who has moved from the state sub-
sequent to an accident or collision, and among others in-
cludes a nonresident firm, partnership, corporation or volun-
tary association, or a firm, partnership, corporation or volun-
tary association that has moved from the state subsequent to
an accident or collision.
(4) "Nonresident plaintiff or plaintiffs" means a nonresident who institutes an action in a court in this state having jurisdiction against a nonresident in pursuance of the provisions of this article.

(5) "Nonresident defendant or defendants" means a nonresident motorist who, either personally or through his or her agent, operated a motor vehicle on a public street, highway or road in this state and was involved in an accident or collision which has given rise to a civil action filed in any court in this state.

(6) "Street", "road" or "highway" means the entire width between property lines of every way or place of whatever nature when any part of the street, road or highway is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(7) "Insurance company" means any firm, corporation, partnership or other organization which issues automobile insurance.

(i) The provision for service of process in this section is cumulative and nothing contained in this section shall be construed as a bar to the plaintiff in any action from having process in the action served in any other mode and manner provided by law.

*§56-3-33. Actions by or against nonresident persons having certain contracts with this state; authorizing secretary of state to receive process; bond and 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

*Clerk's Note: This section was also amended by S. B. 425 (Chapter 87), which passed prior to this act.*
subdivisions (1) through (7) 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 proceeding 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 nonresident 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 omission 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), 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, partnership 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 ac-
tion in any of its courts of general jurisdiction.

(g) This section shall not be retroactive and the provi-
sions hereof shall not be available to a plaintiff in a cause of
action arising from or growing out of any of said acts occur-
ing prior to the effective date of this section.

CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

(a) Except as may be otherwise provided in this code, the
secretary of state shall charge for services rendered in his or
her office the following fees to be paid by the person to
whom the service is rendered at the time it is done:

(1) For filing, recording, indexing, preserving a record of
and issuing a certificate relating to the formation, amend-
ment, change of name, registration of trade name, merger,
consolidation, conversion, renewal, dissolution, termination,
cancellation, withdrawal revocation and reinstatement of
business entities organized within the state, as follows:

(A) Articles of incorporation of for-profit
corporation ........................................ $50.00

(B) Articles of incorporation of nonprofit
corporation ........................................ 25.00

(C) Articles of organization of limited liability
company ........................................... 100.00

(D) Agreement of a general partnership ........ 50.00
(E) Certificate of a limited partnership ......... 100.00

(F) Agreement of a voluntary association ........ 50.00

(G) Articles of organization of a business trust .... 50.00

(H) Amendment or correction of articles of incorpora-
ion, including change of name or increase of capital stock, in
addition to any applicable license tax .............. 25.00

(I) Amendment or correction, including change of name,
of articles of organization of business trust, limited liability
partnership, limited liability company or professional limited
liability company or of certificate of limited partnership or
agreement of voluntary association ................ 25.00

(J) Amendment and restatement of articles of incorpora-
tion, certificate of limited partnership, agreement of volun-
tary association or articles of organization of limited liability
partnership, limited liability company or professional limited
liability company or business trust ................ 25.00

(K) Registration of trade name, otherwise designated
as a true name, fictitious name or D.B.A. (doing business
as) name for any domestic business entity as permitted by
law ......................................... 25.00

(L) Articles of merger of two corporations, limited part-
nerships, limited liability partnerships, limited liability com-
panies or professional limited liability companies, voluntary
associations or business trusts. ...................... 25.00

(M) Plus for each additional party to the merger in excess
of two ................................................ 15.00

(N) Statement of conversion, when permitted, from one
business entity into another business entity, in addition to the
cost of filing the appropriate documents to organize the surviving entity .................. 25.00

(O) Articles of dissolution of a corporation, voluntary association or business trust, or statement of dissolution of a general partnership .................. 25.00

(P) Revocation of voluntary dissolution of a corporation, voluntary association or business trust .............. 15.00

(Q) Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership .............. 25.00

(R) Reinstatement of a limited liability company or professional limited liability company after administrative dissolution ...................... 25.00

(2) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:

(A) Certificate of authority of for-profit corporation .............................................. $100.00

(B) Certificate of authority of nonprofit corporation .............................................. 50.00

(C) Certificate of authority of foreign limited liability companies .............................. 150.00

(D) Certificate of exemption from certificate of authority ........................................ 25.00

(E) Registration of a general partnership .......... 50.00
(F) Registration of a limited partnership ........ 150.00

(G) Registration of a limited liability partnership for two-
year term ........................................ 500.00

(H) Registration of a voluntary association ........ 50.00

(I) Registration of a trust or business trust ....... 50.00

(J) Amendment or correction of certificate of authority
of a foreign corporation, including change of name or in-
crease of capital stock, in addition to any applicable license
tax ............................................. 25.00

(K) Amendment or correction of certificate of limited
partnership, limited liability partnership, limited liability
company or professional limited liability company, voluntary
association or business trust ...................... 25.00

(L) Registration of trade name, otherwise designated
as a true name, fictitious name or D.B.A. (doing business
as) name for any foreign business entity as permitted by
law .................................................. 25.00

(M) Amendment and restatement of certificate of author-
ity or of registration of a corporation, limited partnership,
limited liability partnership, limited liability company or
professional limited liability company, voluntary association
or business trust ................................. 25.00

(N) Articles of merger of two corporations, limited part-
nerships, limited liability partnerships, limited liability com-
panies or professional limited liability companies, voluntary
associations or business trusts ...................... 25.00

(O) Plus for each additional party to the merger in excess
of two ............................................. 5.00
(P) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate articles or certificate to organize the surviving entity ............................ 25.00

(Q) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited liability partnership, limited liability company, voluntary association or business trust ......................................... 25.00

(3) For receiving, filing and recording a change of the principal or designated office, change of the agent of process and/or change of officers, directors, partners, members or managers, as the case may be, of a corporation, limited partnership, limited liability partnership, limited liability company or other business entity as provided by law ........................... 15.00

(4) For receiving, filing and preserving a reservation of a name for each one hundred twenty days or for any other period in excess of seven days prescribed by law for a corporation, limited partnership, limited liability partnership or limited liability company ............................ 15.00

(5) For issuing a certificate relating to a corporation or other business entity, as follows:

(A) Certificate of good standing of a domestic or foreign corporation ........................... $10.00

(B) Certificate of existence of a domestic limited liability company, and certificate of authorization foreign limited liability company .................................................. 10.00

(C) Certificate of existence of any business entity, trademark or service mark registered with the secretary of state ................................................................. 10.00
(D) Certified copy of corporate charter or comparable organizing documents for other business entities ...... 15.00

(E) Plus, for each additional amendment, restatement or other additional document ........................ 5.00

(F) Certificate of registration of the name of a foreign corporation, limited liability company, limited partnership or limited liability partnership ............... 25.00

(G) And for the annual renewal of the name registration ................................................. 10.00

(H) Any other certificate not specified in this subdivision .................................................. 10.00

(6) For issuing a certificate other than those relating to business entities, as provided in this subsection, as follows:

(A) Certificate or apostille relating to the authority of certain public officers, including the membership of boards and commissions ........................................ $10.00

(B) Plus, for each additional certificate pertaining to the same transaction .......................... 5.00

(C) Any other certificate not specified in this subdivision .................................................. 10.00

(D) For acceptance, indexing and recordation of service of process any corporation, limited partnership, limited liability partnership, limited liability company, voluntary association, business trust, insurance company, person or other entity as permitted by law ........................................ 15.00

(E) For shipping and handling expenses for execution of service of process by certified mail upon any defendant within the United States, which fee is to be deposited to the
special revenue account established in this section for the
operation of the office of the secretary of state. ........ 5.00

(F) For shipping and handling expenses for execution of
service of process upon any defendant outside the United
States by registered mail, which fee is to be deposited to the
special revenue account established in this section for the
operation of the office of the secretary of state. ........ 15.00

(7) For a search of records of the office conducted by
employees of or at the expense of the secretary of state upon
request, as follows:

(A) For any search of archival records maintained at
sites other than the office of the secretary of state, no less
than .................................................. $10.00

(B) For searches of archival records maintained at sites
other than the office of the secretary of state which require
more than one hour, for each hour or fraction of an hour con-
sumed in making such search ......................... 10.00

(C) For any search of records maintained on site for the
purpose of obtaining copies of documents or printouts of
data ................................................... 5.00

(D) For any search of records maintained in electronic
format which requires special programming to be performed
by the state information services agency or other vendor, any
actual cost, but not less than ......................... 25.00

(E) The cost of the search is in addition to the cost of any
copies or printouts prepared or any certificate issued pursuant
to or based on the search.

(F) For recording any paper for which no specific fee is
prescribed ............................................ 5.00
187 (8) For producing and providing photocopies or printouts of electronic data of specific records upon request, as follows:

190 (A) For a copy of any paper or printout of electronic data, if one sheet ................................... $1.00

192 (B) For each sheet after the first .......................... .50

193 (C) For sending the copies or lists by fax transmission ................................................. 5.00

195 (D) For producing and providing photocopies of lists, reports, guidelines and other documents produced in multiple copies for general public use, a publication price to be established by the secretary of state at a rate approximating 2.00 plus .10 per page and rounded to the nearest dollar.

199 (E) For electronic copies of records obtained in data format on disk, the cost of the record in the least expensive available printed format, plus, for each required disk, which shall be provided by the secretary of state .......................... 5.00

201 (b) The secretary of state may propose legislative rules for promulgation for charges for on-line electronic access to database information or other information maintained by the secretary of state.

207 (c) For any other work or service not enumerated in this subsection, the fee prescribed elsewhere in this code or a rule promulgated under the authority of this code.

211 (d) The records maintained by the secretary of state are prepared and indexed at the expense of the state and those records shall not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.

217 (e) The secretary of state may provide printed or electronic information free of charge as he or she considers nec-
There is hereby continued in the state treasury a special revenue account to be known as the "service fees and collections" account. Expenditures from the account shall be used for the operation of the office of the secretary of state and are not authorized from collections, but are to be made only in 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. Notwithstanding any other provision of this code, one half of all the fees and service charges established in the following sections and for the following purposes shall be deposited by the secretary of state or other collecting agency to that special revenue account and used for the operation of the office of the secretary of state:

1. The annual attorney-in-fact fee for corporations and limited partnerships established in section five, article twelve-c, chapter eleven of this code;

2. The fees received for the sale of the state register, code of state rules and other copies established by rule and authorized by section seven, article two, chapter twenty-nine-a of this code;

3. The registration fees, late fees and legal settlements charged for registration and enforcement of the charitable organizations and professional solicitations established in sections five, nine and fifteen-b, article nineteen, chapter twenty-nine of this code;

4. The annual attorney-in-fact fee for limited liability companies as designated in section one hundred eight, article one, chapter thirty-one-b of this code and established in section two hundred eleven, article two of said chapter;
(5) The filing fees and search and copying fees for uniform commercial code transactions established by section five hundred twenty-five, article nine, chapter forty-six of this code;

(6) The annual attorney-in-fact fee for licensed insurers established in section twelve, article four, chapter thirty-three of this code;

(7) The fees for the application and record maintenance of all notaries public established by section one hundred seven, article one, chapter twenty-nine-c of this code;

(8) The fees for the application and record maintenance of commissioners for West Virginia as established by section twelve, article four, chapter twenty-nine of this code;

(9) The fees for registering credit service organizations as established by section five, article six-c, chapter forty-six-a of this code;

(10) The fees for registering and renewing a West Virginia limited liability partnership as established by section one, article ten, chapter forty-seven-b of this code;

(11) The filing fees for the registration and renewal of trademarks and service marks established in section seventeen, article two, chapter forty-seven of this code;

(12) All fees for services, the sale of photocopies and data maintained at the expense of the secretary of state as provided in this section; and

(13) All registration, license and other fees collected by the secretary of state not specified in this section.

(g) Any balance in the service fees and collections account established by this section which exceeds five hundred thousand dollars as of the thirtieth day of June, two thousand three, and each year thereafter, shall be expired to the state fund, general revenue fund.
AN ACT to amend and reenact sections two, three, four and nine, article three, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto a new section, designated section three-a, all relating to the regulation of lobbyist activities; increasing the registration fee for lobbyists; eliminating the requirement that lobbyists file duplicate copies of the lobbyist's registration statement; eliminating the requirement that lobbyist registration statements and reports be signed under oath or affirmation; removing the references to false swearing and the associated criminal penalties; making the filing of a false or fraudulent application, statement or report by a lobbyist a misdemeanor; and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LOBBYISTS.

§6B-3-2. Registration of lobbyists.
§6B-3-3. Photograph and information-booklet-publication.
§6B-3-3a. Registration fees.
§6B-3-4. Reporting by lobbyists.
§6B-3-9. Penalties.
§6B-3-2. Registration of lobbyists.

(a) Before engaging in any lobbying activity, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register with the ethics commission by filing a lobbyist registration statement. The registration statement shall contain information and be in a form prescribed by the ethics commission by legislative rule, including, but not limited to, the following information:

(1) The registrant's name, business address, telephone numbers and any temporary residential and business addresses and telephone numbers used or to be used by the registrant while lobbying during a legislative session;

(2) The name, address and occupation or business of the registrant's employer;

(3) A statement as to whether the registrant is employed or retained by his or her employer solely as a lobbyist or is a regular employee performing services for the employer which include, but are not limited to, lobbying;

(4) A statement as to whether the registrant is employed or retained by his or her employer under any agreement, arrangement or understanding according to which the registrant's compensation, or any portion of the registrant's compensation, is or will be contingent upon the success of his or her lobbying activity;

(5) The general subject or subjects, if known, on which the registrant will lobby or employ some other person to lobby in a manner which requires registration under this article; and
(6) An appended written authorization from each of the lobbyist's employers confirming the lobbyist's employment and the subjects on which the employer is to be represented.

(b) Any lobbyist who receives or is to receive compensation from more than one person for services as a lobbyist shall file a separate notice of representation with respect to each person compensating him or her for services performed as a lobbyist. When a lobbyist whose fee for lobbying with respect to the same subject is to be paid or contributed by more than one person, then the lobbyist may file a single statement, in which he or she shall detail the name, business address and occupation of each person paying or contributing to the fee.

(c) Whenever a change, modification or termination of the lobbyist's employment occurs, the lobbyist shall, within one week of the change, modification or termination, furnish full information regarding the change, modification or termination by filing with the commission an amended registration statement.

(d) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on the Monday preceding the second Wednesday in January of each odd-numbered year, and failure to do so terminates his or her registration. Until the registration is renewed, the person may not engage in lobbying activities unless he or she is otherwise exempt under paragraph (B), subdivision (7), section one of this article.

§6B-3-3. Photograph and information-booklet-publication.

Each lobbyist shall, at the time he or she registers, submit to the commission a recent photograph of the lobbyist of a size and format as determined by rule of the commission, together with the name of the lobbyist's employer, a brief
biographical description, and any other information the lobbyist may wish to submit, not to exceed fifty words in length. The photograph and information shall be published at least annually in a booklet form by the commission for distribution to government officers or employees, lobbyists, and to the public. The method of distribution is in the discretion of the commission, which is not required to compile and maintain a distribution list of all persons who may be entitled to receive the booklet.

§6B-3-3a. Registration fees.

(a) Each lobbyist shall, at the time he or she registers, pay the commission a registration fee of sixty dollars to be filed with the initial registration statement and with each new registration statement filed by the lobbyist in subsequent odd numbered years: Provided, That if a lobbyist files his or her initial registration after the first day of January during an even-numbered year, he or she shall only be required to pay a reduced registration fee of thirty dollars for the balance of that year.

(b) The commission shall collect the registration fees authorized by this section and pay them into the state treasury to the credit of the state general fund.

§6B-3-4. Reporting by lobbyists.

(a) A lobbyist shall file with the commission reports of his or her lobbying activities, signed by the lobbyist. The reports shall be filed as follows:

(1) On or before the Monday preceding the second Wednesday in January of each year, a lobbyist shall file an annual report of all lobbying activities which he or she engaged in during the preceding calendar year; and
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(2) If a lobbyist engages in lobbying with respect to legislation, then:

(A) Between the fortieth and forty-fifth days of any regular session of the Legislature in which any lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year; and

(B) Within twenty-one days after the adjournment sine die of any regular or extraordinary session of the Legislature in which any lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year or since the filing of the last report required by this section, whichever is later.

(b) (1) Except as otherwise provided in this section, each report filed by a lobbyist shall show the total amount of all expenditures for lobbying made or incurred by the lobbyist, or on behalf of the lobbyist by the lobbyist's employer, during the period covered by the report. The report shall also show subtotals segregated according to financial category, including meals and beverages; living accommodations; advertising; travel; contributions; gifts to public officials or employees or to members of the immediate family of a public official or employee; and other expenses or services.

(2) Lobbyists are not required to report the following:

(A) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(B) Any expenses incurred for his or her own living accommodations;
(C) Any expenses incurred for his or her own travel to and from public meetings or hearings of the legislative and executive branches;

(D) Any expenses incurred for telephone, and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance; and

(E) Separate expenditures to or on behalf of a public official or employee in an amount of less than five dollars.

(c) If a lobbyist is employed by more than one employer, the report shall show the proportionate amount of the expenditures in each category incurred on behalf of each of his or her employers.

(d) The report shall describe the subject matter of the lobbying activities in which the lobbyist has been engaged during the reporting period.

(e) If, during the period covered by the report, the lobbyist made expenditures in the reporting categories of meals and beverages, living accommodations, travel, gifts or other expenditures, other than for those expenditures governed by subsection (f) of this section, which expenditures in any reporting category total more than twenty-five dollars to or on behalf of any particular public official or employee, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made, the total amount of the expenditures, and the subject matter of the lobbying activity, if any. Under this subsection, no portion of the amount of an expenditure for a dinner, party or other function sponsored by a lobbyist or a lobbyist's employer need be attributed to or counted toward the reporting amount of twenty-five dollars for a particular public official or employee who attends the function if the sponsor has invited to the function all the members of: (1) The Legislature;
(2) either house of the Legislature; (3) a standing or select committee of either house; or (4) a joint committee of the two houses of the Legislature. However, the amount spent for the function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported under subsection (b) of this section.

(f) If, during the period covered by the report, the lobbyist made expenditures in the reporting categories of meals and beverages, lodging, travel, gifts and scheduled entertainment, which reporting expenditures in any reporting category total more than twenty-five dollars for or on behalf of a particular public official or public employee in return for the participation of the public official or employee in a panel or speaking engagement at the meeting, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made and the total amount of the expenditures.

§6B-3-9. Penalties.

(a) Any person who is required under the provisions of this article to file an application, statement or report and who willfully and knowingly makes a false statement, conceals a material fact or otherwise commits a fraud in the application, statement or report 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 not more than one year, or both.

(b) A person who is subject to the registration and reporting requirements of this article and who fails or refuses to register or who fails or refuses to file a required statement or report or who otherwise violates the provisions of this article may be the subject of a complaint filed with the ethics commission and may be proceeded against in the same manner
and to the same ends as a public officer or public employee under the provisions of this chapter.

(c) A person who willfully and knowingly files a false report under the provisions of this article is liable in a civil action to any government officer or employee who sustains damage as a result of the filing or publication of the report.

CHAPTER 208

(Com. Sub. for S. B. 179 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]

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

AN ACT to amend and reenact section twenty-one, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to miners’ health and safety; providing additional factor for determining amount of civil penalty for violation of rule or statute; promulgation of legislative and emergency rules; providing circumstances under which special assessment civil penalty may be imposed in lieu of civil penalty; providing amount of special assessment civil penalty that may be imposed; establishing special revenue fund for receipt of penalty moneys; and providing purposes for expenditures from fund.

Be it enacted by the Legislature of West Virginia:

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

1. (a)(1) Any operator of a coal mine in which a violation occurs of any health or safety rule or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than three thousand dollars, for each violation, unless the director determines that it is appropriate to impose a special assessment for said violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation. Not later than the first day of June, two thousand two, the director shall promulgate as a rule the procedure for assessing such civil penalties. This rule will be in effect upon filing, without regard to the provisions of chapter twenty-nine-a of this code.

2. (2) Any revisions to rules relating to the assessment of civil penalties shall be proposed for promulgation as legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

3. (3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than two hundred fifty dollars for each occurrence of the violation.
(4) A civil penalty under subdivisions (1) or (2) of subsection (a) of this section or subdivisions (1) or (2) of subsection (b) of this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under section twenty of this article and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the attorney...
general, attorneys appointed for the director may appear for
and represent the director in any action to enforce an order
assessing civil penalties under this subdivision.

(b)(1) Any operator who knowingly violates a health or
safety provision of this chapter or health or safety rule pro-
mulgated pursuant to this chapter, or knowingly violates or
fails or refuses to comply with any order issued under section
fifteen of this article, or any order incorporated in a final
decision issued under this article, except an order incorpo-
rated in a decision under subsection (a) of this section or
subsection (b), section twenty-two of this article, shall be
assessed a civil penalty by the director under subdivision (5),
subsection (a) of this section of not more than five thousand
dollars and for a second or subsequent violation assessed a
civil penalty of not more than ten thousand dollars, unless the
director determines that it is appropriate to impose a special
assessment for said violation, pursuant to the provisions of
subsection (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the
provisions of subsection (a) of this section or subdivision (1)
of this subsection, the director may impose a special assess-
ment if an operator violates a health or safety provision of
this chapter or health or safety rule promulgated pursuant to
this chapter and the violation is of serious nature and in-
volves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;

(B) Failure or refusal to comply with any order issued
under section fifteen of this article;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;
(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under section twenty-two of this article.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least five thousand dollars and of not more than ten thousand dollars.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-two of this article, any director, officer or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than six months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining
by operation of law and bars that person from being issued
any license under this chapter, except a miner’s certification,
for a period of not less than one year or for a longer period as
may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale,
introduces or delivers in commerce any equipment for use in
a coal mine, including, but not limited to, components and
accessories of the equipment, who willfully misrepresents the
equipment as complying with the provisions of this law, or
with any specification or rule of the director applicable to the
equipment, and which does not comply with the law, specifi-
cation or rule, is guilty of a misdemeanor and, upon convic-
tion thereof, is subject to the same fine and imprisonment
that may be imposed upon a person under subsection (d) of
this section.

(f) There is created in the treasury of the state of West
Virginia a special health, safety and training fund. All civil
penalty assessments collected under this section shall be
collected by the director and deposited with the treasurer of
the state of West Virginia to the credit of the special health,
safety and training fund. The fund shall be used by the direc-
tor who is authorized to expend the moneys in the fund for
the administration of this chapter.

CHAPTER 209

(S. B. 105 — By Senators Love, Hunter, Anderson, Kessler, Caldwell,
Rowe, Minear, Sprouse, Redd, Minard, Edgell, Snyder, Chafin,
Fanning, Helmick, Ross, Unger, Mitchell and Facemyer)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting all senior service organizations that qualify for tax exemption under Title 26, §501(c)(3) of the United States Internal Revenue Service Code and are recognized as bonafide senior services organizations by the senior services bureau from payment of the automobile titling privilege tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the division of motor vehicles or any other officer or agent charged with the duty, unless the applicant therefor already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle in either an electronic or paper format. The application shall be upon a blank form to be furnished by the division of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and
any other information as the division of motor vehicles may
require. The application shall be signed and sworn to by the
applicant. A duly certified copy of the division’s electronic
record of a certificate of title shall be admissible in any civil,
criminal or administrative proceeding in this state as evi-
dence of ownership.

(b) A tax is imposed upon the privilege of effecting the
certification of title of each vehicle in the amount equal to
five percent of the value of the motor vehicle at the time of
the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or
consideration to the purchaser of the vehicle is the value of
the vehicle. If the vehicle is a used or secondhand vehicle, the
present market value at time of transfer or purchase is the
value of the vehicle for the purposes of this section: Pro-
vided, That so much of the purchase price or consideration as
is represented by the exchange of other vehicles on which the
tax imposed by this section has been paid by the purchaser
shall be deducted from the total actual price or consideration
paid for the vehicle, whether the vehicle be new or second-
hand. If the vehicle is acquired through gift or by any manner
whatsoever, unless specifically exempted in this section, the
present market value of the vehicle at the time of the gift or
transfer is the value of the vehicle for the purposes of this
section.

(2) No certificate of title for any vehicle may be issued to
any applicant unless the applicant has paid to the division of
motor vehicles the tax imposed by this section which is five
percent of the true and actual value of the vehicle whether the
vehicle is acquired through purchase, by gift or by any other
manner whatsoever, except gifts between husband and wife
or between parents and children: Provided, That the husband
or wife, or the parents or children, previously have paid the tax on the vehicles transferred to the state of West Virginia.

(3) The division of motor vehicles may issue a certificate of registration and title to an applicant if the applicant provides sufficient proof to the division of motor vehicles that the applicant has paid the taxes and fees required by this section to a motor vehicle dealership that has gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: Provided, That the applicant makes an affidavit of the same and assigns all rights to claims for money the applicant may have against the motor vehicle dealership to the division of motor vehicles.

(4) The division of motor vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(5) The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles or Class M vehi-
81 cles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear: Provided, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle: Provided, however. That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles to the consumers sales tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the division of motor vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof,
or by any volunteer fire department or duly chartered rescue
or ambulance squad organized and incorporated under the
laws of the state of West Virginia as a nonprofit corporation
for protection of life or property. The total amount of revenue
collected by reason of this tax shall be paid into the state road
fund and expended by the commissioner of highways for
matching federal funds allocated for West Virginia. In addi-
tion to the tax, there is a charge of five dollars for each origi-
nal certificate of title or duplicate certificate of title so issued:
Provided, That this state or any political subdivision of this
state, or any volunteer fire department or duly chartered res-
cue squad is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so
long as the vehicle is owned or held by the original holder of
the certificate, and need not be renewed annually, or any
other time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the
owner of a motor vehicle and the tax imposed by this section
previously has been paid, to the division of motor vehicles,
on that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this sec-
tion is not required to pay the tax a second time for the same
motor vehicle, but is required to pay a charge of five dollars
for the certificate of retitle of that motor vehicle, except that
the tax shall be paid by the person when the title to the vehi-
cle has been transferred either in this or another state from
the person to another person and transferred back to the per-
son.

(11) The tax imposed by this section does not apply to
any passenger vehicle offered for rent in the normal course of
business by a daily passenger rental car business as licensed
under the provisions of article six-d of this chapter. For pur-
poses of this section, a daily passenger car means a Class A
motor vehicle having a gross weight of eight thousand
pounds or less and is registered in this state or any other state.
In lieu of the tax imposed by this section, there is hereby
imposed a tax of not less than one dollar nor more than one
dollar and fifty cents for each day or part of the rental period.
The commissioner shall propose an emergency rule in accor-
dance with the provisions of article three, chapter twenty-
nine-a of this code to establish this tax.

(12) The tax imposed by this article does not apply to the
titling of any vehicle purchased by a senior citizen service
organization which is exempt from the payment of income
taxes under the United States Internal Revenue Service Code,
Title 26 U.S.C. §501(c)(3) and which is recognized to be a
bonafide senior citizen service organization by the senior
services bureau existing under the provisions of article five,
chapter sixteen of this code.

(c) Notwithstanding any provisions of this code to the
contrary, the owners of trailers, semitrailers, recreational
vehicles and other vehicles not subject to the certificate of
title tax prior to the enactment of this chapter are subject to
the privilege tax imposed by this section: Provided, That the
certification of title of any recreational vehicle owned by the
applicant on the thirtieth day of June, one thousand nine hun-
dred eighty-nine, is not subject to the tax imposed by this
section: Provided, however, That mobile homes, manufac-
tured homes, modular homes and similar nonmotive pro-
peled vehicles, except recreational vehicles and house trail-
ers, susceptible of being moved upon the highways but pri-
marily designed for habitation and occupancy, rather than for
transporting persons or property, or any vehicle operated on a
nonprofit basis and used exclusively for the transportation of
mentally retarded or physically handicapped children when
the application for certificate of registration for the vehicle is
accompanied by an affidavit stating that the vehicle will be
operated on a nonprofit basis and used exclusively for the
transportation of mentally retarded and physically handi-
capped children, are not subject to the tax imposed by this
section, but are taxable under the provisions of articles fifteen
and fifteen-a, chapter eleven of this code.

(d) Any person making any affidavit required under any
provision of this section who knowingly swears falsely, or
any person who counsels, advises, aids or abets another in the
commission of false swearing, or any person, while acting as
an agent of the division of motor vehicles, issues a vehicle
registration without first collecting the fees and taxes or fails
to perform any other duty required by this chapter to be per-
formed before a vehicle registration is issued is, on the first
offense, guilty of a misdemeanor and, upon conviction
thereof, shall be fined not more than five hundred dollars or
be confined in the county or regional jail for a period not to
exceed six months or, in the discretion of the court, both
fined and confined. For a second or any subsequent convic-
tion within five years, that person is guilty of a felony and,
upon conviction thereof, shall be fined not more than five
thousand dollars or be imprisoned in a state correctional fa-
cility for not less than one year nor more than five years or,
in the discretion of the court, both fined and imprisoned.

(e) Notwithstanding any other provisions of this section,
any person in the military stationed outside West Virginia, or
his or her dependents who possess a motor vehicle with valid
registration, are exempt from the provisions of this article for
a period of nine months from the date the person returns to
this state or the date his or her dependent returns to this state,
whichever is later.

(f) No person may transfer, purchase or sell a fac-
tory-built home without a certificate of title issued by the
Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than one hundred dollars nor more than one thousand dollars, or be confined in the county or regional jail for not more than one year or, both fined and confined. For each subsequent offense, the fine may be increased to not more than two thousand dollars, with confinement in the county or regional jail not more than one year or, both fined and confined.

Failure of the seller to transfer a certificate of title upon sale or transfer of the factory-built home gives rise to a cause of action, upon prosecution thereof, and allows for the recovery of damages, costs and reasonable attorney fees.

Notwithstanding any other provision to the contrary, whenever reference is made to the application for or issuance of any title or the recordation or release of any lien, it shall be understood to include the application, transmission, recordation, transfer of ownership and storage of information in an electronic format.

CHAPTER 210

(Com. Sub. for S. B. 543 — By Senators Facemyer, Caldwell, Minear, Rowe, Snyder and Ross)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle registration and authorizing specialized motor vehicle registration plates; deleting the provision that division may not issue more than two Class A and two Class G special registration plates for certain officials; adding West Virginia circuit court judges, active and retired, as officials eligible for special registration plates; license plates for war veterans; reducing the registration fee for certain veterans; including bronze star recipients as veterans eligible for special plates; authorizing the division of motor vehicles to issue special registration plates for certified firefighters; providing for the issuance of special plates for all honorably discharged veterans; providing for a one-time fee of ten dollars for disabled veterans, former prisoners of war, Pearl Harbor survivors, purple heart recipients and recipients of the congressional medal of honor; authorizing the division of motor vehicles to issue special registration plates for volunteer firemen and women; authorizing the division of motor vehicles to issue special registration plates displaying patriotic themes; authorizing special registration plates showing the American flag bearing the logo "9/11/01"; authorizing the division of motor vehicles to issue special registration plates celebrating the centennial of the 4-H youth development movement; authorizing the division of motor vehicles to issue special registration plates for the future farmers of America organization; and authorizing the division of motor vehicles to issue special registration plates for educators.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.
§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

(a) The division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight: Provided, That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall begin with number two.

(c) The division may not issue, permit to be issued or distribute any special registration plates except as follows:

(1) The governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.
(2) State officials and judges may be issued special registration plates as follows:

(A) Upon appropriate application, the division shall issue to the secretary of state, state superintendent of schools, auditor, treasurer, commissioner of agriculture and the attorney general, the members of both houses of the Legislature, including the elected officials of both houses of the Legislature, the justices of the supreme court of appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the West Virginia circuit courts, active and retired on senior status, the judges of the United States district courts for the state of West Virginia and the judges of the United States court of appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle and a special registration plate for a Class G motorcycle owned by the official or his or her spouse: Provided, That the division may issue a Class A special registration plate for each vehicle titled to the official and a Class G special registration plate for each motorcycle titled to the official.

(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official’s term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) The division shall charge an annual fee of fifteen dollars for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.
(3) The division may issue members of the national guard forces special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the army national guard or air national guard, as appropriate, or the commanding officer of any United States armed forces reserve unit that the applicant is a member thereof, the division shall issue to any member of the national guard of this state or a member of any reserve unit of the United States armed forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member. Upon presentation of written evidence of retirement status, retired members of this state’s army or air national guard, or retired members of any reserve unit of the United States armed forces, are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) The division shall charge an initial application fee of ten dollars for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this section.

(C) A surviving spouse may continue to use his or her deceased spouse’s national guard forces license plate until the surviving spouse dies, remarries or does not renew the license plate.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may
request that the division issue a registration plate bearing
specially arranged letters or numbers with the maximum
number of letters or numbers to be determined by the com-
missoner. The division shall attempt to comply with the
request wherever possible.

(B) The commissioner shall propose rules for legislative
approval in accordance with the provisions of chapter
twenty-nine-a of this code regarding the orderly distribution
of the plates: Provided, That for purposes of this subdivision,
the registration plates requested and issued shall include all
plates bearing the numbers two through two thousand.

(C) An annual fee of fifteen dollars shall be charged for
each special registration plate issued pursuant to this subdivi-
sion, which is in addition to all other fees required by this
chapter.

(5) The division may issue honorably discharged veterans
special registration plates as follows:

(A) Upon appropriate application, the division shall issue
to any honorably discharged veteran of any branch of the
armed services of the United States a special registration
plate for any number of vehicles titled in the name of the
qualified applicant with an insignia designed by the commis-
ioner of the division of motor vehicles.

(B) The division shall charge a special initial application
fee of ten dollars in addition to all other fees required by law.
This special fee is to compensate the division of motor vehi-
cles for additional costs and services required in the issuing
of the special registration and shall be collected by the divi-
sion and deposited in a special revolving fund to be used for
the administration of this section: Provided, That nothing in
this section may be construed to exempt any veteran from
any other provision of this chapter.
(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(6) The division may issue disabled veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any disabled veteran who is exempt from the payment of registration fees under the provisions of this chapter a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters "DV" in red and also the regular identification numerals in red.

(B) A surviving spouse may continue to use his or her deceased spouse’s disabled veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(C) A qualified disabled veteran may obtain a second disabled veteran license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this section, in addition to all other fees required by this chapter, for the second plate.

(7) The division may issue recipients of the distinguished purple heart medal special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished purple heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the commissioner of motor vehicles and shall
150 denote that those individuals who are granted this special
151 registration plate are recipients of the purple heart. All letter-
152 ings shall be in purple where practical.

153 (B) Registration plates issued pursuant to this subdivision
154 are exempt from all registration fees otherwise required by
155 the provisions of this chapter.

156 (C) A surviving spouse may continue to use his or her
157 deceased spouse's purple heart medal license plate until the
158 surviving spouse dies, remarries or does not renew the li-
159 cense plate.

160 (D) A recipient of the purple heart medal may obtain a
161 second purple heart medal license plate as described in this
162 section for use on a passenger vehicle titled in the name of
163 the qualified applicant. The division shall charge a one-time
164 fee of ten dollars to be deposited into a special revolving fund
165 to be used in the administration of this section, in addition to
166 all other fees required by this chapter, for the second plate.

167 (8) The division may issue survivors of the attack on
168 Pearl Harbor special registration plates as follows:

169 (A) Upon appropriate application, the owner of a motor
170 vehicle who was enlisted in any branch of the armed services
171 that participated in and survived the attack on Pearl Harbor
172 on the seventh day of December, one thousand nine hundred
173 forty-one, the division shall issue a special registration plate
174 for a vehicle titled in the name of the qualified applicant. The
175 registration plate shall be designed by the commissioner of
176 motor vehicles.

177 (B) Registration plates issued pursuant to this subdivision
178 are exempt from the payment of all registration fees other-
179 wise required by the provisions of this chapter.
(C) A surviving spouse may continue to use his or her deceased spouse's survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this section, in addition to all other fees required by this chapter, for the second plate.

(9) The division may issue special registration plates to nonprofit charitable and educational organizations as follows:

(A) Approved nonprofit charitable and educational organizations may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of fifteen dollars, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the division of motor vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations' logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(C) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and
manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in a special revolving fund to pay the administrative costs. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) The division may issue specified emergency or volunteer registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified paramedic or emergency medical technician, a member of a paid fire department, a member of the state fire commission, the state fire marshal, the state fire marshal’s assistants, the state fire administrator and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of ten dollars, which is in addition to any
other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into a special revolving fund to be used for the purpose of compensating the division of motor vehicles for additional costs and services required in the issuing of the special registration and for the administration of this section.

(11) The division may issue specified certified firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified firefighter may apply for a special license plate which bears the insignia of the profession, for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate, issued pursuant to this subdivision.

(B) Each year an application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the West Virginia state fire commission or a copy of the applicant’s certification as a certified firefighter, with certification number, stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees.

(C) Each year an application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of ten dollars, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and depos-
276 ited into a special revolving fund to be used for the purpose
277 of compensating the division of motor vehicles for additional
278 costs and services required in the issuing of the special regis-
279 tration and for the administration of this section.

280 (12) The division may issue special scenic registration
281 plates as follows:

282 (A) Upon appropriate application, the commissioner shall
283 issue a special registration plate displaying a scenic design of
284 West Virginia which displays the words "Wild Wonderful" as
285 a slogan.

286 (B) The division shall charge a special one-time initial
287 application fee of ten dollars in addition to all other fees re-
288 quired by this chapter. All initial application fees collected by
289 the division shall be deposited into a special revolving fund
290 to be used in the administration of this chapter.

291 (13) The division may issue honorably discharged marine
292 corps league members special registration plates as follows:

293 (A) Upon appropriate application, the division shall issue
294 to any honorably discharged marine corps league member a
295 special registration plate for any number of vehicles titled in
296 the name of the qualified applicant with an insignia designed
297 by the commissioner of the division of motor vehicles.

298 (B) The division may charge a special one-time initial
299 application fee of ten dollars in addition to all other fees re-
300 quired by this chapter. This special fee is to compensate the
301 division of motor vehicles for additional costs and services
302 required in the issuing of the special registration and shall be
303 collected by the division and deposited in a special revolving
304 fund to be used for the administration of this section: Pro-
305 vided, That nothing in this section may be construed to ex-
306 empt any veteran from any other provision of this chapter.
(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged marine corps league license plate until the surviving spouse dies, remaries or does not renew the license plate.

(14) The division may issue military organization registration plates as follows:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States congress upon receipt of a guarantee from organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the chartered organization in good standing, as determined by the governing body of the chartered organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of ten dollars for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's military organization registration plate until the surviving spouse dies, remaries or does not renew the special military organization registration plate.

(15) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:
(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia wildlife which shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the director of the division of natural resources.

(B) The division shall charge an annual fee of fifteen dollars for each special nongame wildlife registration plate and each special wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife registration plates and wildlife registration plates shall be deposited in a special revenue account designated the nongame wildlife fund and credited to the division of natural resources.

(C) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(16) The division may issue members of the silver haired legislature special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified member of the silver haired legislature a specialized registration plate which bears recognition of the applicant as a member of the silver haired legislature.

(B) A qualified member of the silver haired legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of fifteen dollars, in addition to all other fees required by this chapter, for the plate. All annual fees collected by the divi-
sion shall be deposited in a special revolving fund to be used in the administration of this chapter.

(17) Upon appropriate application, the commissioner shall issue to a classic motor vehicle or classic motorcycle as defined in section three-a, article ten of this chapter, a special registration plate designed by the commissioner. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for each classic registration plate.

(18) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of motorcycles subject to Class G registration titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.
(19) Racing theme special registration plates:

(A) The division may issue a series of special registration plates displaying national association for stock car auto racing themes.

(B) An annual fee of twenty-five dollars shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into a special revolving fund to be used in the administration of this chapter.

(C) A special application fee of ten dollars shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

(20) The division may issue recipients of the navy cross, distinguished service cross, distinguished flying cross, air force cross, silver star or bronze star special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any recipient of the navy cross, distinguished service cross, distinguished flying cross, air force cross, silver star or bronze star, a registration plate for any number of vehicles titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the commissioner of motor vehicles for each award that denotes that those individuals who are granted this special registration plate are recipients of the navy cross, distinguished service cross, distinguished flying cross, air force cross, silver star or bronze star, as applicable.
(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s navy cross, distinguished service cross, distinguished flying cross, air force cross, silver star or bronze star special registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(21) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States with verifiable service during World War II, the Korean War, the Vietnam War, the Persian Gulf War or the War against Terrorism, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner denoting service in the applicable conflict.

(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to
be used for the administration of this section: Provided, That
nothing contained in this section may be construed to exempt
any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her
deceased spouse's honorably discharged veterans registration
plate until the surviving spouse dies, remarries or does not
renew the special registration plate.

(22) The division may issue special volunteer firefighter
registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of
West Virginia and who is a volunteer fireman or woman may
apply for a special license plate for one Class A vehicle titled
in the name of the qualified applicant which bears the insig-
nia of the profession in white letters on a red background.
The insignia shall be designed by the commissioner and shall
contain a fireman's helmet insignia on the left side of the
license plate.

(B) Each application submitted pursuant to this subdivi-
sion shall be accompanied by an affidavit signed by the appli-
cant's fire chief, stating that the applicant is a volunteer fire-
man or woman and justified in having a registration plate
with the requested insignia. The applicant must comply with
all other laws of this state regarding registration and licensure
of motor vehicles and must pay all required fees. Only one
such license plate may be issued to a volunteer fireman or
woman.

(C) Each application submitted pursuant to this subdivi-
sion shall be accompanied by payment of a special one-time
initial application fee of one dollar, which is in addition to
any other registration or license fee required by this chapter.
All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

The division may issue special registration plates which reflect patriotic themes, including the display of any United States symbol, icon, phrase or expression, which evokes patriotic pride or recognition.

(A) Upon appropriate application, the division shall issue to an applicant a registration plate of the applicant’s choice, displaying a patriotic theme as provided in this subdivision, for a vehicle titled in the name of the applicant. A series of registration plates displaying patriotic themes shall be designed by the commissioner of motor vehicles for distribution to applicants.

(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

Special license plates bearing the American flag and the logo “9/11/01”.

(A) Upon appropriate application, the division shall issue special registration plates which shall display the American flag and the logo “9/11/01”.

(B) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(C) A special application fee of ten dollars shall be charged at the time of initial application as well as upon ap-
application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

(25) The division may issue a special registration plate celebrating the centennial of the 4-H youth development movement and honoring the future farmers of America organization as follows:

(A) Upon appropriate application, the division may issue a special registration plate depicting the symbol of the 4-H organization which represents the head, heart, hands and health as well as the symbol of the future farmers of America organization which represents a cross section of an ear of corn for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) The division shall charge an annual fee of fifteen dollars for each special 4-H future farmers of America registration plate in addition to all other fees required by this chapter.

(26) The division may issue special registration plates to educators in the state’s elementary and secondary schools and in the state’s institutions of higher education as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for
any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) The division shall charge an annual fee of fifteen dollars for each special educator registration plate in addition to all other fees required by this chapter.

(d) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the proper forms to be used in making application for the special license plates authorized by this section.

(e)(1) Nothing in this section may be construed to require a charge for a free prisoner of war license plate or a free recipient of the congressional medal of honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse's prisoner of war or congressional medal of honor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the congressional medal of honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special
revolving fund to be used in the administration of this chapter, in addition to all other fees required by this chapter, for the second special plate.

(f) The division may issue special ten-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than ten years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by section three-a, article ten of this chapter: Provided, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or failure to pay personal property taxes as required by section three-a of this article.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by section fifteen, article ten of this chapter, section three, article three of this chapter or section three-a, article ten of this chapter for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached to the registra-
tion to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner.

(i) Any license plate issued or renewed pursuant to this chapter, which is paid for by a check that is returned for nonsufficient funds, is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.

CHAPTER 211

(Com. Sub. for S. B. 631 — By Senators Chafin, Snyder, Caldwell, Love and Ross)

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

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing special license plates for county sheriffs and their deputies; and fees to be paid by applicants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.
§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

(a) Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the governor, treasurer, three plates per elected office of the board of public works, vehicles operated by the state police, vehicles operated by conservation officers of the division of natural resources, not to exceed ten vehicles operated by the arson investigators of the office of state fire marshal and not to exceed sixteen vehicles operated by inspectors of the office of the alcohol beverage control commissioner, may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

The vehicle shall also have attached to the rear a plate bearing a number and any other words and figures as the commissioner of motor vehicles shall prescribe. The rear plate shall also be green with the number in white.

(b) On registration plates issued to vehicles owned by counties, the color shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom. On any registration plates issued to a city or municipality, the color shall be white on blue with the word “City” on top and the words “West Virginia” on the bottom.
The colors may not be reversed and shall be of reflectorized material. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles.

(c) Registration plates issued to vehicles operated by county sheriffs shall be designed by the commissioner in cooperation with the sheriffs' association with the word "Sheriff" on top of the plate and the words "West Virginia" on the bottom. The plate shall contain a gold shield representing the sheriff's star and a number assigned to that plate by the commissioner. Every county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless otherwise provided in this section, and a fee of ten dollars for each vehicle submitted by the first day of July, two thousand two.

(d) The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws.

(e) Upon application, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law-enforcement vehicles while engaged in undercover investigations.

(f) The commissioner is authorized to issue an unlimited number of license plates per applicant to authorized drug and violent crime task forces in the state of West Virginia when the chairperson of the control group of a drug and violent crime task force signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will
be used only for official undercover work conducted by a drug and violent crime task force.

(g) The commissioner is authorized to issue twenty Class A license plates to the criminal investigation division of the department of tax and revenue for use by its investigators.

(h) The commissioner may issue a maximum of ten Class A license plates to the division of natural resources for use by conservation officers. The commissioner shall designate the color and design of the registration plates to be displayed on the front and the rear of all other state-owned vehicles owned by the division of natural resources and operated by conservation officers.

(i) The commissioner is authorized to issue an unlimited number of Class A license plates to the commission on special investigations for state-owned vehicles used for official undercover work conducted by the commission on special investigations.

(j) No other registration plate may be issued for, or attached to, any state-owned vehicle.

(k) The commissioner of motor vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned cars. The numbered registration plates for the vehicles shall start with the number “five hundred” and the commissioner shall issue consecutive numbers for all state-owned cars.

(l) It is the duty of each office, department, bureau, commission or institution furnished any vehicle to have plates as described herein affixed thereto prior to the operation of the vehicle by any official or employee.
(m) Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars. Magistrates shall have concurrent jurisdiction with circuit and criminal courts for the enforcement of this section.

CHAPTER 212

(Com. Sub. for S. B. 541 — By Senators Wooton and Rowe)

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

AN ACT to amend and reenact sections three and four, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to certificate to show liens and encumbrances; providing that liens and encumbrances placed on vehicles are void against lien creditors under particular circumstances; requiring a purchase money lien or encumbrance to be perfected on the date and time of delivery of same to the division; specifying the documents that will perfect a lien or encumbrance; requiring that an application for a certificate of title must be filed under certain time limitations in order to maintain perfected status; providing when an application is not filed within a certain time limitation that the division take action to void the perfected status of a lien or encumbrance; providing that no certificate of title will be delivered absent an application delivered to the division; and defining a "purchase money lien or encumbrance".

Be it enacted by the Legislature of West Virginia:
That sections three and four, article four-a, chapter seventeen-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 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title or otherwise perfected void as to subsequent purchasers and lien creditors; exceptions.

§17A-4A3-4. Purchase money lien or encumbrance; effective date of lien; dealer to record lien; fees.

§17A-4A-3. Notice of lien; noninventory lien created by voluntary act of the owner not shown on certificate of title or otherwise perfected void as to subsequent purchasers and lien creditors; exceptions.

(a) A certificate of title, when issued by the division showing a lien or encumbrance, shall be considered from and after the filing with the division of the application therefor or the notice of lien authorized in section four of this article adequate notice to the state and its agencies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists.

(b) Notwithstanding any other provision of this code to the contrary, and subject to the provisions of subsection (c) of this section, any lien or encumbrance placed on a vehicle by the voluntary act of the owner shall be void as against: (i) any lien creditor who, without knowledge of the lien, acquires by attachment, levy or otherwise a lien thereupon, unless the lien or encumbrance is noted on the certificate of title, a filed application for certificate of title or the notice of lien authorized in section four of this article; and (ii) any pur-
chaser who, without knowledge of the lien or encumbrance, purchases the vehicle, unless the lien or encumbrance is noted on the certificate of title, a filed application for certificate of title or the notice of lien authorized in section four of this article: Provided, That a purchaser under this subsection who purchases the vehicle without knowledge of the lien or encumbrance and contemporaneously obtains actual physical possession of the vehicle and the certificate of title for the vehicle without the lien or encumbrance noted on the certificate of title, receives the vehicle free and clear of the lien or encumbrance.

(c) The creation and perfection of a lien against: (1) A vehicle held as inventory for sale by a registered dealer holding title by assignment; or (2) a vehicle for which a certificate of title has been issued and is held as inventory for lease by a vehicle rental agency or similar person engaged solely in the business of leasing vehicles in accordance with the provisions of article nine, chapter forty-six of this code shall be deemed adequate notice to the state and its agencies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists, subject to the provisions of section three hundred seven, article nine, chapter forty-six of this code, except that any lien or encumbrance on such a vehicle shall not be effective against the rights of any purchaser for value who purchases the vehicle primarily for personal, family, household or agricultural purposes unless such lien or encumbrance is recorded on the certificate of title or specified on the bill of sale.

§17A-4A-4. Purchase money lien or encumbrance; effective date of lien; dealer to record lien; fees.

(a) A purchase money lien or encumbrance upon any vehicle shall be perfected on the date and at time of delivery to the division of motor vehicles of either the application for a
certificate of title with all supporting documents, or a completed notice of lien form in a format determined by the division. The notice of lien form may be submitted to the division in paper format, facsimile or in any other electronic format approved by the division.

(b) If perfection occurs through the notice of lien form pursuant to subsection (a) of this section, an application for certificate of title must be received by the division of motor vehicles within sixty days after the date of purchase of the vehicle or refinancing of such purchase in order to maintain the perfected status of such lien or encumbrance. When an application is not filed within the time prescribed, the lien or encumbrance shall become unperfected on the sixty-first day following the purchase or refinancing date of the vehicle. If an application for a certificate of title is received by the division on or after the sixty-first day, the new perfection date for the lien or encumbrance is the date the application for a certificate of title is received by the division. Nothing in this section extends the sixty-day title application filing requirement of section four, article four of this chapter. The name and address of the lien holder shall be recorded on this title by the division in either electronic or paper format.

(c) No certificate of title for a vehicle shall be issued unless an application is delivered to the division of motor vehicles.

(d) In all transactions involving a purchase money lien or encumbrance upon a motor vehicle, the motor vehicle dealer shall collect and remit to the division of motor vehicles the title, tax and registration fees required under section four, article three of this chapter and file and record with the division of motor vehicles any lien created as a result of the transaction: Provided, That a motor vehicle dealer may remit the title, tax and registration fees through any license service that is licensed by the division of motor vehicles.
(e) No fee may be charged by a motor vehicle dealer for its services required under this section except that fee authorized by section one-b, article six of this chapter or subdivision (6), subsection (a), section one hundred nine, article three, chapter forty-six-a of this code.

(f) For purposes of this section, a purchase money lien or encumbrance is defined to include: (1) A lien taken or retained by the seller or the vehicle to secure all or a part of its price; (2) a lien taken by a person who by making advances or incurring an obligation gives value to enable another to acquire rights in or the use of a vehicle if such value is so used; and (3) the refinancing of either of the foregoing for the sole purpose of repaying a loan secured by the vehicle.

CHAPTER 213

(S. B. 725 — By Senators Redd, Facemyer, Kessler, McKenzie, Oliverio, Rowe and Ross)

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

AN ACT to amend and reenact section five, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article six-c, chapter seventeen-a of said code, all relating to allowing used motor vehicle dealers to purchase new motor vehicles and to sell the vehicle without first obtaining a new motor vehicle license under certain circumstances and to allowing automobile auction businesses to sell vehicles with a salvage or nonrepairable certificate.

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

Article 6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers.

ARTICLE 6C. AUTOMOBILE AUCTION BUSINESSES.

§17A-6-5. License certificate exemption.

(a) Any new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer or wrecker/dismantler/rebuilder receiving a vehicle in trade of a type other than that he is licensed to sell hereunder may sell such vehicle without obtaining a license certificate to engage in the business of selling vehicles of such type and without being considered to be a dealer in vehicles of such type.

(b) Any used motor vehicle dealer may obtain a new motor vehicle from a new motor vehicle dealer licensed in this state or any other state and sell the new motor vehicle without first obtaining a license to engage in the business of selling new motor vehicles: Provided, That the used motor vehicle dealer first titles the new motor vehicle in the name of the used motor vehicle dealer.
§17A-6C-1. License certificate required; application form; prohibited acts; reassignment of title; and exemption from privilege tax.

(a) A person, partnership or corporation may not engage in, represent or advertise that he, she or it is in the business of conducting automobile auctions without first obtaining a license certificate from the office of the commissioner. The commissioner shall provide an application form for applicants seeking a license certificate. The applicant shall provide full information required by the commissioner on the application form. The applicant, if a person, shall verify the information on the form by oath or affirmation. If the applicant is a partnership or corporation, the oath or affirmation shall be made by a partner or an officer of the corporation.

(b) For the purposes of this article, the term “automobile auction” means an auction or other sale where twenty or more used motor vehicles are offered for sale by auction within a license year, but does not include a sale or auction of surplus vehicles by an agency of this state, a municipality of this state or of the federal government or a sale or auction of repossessed vehicles by a financial institution or a sale or auction by a licensed motor vehicle dealer of vehicles owned by said dealer.

(c) The automobile auction may auction or sell vehicles owned by the auction or may auction vehicles which are owned by others.

(d) When the transferee of a vehicle is an automobile auction which holds the same for resale and lawfully operates the same under Class AA plates, such automobile auction shall not be required to obtain a new registration of said vehicle or be required to forward the certificate of title to the division, but upon transfer of title or interest to another per-
son the automobile auction shall execute and acknowledge an
assignment and warranty of title upon the certificate of title
and deliver the same not later than sixty days from date of
sale to the person to whom such transfer is made.

(e) The tax imposed by section four, article three of this
chapter does not apply to the titling of vehicles purchased for
resale by an automobile auction.

(f) Notwithstanding any other provision of this article,
while the vehicle is in the possession and control of an auto-
mobile auction business, its employees may not operate or
allow another to operate a vehicle with a salvage or a
nonrepairable motor vehicle certificate issued pursuant to
section ten, article four of this chapter on the roads and high-
ways of this state. In accordance with the temporary plate
provisions and the special dealer plate provisions of this arti-
cle, an automobile auction may operate or allow another
person to operate a vehicle on the roads and highways of this
state that has a cosmetic total loss salvage certificate issued
pursuant to section ten, article four of this chapter.

CHAPTER 214

(Com. Sub. for S. B. 695 — By Senators Wooton and Unger)

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

AN ACT to amend article six, chapter seventeen-a of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
five-a, relating to authorizing out-of-state dealers duly licensed
in a contiguous state to participate in vehicle shows and exhibi-
tions to the extent that the dealer’s home state allows dealers
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-5a. Reciprocity for out-of-state dealers; establishing violations of this section as misdemeanor offense; mandating that the commissioner propose or amend legislative rules.

(a) The division may permit a vehicle dealer licensed in another state contiguous to this state to participate in industry wide public vehicle shows and exhibitions subject to the following:

(1) The division determines that the state in which the out-of-state dealer is licensed permits dealers licensed by this state to participate in public vehicle shows and exhibitions under conditions substantially equivalent to the conditions which are imposed upon dealers from that state who participate in public vehicle shows and exhibitions in this state;

(2) The division determines that the out-of-state dealer holds a valid and unrevoked vehicle dealer license from the dealer’s home state;
(3) The dealer has secured the permission of its manufacturer; and

(4) The dealer first obtains an off-premises sales permit issued under legislative rules promulgated by the division.

(b) Nothing in this section requires an organizer of a public vehicle show or exhibition to invite or to include an out-of-state vehicle dealer as a participant.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor and shall be fined not more than five hundred dollars or confined in the regional or county jail for not more than six months, or both.

(d) In addition to any penalty imposed pursuant to subsection (c) of this section, any person violating the provisions of this section may be subject to a civil penalty as provided for in section twenty-five-a of this article.

(e) The commissioner shall propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the purposes of this section.
AN ACT to amend and reenact sections one and six, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing the division of motor vehicles to add an optional classification on driver’s licenses for the deaf or hard of hearing and for other handicapped or disabled drivers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

(a) No person, except those hereinafter expressly ex-
12empted, may drive any motor vehicle upon a street or high-
3way in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of the subdivision street is generally used by the public un-
6less the person has a valid driver’s license under the provi-
7sions of this code for the type or class of vehicle being
8 driven.

9 Any person licensed to operate a motor vehicle as pro-
10vided in this code may exercise the privilege thereby granted as provided in this code and, except as otherwise provided by law, shall not be required to obtain any other license to exer-
(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with the provisions of this code, federal law or rule. Licenses shall be issued in different colors for those drivers under age eighteen, those drivers age eighteen to twenty-one and adult drivers. The commissioner is authorized to select and assign colors to the licenses of the various age groups. The commissioner shall implement color-coded licenses on or before the first day of January, two thousand one.

(c) Driver's licenses issued by the division shall be classified in the following manner:

(1) Class A, B or C license shall be issued to those persons eighteen years of age or older with two years' driving experience and who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of public law 99-570 and subsequent rules, and have paid the required fee.

(2) Class D license shall be issued to those persons eighteen years and older with one year of driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purposes of the regulation of the operation of a motor vehicle, wherever the term chauffeur's license is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section.
Provided, That anyone who is not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle which is registered or which is required to be registered as a Class A motor vehicle as that term is defined in section one, article ten, chapter seventeen-a of this code with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E license for any person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided for by this chapter and have paid the required fee, but who do not possess a Class A, B, C, D or E driver's license.

(5) All licenses issued under this section may contain information designating the licensee as a diabetic, or as deaf or hard of hearing and for other handicapped or disabled persons in accordance with criteria established by the division, if the licensee requests this information on the license.

(d) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of the
subdivision street is generally used by the public unless the
person has a valid motorcycle license or a valid license which
has been endorsed under section seven-b of this article for
motorcycle operation or has a valid motorcycle instruction
permit.

(e)(1) A nondriver identification card may be issued to
any person who:

(A) Is a resident of this state in accordance with the pro-
visions of section one-a, article three, chapter seventeen-a of
this code;
(B) Does not have a valid driver's license;
(C) Has reached the age of two years. The division may
also issue a nondriver identification card to a person under
the age of two years for good cause shown;
(D) Has paid the required fee of two dollars and fifty
cents per year for each year the identification card is issued to
be valid: Provided, That the fee is not required if the appli-
cant is sixty-five years or older or is legally blind; and
(E) Presents a birth certificate or other proof of age and
identity acceptable to the division with a completed applica-
tion on a form furnished by the division.

(2) The nondriver identification card shall contain the
same information as a driver's license except that the identi-
fication card shall be clearly marked as identification card.
However, the division may issue an identification card with
less information to persons under the age of sixteen. It may
be renewed on application and payment of the fee required by
this section.
(A) Every identification card issued to persons who have attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in which the applicant's birthday occurs in those years in which the applicant's age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years nor more than seven years and shall be valid for a period of five years expiring in the month in which the applicant's birthday occurs and in a year in which the applicant's age is evenly divisible by five.

(B) Every identification card issued to persons who have not attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in the year in which the applicant attains the age of twenty-one years.

(C) Every identification card issued to persons under the age of sixteen shall expire on the day of the month designated by the commissioner in which the applicant's birthday occurs and shall be issued for a period of two years.

(3) The identification card shall be surrendered to the division when the holder is issued a driver's license. The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars or confined in the county or regional jail not more than six months, or both.

§17B-2-6. Application for license or instruction permit; fee to accompany application.
(a) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee and payment of the fee shall entitle an applicant under the age of eighteen to not more than three attempts to pass the road skills test. An applicant age eighteen years or older is entitled to not more than three attempts to pass the road skills test within a period of sixty days from the date of issuance of the instruction permit. An applicant who fails either the written test or the road skills test may not be tested twice within a period of one week.

(b) Any applicant who has not been previously licensed must hold an instruction permit for a minimum of thirty days. For the purposes of this section, the term "previously licensed" means an applicant who has obtained at least a level two graduated license or junior driver's license issued under the provisions of this article or has obtained an equal or greater level of licensure if previously licensed in another state.

(c) Every said application shall state the full name, date of birth, sex and residence address of the applicant and briefly describe the applicant and shall state whether the applicant has theretofore been a licensed driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked within the five years next preceding the date of application, or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal, whether the applicant desires a notation on the driver's license indicating that the applicant is a diabetic, deaf, or hard of hearing, or has any other handicap or disability and such other pertinent information as the commissioner may require.
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CHAPTER 216

(S. B. 438 — By Senators Wooton, Bailey and Hunter)

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

AN ACT to amend chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to requiring division of motor vehicles to provide a mechanism on certain applications to allow persons to indicate their preference to register with selective service system; and specifying the effect of signing the application under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. REQUIREMENT OF COMPLIANCE WITH SELECTIVE SERVICE REGISTRATION.

§17B-2A-1. Legislative intent.

§17B-2A-2. Compliance with registration requirements of military selective service act.

§17B-2A-1. Legislative intent.

1 It is the intent of the Legislature in enacting this article to
2 protect state residents from the penalties associated with
3 failing to register with the United States selective service
system and to help ensure that any future draft is fair and equitable to all potential draftees.

The Legislature finds and declares that the penalties associated with noncompliance are severe, including, but not limited to, a felony conviction and forfeiture of the ability to seek state employment from certain state agencies and departments. In addition, failure to register may permanently preclude the violator from acquiring many federal benefits, such as federal employment, including employment with the United States postal service, federal and state student financial assistance, participation in federally funded job training programs and eligibility for United States citizenship for immigrants seeking citizenship.

Therefore, in recognition of the severe consequences of noncompliance and the importance of helping ensure that any future draft is fair and equitable, it is the intent of the Legislature to notify state residents of their responsibility to register with selective service and to provide them the opportunity to register concurrent with applying for a driver’s license or identification card.

§17B-2A-2. Compliance with registration requirements of military selective service act.

The division of motor vehicles shall provide a mechanism on each application for the issuance, renewal or duplicate of an instruction permit, a driver’s license, a professional driver’s license, a commercial driver’s license or an identification card by which those persons required to register in compliance with the requirements of section three of the “Military Selective Service Act”, 50 U.S.C. App. 451, et seq., may indicate their preference to allow the division to forward required information to the selective service system. If the applicant so indicates, his signature on the application may serve as his consent to registration with the selective service system, if he is not already registered.
AN ACT to amend and reenact section three, article two, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-nine, chapter thirty of said code, all relating to enforcement of motor vehicle laws; extending the power of special officers designated by the commissioner of highways on official weighing crews to possess firearms while on duty; training requirements; qualifications; requiring division of highways to pay for training; and clarifying responsibilities and duties of governor’s committee on crime, delinquency and correction.

Be it enacted by the Legislature of West Virginia:

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

Chapter
17C. Traffic Regulations and Laws of the Road.
30. Professions and Occupations.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.
ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.

§17C-2-3. Enforcement of chapter; designation and power of special officers; bond of special officers; failure to obey police officer or special officers.

(a) It is the duty of the West Virginia state police and its members to enforce the provisions of this chapter and other laws of this state governing the operation of vehicles upon the streets and highways of this state as defined in section thirty-five, article one of this chapter or in other designated places specifically referred to in a given section in this chapter; and it is the duty of sheriffs and their deputies and of the police of municipalities to render to the West Virginia state police assistance in the performance of said duties as the superintendent of the West Virginia state police may require of them.

(b) The West Virginia commissioner of highways is authorized to designate employees of the West Virginia division of highways as special officers to enforce the provisions of this chapter only when special officers are directing traffic upon bridges and the approaches to bridges which are a part of the state road system when any bridge needs special traffic direction and the superintendent of the West Virginia state police has informed the West Virginia commissioner of highways that he or she is unable to furnish personnel for traffic direction. The West Virginia commissioner of highways may also designate certain employees of the West Virginia division of highways serving as members of official weighing crews as special officers to enforce the provisions of article seventeen of this chapter. Notwithstanding any provision of this code to the contrary, designated special officers serving as members of official weighing crews may carry handguns in the course of their official duties after meeting specialized qualifications established by the governor's committee on
crime, delinquency and correction, which qualifications shall include the successful completion of handgun training, including a minimum of four hours’ training in handgun safety, paid for by the division of highways and comparable to the handgun training provided to law-enforcement officers by the West Virginia state police: Provided, That nothing in this section shall be construed to include designated special officers authorized by the provisions of this section as law-enforcement officers as such are defined in section one, article twenty-nine, chapter thirty of this code. The West Virginia commissioner of highways shall provide a blanket bond in the amount of ten thousand dollars for all employees designated as special officers, as above provided.

(c) No person shall willfully fail or refuse to comply with a lawful order or direction of any police officer or designated special officer invested by law with authority to direct, control or regulate traffic.

(d) No person shall willfully fail or refuse to comply with a lawful order or direction of any designated special officer pursuant to the provisions of subsection (b) of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-3. Duties of the governor’s committee and the subcommittee.

Upon recommendation of the subcommittee, the governor’s committee shall, by or pursuant to rule or regulation:

(a) Provide funding for the establishment and support of law-enforcement training academies in the state;

(b) Establish standards governing the establishment and operation of the law-enforcement training academies, includ-
ing regional locations throughout the state, in order to provide access to each law-enforcement agency in the state in accordance with available funds;

(c) Establish minimum law-enforcement instructor qualifications;

(d) Certify qualified law-enforcement instructors;

(e) Maintain a list of approved law-enforcement instructors;

(f) Promulgate standards governing the qualification of law-enforcement officers and the entry-level law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of four hundred classroom hours, shall provide for credit to be given for relevant classroom hours earned pursuant to training other than training at an established law-enforcement training academy if earned within five years immediately preceding the date of application for certification, and shall provide that the required classroom hours can be accumulated on the basis of a part-time curricula spanning no more than twelve months, or a full-time curricula;

(g) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;

(h) Certify law-enforcement officers, as provided in section five of this article;

(i) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to section four of this article;
(j) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the committee; and

(k) Submit, on or before the thirtieth day of September of each year, to the governor, and upon request to individual members 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.

Chapter 218

(Com. Sub. for S. B. 664 — By Senators Ross, Sharpe and Fanning)

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

AN ACT to amend and reenact section three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four, twelve and thirteen, article one, chapter seventeen-e of said code, all relating to the requirement that certain vehicles stop or slow down at railroad crossings; and disqualifying violating drivers from operating commercial vehicles for certain periods of time in compliance with federal law.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four, twelve and thirteen, article one, chapter seventeen-e of said code be amended and reenacted, all to read as follows:
§17C-12-3. Certain vehicles must stop at all railroad grade crossings.

(a) Except as provided in subsection (f) of this section, the driver of a commercial motor vehicle specified in subsection (b) of this section shall not cross a railroad track or tracks at grade unless he or she first: (1) Stops the commercial motor vehicle within fifty feet of, and not closer than fifteen feet to, the tracks; (2) thereafter, listens and looks in each direction along the tracks for an approaching train; and (3) ascertains that no train is approaching. When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without a change of gears. The driver shall not shift gears while crossing the tracks.

(b) The following commercial vehicles are required to stop at railroad tracks or tracks at grade:

(1) Every bus transporting passengers;

(2) Every commercial motor vehicle transporting any quantity of a United States department of transportation defined division 2.3 chlorine;

(3) Every commercial motor vehicle which, in accordance with United States department of transportation regulations, is marked or placarded and is required to stop in accordance with 49 C.F.R. part §392.10(a)(3)(2001);
(4) Every cargo tank motor vehicle, loaded or empty, used for the transportation of any hazardous material, as defined in federal department of transportation hazardous materials rules, 49 C.F.R. parts §107 through §180 (2001);

(5) Every cargo tank motor vehicle transporting a commodity which, at the time of loading, has a temperature above its flashpoint as determined by 49 C.F.R. §173.120 (2001); and

(6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity exemption in accordance with 49 C.F.R. part §107 subpart B (2001).

(c) Any vehicle owned by an employer which, in carrying on the employer’s business or in carrying employees to and from work, carries more than six employees of the employer is required to stop at all railroad tracks or tracks at grade, in accordance with subsection (a) of this section.

(d) All drivers of commercial motor vehicles not required to stop at railroad tracks or tracks at grade as provided in subsection (a) of this section may not cross a railroad track or tracks at grade unless he or she first slows the commercial motor vehicle to a speed which will permit the commercial motor vehicle to be stopped before reaching the nearest rail of the railroad crossing and permit exercise of due caution to ascertain that the tracks are clear of an approaching train.

(e) All drivers of commercial motor vehicles may not proceed to cross a railroad crossing unless there is sufficient space to drive completely through the crossing without stopping and the vehicle has sufficient undercarriage clearance to drive completely through the crossing without stopping.

(f) No stop need be made at:
(1) Any crossing where a police officer, crossing flagger or a traffic-control signal directs traffic to proceed;

(2) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes within a business district, as defined in 49 C.F.R. §390.5 (2000);

(3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which under local law permits the commercial motor vehicle to proceed across the track without slowing or stopping; or

(4) A railroad grade crossing which is marked with a sign indicating that the rail line is out of service.

(g) Any person driving a vehicle specified in this section or a vehicle that requires a commercial driver’s license who fails to comply with the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined one hundred dollars or imprisoned for not more than ten days: Provided, That if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER’S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER’S LICENSE.

§17E-1-4. Limitation on number of driver’s licenses.

§17E-1-12. Classifications, endorsements and restrictions.


§17E-1-4. Limitation on number of driver’s licenses.

1 No person who drives a commercial motor vehicle may have more than one driver’s license’s at one time.

§17E-1-12. Classifications, endorsements and restrictions.
Commercial driver's licenses may be issued with the following classifications, endorsements and restrictions; the holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles and vehicles which require an endorsement, unless the proper endorsement appears on the license:

(a) **Classifications.** –

1. **Class A** - Any combination of vehicles with a gross combined vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand pounds.

2. **Class B** - Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more and any vehicle towing a vehicle not in excess of ten thousand pounds.

3. **Class C** - Any single vehicle or combination vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds comprising:

   (A) Vehicles designed to transport sixteen or more passengers, including the driver; and

   (B) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 C.F.R., Part §172, subpart F (2001).

(b) **Endorsements and restrictions.** — The commissioner upon issuing a commercial driver's license may impose endorsements or restrictions determined by the commissioner to be appropriate to assure the safe operation of a motor vehicle.
and to comply with 49 U.S.C., *et seq.*, and federal rules implementing the law.

(c) **Applicant record check.** — Before issuing a commercial driver’s license, the commissioner shall obtain driving record information through the commercial driver’s license information system, the national driver register and from each state in which the person has been commercially licensed.

(d) **Notification of license issuance.** — Within ten days after issuing a commercial driver’s license, the commissioner shall notify the commercial driver’s license information system of that fact, providing all information required to ensure identification of the person.

(e) **Expiration of license.** –

(1) Every commercial driver’s license issued to persons who have attained their twenty-first birthday expires on the applicant’s birthday in those years in which the applicant’s age is evenly divisible by five. Except as provided in subdivision (2) of this subsection, no commercial driver’s license may be issued for less than three years nor more than seven years and the commercial driver’s license shall be renewed by the applicant’s birthday and is valid for a period of five years, expiring in the month in which the applicant’s birthday occurs and in a year in which the applicant’s age is evenly divisible by five.

(2) Every commercial driver’s license issued to persons who have not attained their twenty-first birthday expires on the last day of the month in which the applicant attains the age of twenty-one years.

(3) Commercial driver’s licenses held by any person in the armed forces which expire while that person is on active
duty remains valid for thirty days from the date on which that person reestabhshes residence in West Virginia.

(4) Any person applying to renew a commercial driver’s license which has been expired for two years or more shall follow the procedures for an initial issuance of a commercial driver’s license, including the testing provisions.

(f) License renewal procedures. — When applying for renewal of a commercial driver’s license, the applicant shall complete the application form and provide updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the applicant shall comply with a background check in accordance with 49 U.S.C. §5103a and pass the written test for a hazardous materials endorsement.


(a) Disqualification offenses. — Any person is disqualified from driving a commercial motor vehicle for a period of one year if convicted of a first violation of:

(1) Driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(2) Driving a commercial motor vehicle while the person’s alcohol concentration of the person’s blood, breath or urine is four hundredths of one percent or more, by weight;

(3) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(4) Using a commercial motor vehicle in the commission of any felony as defined in this article: Provided, That the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled
substance falls under the provisions of subsection (e) of this section;

(5) Refusing to submit to a test to determine the person’s alcohol concentration while driving a commercial motor vehicle;

(6) Manslaughter or negligent homicide resulting from the operation of a motor vehicle as defined in section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

(7) Driving while his or her license is suspended or revoked, as defined in section three, article four, chapter seventeen-b of this code; or

(8) Perjury or making a false affidavit or statement under oath to the division of motor vehicles, as defined in subsection (4), section five, article three, chapter seventeen-b of this code and section two, article four of said chapter.

If any of the violations in this subsection occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years for a first violation.

(b) A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection (a) of this section, or any combination of those offenses, arising from two or more separate incidents.

(c) The commissioner may propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code establishing guidelines, including conditions, under which a disqualification for life under subsection (b) of this section may be reduced to a period of not less than ten years.

(d) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture,
distribution or dispensing of a controlled substance, or pos-
session with intent to manufacture, distribute or dispense a
controlled substance.

(e) A person is disqualified from driving a commercial
motor vehicle for a period of sixty days if convicted of two
serious traffic violations, or one hundred twenty days if con-
victed of three serious violations, committed in a commercial
motor vehicle arising from separate incidents occurring
within a three-year period.

(f) In addition, in accordance with the provision of 49
C.F.R. §391.15 and §383.15 (1998), a conviction of violating
an out-of-service order is a disqualifying offense. For the first
offense, the period of disqualification shall be for ninety
days. For the second offense within a ten-year period for
violations in separate incidents, the period of disqualification
shall be for a period of one year. For the third or subsequent
offense within a ten-year period for violations in separate
incidents, the period of disqualification shall be for a period
of three years. If the violation of the out-of-service order
occurred while the person was operating a commercial motor
vehicle transporting hazardous material required to be plac-
arded under the Hazardous Transportation Act (49 U.S.C.
§§5101, et seq.) or while operating a motor vehicle designed
to transport sixteen or more passengers, including the driver,
the period of disqualification for the first offense shall be for
one hundred eighty days. For the second or subsequent of-
fense within a ten-year period for violations in separate inci-
dents, the period of disqualification shall be for three years.

(g) A person is disqualified from driving a commercial
motor vehicle if he or she has failed to pay overdue child
support or comply with subpoenas or warrants relating to
paternity or child support proceedings, if a circuit court has
ordered the suspension of the commercial driver’s license as
provided in article five-a, chapter forty-eight-a of this code
and the child support enforcement division has forwarded to
the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due. A disqualification under this section continues until the division has received a court order restoring the license or a certification by the child support enforcement division that the licensee is complying with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(h) In accordance with the provisions of 49 C.F.R. §383.51 (2001), any person convicted of operating a commercial motor vehicle in violation of any federal, state or local law or ordinance pertaining to any of the railroad crossing violations described in subdivision (1) of this subsection shall be disqualified for the period of time specified in subdivision (2) of this subsection:

(1) Conviction for any of the following railroad crossing violations shall result in disqualification:

(A) Failing to slow down and check that the tracks are clear of an approaching train, if not required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(B) Failing to stop before reaching the crossing, if the tracks are not clear, if not required to stop, in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code;

(C) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(D) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the
provisions of section three, article twelve, chapter seventeen-c of this code;

(E) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code; or

(F) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code.

(2) Duration of disqualification time periods for railroad-highway grade crossing convictions are as follows:

(A) For the first conviction, a driver of a commercial motor vehicle shall be disqualified for sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation;

(B) For a second conviction, a driver of a commercial vehicle shall be disqualified for one hundred twenty days if during any three-year period the driver is convicted of a second railroad-highway grade crossing violation in separate incidents;

(C) For the third or subsequent conviction, a driver of a commercial motor vehicle shall be disqualified for one year if during any three-year period the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

(i) After suspending, revoking or canceling a commercial driver’s license, the division shall update its records to reflect that action within ten days.
AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special registration plates or placards for persons with mobility impairments; providing entitlement for special registration plates or placards for persons who transport persons with disabilities; requiring persons other than the person with the mobility impairment to provide certification with the application; modifying definition of a person with a mobility impairment; providing that “accessible parking” is preferred language in reference to “handicapped parking”; increasing criminal penalties; creating new criminal offense for selling unofficially issued placards or identification cards; providing that identification cards shall be identical in design for both registration plates and placards; providing requirements relative to accessible parking space signposts; providing local authorities who adopt enforcement provisions contained in this section shall retain fines and fees associated with enforcement under the section; and providing the commissioner issue a separate document informing general public regarding the new provisions and increased fines under the legislation.

Be it enacted by the Legislature of West Virginia:

That section six, article thirteen, 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 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; definitions; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.

(a) (1) The following persons may apply for special registration plates or removable windshield placards:

(A) A person with a mobility impairment;

(B) A relative of a person with a mobility impairment;

(C) A person who regularly resides with a person with a mobility impairment;

(D) A person who regularly transports a person who has a mobility impairment; or

(E) A West Virginia organization which transports persons with disabilities and facilitates the mobility of its customers, patients, students or persons otherwise placed under its responsibility.

(2) The commissioner may not issue a total of more than two special registration plates or removable windshield placards to any person with a mobility impairment and any applicant applying on behalf of that person under paragraphs (B), (C) and (D), subdivision (1) of this subsection. Special registration plates or placards may only be issued for placement on a Class A or Class G motor vehicle registered under the provisions of article three, chapter seventeen-a of this code.

(3) The applicant shall specify whether he or she is applying for a special registration plate, a removable windshield
placard or both on the application form prescribed and furnished by the commissioner.

(4) The applicant shall submit, with the application, a certificate issued by a licensed physician stating that the applicant has a mobility impairment or that the applicant is a relative of, regularly resides with, or regularly transports a person with a mobility impairment as defined in this section. The physician shall specify in the certificate whether the disability is temporary or permanent. A disability which is temporary shall not exceed six months. A disability which is permanent is one which is one to five years or more in expected duration.

(5) Upon receipt of the completed application, the physician's certificate and the regular registration fee for the applicant's vehicle class, if the commissioner finds that the applicant qualifies for the special registration plate or a removable windshield placard as provided in this section, he or she shall issue to the applicant a special registration plate (upon remittance of the regular registration fee) or a removable windshield placard (red for temporary and blue for permanent), or both. Upon request, the commissioner shall also issue to any otherwise qualified applicant one additional placard having the same expiration date as the applicant's original placard. The placard shall be displayed by hanging it from the interior rearview mirror of the motor vehicle so that it is conspicuously visible from outside the vehicle when parked in a designated accessible parking space. The placard may be removed from the rearview mirror whenever the vehicle is being operated to ensure clear vision and safe driving. Only in the event that there is no suitable rearview mirror in the vehicle may the placard be displayed on the dashboard of the vehicle.
(b) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person or applicant with a "mobility impairment" means a person who is a citizen of West Virginia and as determined by a physician, allopath or osteopath licensed to practice in West Virginia:

(A) Cannot walk two hundred feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;

(C) Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(D) Uses portable oxygen;

(E) Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American heart association; or

(F) Is severely limited in his or her ability to walk because of an arthritic, neurological or other orthopedic condition;

(2) "Special registration plate" means a registration plate that displays the international symbol of access in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;
“Removable windshield placard” (permanent or temporary) means a two-sided, hanger-style placard measuring three inches by nine and one-half inches, with all of the following on each side:

(A) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;

(B) An identification number measuring one inch in height;

(C) An expiration date in numbers measuring one inch in height; and

(D) The seal or other identifying symbol of the issuing authority;

“Regular registration fee” means the standard registration fee for a vehicle of the same class as the applicant’s vehicle;

“Public entity” means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government;

“Public facility” means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located;

“Place or places of public accommodation” means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

(A) Inns, hotels, motels and other places of lodging;
(B) Restaurants, bars or other establishments serving food or drink;

(C) Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;

(D) Auditoriums, convention centers, lecture halls or other places of public gatherings;

(E) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;

(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;

(G) Terminals, depots or other stations used for public transportation;

(H) Museums, libraries, galleries or other places of public display or collection;

(I) Parks, zoos, amusement parks or other places of recreation;

(J) Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation;
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141 (8) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity;

144 (9) "Accessible parking" formerly known as "handicapped parking" is the present phrase consistent with language within the Americans with Disabilities Act (ADA).

147 Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard under this section is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars. Any person who fabricates, uses or sells unofficially issued windshield placards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars per placard fabricated, used or sold. Any person who fabricates, uses or sells unofficially issued identification cards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined seven hundred dollars per identification card fabricated, used or sold. Any person who fabricates, uses or sells unofficially issued labels imprinted with a future expiration date to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined seven hundred dollars. Any person covered by this section who sells or gives away their officially issued windshield placard to any person or organization not qualified to apply or receive the placard and then reapplies for a new placard on the basis it was stolen
is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he, she or they may otherwise incur, shall lose their right to receive or use a special placard or special license plate for a period of not less than five years.

(c) The commissioner shall set the expiration date for special registration plates and permanent removable windshield placards on the last day of a given month and year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, the commissioner shall issue: (i) A new special registration plate or new permanent removable windshield placard; or (ii) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard.

(d) The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner.

(e) The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an identification card bearing the applicant’s name, assigned identification number and expiration date. The applicant shall thereafter carry this identification card on his or her person whenever parking in an accessible parking space. The identification card shall be identical in design for both registration plates and removable windshield placards.

(f) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access
aisle for vans having side mounted hydraulic lifts or ramps or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every twelve or twenty-four inches apart or other appropriate markings denoting that the space is a no-parking zone. All accessible parking spaces should have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(g) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(h) Free stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment at all times.

(i) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, That this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during
heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment is guilty of a misdemeanor and, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined one hundred dollars; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars.

(j) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand or park a motor vehicle in an area designated, zoned or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as “van accessible” but may be used by any vehicle displaying a valid special registration plate or removable windshield placard. These spaces are intended solely for persons with a mobility impairment, as defined in this section: Provided, That any person in the act of transporting a person with a mobility impairment as defined in
this section, may stop, stand or park a motor vehicle not dis-
playing a special registration plate or removable windshield
placard in the area designated for accessible parking by the
international symbol of access for the limited purposes of
loading or unloading a passenger with a mobility impairment:
Provided, however, That the vehicle shall be promptly moved
after the completion of this limited purpose.

Any person who violates the provisions of this subsection
is guilty of a misdemeanor and, upon conviction thereof,
shall be fined one hundred dollars; upon second conviction
thereof, in addition to any other penalty he or she may other-
wise incur, shall be fined three hundred dollars; and upon
third and subsequent convictions thereof, in addition to any
other penalty he or she may otherwise incur, shall be fined
five hundred dollars.

(k) All signs that designate areas as “accessible parking”
or that display the international symbol of access shall also
include the words “Up to $500 fine”.

(l) No person may stop, stand or park a motor vehicle in
an area designated or marked off as an access aisle adjacent
to a van-accessible parking space or regular accessible park-
ing space. Any person, including a driver of a vehicle dis-
playing a valid removable windshield placard or special reg-
istration plate, who violates the provisions of this subsection
is guilty of a misdemeanor and, upon conviction thereof,
shall be fined one hundred dollars; upon second conviction
thereof, in addition to any other penalty he or she may other-
wise incur, shall be fined three hundred dollars; and upon
third and subsequent convictions thereof, in addition to any
other penalty he or she may otherwise incur, shall be fined
five hundred dollars.

(m) Parking enforcement personnel who otherwise en-
force parking violations may issue citations for violations of
(n) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers' compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle's license plate number, date, time and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned or designated accessible parking areas by the supervising law-enforcement agency.

(o) Local authorities who adopt the basic enforcement provisions of this section and issue their own local ordinances shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (n) of this section, if adopted by local authorities, or otherwise shall go into the local authorities' general revenue fund. Otherwise, any moneys collected as fines shall be collected for and remitted to the state.

(p) The commissioner shall prepare and issue a document to applicants describing the privileges accorded a vehicle having a special registration plate and removable windshield placard as well as the penalties when the vehicle is being
inappropriately used as described in this section and shall include the document along with the issued special registration plate or windshield placard. In addition, the commissioner shall issue a separate document informing the general public regarding the new provisions and increased fines being imposed either by way of newspaper announcements or other appropriate means across the state.

(q) The commissioner shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section within ninety days after being enacted by the Legislature in its regular session.

CHAPTER 220

(S. B. 278 — By Senators Love, Ross, Helmick, Wooton, Bailey, Hunter, Minard and Rowe)

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

AN ACT to amend article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, all relating to authorized emergency vehicles generally; requiring motor vehicle drivers take certain precautions when approaching a stationary authorized emergency vehicle displaying emergency signals; and providing penalties for violations.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be
ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-9a. Approaching authorized emergency vehicles; penalties.

(a) The driver of any vehicle approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, shall:

(1) Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the authorized emergency vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or

(2) Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed fifteen miles per hour on any nondivided highway or street and twenty-five miles per hour on any divided highway depending on road conditions, if changing lanes would be impossible or unsafe.

(b) (1) Any person who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail not more than sixty days, or both fined and imprisoned.

(2) If violation of this section results in property damage in addition to any other penalty imposed, driving privileges
of the persons causing the property damage shall be suspended for ninety days.

(3) If violation of this section results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.

(4) If violation of this section results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.

(5) Any person who violates any provision of this section and while doing so also violates section two, article five of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall, in addition to the penalties set out in section two of said article and this section, 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 more than six months, or both fined and imprisoned.

CHAPTER 221

(Com. Sub. for S. B. 35 — By Senators Redd, Love and Snyder)

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

AN ACT to amend and reenact sections five and six, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to increasing fees for motor vehicle inspections.
Be it enacted by the Legislature of West Virginia:

That sections five and six, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

(a) The superintendent of the state police is responsible for the inspection as provided in this article and shall prescribe requirements and qualifications for official inspection stations. He or she shall select and designate the stations and shall issue permits for official inspection stations and furnish instructions and all necessary forms for the inspection of vehicles as required in this article and the issuance of official certificates of inspection and approval. The certificate of inspection shall be a paper sticker or decal to be affixed to the windshield of a motor vehicle, shall be serially numbered and shall properly identify the official inspection station which issued it. A charge of one dollar per sticker shall be charged by the state police to the inspection station, and the funds received shall be deposited into the state treasury and credited to the account of the state police for application in the administration and enforcement of the provisions of this article. Any balance remaining in the fund on the last day of June of each fiscal year, not required for the administration and enforcement of the provisions of this article, shall be transferred to the state road fund. The superintendent may exchange stickers or make refunds to official inspection stations for stickers on hand when permits are revoked or when, for any reason, the stickers become obsolete.
(b) A person shall apply for a permit upon an official form prescribed by the superintendent and the superintendent shall grant permits only when the superintendent is satisfied that the station is properly equipped and has competent personnel to make the inspections and adjustments and that the inspections and adjustments will be properly conducted. The superintendent, before issuing a permit, may require the applicant to file a bond with surety approved by the superintendent, conditioned that such applicant, as a station operator, will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of the station operator or employees thereof.

(c) The superintendent shall properly supervise and cause inspections to be made of the stations. Upon finding that a station is not properly equipped or conducted, the superintendent may, upon a first violation, suspend the permit for a period of up to one year. Upon a second or subsequent finding that a station is not properly equipped or conducted, the superintendent shall permanently revoke and require the surrender of the permit. The superintendent may reinstate the permit of any person whose permit was permanently revoked prior to the effective date of this section upon a first finding that a station was not properly equipped or conducted, upon application, at any time after the expiration of six months from the time of revocation and shall reinstate the permit, upon application, after the expiration of one year. He or she shall maintain and post at his or her office and at any other places as he or she may select lists of all stations holding permits and of those whose permits have been suspended or revoked.

§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.
(a) No permit for an official inspection station shall be assigned or transferred or used at any location other than designated in the permit and every permit shall be posted in a conspicuous place at the station location designated in the permit.

(b) The person operating the station shall issue a certificate of inspection and approval, upon an official form, to the owner of a vehicle upon inspecting the vehicle and determining that its equipment required under this article is in good condition and proper adjustment, but otherwise no certificate shall be issued, except one issued pursuant to section two of this article. When required by the superintendent, a record and report shall be made of every inspection and every certificate issued.

(c) A fee of not more than twelve dollars may be charged for an inspection and any necessary headlight adjustment to proper focus, not including any replacement parts required, and the issuance of the certificate, but the imposition of the charge is not mandatory.

CHAPTER 222

(Com. Sub. for H. B. 4309 — By Delegates Amores, Webster, J. Smith, Smirl and Webb)

[Passed February 28, 2002; in effect ninety days from passage. Approved by the Governor.]
absence of its municipal court judge, the municipal court clerk or other persons designated by city charter or ordinance may serve as municipal judge; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2. Municipal court for municipalities.

(a) Notwithstanding any charter provision to the contrary, any city may provide by charter provision and any municipality may provide by ordinance for the creation and maintenance of a municipal court, for the appointment or election of an officer to be known as municipal court judge and for his or her compensation, and authorize the exercise by the court or judge of the jurisdiction and the judicial powers, authority and duties set forth in section one of this article and similar or related judicial powers, authority and duties enumerated in any applicable charter provisions, as set forth in the charter or ordinance. Additionally, any city may provide by charter provision and any municipality may provide by ordinance, that in the absence of or in the case of the inability of the municipal court judge to perform his or her duties, the municipal court clerk or other official designated by charter or ordinance may act as municipal court judge: Provided, That the municipal court clerk or other official designated by charter or ordinance to act as municipal court judge shall comply with the requirements set forth in subsection (b) of this section, as well as any other requirements that the city by charter provision or the municipality by ordinance may require.
(b) Any person who assumes the duties of municipal court judge who has not been admitted to practice law in this state shall attend and complete the next available course of instruction in rudimentary principles of law and procedure. The course shall be conducted by the municipal league or a like association whose members include more than one half of the chartered cities and municipalities of this state. The instruction must be performed by or with the services of an attorney licensed to practice law in this state for at least three years. Any municipal court judge may attend a course for the purpose of continuing education. The cost of any course referred to in this section shall be paid by the municipality that employs the municipal judge.

(c) Only a defendant who has been charged with an offense for which a period of confinement in jail may be imposed is entitled to a trial by jury. If a municipal court judge determines, upon demand of a defendant, to conduct a trial by jury in a criminal matter, it shall follow the procedures set forth in the rules of criminal procedure for magistrate courts promulgated by the supreme court of appeals, except that the jury in municipal court shall consist of twelve members.

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CHAPTER 223

(H. B. 4540 — By Delegates Fleischauer, Caputo, Manuel, R. Thompson, Wills, Hrutkay and Givens)

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

AN ACT to amend and reenact section twenty-four, article fifteen, chapter eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the political activities of members of paid fire departments; amending the list of prohibited political activities by members of paid fire departments and exceptions thereto; prohibiting such members from being candidates for or holding public office in the municipality in which they are employed, but permitting such members to be candidates for or hold other public office; prohibiting a member of a paid fire department from soliciting political contributions or donations from members or employees of his or her own fire department; reenacting civil service protections related to unauthorized and permissible political activity; and amending penalties for violations of this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.


(a) No member of any paid fire department may:

(1) Solicit any assessment, subscription or contribution for any political party, committee or candidate from any person who is a member or employee of the same fire department by which they are employed;

(2) Use any official authority or influence, including, but not limited to, the wearing by a member of a paid fire department of his or her uniform, for the purpose of interfering with or affecting the nomination, election or defeat of any candidate or the passage or defeat of any ballot issue: Provided, That this subdivision shall not be construed to prohibit any member of a paid fire department from casting his or her vote at any election while wearing his or her uniform;
(3) Coerce or command anyone to pay, lend or contribute anything of value to a party, committee, organization, agency or person for the nomination, election or defeat of a ballot issue; or

(4) Be a candidate for or hold any other public office in the municipality in which he or she is employed: Provided, That any paid member of a fire department that is subject to the provisions of 15 U.S.C. §1501 et seq., may not be a candidate for elective office.

(b) Other types of partisan or nonpartisan political activities not inconsistent with the provisions of subsection (a) of this section are permissible political activities for members of paid fire departments.

(c) No person shall be appointed or promoted to or demoted or dismissed from any position in a paid fire department or in any way favored or discriminated against because of his or her engagement in any political activities authorized by the provisions of this section. Any elected or appointed official who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by the penalties contained in section twenty-six, article fifteen, chapter eight of this code.
AN ACT to amend and reenact section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal police and firemen’s pension and relief funds; and providing that no municipality may anticipate or use in any manner any state funds accruing to the police or firemen’s pension fund to offset the minimum required funding amount for any fiscal year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.


1 The board of trustees for each pension and relief fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary. All of the following standards must be met:

5 (a) An actuarial valuation report shall be prepared at least once every three years commencing with the later of: (1) The first day of July, one thousand nine hundred eighty-three; or (2) three years following the most recently prepared actuarial valuation report: Provided, That this most recently prepared actuarial valuation report meets all of the standards of this section.

12 (b) The actuarial valuation report shall consist of, but is not limited to, the following disclosures: (1) The financial
objective of the fund and how the objective is to be attained;
(2) the progress being made toward realization of the financial objective; (3) recent changes in the nature of the fund, benefits provided, or actuarial assumptions or methods; (4) the frequency of actuarial valuation reports and the date of the most recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which the qualified actuary relies on the data provided and whether the data was certified by the fund’s auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation of the actuarial assumptions and methods; and (8) any other information the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c)(1) After the thirtieth day of June, one thousand nine hundred ninety-one, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and the allocable portion of the state premium tax fund for municipal pension and relief funds established under section fourteen-d, article three, chapter thirty-three of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years: Provided, That in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, the municipality may elect to make its annual contribution to the fund utilizing an alternative contribution in an amount not less than: (i) One hundred seven percent of the amount contributed for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety; or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal years beginning with the 1984 fiscal year whichever is greater: Provided, however, That contribution payments in subsequent fiscal years under this
alternative contribution method may not be less than one hundred seven percent of the amount contributed in the prior fiscal year: Provided further, That prior to utilizing this alternative contribution methodology the actuary of the fund shall certify in writing that the fund is projected to be solvent under the alternative contribution method for the next consecutive fifteen-year period. For purposes of determining this minimum financial objective: (1) The value of the fund’s assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value; and (2) all costs, deficiencies, rate of interest, and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary’s best estimate of anticipated experience under the fund.

(2) No municipality may anticipate or use in any manner any state funds accruing to the police or firemen’s pension fund to offset the minimum required funding amount for any fiscal year.

(3) Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to the fund an amount which may not be less than the normal cost, as determined by the actuarial report.

(d) For purposes of this section the term “qualified actuary” means only an actuary who is a member of the society of actuaries or the American academy of actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his or her duties with respect to a fund solely in the interest of the members and member’s beneficiaries of that fund. In order for the standards of this section to be met, the qualified actuary shall certify that the actuarial valuation
report is complete and accurate and that in his or her opinion
the technique and assumptions used are reasonable and meet
the requirements of this section of this article.

(e) The cost of the preparation of the actuarial valuation
report shall be paid by the fund.

(f) Notwithstanding any other provision of this section,
for the fiscal year ending the thirtieth day of June, one thou-
sand nine hundred ninety-one, the municipality may calculate
its annual contribution based upon the provisions of the sup-
plemental benefit provided for in this article enacted during
the one thousand nine hundred ninety-one regular session of
the Legislature.

CHAPTER 225

(Com. Sub. for S. B. 601 — By Senators Plymale, Fanning,
Edgell, Jackson, McCabe, Prezioso and Sprouse)

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

AN ACT to amend article twenty-two, chapter eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
twenty-a, relating to municipal police and firemen's pension
and relief funds; setting forth legislative findings; requiring the
treasurer to select and contract with a single qualified actuary
to serve as a consultant with respect to the funds; requiring
annual valuations of the funds; specifying requirements for
reporting the valuations; and providing that the funds are not a
responsibility or obligation of this state.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-20a. Hiring of actuary; preparation of actuarial valuations.

(a) (1) The Legislature finds that it is in the best interests of the state and its municipalities to have accurate data regarding the various municipal police and firemen’s pension and relief funds. The Legislature finds that data received from the funds is not always reliable due to inconsistent methods of reporting. The Legislature also finds that the municipalities need to know if the data they are basing their decisions on regarding pensions for their police and firemen is accurate and that they can depend on it.

(2) The Legislature finds that the state treasurer should contract with an actuary as a consultant for the municipal police and firemen’s pension and relief funds and that among other duties the actuary should determine if there is consistent reporting from the various funds. The Legislature further finds that the state treasurer should share the results of the actuary’s annual valuation with the appropriate municipality.

(b) Notwithstanding any other provision of this code to the contrary, beginning the first day of July, two thousand two, the state treasurer shall select by competitive bid and
contract with a single qualified actuary. The actuary shall serve as a consultant to the treasurer with regard to the operation of the municipal police and firemen's pension and relief funds and shall report annually to the treasurer with regard to all funds existing in this state by virtue of this article. The treasurer may pay for costs associated with the actuary's work out of the fund established pursuant to section fourteen-d, article three, chapter thirty-three of this code.

(c) With respect to each municipal police or firemen's pension and relief fund, the actuary shall complete an annual valuation in accordance with actuarial standards of practice promulgated by the actuarial standards board of the American academy of actuaries. The report of the valuation shall include: (1) A summary of the benefit provisions evaluated; (2) a summary of the census data and financial information used in the valuation; (3) a description of the actuarial assumptions, actuarial costs method and asset valuation method used in the valuation, including a statement of the assumed rate of payroll growth and assumed rate of growth or decline in the number of the fund members' contribution to the pension fund; (4) a summary of findings that includes a statement of the actuarially accrued pension liabilities and unfunded actuarial accrued pension liabilities; (5) a schedule showing the effect of any changes in the benefit provisions, actuarial assumptions or cost methods since the last annual actuarial valuation; (6) a statement of whether contributions to the pension fund are in accordance with the provisions of this chapter and whether they are expected to be sufficient; and (7) any other matters determined by the treasurer to be necessary or appropriate. The treasurer shall forward a copy of the annual valuation to the municipality for which it was completed.

(d) (1) The hiring of an actuary under the provisions of this section shall not be construed to make the municipal
54 police and firemen's pension and relief funds the responsibility or obligation of the state of West Virginia.

56 (2) Any actuarial deficiency identified by the actuary under this section or this article is not an obligation of the state of West Virginia.

CHAPTER 226

(Com. Sub. for S. B. 679 — By Senators Burnette and Anderson)

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

AN ACT to amend and reenact sections three, six and eight, article twenty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to intergovernmental relations generally; providing that certain separate legal or administrative entities are public corporations; extending the duration of certain intergovernmental agreements indefinitely; and limiting to one fiscal year certain other intergovernmental agreements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. INTERGOVERNMENTAL RELATIONS — CONTRACTING AND JOINT ENTERPRISES.

PART II. INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS.
§8-23-3. Intergovernmental agreements generally.

Any power or powers, privilege or privileges, authority or undertaking, exercised or capable of exercise, or which may be engaged in, and any public works which may be undertaken, by a public agency acting alone may be exercised, enjoyed, engaged in or undertaken jointly with any other public agency which could likewise act alone.

Any two or more public agencies may enter into a written agreement with one another for joint or cooperative action pursuant to the provisions of this section. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement shall become effective.

Any separate legal or administrative entity established hereunder is a public corporation and may exist for the length of time set forth in the intergovernmental agreement.

Any such agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created;

(3) Its purpose or purposes;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the
agreement and for disposing of property upon such partial or
complete termination; and

(6) Any other necessary and proper matters.

In the event that the agreement does not establish a sepa-
rate legal or administrative entity to conduct the joint or co-
operative undertaking, the agreement shall, in addition to the
items enumerated above, contain the following:

(1) Provision for an administrator or a joint board respon-
sible for administering the joint or cooperative undertaking
and in the event a joint board is provided for, there shall be a
representative on the board from each of the public agencies
which are party to the agreement; and

(2) The manner of acquiring, holding and disposing of
real and personal property used in the joint or cooperative
undertaking.

No agreement made pursuant to the provisions of this
section shall relieve any public agency of any obligation or
responsibility imposed upon it by law, except that to the ex-
tent of actual and timely performance thereof by a joint board
or other legal or administrative entity created by an agree-
ment made hereunder, said performance may be offered in
satisfaction of the obligation or responsibility.

Every agreement made pursuant to the provisions of this
section shall, prior to and as a condition precedent to its be-
coming effective, be submitted to the attorney general who
shall determine whether the agreement is in proper form and
is compatible with the laws of this state. The attorney general
shall approve any such agreement submitted to him unless he
shall find that it does not meet the conditions set forth herein,
in which event he shall detail in writing to the governing
bodies of the public agencies concerned the specific respects
in which the proposed agreement fails to meet the require-
ments of law. Failure to disapprove any such agreement so
submitted within thirty days of its submission shall constitute approval thereof.

The financing of joint projects by agreement shall be as provided by law.

§8-23-6. Appropriations; furnishing of property, personnel and services.

Any public agency entering into an agreement pursuant to the provisions of section three of this article is hereby empowered and authorized to appropriate funds to, and to sell, lease, transfer or otherwise supply real or personal property to, and to furnish personnel and services to, the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking if the public agency provides the funds and property in compliance with the provisions of this code or other applicable law. The board or entity is hereby empowered and authorized to receive, expend and utilize the same.

§8-23-8. Duration of intergovernmental agreements and contracts.

(a) If an intergovernmental agreement, entered into in accordance with the provisions of section three of this article, and if a contract for the performance of a service, activity or undertaking entered into in accordance with the provisions of section seven of this article does not create a financial obligation for a public agency except as provided by statute or other applicable law, the agreement or contract is of a duration as is specified in the agreement or contract.

(b) If an intergovernmental agreement entered into in accordance with the provisions of section three of this article, and if any contract for the performance of a service, activity or undertaking entered into in accordance with the provisions of section seven of this article, creates a financial obligation for a public agency, the agreement or contract is one fiscal
year, but the same may be annually renewed each fiscal year: Provided, That any such agreement or contract may be for such period in excess of one fiscal year as is specified in the agreement or contract, if such agreement or contract is ratified by a majority of the legal votes cast by the qualified voters of the several jurisdictions represented by the contracting parties voting separately at a regular or special election.

CHAPTER 227

(S. B. 721 — By Senators Helmick, Mitchell, Bowman, Love, Minard, Plymale, Ross, Rowe, Snyder, Deem and Minear)

[Passed March 5, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the director of natural resources to enter into reciprocal agreements with the state of Ohio with regard to hunting and fishing on tributaries of the Ohio River.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-28. When licenses or permits not required.
Persons in the following categories shall not be required to obtain licenses or permits as indicated:

(a) Bona fide resident landowners or their resident children, or resident parents, or bona fide resident tenants of such land, may hunt, trap or fish on their own land during open season in accordance with the laws and regulations applying to such hunting, trapping and fishing without obtaining a license to do so unless such lands have been designated as a wildlife refuge or preserve.

(b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a fishing license to do so. A written statement or certificate from a duly licensed physician of this state showing the said resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of said resident at all times while he or she is fishing in this state.

(c) All residents of West Virginia on active duty in the armed forces of the United States of America, while on leave or furlough, shall have the right and privilege to hunt, trap or fish in season in West Virginia without obtaining a license to do so. Leave or furlough papers shall serve in lieu of any such license and shall be carried on the person at all times while trapping, hunting or fishing.

(d) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five years of age or older is not required to have a license to hunt, trap or fish during the legal seasons in West Virginia, but in lieu of such license any such person shall at all times while hunting, trapping or fishing, carry on his or her person a valid West Virginia driver’s license or nondriver identification card issued by the division of motor vehicles.
(e) Residents of the state of Maryland who carry hunting or fishing licenses valid in that state may hunt or fish from the West Virginia banks of the Potomac River without obtaining licenses to do so, but such hunting or fishing shall be confined to the fish and waterfowl of the river proper and not on its tributaries: Provided, That the state of Maryland shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing on the Potomac River from the Maryland banks of said river to licensed residents of West Virginia, without requiring said residents to obtain Maryland hunting and fishing licenses.

(f) Residents of the state of Ohio who carry hunting or fishing licenses valid in that state may hunt or fish on the Ohio River or from the West Virginia banks of said river without obtaining licenses to do so, but such hunting or fishing shall be confined to fish and waterfowl of the river proper and to points on West Virginia tributaries and embayments identified by the director: Provided, That the state of Ohio shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing from the Ohio banks of said river to licensed residents of West Virginia without requiring said residents to obtain Ohio hunting and fishing licenses. In the event the state of Ohio accords this privilege to residents of West Virginia, such Ohio residents will not be required to obtain the license provided for by section forty-two of this article.

(g) Any resident of West Virginia who was honorably discharged from the armed forces of the United States of America and who receives a veteran’s pension based on total permanent service connected disability as certified to by the veterans administration, shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-
nine-a of this code setting forth the procedure for the certification of the veteran, manner of applying for and receiving the certification and requirements as to identification while said veteran is hunting, trapping or fishing.

(h) Any disabled veteran, who is a resident of West Virginia and who, as certified to by the commissioner of motor vehicles, is eligible to be exempt from the payment of any fee on account of registration of any motor vehicle owned by such disabled veteran as provided for in section eight, article ten, chapter seventeen-a of this code, shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code setting forth the procedure for the certification of the disabled veteran, manner of applying for and receiving the certification, and requirements as to identification while said disabled veteran is hunting, trapping or fishing.

(i) Any resident or inpatient in any state mental health, health or benevolent institution or facility may fish in this state, under proper supervision of the institution involved, without obtaining a fishing license to do so. A written statement or certificate signed by the superintendent of the mental health, health or benevolent institution or facility in which the resident or inpatient, as the case may be, is institutionalized shall serve in lieu of a fishing license and shall be carried on the person of the resident or inpatient at all times while he or she is fishing in this state.

(j) Any resident who is developmentally disabled, as certified by a physician and the director of the division of health, may fish in this state without obtaining a fishing license to do so. As used in this section, "developmentally
disabled" means a person with a severe, chronic disability which:

(1) Is attributable to a mental or physical impairment, or a combination of mental and physical impairments;

(2) Is manifested before the person attains age twenty-two;

(3) Results in substantial functional limitations in three or more of the following areas of major life activity: (A) Self-care; (B) receptive and expressive language; (C) learning; (D) mobility; (E) self-direction; (F) capacity for independent living; and (G) economic self-sufficiency; and

(4) Reflects the person's need for a combination and sequence of care, treatment or supportive services which are of lifelong or extended duration and are individually planned and coordinated.

CHAPTER 228

(S. B. 576 — By Senators Helmick, Anderson, Minard, Ross and Minear)

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

AN ACT to repeal section forty-six-h, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section forty-three of said article, relating to nonresident Class E hunting and trapping licence.

Be it enacted by the Legislature of West Virginia:
That section forty-six-h, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section forty-three of said article be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-43. Class E, Class EE, Class F and Class H licenses for nonresidents.

1 The licenses in this section shall be required of nonresidents to hunt, trap or fish in West Virginia. A Class E license shall be a nonresident hunting and trapping license and shall entitle the licensee to hunt or trap all legal species of wild animals and wild birds in all counties of the state except when other licenses or permits are required. The fee therefor shall be one hundred dollars.

A Class EE license shall be a nonresident bear hunting license and shall entitle the licensee to hunt bear in all counties of the state, except when additional licenses or permits are required. The fee therefor shall be one hundred fifty dollars.

A Class F license shall be a nonresident fishing license and shall entitle the licensee to fish for all fish in all counties of the state except when additional licenses or permits are required. The fee therefor shall be thirty dollars.

Trout fishing is not permitted with a Class F license unless such license has affixed thereto an appropriate trout stamp as prescribed by the division of natural resources.

A Class H license shall be a nonresident small game hunting license and shall entitle the licensee to hunt small game in all counties of the state, except when additional licenses or permits are required, for a period of six days beginning with the date it is issued. The fee therefor shall be twenty dollars. As used in this section, "small game" means all game except bear, deer, wild turkey and wild boar.
AN ACT to amend and reenact section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class V resident and Class VV nonresident muzzle-loading deer hunting licenses; and adding open sights and telescopic sights.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.

A Class V license shall be a resident muzzle-loading deer hunting license. A Class VV license shall be nonresident muzzle-loading deer hunting license. A Class V and VV license shall entitle the licensee to hunt for and kill deer with a muzzle-loader during muzzle-loading deer seasons in counties of the state, or parts thereof, excluding Logan, McDowell, Mingo and Wyoming counties, as established by the natural resources commission in section seventeen, article one of this chapter. The director shall establish rules governing the issuance of Class V and Class VV licenses as neces-
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sary to limit, on a fair and equitable basis, the number of persons who may muzzle-loader hunt for deer in any special management area. There shall be a season of at least three days each year for the taking of deer with muzzle-loading firearms, either rifles or pistols.

Only single shot muzzle-loading firearms with open sights or telescopic sights having a bore diameter of no less than thirty-eight one-hundredths inch are legal firearms for the taking of deer during the muzzle-loading deer season provided herein.

The licenses shall be issued in a form prescribed by the director, are in addition to a Class A, Class AB or Class E license and are valid only when accompanied thereby. The fee for the Class V license shall be five dollars. The fee for the Class VV license shall be twenty-five dollars.

CHAPTER 230
(S. B. 722 — By Senators Helmick, Mitchell, Anderson, Bowman, Love, Minard, Plymale, Prezioso, Ross, Rowe and Snyder)

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

AN ACT to amend and reenact section forty-six-m, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class XJ junior sportsman’s hunting, fishing and trapping licenses for residents fifteen to eighteen years old and nonresidents under the age of fifteen.

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46m. Class XJ junior sportsman’s hunting, fishing and trapping license.

(a) On or after the first day of January, two thousand three, a Class XJ license shall be a junior sportsman’s hunting, fishing and trapping license and shall entitle the licensee to hunt and trap for all legal species of wild animals and wild birds, to fish for all legal species of fish and to take frogs in all counties of the state, except as prohibited by the rules of the director or when additional licenses and permits are required.

No additional fees shall be required of Class XJ licensees for a Class I, U, UU, V, VV, W or WW license or for the resident conservation stamp required by section nine, article two-b of this chapter in order for the Class XJ licensee to participate in the seasons for which said licenses are required. Trout fishing is not permitted with a Class XJ license unless said licensee possesses a valid Class O trout license.

(b) The Class XJ license may be issued to:

(1) A resident of this state who has not reached his or her eighteenth birthday and is otherwise required by section twenty-seven of this article to purchase a license; or

(2) A nonresident of this state who has not reached his or her fifteenth birthday and is at least eight years old and is otherwise required by section twenty-seven of this article to purchase a license.
(c)(1) The fee charged to a resident for the Class XJ license shall be fifteen dollars, of which three dollars shall be designated as conservation stamp revenue and expended pursuant to section nine, article two-b of this chapter.

(2) The fee charged to a nonresident for the Class XJ license shall be fifteen dollars. In addition to paying the XJ license fee, a nonresident applicant must purchase a conservation stamp for the fee required of a nonresident in section nine, article two-b of this chapter, and a law-enforcement and sports education stamp for the fee required of a nonresident in section ten, article two-b of this chapter.

CHAPTER 231

(Com. Sub. for H. B. 4437 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

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

AN ACT to amend and reenact sections three and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reauthorizing the neighborhood investment program act; revising definitions; requiring independent program evaluation; and setting new termination date for the act.

Be it enacted by the Legislature of West Virginia:

That sections three and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.


§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.


1. (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.

2. (b) Terms defined.

3. (1) “Affiliate” includes all business entities which are affiliates of each other when either directly or indirectly:

4. (A) One business entity controls or has the power to control the other business entity; or

5. (B) A third party or third parties control or have the power to control both affiliates. In determining whether business entities are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

6. (2) “Capacity building” means to generally enhance the capacity of the community to achieve improvements and to obtain the community services described in subparagraphs (i) through (v), inclusive, of the definition of that term, as set forth in subdivision (4) of this subsection. Capacity building includes, but is not limited to, improvement of the means, or capacity, to:
(i) Access, obtain and use private, charitable and governmental assistance programs, administrative assistance and private, charitable and governmental resources or funds;

(ii) Fulfill legal, bureaucratic and administrative requirements and qualifications for accessing assistance, resources or funds; and

(iii) Attract and direct political and community attention to needs of the community for the purpose of increasing access to and use of assistance, resources or funds for a given purpose, goal or need.

(3) "Commissioner or tax commissioner" are used interchangeably in this article and mean the tax commissioner of the state of West Virginia, or his or her delegate.

(4) "Community services" means services, provided at no charge whatsoever, of:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;
(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens; without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

(5) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) "Corporation" means any corporation, joint-stock company or association and any business conducted by a trustee or trustees in which interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(7) "Crime prevention" means any activity which aids in the reduction of crime.

(8) "Delegate" in the phrase "or his or her delegate," when used in reference to the tax commissioner, means any officer or employee of the 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.

(9) "Director or director of the West Virginia development office" means the director of the West Virginia office.
“Economically disadvantaged” means:

(A) In a municipality. — Any area not exceeding fifteen square miles in West Virginia which contains any portion of an incorporated municipality;

(i) In which area the aggregate poverty rate of persons residing in the area, based upon the most recent decennial census of population, is at least one hundred twenty-five percent of the statewide poverty rate; and

(ii) That is certified as an economically disadvantaged area by the West Virginia development office;

(B) In a rural area. — Any area not exceeding twenty-five square miles in West Virginia:

(i) Which area is located in a rural area and which contains no incorporated municipalities or portions thereof;

(ii) In which area the aggregate poverty rate of persons residing in the area, based upon the most recent decennial census of population, is at least one hundred twenty-five percent of the statewide poverty rate; and

(iii) That is certified as an economically disadvantaged area by the West Virginia development office;

(C) An economically disadvantaged area qualifies only pursuant to a certification issued by the West Virginia development office. The certifications issued by the West Virginia development office expire after the passage of five calendar years, unless specifically limited to a shorter time by specific order of the West Virginia development office, and no area shall hold the status of a certified economically disadvantaged area for a period of time greater than ten years, either consecutively or in the aggregate;
(D) The certification of an economically disadvantaged area shall be made on the basis of a determination by the development office that an area meets the poverty criteria established in paragraphs (A) and (B) of this subdivision;

(E) No economically disadvantaged area may be certified within twenty-five miles of any other certified economically disadvantaged area. Not more than six economically disadvantaged areas may hold the status of certified economically disadvantaged areas at any one time in this state;

(F) At least a majority of all economically disadvantaged areas holding designations as economically disadvantaged areas at any one time shall be located in rural areas; and

(G) The certification shall be filed with the secretary of state and shall specifically set forth the boundaries of the economically disadvantaged area by both description and map, the date of certification of the area as an economically disadvantaged area, the date on which the certification will terminate and a statement of the director's findings as to the aggregate poverty rate of persons living in the certified economically disadvantaged area.

(11) "Economically disadvantaged citizen" means a natural person, who during the current taxable year has, or during the immediately preceding taxable year had, an annual gross personal income not exceeding one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who is a domiciliary and resident of this state.

(12) "Education" means any type of scholastic instruction to, or scholarship by, an individual that enables that individual to prepare for better life opportunities. Education does not include courses in physical training, physical conditioning, physical education, sports training, sports camps and similar training or conditioning courses (except for physical therapy
prescribed by a physician or other person licensed to pre-
scribe courses of medical treatment under this code).

(13) “Eligible contribution” consists of:

(A)(i) Cash;

(ii) Tangible personal property, valued at its fair market
value;

(iii) Real property, valued at its fair market value;

(iv) In-kind professional services, valued at seventy-five
percent of fair market value; and

(v) Publicly traded common or preferred stock represent-
ing ownership in a corporation, valued at its fair market value
in accordance with the regulations of the internal revenue
service: Provided, That contributed stock shall be sold by the
project transferee within one hundred eighty days of its re-
ceipt.

(B) For purposes of this definition, the value of in-kind
professional services will not qualify as an eligible contribu-
tion unless the services are:

(i) Reasonably priced and valued, and reasonably neces-
sary services customarily and normally provided by the con-
tributor in the normal course of business to customers, clients
or patients other than those encompassed by the project plan;

(ii) Not reimbursable, in whole or in part, from sources
other than the tax credit provided under this article; and

(iii) Services which are not available without cost else-
where in the community;
(C) "Professional services" means only those services provided directly by a physician licensed to practice in this state, those services provided directly by a dentist licensed to practice in this state, those services provided directly by a lawyer licensed to practice in this state, those services provided directly by a registered nurse, licensed practical nurse, dental hygienist or other health care professional licensed to practice in this state, those services provided directly by a certified public accountant or public accountant licensed to practice in this state, and those services provided directly by an architect licensed to practice in this state;

(D) **Minimum contribution.** — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value of less than five hundred dollars qualifies as an eligible contribution;

(E) **Maximum contribution.** — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value in excess of two hundred thousand dollars qualifies as an eligible contribution; and

(F) **Limitations.** — Not more than twenty-five percent of total eligible contributions to a certified project may be in-kind contributions. Not more than twenty-five percent of total eligible contributions made by any taxpayer to any certified project may be in-kind contributions.

(14) **Eligible taxpayer.** —

(A) "Eligible taxpayer" means any person subject to the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter which makes an eligible contribution to a qualified charitable organization pursuant to the terms of a certified project plan for the purpose of providing
neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education for individuals not employed by the contributing taxpayer or an affiliate of the contributing taxpayer or a person related to the contributing taxpayer;

(B) "Eligible taxpayer" also includes 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 and if one or more affiliates included in the affiliated group would qualify as an eligible taxpayer under paragraph (A) of this subdivision.

(15) "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.

(16) "Job training" means instruction to an individual that enables the individual to acquire vocational skills to become employable or able to seek a higher grade of employment.

(17) "Natural person or individual" means a human being. The terms "natural person" and "individual" do not mean, and specifically exclude any corporation, limited liability company, partnership, joint venture, trust, organization, association, agency, governmental subdivision, syndicate, affiliate or affiliation, group, unit or any entity other than a human being.

(18) "Neighborhood assistance" means either:

(A) Furnishing financial assistance, labor, material and technical advice to aid in the physical or economic improvement of any part or all of an economically disadvantaged area; or
(B) Furnishing technical advice to promote higher employment in an economically disadvantaged area.

(19) "Neighborhood organization" means any organization:

(A) Which is performing community services, as defined in this section; and

(B) Which is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code.

(20) "Partnership and partner" 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 a syndicate, group, pool, joint venture or organization.

(21) "Person" includes any natural person, corporation, limited liability company or partnership.

(22) "Project transferee" means any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person that receives an eligible contribution or part of an eligible contribution from an eligible taxpayer for the purpose of directly or indirectly providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education or other services or assistance pursuant to a project plan. The project transferee is typically the first entity or person receiving eligible contributions from eligible taxpayers under a project plan. However, in the case of eligible contributions of in-kind services or other eligible contributions or portions of those contributions made pursuant to a certified project plan directly to indigent, disadvantaged or
needy persons, economically disadvantaged citizens or other persons or organizations under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, the eligible contributions shall be considered to have been made to the entity, organization or person under whose sponsorship or auspices the eligible contributions are made, and that entity, organization or person is considered to be the project transferee with relation to those eligible contributions. The project transferee is the entity, organization or person that is liable under this article for payment of the project certification fee to the West Virginia development office. The term “project transferee” means and includes any considered project transferee, considered as such under the provisions of this article.

(23) “Qualified charitable organization” means a neighborhood organization, as defined in this section, which is the sponsor of a project which has received certification by the director of the West Virginia development office pursuant to the requirements of this article: Provided, That no organization may qualify as a qualified organization for purposes of this article if the organization is not registered with this state as required under the solicitation of charitable funds act.

(24) “Related person” or “person related to” a stated taxpayer means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;
(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof 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 which entitles its owner 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 shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c), other than paragraph (3) of that section, of the United States Internal Revenue Code, as amended.

(25) “State fiscal year” means a twelve-month period beginning on the first day of July and ending on the thirtieth day of June.

(26) “Taxpayer” means any person subject to the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter (or any one or combination of the articles of this chapter).

(27) “Technical assistance” means:

(A) Assistance in understanding, using and fulfilling the legal, bureaucratic and administrative requirements and qualifications which must be negotiated for the purpose of effec-
(B) Assistance provided by any person holding a license under West Virginia law to practice any licensed profession or occupation, by which the person, in the practice of the profession or occupation, assists economically disadvantaged citizens or the persons in an economically disadvantaged area by:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or
(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.

Annually, on or before the fifteenth day of December, the director shall secure an independent review of the neighborhood investment program created by this article and present the findings to the joint committee on government and finance. Unless sooner terminated by law, the neighborhood investment program act shall terminate on the first day of July, two thousand five. No entitlement to the tax credit under this article shall result from any contribution made to any certified project after the first day of July, two thousand five, and no credit shall be available to any taxpayer for any contribution made after that date. Taxpayers which have gained entitlement to the credit pursuant to eligible contributions made to certified projects prior to the first day of July, two thousand five, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this article.

CHAPTER 232

(S. B. 712 — By Senators Anderson, Deem, Helmick, McKenzie, Oliverio and Ross)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section twenty-three, article six, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article nine, chapter twenty-two-c of said code, all relating to the plugging of oil and gas wells; designating the plats required to be filed prior to commencing plugging operations; providing that lessees are not required to offer to sell or otherwise transfer interest in well prior to commencement of plugging operations to lessors or others with interests in wells; authorizing the use of global positioning system for identification of well locations; and authorizing legislative rules relating thereto.

Be it enacted by the Legislature of West Virginia:

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

Chapter
22. Environmental Resources.
22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-23. Plugging, abandonment and reclamation of well; notice of intention; bonds; affidavit showing time and manner.

1 All dry or abandoned wells or wells presumed to be abandoned under the provisions of section nineteen of this article shall be plugged and reclaimed in accordance with this sec-
Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either:
(a) Notify, by registered or certified mail, the secretary and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section twelve of this article, and the coal operators to whom notices are required to be given by section thirteen of this article, of its intention to plug and abandon any such well (using such form of notice as the secretary may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so mailed is received or in due course should be received by the secretary, in order that a representative or representatives of the secretary and such coal operator, owner or lessee, if any, may be present at the plugging and filling of the well: Provided, That whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described; or (b) first obtain the written approval of the secretary and such coal operator, owner or lessee, if any; or (c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the secretary, first obtain the verbal permission of the secretary or the secretary's designated representative to plug and abandon the well, except that the well operator shall, within a reasonable period not to exceed five days after the commencement of the plugging operations, give the written notices required by subdivision (a) above.

The well operator shall not be required to prepare or submit to the director a plat prior to the commencement of
plugging operations as long as a plat pertaining to the par-
ticular well is on file with the director and accurately identifies
the location of the well, or so long as there is also on file with
the director the coordinates of the well established by a
global positioning system. The coordinates established by a
global positioning system must be filed with the secretary in
either a written or electronic form prescribed by the secre-
tary. The global positioning system used to establish the co-
ordinates shall be accurate within the variance allowed by
law for the distance between the actual location of the well
and location shown on the plat that is required to be filed
with a well permit application, or the secretary may establish
the accuracy of the global positioning system by legislative
rule promulgated pursuant to section two of this article.

No well may be plugged or abandoned unless prior to the
commencement of plugging operations and the abandonment
of any well the secretary is furnished a bond as provided in
section twenty-six of this article. In no event prior to the
commencement of plugging operations shall a lessee under a
lease covering a well be required to give or sell the well to
any person owning an interest in the well, including, but not
limited to, the respective lessor, or agent of the lessor, nor
may the lessee be required to grant a person with an interest
in the well, including, but not limited to, the respective les-
sor, or agent of the lessor, an opportunity to qualify under
section twenty-six of this article to continue operation of the
well.

When the plugging, filling and reclamation of a well
have been completed, an affidavit, in triplicate, shall be made
(on a form to be furnished by the secretary) by two experi-
enced persons who participated in the work, the secretary or
the secretary’s designated representative, in which affidavit
shall be set forth the time and manner in which the well was
plugged and filled and the land reclaimed. One copy of this
affidavit shall be retained by the well operator, another (or
true copies of same) shall be mailed to the coal operator or
operators, if any, and the third to the secretary.

CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS
AND COMPACTS.

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section,
the provisions of this article shall apply to all lands located in
this state, however owned, including any lands owned or
administered by any government or any agency or subdivi-
sion thereof, over which the state has jurisdiction under its
police power. The provisions of this article are in addition to
and not in derogation of or substitution for the provisions of
article six, chapter twenty-two of this code.

(b) This article shall not apply to or affect:

(1) Shallow wells other than those utilized in secondary
recovery programs as set forth in section eight of this article;

(2) Any well commenced or completed prior to the ninth
day of March, one thousand nine hundred seventy-two, un-
less such well is, after completion (whether such completion
is prior or subsequent to that date):

(A) Deepened subsequent to that date to a formation at or
below the top of the uppermost member of the "Onondaga
Group"; or

(B) Involved in secondary recovery operations for oil
under an order of the commission entered pursuant to section
eight of this article;
(3) Gas storage operations or any well employed to inject
gas into or withdraw gas from a gas storage reservoir or any
well employed for storage observation; or

(4) Free gas rights.

(c) The provisions of this article shall not be construed to
grant to the commissioner or the commission authority or
power to:

(1) Limit production or output, or prorate production of
any oil or gas well, except as provided in subdivision (6),
subsection (a), section seven of this article; or

(2) Fix prices of oil or gas.

(d) Nothing contained in either this chapter or chapter
twenty-two of this code may be construed so as to require,
prior to commencement of plugging operations, a lessee un-
der a lease covering a well to give or sell the well to any
person owning an interest in the well, including, but not lim-
ited to, a respective lessor, or agent of the lessor, nor shall the
lessee be required to grant to a person owning an interest in
the well, including, but not limited to, a respective lessor, or
agent of a lessor, an opportunity to qualify under section
twenty-six, article six, chapter twenty-two of this code to
continue operation of the well.

CHAPTER 233

(S. B. 724 — By Senators Wooton, Caldwell, Hunter, Kessler, Minard,
Redd, Ross, Rowe, Snyder, Deem and Facemyer)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section five, article four, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulation of parking on property owned or leased by the state for the purpose of providing parking for state office buildings in Charleston.

Be it enacted by the Legislature of West Virginia:

That section five, article four, 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:

§5A-4-5. Regulation of parking on state-owned or -leased property in Charleston; construction of parking garage for general public; penalties; jurisdiction; creation of funds.

(a) It is the intent of the Legislature to provide a parking facility for the general public and to direct the secretary of the department of administration to plan and construct a parking garage at the state capitol complex that will provide sufficient and additional parking for the general public.

(b) The secretary may regulate the parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha County:

(1) The east side of Greenbrier street between Kanawha boulevard and Washington street, east;

(2) The west side of California avenue between Kanawha boulevard and Washington street, east;

(3) Upon the state-owned or -leased grounds upon which state office buildings number one (1) through twenty (20) and the Laidley Field complex are located; and
(4) Upon any other property now or hereafter owned or leased by the state or any of its agencies and used for parking purposes in conjunction with the state capitol or any state office buildings.

(c) The secretary shall propose rules for promulgation respecting parking and to allocate parking spaces to public officers and employees of the state upon all of the property set forth in subsection (a) of this section: Provided, That during sessions of the Legislature, including regular, extended, extraordinary and interim sessions, parking on the east side of Greenbrier street between Kanawha boulevard and Washington street, east, in the science and culture center parking lot, on the north side of Kanawha boulevard between Greenbrier street and California avenue and on the west side of California avenue between Kanawha boulevard and Washington street, east, is subject to rules promulgated jointly by the speaker of the House of Delegates and the president of the Senate. Any person parking any vehicle contrary to the rules promulgated under authority of this subsection is subject to a fine of not less than one dollar nor more than twenty-five dollars for each offense. In addition, the secretary or the Legislature, as the case may be, may cause the removal, immobilization or other remedy considered necessary, at owner expense, of any vehicle that is parked in violation of the rules. Magistrates in Kanawha County have jurisdiction of all the offenses.

(d) The secretary may employ the persons as may be necessary to enforce the parking rules promulgated under the provisions of this section.

(e) There is created in the department of administration a special fund to be named the "Parking Garage Fund" in which shall be deposited funds that are appropriated and funds from other sources to be used for the construction and maintenance of a parking garage on the state capitol complex.
AN ACT to amend and reenact section two, article eleven, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the payment of funeral expenses of probation officers and correctional employees killed in the line of duty.

Be it enacted by the Legislature of West Virginia:

That section two, article eleven, 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 11. PAYMENT OF FUNERAL EXPENSES.

§15-11-2. Payment of funeral expenses of law-enforcement, safety and emergency workers killed in the line of duty.

(a) The secretary of military affairs and public safety shall, upon written request, direct payment from the fund in the form of a draft as provided in this article up to and including an amount not exceeding eight thousand dollars for the reasonable funeral expenses, including burial expenses, of a law-enforcement, safety or emergency worker killed on or after the first day of January, one thousand nine hundred
ninty-nine, while carrying out official duties: Provided, That no funds shall be expended for any funeral expense that is otherwise payable pursuant to the provisions of article four, chapter twenty-three of this code, as amended, or other benefit programs established by a provision of this code which does not involve employee participation: Provided, however, That where other funds for funeral expenses are provided pursuant to the laws of this state, from whatever source, which amount to less than eight thousand dollars, funds provided by the provisions of this section shall be expended so as to ensure that at least eight thousand dollars is available for reasonable funeral expenses. The secretary shall direct payment of the funeral expenses upon written request of an employer or head of a volunteer organization, as is appropriate pursuant to this article, certifying that the individual for whom funeral expenses are requested was killed while performing official duties.

(b) The secretary shall supply the draft in the name of the person contracting for the funeral services and, if known, the service provider to the employer or agency head making the request who shall tender the draft to the person who contracted for the services.

(c) For the purposes of this section, “law-enforcement, safety or emergency worker” means:

(1) Any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of the state, other than parking ordinances, and including those persons employed as security officers at municipal, county, regional or state offices, authorities or institutions, although their employers may not be public law-enforcement agencies, employed by the Hatfield-McCoy regional recreation authority
and members of the West Virginia national guard while engaged in active duty service: Provided, That this section does not apply to those persons employed by private security firms or agencies;

(2) Any state, regional, county or municipal correctional employee;

(3) Any firefighter employed by the state or any political subdivision of the state and any volunteer firefighter performing as a member of a volunteer fire department;

(4) Any "emergency medical services personnel", as defined in section three, article four-c, chapter sixteen of this code, employed by or volunteering for any state agency or institution or political subdivision of the state; or

(5) Any probation officer appointed under the provisions of section five, article twelve, chapter sixty-two of this code.

CHAPTER 235

(Com. Sub. for S. B. 48 — By Senators Ross and Love)

[Passed February 12, 2002; in effect July 1, 2002. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section six, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section six, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter
61. Crimes and Their Punishment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

The licensure provisions set forth in this article do not apply to:

(1) Any person carrying a deadly weapon upon his or her own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her
home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;

(3) Any law-enforcement officer or law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia division of corrections duly appointed pursuant to the provisions of section five, article five, chapter twenty-eight of this code while the employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while the member is on duty;

(6) Any circuit judge, including any retired circuit judge designated senior status by the supreme court of appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;

(7) Any resident of another state who has been issued a license to carry a concealed weapon by a state or a political subdivision which has entered into a reciprocity agreement with this state. The governor may execute reciprocity agreements on behalf of the state of West Virginia with states or political subdivisions which have similar gun permitting laws and which recognize and honor West Virginia licenses issued pursuant to section four of this article;

(8) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer’s duty; and
Any Hatfield-McCoy regional recreation authority ranger while the ranger is on duty.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.


(a) Each probation officer shall investigate all cases referred to him for investigation by the court and shall report in writing thereon. He shall furnish to each person released on probation under his supervision a written statement of the conditions of his probation together with a copy of the rules and regulations prescribed by the court for the supervision of probationers. He shall keep himself informed concerning the conduct and condition of those under his supervision and shall report thereon in writing as often as the court may require. He shall use all practicable and suitable methods to aid and encourage them and to bring about improvement in their conduct and condition. He shall keep detailed records of his work, shall keep accurate and complete accounts of and give receipts for all money collected from persons under his supervision and shall pay over the money to such person as the court may designate. He shall give bond with good security, to be approved by the court, in a penalty of not less than one thousand nor more than three thousand dollars, as the court may determine. He shall also perform such other duties as the court may require. He shall have authority, with or without an order or warrant, to arrest any probationer.

(b) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after the first day of July, two thousand two, may carry handguns in the course of their official duties after meeting specialized quali-
fications established by the governor's committee on crime, delinquency and correction, which qualifications shall include the successful completion of handgun training, including a minimum of four hours' training in handgun safety and comparable to the handgun training provided to law-enforcement officers by the West Virginia state police.

(2) Any person employed as a probation officer on the thirtieth day of June, two thousand two, is exempt from the licensure requirements set forth in article seven, chapter sixty-one of this code until the thirtieth day of June, two thousand four, while employed as a probation officer: Provided, That after the thirtieth day of June, two thousand four, such probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

(3) Nothing in this subsection shall be construed to include probation officers within the meaning of law-enforcement officers as defined in section one, article twenty-nine, chapter thirty of this code.

CHAPTER 236

(H. B. 4124 — By Delegates Douglas, Kuhn, Prunty, Stephens and Leggett)

[Passed February 15, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, seven, eight, eleven and thirteen, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto two new sections,
designated sections eight-a and eight-b, all relating to professional licensing boards; prohibiting discrimination; modifying contents of license or certificate; providing for denial of licenses and revocation of licenses; hearings; providing for reinstatement of license following revocation; providing for mediation of complaints; limiting compensation for board members to attendance at official meetings and other official duties; permitting boards to reimburse expenses; prohibiting board members from being compensated as employees of the board; permitting roster of licensees to be sorted alphabetically by county or city; and removing requirement for listing of social security numbers on rosters to be distributed to the public.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-6. Application for license or registration; examination fee; prohibiting discrimination.

§30-1-7. Contents of license or certificate of registration.

§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

§30-1-8a. Reinstatement of license.

§30-1-8b. Mediation of complaints.

§30-1-11. Compensation of members; expenses.

§30-1-13. Roster of licensed or registered practitioners.

§30-1-6. Application for license or registration; examination fee; prohibiting discrimination.
(a) Every applicant for license or registration under the provisions of this chapter shall apply for the license or registration in writing to the proper board and shall transmit with his or her application an examination fee which the board is authorized to charge for an examination or investigation into the applicant's qualifications to practice.

(b) Each board referred to in this chapter is authorized to establish by rule a deadline for application for examination which shall be no less than ten nor more than ninety days prior to the date of the examination.

(c) Boards may set by rule fees relating to the licensing or registering of individuals, which shall be sufficient to enable the boards to carry out effectively their responsibilities of licensure or registration and discipline of individuals subject to their authority: Provided, That when any board proposes to promulgate a rule regarding fees for licensing or registration, that board shall notify its membership of the proposed rule by mailing a copy of the proposed rule to the membership at the time that the proposed rule is filed with the secretary of state for publication in the state register in accordance with section five, article three, chapter twenty-nine-a of this code.

(d) In addition to any other information required, the applicant's social security number shall be recorded on the application.

(e) No board may discriminate against any applicant because of political or religious opinion or affiliation, marital status, race, color, gender, creed, age, national origin, disability or other protected group status.

(f) Any board may deny the application for licensure or registration of an applicant whose license or registration in any other state, territory, jurisdiction or foreign nation has
been revoked by the licensing authority thereof. The applica-
tion may be denied by a board without a hearing unless the
applicant requests a hearing within thirty days of the denial.
Any hearing must be conducted pursuant to the provisions of
section eight of this article or provisions contained in the
rules of the board.

§30-1-7. Contents of license or certificate of registration.

Every license or certificate of registration issued by each
board shall bear a serial or license number, the full name of
the applicant, the date of issuance, and the seal of the board:
Provided, That licenses or certificates of registration issued
or renewed on or after the first day of July, two thousand
three, will indicate both the date of issuance and the date of
expiration. The licenses or certificates of registration shall be
signed by the board's president and secretary or executive
secretary. No license or certificate of registration granted or
issued under the provisions of this chapter may be assigned.

§30-1-8. Denial, suspension or revocation of a license or regis-
tration; probation; proceedings; effect of sus-
pension or revocation; transcript; report; judi-
cial review.

(a) Every board referred to in this chapter may suspend
or revoke the license of any person who has been convicted
of a felony or who has been found to have engaged in con-
duct, practices or acts constituting professional negligence or
a willful departure from accepted standards of professional
conduct. Where any person has been convicted of a felony or
has been found to have engaged in such conduct, practices or
acts, every board referred to in this chapter may enter into
consent decrees, to reprimand, to enter into probation orders,
to levy fines not to exceed one thousand dollars per day per
violation, or any of these, singly or in combination. Each
board may also assess administrative costs. Any costs which are assessed shall be placed in the special account of the board, and any fine which is levied shall be deposited in the state treasury's general revenue fund. For purposes of this section, the word "felony" means a felony or crime punishable as a felony under the laws of this state, any other state, or the United States. Every board referred to in this chapter may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(b) Every board referred to in this chapter may revoke the license or registration of an individual licensed or otherwise lawfully practicing within this state whose license or registration in any other state, territory, jurisdiction or foreign nation has been revoked by the licensing authority thereof.

(c) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority. However, this requirement does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person's continuation in practice constitutes an immediate danger to the public.

(d) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder of the certificate,
license, registration or authority and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one, article two, chapter fifty-six of this code, at least thirty days prior to the hearing, and he or she may appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may consider advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority, and suspension or revocation shall take from the person all rights and privileges acquired thereby.

(e) Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(f) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection are in accordance with the provisions for hearings which are set forth in this section.

(g) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript of the hearing retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.
(h) All proceedings under the provisions of this section are subject to review by the supreme court of appeals.

(i) On or before the first day of July, two thousand one, every board referred to in this chapter shall adopt procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under this chapter. The proposed legislative rules relating only to complaint procedures or contested case hearing procedures required by the prior enactment of this subsection shall be redesignated as procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code. Each board shall file the procedural rules required by this subsection by the thirty-first day of January, two thousand one. The public hearing or public comment period conducted for the proposed legislative rules shall serve as the public hearing or public comment period required by section five, article three, chapter twenty-nine-a of this code.

§30-1-8a. Reinstatement of license.

(a) Every board referred to in this chapter is authorized to consider the reinstatement of any license or registration that has been suspended, revoked or not renewed, upon a showing that the applicant can resume practicing with reasonable skill and safety.

(b) Each board may adopt a procedural rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, specifying forms and procedures for application for reinstatement.

§30-1-8b. Mediation of complaints.
(a) Any board referred to in this chapter may, on its own motion or by stipulation of the parties, refer any complaints against persons licensed under this chapter to mediation.

(b) Any board may maintain a list of mediators with expertise in professional disciplinary matters or may obtain a list from the West Virginia center for dispute resolution or the West Virginia state bar’s mediator referral service. The board shall designate a mediator from the list by neutral rotation.

(c) The mediation is not considered a proceeding open to the public and any reports and records introduced at the mediation are not part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree to the use in writing.

(d) The mediation may not be used to delay any disciplinary proceeding.

§30-1-11. Compensation of members; expenses.

(a) Each member of every board referred to in this chapter shall receive compensation for attending official meetings or engaging in official duties 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. The limitations contained in this
section do not apply if they conflict with provisions of this chapter relating to a particular board and enacted after the first day of January, one thousand nine hundred ninety-five.

(b) A board may reimburse actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

(c) No member of any board referred to in this chapter may receive compensation as an employee of the board.

§30-1-13. Roster of licensed or registered practitioners.

The secretary of every board shall prepare and maintain a complete roster of the names and office addresses of all persons licensed, or registered, and practicing in this state the profession or occupation to which such board relates, arranged alphabetically by name and also by the cities or counties in which their offices are situated. Each board shall make the roster available upon request to any member of the public.

CHAPTER 237

(Com. Sub. for S. B. 555 — By Senator Chafin)

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

AN ACT to amend and reenact section ten, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license to practice medicine
and surgery or podiatry; requiring applicants to have a passing score on all components of the examination within a specified time frame; and exception.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

1. He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine and surgery;

2. He or she must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine, which is approved by the liaison committee on medical education or by the board;
(3) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the accreditation council for graduate medical education; and

(4) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: Provided, That the board, or a majority of it, may accept in lieu of an examination of applicants the certificate of the national board of medical examiners: Provided, however, that the board is authorized to enter into reciprocity agreements with medical licensing authorities in other states, the District of Columbia, Canada or the Commonwealth of Puerto Rico and, for an applicant who: (i) Is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state or jurisdiction having reciprocity; (ii) has been engaged on a full-time professional basis in the practice of medicine within that state or jurisdiction for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction, the board may permit licensure in this state by reciprocity. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of medicine and surgery, before being eligible for reexamination: Provided further, That an applicant is required to attain a passing score on all components or steps of the examination within a period of seven consecutive years: And provided further, That the board may, in its discretion, extend this period of seven con-
secutive years for up to three additional years for any medical
student enrolled in a dual MD-PhD program.

(c) In addition to the requirements of subsection (b) hereof, any individual who has received the degree of doctor of medicine or its equivalent from a school of medicine located outside of the United States, the Commonwealth of Puerto Rico and Canada to be licensed to practice medicine in this state must also meet the following additional requirements and limitations:

(1) He or she must be able to demonstrate to the satisfaction of the board his or her ability to communicate in the English language;

(2) Before taking a licensure examination, he or she must have fulfilled the requirements of the educational commission for foreign medical graduates for certification, or he or she must provide evidence of receipt of a passing score on the examination of the educational commission for foreign medical graduates: Provided, That an applicant who: (i) Is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has been engaged on a full-time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction is not required to have a certificate from the educational commission for foreign medical graduates;

(3) He or she must submit evidence to the board of either:

(i) Having successfully completed a minimum of two years
of graduate clinical training in a program approved by the
accreditation council for graduate medical education; or (ii)
current certification by a member board of the American
board of medical specialties.

(d) For an individual to be licensed to practice podiatry in
this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on
a form provided by the board and remit to the board a reason-
able examination fee, the amount of the reasonable fee to be
set by the board. The application must, as a minimum, re-
quire a sworn and notarized statement that the applicant is of
good moral character and that he or she is physically and
mentally capable of engaging in the practice of podiatric
medicine;

(2) He or she must provide evidence of graduation and
receipt of the degree of doctor of podiatric medicine and its
equivalent from a school of podiatric medicine which is ap-
proved by the council of podiatry education or by the board;

(3) He or she must pass an examination approved by the
board, which examination can be related to a national stan-
dard. The examination shall be in the English language and
be designed to ascertain an applicant’s fitness to practice
podiatric medicine. The board shall before the date of exami-
nation determine what will constitute a passing score. If an
applicant fails to pass the examination on two occasions, he
or she shall successfully complete a course of study or train-
ing, as approved by the board, designed to improve his or her
ability to engage in the practice of podiatric medicine, before
being eligible for reexamination: Provided, That an applicant
is required to attain a passing score on all components or
steps of the examination within a period of seven consecutive
years; and
(4) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the council on podiatric medical education, or the colleges of podiatric medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the U. S. armed forces or three years private podiatric clinical experience in lieu of this requirement.

(e) All licenses to practice medicine and surgery granted prior to the first day of July, one thousand nine hundred ninety-one, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: Provided, That the provisions of subsection (d) of this section shall not apply to any person legally entitled to practice chiropody or podiatry in this state prior to the eleventh day of June, one thousand nine hundred sixty-five: Provided, however, That all persons licensed to practice chiropody prior to the eleventh day of June, one thousand nine hundred sixty-five, shall be permitted to use the term “chiropody-podiatry” and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

CHAPTER 238

(Com. Sub. for S. B. 243 — By Senators Wooton, Bowman and Rowe)

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

AN ACT to amend and reenact section fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three-c of said chapter by adding thereto a new section, designated sec-
tion four, all relating to the professional discipline of physicians and podiatrists; requiring hospitals to report certain information to the board of medicine regarding disciplinary actions and related legal actions against physicians or podiatrists; requiring managed care organizations to report certain information to the board of medicine regarding physicians or podiatrists; defining "managed care organization"; including state board of risk and insurance management among entities which must report on certain legal actions to the board of medicine; requiring clerks of courts to forward certain court orders to the board of medicine; updating terminology and making certain technical revisions; authorizing board of medicine to revoke licenses for period not to exceed ten years; prohibiting physicians or podiatrists from practicing medicine, surgery or podiatry or to otherwise deliver health care services when license is temporarily suspended; eliminating ability of physician or podiatrist whose license is revoked because of a felony drug conviction from reapplying for licensure after five years; and authorizing defendants who prevail in civil actions filed as a result of peer review to recover attorney fees and court costs in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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


3C. Health Care Peer Review Organization Protection.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability and professional
incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

(a) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies and others.

The board may initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees, hospital administrators, professional societies or others; or if there are five judgments or settlements within the most recent five-year period in excess of fifty thousand dollars each. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are so provided, the subject physician or
podiatrist is allowed fifteen days to comment on the requested information and such comments must be considered by the board.

The chief executive officer of every hospital shall, within sixty days after the completion of the hospital’s formal disciplinary procedure and also after the commencement of and again after the conclusion of any resulting legal action, report in writing to the board the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported. Voluntary cessation of hospital privileges for reasons unrelated to professional competence or ethics need not be reported.

Any managed care organization operating in this state which provides a formal peer review process shall report in writing to the board, within sixty days after the completion of any formal peer review process and also within sixty days after the commencement of and again after the conclusion of any resulting legal action, the name of any physician or podiatrist whose credentialing has been revoked or not renewed by the managed care organization. The managed care organization shall also report in writing to the board any other disciplinary action taken against a physician or podiatrist relating to professional ethics, professional liability, moral turpitude or drug or alcohol abuse within sixty days after completion of
a formal peer review process which results in the action taken by the managed care organization. For purposes of this subsection, “managed care organization” means a plan that establishes, operates or maintains a network of health care providers who have entered into agreements with and been credentialed by the plan to provide health care services to enrollees or insureds to whom the plan has the ultimate obligation to arrange for the provision of or payment for health care services through organizational arrangements for ongoing quality assurance, utilization review programs or dispute resolutions.

Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, medical professional liability, moral turpitude or drug or alcohol abuse, shall report in writing to the board within sixty days of a final decision the name of the member, together with all pertinent information relating to the action.

Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a physician or podiatrist in this state, including the state board of risk and insurance management, shall submit to the board the following information within thirty days from any judgment or settlement of a civil or medical professional liability action excepting product liability actions: The date of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by which party; the amount of any settlement or judgment against the insured; and other information as the board may require.
Within thirty days from the entry of an order by a court in a medical professional liability action or other civil action wherein a physician or podiatrist licensed by the board is determined to have rendered health care services below the applicable standard of care, the clerk of the court in which the order was entered shall forward a certified copy of the order to the board.

Within thirty days after a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be so licensed is convicted of a felony under the laws of this state or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of the physician or podiatrist or applicant, the nature of the offense committed and the final judgment and sentence of the court.

Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator 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. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of the hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars against the violator. Anyone so assessed shall be notified of the as-
125 assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within thirty days, the attorney general may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any such civil action, the court’s review of the board’s action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code. Notwithstanding any other provision of this article to the contrary, when there are conflicting views by recognized experts as to whether any alleged conduct breaches an applicable standard of care, the evidence must be clear and convincing before the board may find that the physician has demonstrated a lack of professional competence to practice with a reasonable degree of skill and safety for patients.

140 Any person may report to the board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of that person amounts to medical professional liability or professional incompetence.

144 The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

147 The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of physicians or podiatrists to suspend, restrict or revoke the privileges or membership of the physician or podiatrist.

154 (c) The board may deny an application for license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist
157 licensed or otherwise lawfully practicing in this state who,  
158 after a hearing, has been adjudged by the board as unquali-
159 fied due to any of the following reasons:

160 (1) Attempting to obtain, obtaining, renewing or attempt-
161 ing to renew a license to practice medicine and surgery or  
162 podiatry by bribery, fraudulent misrepresentation or through  
163 known error of the board;

164 (2) Being found guilty of a crime in any jurisdiction,  
165 which offense is a felony, involves moral turpitude or di-
166 rectly relates to the practice of medicine. Any plea of nolo  
167 contendere is a conviction for the purposes of this subdivi-
168 sion;

169 (3) False or deceptive advertising;

170 (4) Aiding, assisting, procuring or advising any unautho-
171 rized person to practice medicine and surgery or podiatry  
172 contrary to law;

173 (5) Making or filing a report that the person knows to be  
174 false; intentionally or negligently failing to file a report or  
175 record required by state or federal law; willfully impeding or  
176 obstructing the filing of a report or record required by state or  
177 federal law; or inducing another person to do any of the fore-
178 going. The reports and records as are herein covered mean  
179 only those that are signed in the capacity as a licensed physi-
180 cian or podiatrist;

181 (6) Requesting, receiving or paying directly or indirectly  
182 a payment, rebate, refund, commission, credit or other form  
183 of profit or valuable consideration for the referral of patients  
184 to any person or entity in connection with providing medical  
185 or other health care services or clinical laboratory services,  
186 supplies of any kind, drugs, medication or any other medical
goods, services or devices used in connection with medical or
other health care services;

(7) Unprofessional conduct by any physician or podiatrist
in referring a patient to any clinical laboratory or pharmacy
in which the physician or podiatrist has a proprietary interest
unless the physician or podiatrist discloses in writing such
interest to the patient. The written disclosure shall indicate
that the patient may choose any clinical laboratory for pur-
poses of having any laboratory work or assignment per-
formed or any pharmacy for purposes of purchasing any pre-
scribed drug or any other medical goods or devices used in
connection with medical or other health care services;

As used herein, "proprietary interest" does not include an
ownership interest in a building in which space is leased to a
clinical laboratory or pharmacy at the prevailing rate under a
lease arrangement that is not conditional upon the income or
gross receipts of the clinical laboratory or pharmacy;

(8) Exercising influence within a patient-physician rela-
tionship for the purpose of engaging a patient in sexual activ-
ity;

(9) Making a deceptive, untrue or fraudulent representa-
tion in the practice of medicine and surgery or podiatry;

(10) Soliciting patients, either personally or by an agent,
through the use of fraud, intimidation or undue influence;

(11) Failing to keep written records justifying the course
of treatment of a patient, the records to include, but not be
limited to, patient histories, examination and test results and
treatment rendered, if any;

(12) Exercising influence on a patient in such a way as to
exploit the patient for financial gain of the physician or podi-
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217 artist or of a third party. Any influence includes, but is not
218 limited to, the promotion or sale of services, goods, appli-
219 ciances or drugs;

220 (13) Prescribing, dispensing, administering, mixing or
221 otherwise preparing a prescription drug, including any con-
222 trolled substance under state or federal law, other than in
223 good faith and in a therapeutic manner in accordance with
224 accepted medical standards and in the course of the physi-
225 cian’s or podiatrist’s professional practice: Provided, That a
226 physician who discharges his or her professional obligation
227 to relieve the pain and suffering and promote the dignity and
228 autonomy of dying patients in his or her care and, in so do-
229 ing, exceeds the average dosage of a pain relieving controlled
230 substance, in Schedule II and III of the Uniform Controlled
231 Substance Act, does not violate this article;

232 (14) Performing any procedure or prescribing any ther-
233 apy that, by the accepted standards of medical practice in the
234 community, would constitute experimentation on human
235 subjects without first obtaining full, informed and written
236 consent;

237 (15) Practicing or offering to practice beyond the scope
238 permitted by law or accepting and performing professional
239 responsibilities that the person knows or has reason to know
240 he or she is not competent to perform;

241 (16) Delegating professional responsibilities to a person
242 when the physician or podiatrist delegating the responsibili-
243 ties knows or has reason to know that the person is not quali-
244 fied by training, experience or licensure to perform them;

245 (17) Violating any provision of this article or a rule or
246 order of the board or failing to comply with a subpoena or
247 subpoena duces tecum issued by the board;
Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate or preclude another physician or podiatrist from lawfully advertising his or her services;

(19) Gross negligence in the use and control of prescription forms;

(20) Professional incompetence; or

(21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process or loss of motor skill or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or she may resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding.

(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this
article. A plea of nolo contendere has the same effect as a verdict or plea of guilt.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint, shall be dismissed: Provided, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician or podiatrist’s current patients, the investigating body may conduct a limited investigation related to the physician or podiatrist’s current capacity and qualification to practice and may recommend conditions, restrictions or limitations on the physician or podiatrist’s license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within ninety days of any referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it deems appropriate, as provided herein.

(f) The investigating body, as provided for in subsection (e) of this section, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to any such examination has the right, at his or her expense, to...
designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is considered to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to any such examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his or her expense. The physician or podiatrist has the right to defend against any charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross-examine witnesses and the right to have
subpoenas and subpoenas duces tecum issued on his or her behalf for the attendance of witnesses and the production of documents. The board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) In disciplinary actions in which probable cause has been found by the board, the board shall, within twenty days of the date of service of the written notice of charges or sixty days prior to the date of the scheduled hearing, whichever is sooner, provide the respondent with the complete identity, address and telephone number of any person known to the board with knowledge about the facts of any of the charges; provide a copy of any statements in the possession of or under the control of the board; provide a list of proposed witnesses with addresses and telephone numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of rule 26(b)(4) of the West Virginia rules of civil procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing: Provided, That the board shall not be required to furnish or produce any materials which contain opinion work product information or would be a violation of the attorney-client privilege. Within twenty days of the date of service of the written notice of charges, the board shall be required to disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary process. Within thirty days of receipt of the board's mandatory discovery, the respondent shall provide the board with the complete identity, address and telephone number of any person known to the respondent with knowledge about the facts of any of the charges; provide a list of proposed witnesses with addresses and telephone numbers, to be called at hearing, with a brief summary of his or her anticipated testimony; provide disclo-
sure of any trial expert pursuant to the requirements of rule
26(b)(4) of the West Virginia rules of civil procedure; pro-
vide inspection and copying of the results of any reports of
physical and mental examinations or scientific tests or exper-
iments; and provide a list and copy of any proposed exhibit to
be used at the hearing.

(j) Whenever it finds any person unqualified because of
any of the grounds set forth in subsection (c) of this section,
the board may enter an order imposing one or more of the
following:

(1) Deny his or her application for a license or other au-
thorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit or restrict his or her license or other
authorization to practice medicine and surgery or podiatry for
not more than five years, including limiting the practice of
that person to, or by the exclusion of, one or more areas of
practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to
practice medicine and surgery or podiatry or to prescribe or
dispense controlled substances for a period not to exceed ten
years;

(5) Require him or her to submit to care, counseling or
treatment designated by the board as a condition for initial or
continued licensure or renewal of licensure or other authori-
ization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of
education prescribed by the board;
(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and

(8) Assess a civil fine of not less than one thousand dollars nor more than ten thousand dollars.

(k) Notwithstanding the provisions of section eight, article one, chapter thirty of this code, if the board determines the evidence in its possession indicates that a physician's or podiatrist's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided for in subsection (j) of this section on a temporary basis and without a hearing if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within fifteen days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(1) Any person against whom disciplinary action is taken pursuant to the provisions of this article has the right to judicial review as provided in articles five and six, chapter twenty-nine-a of this code: Provided, That a circuit judge may also remand the matter to the board if it appears from competent evidence presented to it in support of a motion for remand that there is newly discovered evidence of such a character as ought to produce an opposite result at a second hearing on the merits before the board and:

(1) The evidence appears to have been discovered since the board hearing; and

(2) The physician or podiatrist exercised due diligence in asserting his or her evidence and that due diligence would not have secured the newly discovered evidence prior to the appeal. A person may not practice medicine and surgery or
podiatry or deliver health care services in violation of any disciplinary order revoking, suspending or limiting his or her license while any appeal is pending. Within sixty days, the board shall report its final action regarding restriction, limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice privileges or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American medical association, the American podiatry association, professional societies of physicians or podiatrists in the state and any entity responsible for the fiscal administration of medicare and medicaid.

(m) Any person against whom disciplinary action has been taken under the provisions of this article shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation or restriction period the physician or podiatrist may resume practice if the board has so ordered.

(n) Any entity, organization or person, including the board, any member of the board, its agents or employees and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation or preparation of any such report or information or assists the board or a hospital governing body
or any committee in carrying out any of its duties or func-
tions provided by law is immune from civil or criminal liabil-
ity, except that the unlawful disclosure of confidential infor-
mation possessed by the board is a misdemeanor as provided
for in this article.

(o) A physician or podiatrist may request in writing to the
board a limitation on or the surrendering of his or her license
to practice medicine and surgery or podiatry or other appro-
priate sanction as provided herein. The board may grant the
request and, if it considers it appropriate, may waive the
commencement or continuation of other proceedings under
this section. A physician or podiatrist whose license is lim-
ited or surrendered or against whom other action is taken
under this subsection may, at reasonable intervals, petition
for removal of any restriction or limitation on or for reinsta-
lement of his or her license to practice medicine and surgery or
podiatry.

(p) In every case considered by the board under this arti-
cle regarding discipline or licensure, whether initiated by the
board or upon complaint or information from any person or
organization, the board shall make a preliminary determina-
tion as to whether probable cause exists to substantiate
charges of disqualification due to any reason set forth in sub-
section (c) of this section. If probable cause is found to exist,
all proceedings on the charges shall be open to the public
who shall be entitled to all reports, records and
nondeliberative materials introduced at the hearing, including
the record of the final action taken: Provided, That any medi-
cal records, which were introduced at the hearing and which
pertain to a person who has not expressly waived his or her
right to the confidentiality of the records, may not be open to
the public nor is the public entitled to the records.
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(q) Notwithstanding any other provisions of this article, the board may, at any time, on its own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the West Virginia state bar's mediator referral service of certified mediators with expertise in professional disciplinary matters. The board and the physician or podiatrist may choose a mediator from this list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from this listing by neutral rotation. The mediation shall not be considered a proceeding open to the public and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing.

ARTICLE 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.

§30-3C-4. Liability for court costs and attorney fees in certain civil actions.

1 Any party or parties who institute an action as a result of a peer review may be liable for court costs and reasonable attorney's fees, if the defendant substantially prevails and if the action, or the plaintiff's conduct during the litigation of the action, was frivolous, unreasonable, without foundation, or in bad faith.
AN ACT to amend and reenact sections one and two, article
three-a, chapter thirty of the code of West Virginia, one thou­
sand nine hundred thirty-one, as amended, relating to end of
life pain management; providing that any board, governed by
chapter thirty that licenses health care practitioners, may de­
velop guidelines for pain management.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.
§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to
management of intractable pain.

§30-3A-1. Definitions.

1 For the purposes of this article, the words or terms de­
2 fined in this section have the meanings ascribed to them.
3 These definitions are applicable unless a different meaning
4 clearly appears from the context.

5 (1) An “accepted guideline” is a care or practice guide­
6 line for pain management developed by a nationally recog­
7 nized clinical or professional association or a specialty soci­
ety or government-sponsored agency that has developed
practice or care guidelines based on original research or on
review of existing research and expert opinion. An accepted
guideline also includes policy or position statements relating
to pain management issued by any West Virginia board in-
cluded in chapter thirty of the West Virginia code with juris-
diction over various health care practitioners. Guidelines
established primarily for purposes of coverage, payment or
reimbursement do not qualify as accepted practice or care
guidelines when offered to limit treatment options otherwise
covered by the provisions of this article.

(2) “Board” or “licensing board” means the West Vir-
ginia board of medicine, the West Virginia board of osteopa-
thy, the West Virginia board of registered nurses or the West
Virginia board of pharmacy.

(3) “Intractable pain” means a state of pain having a
cause that cannot be removed. Intractable pain exists if an
effective relief or cure of the cause of the pain: (1) Is not
possible; or (2) has not been found after reasonable efforts.
Intractable pain may be temporary or chronic.

(4) “Nurse” means a registered nurse licensed in the state
of West Virginia pursuant to the provisions of article seven
of this chapter.

(5) “Pain-relieving controlled substance” includes, but is
not limited to, an opioid or other drug classified as a schedule
II controlled substance and recognized as effective for pain
relief, and excludes any drug that has no accepted medical
use in the United States or lacks accepted safety for use in
treatment under medical supervision including, but not lim-
ited to, any drug classified as a schedule I controlled sub-
stance.
(6) "Pharmacist" means a registered pharmacist licensed in the state of West Virginia pursuant to the provisions of article five of this chapter.

(7) "Physician" means a physician licensed in the state of West Virginia pursuant to the provisions of article three or article fourteen of this chapter.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of intractable pain.

(a) A physician shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for prescribing, administering or dispensing pain-relieving controlled substances for the purpose of alleviating or controlling intractable pain when:

(1) In a case of intractable pain involving a dying patient, in practicing in accordance with an accepted guideline as defined in section one of this article, the physician discharges his or her professional obligation to relieve the dying patient’s intractable pain and promote the dignity and autonomy of the dying patient, even though the dosage exceeds the average dosage of a pain-relieving controlled substance; or

(2) In the case of intractable pain involving a patient who is not dying, the physician discharges his or her professional obligation to relieve the patient’s intractable pain, even though the dosage exceeds the average dosage of a pain-relieving controlled substance, if the physician can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.
(b) A registered nurse shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for administering pain-relieving controlled substances to alleviate or control intractable pain, if administered in accordance with the orders of a licensed physician.

(c) A registered pharmacist shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control intractable pain, if dispensed in accordance with the orders of a licensed physician.

(d) For purposes of this section, the term “disciplinary sanctions” includes both remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or informal proceedings.

(e) The provisions of this section shall apply to the treatment of all patients for intractable pain, regardless of the patient’s prior or current chemical dependency or addiction. The board may develop and issue policies or guidelines establishing standards and procedures for the application of this article to the care and treatment of persons who are chemically dependent or addicted.
AN ACT to amend article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-c, relating to authorizing the board of pharmacy to enter into agreements with organizations to form pharmacist recovery networks for impaired pharmacists, pharmacy interns and pharmacy technicians; providing for rule-making authority; and providing for fees to be set by legislative rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-7c. Authorization for the board of pharmacy to enter into agreements with organizations to form pharmacist recovery networks for treatment of impaired pharmacists, pharmacy interns and pharmacy technicians.

(a) The board may, under legislative rules adopted by the board in accordance with article three, chapter twenty-nine-a of this code, enter into agreements with organizations to form pharmacist recovery networks. Any pharmacist recovery network shall promote the early identification, intervention, treatment, and rehabilitation of pharmacists, pharmacy interns and pharmacy technicians who may be impaired by reason of illness, alcohol or drug abuse, or as a result of any other physical or mental condition. Activities to be covered by the agreements shall include investigation, review and evaluation of records, reports, complaints, litigation and other information about the practices and practice patterns of pharmacists licensed by the board, as such matters may relate to
impaired pharmacists, pharmacy interns or pharmacy technicians.

(b) Agreements authorized under this section shall include provisions for the impaired pharmacist recovery network to receive relevant information from the board and other sources, conduct any investigation, review and evaluation in an expeditious manner, provide assurance of confidentiality of nonpublic information, make reports of investigations and evaluations to the board, and to do other related activities for operating and promoting a coordinated and effective peer review process. The agreements shall include provisions assuring basic due process for pharmacists, pharmacy interns or pharmacy technicians as well as provisions for the adequate treatment, supervision and follow through for participants.

(c) Any organization that enters into an agreement with the board to create a pharmacist recovery network shall establish and maintain a program for impaired pharmacists, pharmacy interns and pharmacy technicians for the purpose of identifying, reviewing and evaluating the ability of those individuals to function as pharmacist, pharmacy intern or pharmacy technician, and to provide programs for treatment and rehabilitation, including supervision and follow up for participating persons.

(d) Prior to entering into any agreement with any organization to form a pharmacist recovery network, the board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the operation of any pharmacist recovery network, with provisions for:

(1) Definitions of impairment;

(2) Guidelines for program elements;

(3) Procedures for receipt and use of information of suspected impairment;
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(4) Procedures for intervention and referral;

(5) Arrangements for mandatory monitoring, treatment, rehabilitation, post-treatment support and performance;

(6) Reports of individual cases to the board;

(7) Periodic reporting of statistical information;

(8) Assurance of confidentiality of nonpublic information and of the peer review process; and

(9) Assessment of a fee to be added to each licensure renewal application fee payable to the board and dedication of any revenue generated by the assessment for the operation of pharmacist recovery networks developed under this section.

(e) Upon investigation and review of a pharmacist, pharmacy intern or pharmacy technician, or upon receipt of a complaint or other information, an organization that enters into an agreement with the board to operate a pharmacist recovery network shall report immediately to the board detailed information about any pharmacist, pharmacy intern or pharmacy technician, if:

(1) The individual constitutes an imminent danger to the public or himself or herself; or

(2) The individual refuses to cooperate with the program, refuses to submit to treatment, refuses to participate in follow up treatment and monitoring, or is still impaired after treatment; or

(3) It reasonably appears that there are other grounds for disciplinary action.

(f) Any confidential patient information acquired, created or used by a pharmacist recovery network pursuant to this
section shall remain confidential and may not be subject to

discovery or subpoena in a civil case.

(g) If the board has not instituted any disciplinary pro-
ceedings as provided in this article, any information received,
maintained or developed by a pharmacist recovery network
relating to the alcohol or chemical dependency impairment of
any pharmacist, pharmacy intern or pharmacy technician
shall be confidential and not available for public information,
discovery or court subpoena nor for introduction into evi-
dence in any professional liability action or other action for
damages arising out of the provision of or failure to provide
health care services.

(h) No person participating in a pharmacist recovery
network developed under this section may be required in a
civil case to disclose any information, including opinions,
recommendations or evaluations, acquired or developed
solely in the course of participating in the program.

(i) All persons engaged in activities conducted pursuant
to a pharmacist recovery network developed under this sec-
tion when acting in good faith and without malice enjoy im-
munity from individual civil liability while acting within the
scope of their duties as part of a pharmacist recovery net-
work.

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CHAPTER 241

(H. B. 4098 — By Delegates Douglas, Kuhn, Varner,
Butcher, Hatfield, Leggett and Border)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-17. Continuation of board.

Pursuant to the provisions of article ten, chapter four of this code, the board of examiners for registered professional nurses shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to that article.
their employment with a permit issued by the department of education.

_Be it enacted by the Legislature of West Virginia:_

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

**ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.**

§30-21-3. License required; firms, associations and corporations engaging in the practice of psychology.

(a) No person shall engage in, offer to engage in, or hold himself or herself out to the public as being engaged in, the practice of psychology in this state, nor shall any person use in connection with any trade, business, profession or occupation, except in those instances specifically excluded from the definition of the practice of psychology by subparagraphs (1), (2), (3), (4) and (6), subdivision (e), section two of this article, the word "psychologist," "psychology," "psychological" or any other title, word or abbreviation which induces or tends to induce the belief that such person is qualified to engage or is engaged in the practice of psychology, unless and until he or she shall first obtain a license or temporary permit to engage in the practice of psychology in accordance with the provisions of this article, which license or temporary permit remains unexpired, unsuspended and unrevoked: Provided, That such license or temporary permit shall not be required for an individual who is the holder of a school psychology certificate or permit issued by the West Virginia department of education and who is engaged in the practice of school psychology solely within the scope of employment as a school board employee: Provided, however, That no such license or temporary permit shall be required for a psychologist who is not a resident of this state, who is the holder of a
license or certificate to engage in the practice of psychology
issued by a state with licensing or certification requirements
determined by the board to be at least as great as those pro-
vided in this article, who has no regular place of practice in
this state and who engages in the practice of psychology in
this state for a period of not more than ten days in any calen-
dar year.

(b) No firm, association or corporation shall, except
through a licensee or licensees, render any service or engage
in any activity which if rendered or engaged in by any indi-
vidual would constitute the practice of psychology.

CHAPTER 243

(H. B. 4346 — By Delegates Compton, Hatfield and Brown)

[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 twenty-
three, chapter thirty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, all relating to the board of
examiners for radiologic technologists; changing the qualifica-
tions for applicants; and revising the name of the national orga-
nization issuing requirements for approval standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.
§30-23-5. Board of examiners; powers and duties; funds of board.

1 (a) The board shall:

2 (1) Propose legislative rules implementing the provisions
3 of this article and the powers and duties conferred upon the
4 board in accordance with the provisions of article three,
5 chapter twenty-nine-a of this code;

6 (2) Determine applicants' eligibility for a license or tem-
7 porary permit to practice radiologic technology;

8 (3) Issue, renew, deny, suspend or revoke licenses and
9 temporary permits to engage in the practice of radiologic
10 technology in accordance with the provisions of this article
11 and, in accordance with the administrative procedures herein-
12 after provided, review, affirm, reverse, vacate or modify its
13 order with respect to any denial, suspension or revocation;

14 (4) Investigate alleged violations of provisions of this
15 article, rules promulgated hereunder and orders and final
16 decisions of the board and take appropriate disciplinary ac-
17 tion against any licensee for the violation thereof or institute
18 appropriate legal action for the enforcement of the provisions
19 of this article, rules promulgated hereunder and orders and
20 final decisions of the board;

21 (5) Employ, direct, discharge and define the duties of full
22 or part-time professional, clerical or other personnel neces-
23 sary to effectuate the provisions of this article;

24 (6) Keep accurate and complete records of its proceed-
25 ings, certify the records as may be appropriate, and prepare,
from time to time, a list showing the names and addresses of all licensees;

(7) Provide standards for approved schools of technology, procedures for obtaining and maintaining approval, and procedures of revocation of approval where standards are not maintained: Provided, That the standards for approved schools meet at least the minimal requirements of the American registry of radiologic technologists;

(8) Whenever appropriate, confer with the attorney general or his or her assistants in connection with all legal matters and questions; and

(9) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.

(b) All moneys paid to the board must be accepted by a person designated by the board and deposited by him or her with the treasurer of the state and credited to an account to be known as the "board of examiners of radiologic technologist fund." The reimbursement of all reasonable and necessary expenses actually incurred by members of the board and all other costs and expenses incurred by the board in the administration of this article must be paid from the fund, and no part of the state's general revenue fund may be expended for this purpose.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

(a) To be eligible for a license to practice radiologic technology the applicant must:

(1) Be of good moral character;
(2) Have completed four years of high school education or its equivalent;

(3) Have successfully completed an eighteen-month course in radiologic study in a school of radiologic technology approved by the board;

(4) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of radiologic technology, skills and techniques; and

(5) Not have been convicted of a felony in any court in this state or any federal court in this or any other state within ten years preceding the date of application for registration, which conviction remains unreversed; and not have been convicted of a felony in any court in this state or any federal court in this or any other state at any time if the offense for which the applicant was convicted related to the practice of radiologic technology, which conviction remains unreversed.

(b) Any person who holds a license or certificate, including the American registry of radiologic technologists, to practice radiologic technology issued by any other state, the requirements for which license or certificate are found by the board to be at least equal to those provided in this article, shall be eligible for a license to practice radiologic technology in this state without examination.

(c) The following persons are not required to obtain a license in accordance with the provisions of this article:

(1) A technology student enrolled in or attending an approved school of technology who as part of his or her course of study applies ionizing radiation to a human being under the supervision of a licensed practitioner;
(2) A person acting as a dental assistant who under the supervision of a licensed dentist operates only radiographic dental equipment for the sole purpose of dental radiography;

(3) A person engaged in performing the duties of a technologist in the person’s employment by an agency, bureau or division of the government of the United States;

(4) Any licensed practitioner, radiologist or radiology resident; and

(5) Any person who demonstrates to the board that as of the first day of July, one thousand nine hundred ninety-nine, he or she:

(A) Has engaged in the practice of radiologic technology for the limited purpose of performing bone densitometry in this state for five or more years;

(B) Practices under the supervision of a licensed practitioner; and

(C) Has received a densitometry technologist degree certified by the international society for clinical densitometry.

(d) Any person seeking a license shall submit an application therefor at such time, in such manner, on such forms and containing such information as the board may from time to time by legislative rule prescribe, and shall pay to the board a license fee, which fee shall be returned to the applicant if the license application is denied.
AN ACT to amend and reenact section fifteen, article thirty-two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to speech-language pathology and audiology license renewal; allowing the board to establish continuing education hours by legislative rule; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.


1 (a) Licenses issued under this article shall expire every two years;

3 (b) Every person licensed under this bill shall:

4 (1) Pay an amount established by the board by legislative rule in order for his or her license to be renewed;

6 (2) Submit an application for renewal on a form prescribed by the board;
(3) Meet any other requirements the board establishes as conditions for license renewal; and

(4) Engage in continuing education activities, as set forth in legislative rule, whose content is directly related to the professional growth and development of speech-language pathologists and audiologists. The following are examples of ways in which these hours may be obtained:

(i) Short courses, mini-seminars and teleconferences of the American speech-language-hearing association;

(ii) Educational sessions of the West Virginia speech-language-hearing association;

(iii) Educational sessions provided within the licensee’s work setting; or

(iv) Any other activities approved by the board.

(c) Licensees are granted a grace period of thirty days after the expiration of their licenses in which to renew retroactively as long as they otherwise are entitled to have their licenses renewed and pay to the board the renewal fee and any late fee set by the board.

(d) A suspended license is subject to expiration and may be renewed as provided in this article, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order of judgment by which the license was suspended.

(e) A license revoked on disciplinary grounds is subject to expiration as provided in this article, but it may not be renewed. If such license is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a rein-
statement fee that shall equal the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee set by the board by legislative rule.

CHAPTER 245

(Com. Sub. for S. B. 453 — By Senators Bowman, Bailey and Rowe)

[Passed March 5, 2002; in effect from passage. Approved by the Governor.] AN ACT to repeal article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty of said code by adding thereto a new article, designated article forty, relating to the West Virginia real estate license act; requiring license to sell real estate; providing definitions; scope of practice; exceptions; qualifications, terms, appointments and removal of members; powers and duties of commission; providing rule-making authority; qualifications and requirements for licensure; standards for examinations; continuing education requirements; issuing and renewing licenses; denying, suspending, revoking or reinstating licenses; professional conduct; fees; special revenue account; administrative fines; providing immunity from civil liability for commission members and persons reporting violations; requiring definite place of business of licensees; displaying license certificates; trust fund accounts; prohibiting commingling funds; delineating prohibited acts; investigating and resolving complaints against licensees; hearings and judicial review; penalties for violations; injunctions; criminal proceedings for violations; requirements for bringing action for recov-
Be it enacted by the Legislature of West Virginia:

That article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter thirty of said code be amended by adding thereto a new article, designated article forty to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-1. Legislative findings.
§30-40-3. License required.
§30-40-5. Scope of practice; exceptions.
§30-40-6. Commission created; membership; appointment and removal of members; qualifications; terms; organization.
§30-40-9. Fees; special revenue account; administrative fines.
§30-40-10. Civil liability for commission members; liability limitations of person reporting to commission.
§30-40-12. Qualifications for broker’s license.
§30-40-17. Place of business; branch offices; display of certificates; custody of license certificates; change of address; change of employer by a salesperson or associate broker; license certificates; term of license.
§30-40-19. Refusal, suspension or revocation of a license.
§30-40-20. Complaints; investigation.
§30-40-21. Hearings; judicial review; cost of proceedings.
§30-40-22. Penalties for violations.
§30-40-24. Injunctions; criminal proceedings.
§30-40-1. Legislative findings.

  1 The Legislature hereby finds and declares that the practice of real estate brokerage is a privilege and any person engaged in the professional practice of real estate brokerage should possess the requisite experience and training and be subject to adequate regulation and control. As a matter of public policy, it is necessary to protect the public interest from the unauthorized, unqualified and unregulated practice of real estate brokerage through enactment of this article and to regulate the granting of such privileges and their use. This article shall be liberally construed to carry out these purposes.


  1 This article shall be known and may be cited as the "West Virginia Real Estate License Act".

§30-40-3. License required.

  1 It shall be unlawful for any person to engage in or carry on, directly or indirectly, or to advertise or hold himself or herself out as engaging in or carrying on the business or act in the capacity of a real estate broker, associate broker or salesperson within this state without first obtaining a license as provided for in this article.


  1 Unless the context in which used clearly requires a different meaning, as used in this article:
(a) "Applicant" means any person who is making application to the commission for a license.

(b) "Associate broker" means any person who qualifies for a broker's license, but who is employed or engaged by a licensed broker to engage in any activity regulated by this article, in the name of and under the direct supervision of the licensed broker.

(c) "Broker" means any person who for compensation or with the intention or expectation of receiving or collecting compensation:

(1) Lists, sells, purchases, exchanges, options, rents, manages, leases or auctions any interest in real estate; or

(2) Directs or assists in the procuring of a prospect calculated or intended to result in a real estate transaction; or

(3) Advertises or holds himself or herself out as engaged in, negotiates or attempts to negotiate, or offers to engage in any activity enumerated in subdivision (1) of this subsection.

(d) "Commission" means the West Virginia real estate commission as established in section six of this article.

(e) "Compensation" means fee, commission, salary or other valuable consideration, in the form of money or otherwise.

(f) "Designated broker" means a person holding a broker's license who has been appointed by a partnership, association, corporation, or other form of business organization engaged in the real estate brokerage business, to be responsible for the acts of the business and to whom the partners, members, or board of directors have delegated full authority.
to conduct the real estate brokerage activities of the business organization.

(g) "Distance education" means courses of instruction in which instruction takes place through media where the teacher and student are separated by distance and sometimes by time.

(h) "Inactive" means a licensee who is not authorized to conduct any real estate business and is not required to comply with any continuing education requirements.

(i) "License" means a license to act as a broker, associate broker or salesperson.

(j) "Licensee" means a person holding a license.

(k) "Member" means a commissioner of the real estate commission.

(l) "Real estate" means any interest or estate in land and anything permanently affixed to land.

(m) "Salesperson" means a person employed or engaged by or on behalf of a broker to do or deal in any activity included in this article, in the name of and under the direct supervision of a broker, other than an associate broker.

§30-40-5. Scope of practice; exceptions.

(a) The practice of real estate brokerage includes acting in the capacity of a broker, associate broker or salesperson as defined in section four of this article.

(b) The practice of real estate brokerage does not include the activities normally performed by an appraiser, mortgage company, lawyer, engineer, contractor, surveyor, home in-
spectator or other professional who may perform an ancillary
service in conjunction with a real estate transaction.

(c) The provisions of this article do not apply to:

(1) Any person acting on his or her own behalf as owner
or lessor of real estate.

(2) The regular employees of an owner of real estate,
who perform any acts regulated by this article, where the acts
are incidental to the management of the real estate: Provided,
That the employee does not receive additional compensation
for the act and does not perform the act as a vocation.

(3) Attorneys-at-law: Provided, That attorneys-at-law
shall be required to submit to the written examination re-
quired under section twelve of this article in order to qualify
for a broker's license: Provided, however, That an attorney-
at-law who is licensed as a real estate broker prior to the first
day of July, one thousand nine hundred eighty, is exempt
from the written examination required under section twelve
of this article.

(4) Any person holding, in good faith, a valid power of
attorney from the owner or lessor of the real estate.

(5) Any person acting as a receiver, trustee, administra-
tor, executor, guardian, conservator or under the order of any
court or under the authority of a deed of trust or will.

(6) A public officer while performing his or her official
duties.

(7) Any person acquiring or disposing of any interest in
timber or minerals, or acquiring or disposing of properties for
 easements and rights-of-ways for pipelines, electric power
 lines and stations, public utilities, railroads or roads.
36 (8) Any person employed exclusively to act as the management or rental agent for the real estate of one person, partnership or corporation.

39 (9) Any person properly licensed pursuant to the provisions of article two-c, chapter nineteen of this code when conducting an auction, any portion of which contains any leasehold or estate in real estate, only when the person so licensed is retained to conduct an auction by:

44 (A) A receiver or trustee in bankruptcy;

45 (B) A fiduciary acting under the authority of a deed of trust or will; or

47 (C) A fiduciary of a decedent’s estate.

48 (10) Any person employed by a broker in a noncommissioned clerical capacity who may in the normal course of employment, be required to:

51 (A) Disseminate brokerage preprinted and predetermined real estate sales and rental information;

53 (B) Accept and process rental reservations or bookings for a period not to exceed thirty consecutive days in a manner and procedure predetermined by the broker;

56 (C) Collect predetermined rental fees for the rentals which are to be promptly tendered to the broker; or

58 (D) Any combination thereof.

§30-40-6. Commission created; membership; appointment and removal of members; qualifications; terms; organization.
(a) The West Virginia real estate commission is hereby continued. The members of the commission in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) (1) Commencing with the terms beginning with the first day of July, two thousand two, the commission shall consist of five persons appointed for terms of four years by the governor with the advice and consent of the Senate. Four commissioners must be licensed under the provisions of this article and one commissioner must be a citizen member who is not licensed under the provisions of this article.

(2) Each licensed commissioner, at the time of his or her appointment, must have been licensed and practiced in this state as a real estate broker, associate broker or salesperson as his or her primary vocation for a period of not less than ten years immediately preceding the appointment. Each commissioner must have been a resident of this state for at least six years prior to his or her appointment and must remain a resident during the appointment term. No more than four commissioners shall belong to the same political party.

(3) The appointment of three licensed commissioners, whether for a full term or to fill a vacancy, shall be made by the governor with the advice and consent of the Senate. The appointment of one licensed commissioner, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees selected by the West Virginia association of realtors. If the appointment is for a full term, the nominations must be submitted to the governor not later than three months prior to the date on which the appointment becomes effective. If the appointment is to fill a vacancy, the nominations must be submitted to the governor within thirty days after a request for the nominations has been made by the
governor to the West Virginia association of realtors. If the association fails to submit nominations in accordance with the requirements of this section, the governor may make the appointment without the nominations.

(c) Any commissioner immediately and automatically forfeits his or her membership on the commission if he or she has his or her license to practice as a real estate broker, associate broker or salesperson suspended or revoked by the board, is convicted of a felony under the laws of this state or of the United States, becomes a nonresident of this state, or holds any elective public office or becomes a member of any political committee.

(d) No member of the commission may be removed from office by the governor except for official misconduct, incompetency, neglect of duty, gross immorality or other good cause, but then only in the manner prescribed by law for the removal by the governor of state elective officials.

(e) No member of the commission 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.

(f) The governor shall designate one member of the commission as chairman and the members shall choose a vice chairman and a secretary, each of whom shall continue to serve in their respective capacity until replaced.

(g) Three members shall constitute a quorum for the conduct of official business.

(h) Each commissioner shall receive the same compensation as is paid to members of the Legislature for their interim
duties as recommended by the citizens legislative compensa-
tion commission and authorized by law for each day or por-
tion thereof engaged in the discharge of official duties. Each 
commissioner shall be reimbursed for his or her actual and 
necessary expenses for each day or portion thereof engaged 
in the discharge of official duties in a manner consistent with 
guidelines of the travel management office of the department 
of administration.


The commission has all the powers set forth in article one 
of this chapter and in addition:

(a) May sue and be sued in its official name as an agency 
of this state;

(b) Shall employ an executive director and shall fix his or 
her compensation subject to the general laws of this state. 
The commission shall determine the duties of the executive 
director, as it shall deem necessary and appropriate to dis-
charge the duties imposed by the provisions of this code;

(c) Shall employ or contract with such other investiga-
tors, hearing examiners, attorneys, consultants, clerks and 
assistants as the commission deems necessary and determine 
the duties and fix the compensation of such investigators, 
clers and assistants subject to the general laws of this state;

(d) Shall have the authority to issue subpoenas and sub-
poenas duces tecum through any member, its executive direc-
tor or any duly authorized representative;

(e) Shall prescribe, examine and determine the qualifica-
tions of any applicant for a license;
20 (f) Shall provide for an appropriate examination of any applicant for a license;

22 (g) May enter into agreements with other jurisdictions whereby the license issued by another jurisdiction may be recognized as successfully qualifying a nonresident for a license in this state without additional education or examination requirements;

27 (h) Shall issue, renew, deny, suspend, revoke or reinstate licenses and take disciplinary action against any licensee;

29 (i) May investigate or cause to be investigated alleged violations of the provisions of this article, the rules promulgated hereunder and the orders or final decisions of the commission;

33 (j) Shall conduct hearings or cause hearings to be conducted upon charges calling for the discipline of a licensee or for the suspension or revocation of a license;

36 (k) May examine the books and records relating to the real estate business of a licensee if the licensee is charged in a complaint of any violation of this article, commission rule, or any order or final decision issued by the commission: Provided, That such examination shall not extend beyond the specific violation charged in the complaint;

42 (l) May impose one or more sanctions as considered appropriate in the circumstances for the discipline of a licensee. Available sanctions include, but are not limited to, denial of a license or renewal thereof, administrative fine not to exceed one thousand dollars per day per violation, probation, revocation, suspension, restitution, require additional education, censure, denial of future license, downgrade of license, reprimand or order the return of compensation collected from an injured consumer;
(m) Shall meet at least once each calendar year at such place and time as the commission shall designate and at such other times and places as it considers necessary to conduct commission business;

(n) Shall publish an annual directory of licensees in compliance with the provisions of section thirteen, article one, chapter thirty of this code;

(o) May sponsor real estate related educational seminars, courses, workshops or institutes, may incur and pay the necessary expenses and may charge a fee for attendance;

(p) May assist libraries, institutions and foundations with financial aid or otherwise, in providing texts, sponsoring studies, surveys and programs;

(q) May perform compliance audits on real estate brokerage offices, education providers or any other person regulated by the commission;

(r) May provide distance education courses for applicants for a license sufficient to meet the educational requirements contained in subsections (a) and (b), section fourteen of this article; and

(s) Shall take all other actions necessary and proper to effectuate the purposes of this article.


(a) The commission may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which are necessary for the conduct of its business, the holding of hearings and for the general implementation, enforcement and administration
of the provisions of this article, including, but not limited to, establishing, administering and governing the following:

1. Fees for applications, examinations, licenses, renewal of licenses, changes to licenses requiring reissuance, courses, investigations, copies of records, license certifications and other fees considered necessary by the commission, none of which shall be prorated or refundable: Provided, That the fee schedule in effect prior to enactment of this article, enumerated in section nine, article twelve, chapter forty-seven of this code, shall continue to be effective until withdrawn, revoked or amended;

2. The minimum requirements and qualifications necessary for approval by the commission of providers, instructors and the course content of any prelicense education course required in section fourteen of this article;

3. The experience required of an applicant;

4. The minimum standards for licensure;

5. The standards for examinations;

6. The minimum requirements and qualifications necessary for approval by the commission of providers, instructors and courses of continuing professional education required by section sixteen of this article;

7. Continuing professional education requirements for licensees, including any exemptions;

8. Renewal of licenses;

9. Use of firm or trade name;

10. Denying, suspending, revoking or reinstating a license;
(11) Form and use of contracts used in a real estate transaction;

(12) Notification required to clients or customers of agency relationship;

(13) Professional conduct requirements; and

(14) Any other purpose to carry out the requirements of this article or to protect the public interest.

(b) All rules in effect as of the passage of this article previously promulgated by the commission pursuant to article twelve, chapter forty-seven of this code will remain in effect until amended, modified, repealed or replaced, except that references to provisions of former enactments of this article are interpreted to mean provisions of this article.

§30-40-9. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the commission shall be deposited into the treasury of the state, at least once each month, into a special revenue fund known as the “real estate license fund” which is continued.

(b) Except as may be provided in section ten, article one of this chapter, the commission shall retain the amounts in the special revenue fund from year to year and no funds collected under this article may be used by the commission for any purpose other than the administration and enforcement of this article. No compensation or expense incurred under this article is a charge against the general revenue fund.

(c) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the general revenue fund of the state treasury.
§30-40-10. Civil liability for commission members; liability limitations of person reporting to commission.

(a) Members of the commission shall be immune from individual civil liability for actions taken in good faith and without malice, within the scope of their duties as commission members.

(b) Any person who reports or otherwise provides evidence of violations of this article, the commission's rules, orders or final decisions to the commission or other law-enforcement agency, is not liable for making the report if it is made without malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.


The commission shall only issue an original license to an applicant if he or she:

(a) Submits an application, in writing, in a form prescribed by the commission which must contain, but is not limited to:

(1) The applicant’s social security number;

(2) The recommendation of at least two persons who:

(A) Are property owners at the time of signing the application;

(B) Have been property owners for at least twelve months preceding the signing of the application;

(C) Have known the applicant for at least two years;

(D) Are not related to the applicant;
(E) Are not affiliated with the applicant as an employer, partner or associate or with the broker that will employ the applicant;

(F) Believe the applicant bears a good reputation for honesty, trustworthiness and fair dealing; and

(G) Believe the applicant is competent to transact the business of a real estate broker, associate broker or salesperson, as the case may be, in a manner that would protect the interest of the public.

(3) A clear record indicating all jurisdictions where the applicant holds or has held any professional license.

(4) A clear record indicating if the applicant has been convicted of any criminal offense or if there is any criminal charge pending against the applicant, or a member or officer of the brokerage business, at the time of application.

(b) Is at least eighteen years of age.

(c) Is a high school graduate or the holder of an equivalency diploma.

(d) Is trustworthy, of good moral character and competent to transact the business of a broker, associate broker or salesperson.

(e) Has paid the appropriate fee, if any, which must accompany all applications for original license or renewal.

§30-40-12. Qualifications for broker's license.

(a) An applicant for a broker's license shall:

(1) Have served an apprenticeship as a licensed salesperson for two years or shall produce evidence satisfactory to
the commission, in its sole discretion, of real estate experience equivalent to two years full-time experience as a licensed salesperson;

(2) Submit satisfactory evidence of having completed the required education course as provided for in section fourteen of this article;

(3) Successfully pass the examination or examinations provided by the commission.

(b) No broker’s license shall be issued in the name of a corporation, association or partnership except through one of its members or officers.

(c) No broker’s license shall be issued in the name of a corporation, association or partnership unless each member or officer, who will engage in the real estate business, obtains a license as a real estate salesperson or associate broker.


An applicant for a salesperson’s license shall:

(1) Submit satisfactory evidence of having completed the required education course as provided in section fourteen of this article.

(2) Successfully pass the examination or examinations provided by the commission.


(a) Applicants for a broker’s license shall provide evidence satisfactory to the commission that he or she has completed at least one hundred eighty clock-hours, equivalent to twelve college semester credit hours, in a course or courses approved by the commission: Provided, That an applicant for

(a) The commission may recognize a valid license issued by another jurisdiction as satisfactorily qualifying a nonresident person to obtain a comparable license in this state: Provided, That the nonresident has qualified for original license in his or her jurisdiction of residence by examination and by complying with all the provisions for obtaining an original license in that jurisdiction and the jurisdiction affords the same privilege to licensees of this state.

(b) In order to obtain a license in this state, a nonresident applicant must:

(1) Submit the appropriate application and fee, if any;

(2) Sign a statement that the applicant has read the real estate license law and rules of this state and agrees to abide by those provisions in all brokerage activity conducted in this state;
(3) Cause the real estate licensing body of the applicant’s resident jurisdiction to furnish a certification of licensure which shall contain a clear record of any disciplinary actions;

(4) Cause the real estate licensing body of any other jurisdiction where the applicant currently holds or has held a real estate license to furnish a certification of licensure which shall contain a clear record of any disciplinary actions;

(5) File with the commission an irrevocable written designation that appoints the executive director of the commission to act as the nonresident licensee’s agent, upon whom all judicial and other process or legal notices directed to the licensee may be served. The designation must stipulate and agree that service upon the executive director is equivalent to personal service upon the licensee. A copy of the designation of appointment, certified by the seal of the commission, may be admitted into evidence with the same force and affect as the original. The executive director shall mail a copy of any process or legal notice immediately upon receipt, by certified mail, to the last known business address of the licensee. No judgment by default may be taken in any action or proceeding until after thirty days of mailing and then only upon certification by the executive director that a copy of the judicial, other process or legal notice was mailed as required; and

(6) File with the commission, a bond in the penalty of two thousand dollars if the applicant wishes to maintain an active license in this state. The bond must be issued by a recognized surety and must be for the benefit of and to indemnify any person in this state who may have a cause of action against the principal.

(a) Every licensee shall complete seven hours of continuing professional education for each fiscal year, with each hour equaling fifty minutes of instruction.

(b) Upon application for the renewal of a real estate license on active status, each licensee must furnish satisfactory evidence, as established by the commission, that he or she has completed seven hours of approved continuing professional education during the term of the previous license: Provided, That if the commission issues a license certificate for a period of more than one fiscal year, each licensee must furnish satisfactory evidence that he or she has completed the equivalent of seven hours of continuing professional education for each year covered by the term of the previous license.

(c) When a licensee in an inactive status makes application to revert to an active status, he or she must furnish satisfactory evidence to the commission that he or she has completed the approved continuing professional education that would have been required for active status at the time the license was renewed.

(d) Approval from the commission shall be obtained by each provider and instructor and for any course prior to any advertising or offering of the course.

(e) Real estate-related continuing education courses provided by or approved by the real estate appraiser licensing and certification board, the department of highways, the West Virginia state bar or other agency of this state shall be recognized as approved by the commission.

(f) If approved in advance by the commission, distance education courses may be used to satisfy the continuing education requirement.
(g) Any licensee holding a license on the first day of July, one thousand nine hundred sixty-nine, and continuously thereafter, shall be exempt from the continuing professional education requirement.

§30-40-17. Place of business; branch offices; display of certificates; custody of license certificates; change of address; change of employer by a salesperson or associate broker; license certificates; term of license.

(a) Every person holding a broker’s license under the provisions of this article shall:

(1) Have and maintain a definite place of business within this state, which shall be a room or rooms used for the transaction of real estate business and any allied business. The definite place of business shall be designated in the license certificate issued by the commission and the broker may not transact business at any other location, unless such other location is properly licensed by the commission as a branch office: Provided, That a nonresident broker who maintains a definite place of business in his or her jurisdiction of residence may not be required to maintain an office in this state if said jurisdiction offers the same privilege to licensed brokers of this state;

(2) Conspicuously display his or her broker's license in the main office and the license of each associate broker and salesperson employed by the broker who is primarily working from the main office;

(3) Conspicuously display his or her branch office license in each branch office and the license of each associate broker and salesperson employed by the broker who is primarily working from each branch office;
(4) Make application to the commission before changing the address of any office or within ten days after any change;

(5) Maintain in his or her custody and control the license of each associate broker and salesperson employed by him or her; and

(6) Promptly return the license of any associate broker or salesperson whose employment with the broker is terminated.

(b) Every person holding an associate broker's or salesperson's license under the provisions of this article shall:

(1) Conduct real estate brokerage activities only under the direct supervision and control of his or her employing broker, which shall be designated in the license certificate;

(2) Promptly make application to the commission of any change of employing broker: Provided, That it shall be unlawful to perform any act contained in this article, either directly or indirectly, after employment has been terminated until the associate broker or salesperson has made application to the commission for a change of employing broker and the application is approved.

(c) The commission shall issue a license certificate which shall:

(1) Be in such form and size as shall be prescribed by the commission;

(2) Be imprinted with the seal of the commission and shall contain such other information as the commission may prescribe: Provided, That a salesperson's and an associate broker's license shall show the name of the broker by whom he or she is employed;
(3) In the case of an active licensee, be mailed or delivered to the broker's main office address;

(4) In the case of an inactive licensee, be held in the commission office;

(5) Be valid for a period that coincides with the fiscal year beginning on the first day of July and ending on the thirtieth day of June and may be issued for a period covering more than one fiscal year at the discretion of the commission: Provided, That nothing contained herein shall authorize any person to transact real estate business prior to becoming properly licensed.


(a) Every person licensed as a broker under the provisions of this article who does not immediately deliver all funds received, in relation to a real estate transaction, to his or her principal or to a neutral escrow depository shall maintain one or more trust fund accounts in a recognized financial institution and shall place all funds therein: Provided, That nothing contained herein shall require a broker to maintain a trust fund account if the broker does not hold any money in trust for another party.

(b) Funds that must be deposited into a trust fund account include, but are not limited to, earnest money deposits, security deposits, rental receipts, auction proceeds and money held in escrow at closing.

(c) Each trust fund account must be established at a financial institution which is insured against loss by an agency of the federal government and the amount deposited therein cannot exceed the amount that is insured against loss.
(d) Each trust fund account must provide for the withdrawal of funds without notice.

(e) No trust fund account may earn interest or any other form of income, unless specifically authorized by commission rule.

(f) The broker may not commingle his or her own funds with trust funds and the account may not be pledged as collateral for a loan or otherwise utilized by the broker in a manner that would violate his or her fiduciary obligations in relation to the trust funds: Provided, That nothing contained herein prevents the broker from depositing a maximum of one hundred dollars of his or her own money in the trust fund account to maintain a minimum balance in the account.

(g) No financial institution, in which a trust fund account is established under the provisions of this article, shall require a minimum balance in excess of the amount authorized in subsection (f) of this section.

(h) The broker shall be the designated trustee of the account and shall maintain complete authority and control over all aspects of each trust fund account, including signature authority: Provided, That only one other member or officer of a corporation, association or partnership, who is licensed under the provisions of this article, may be authorized to disburse funds from the account: Provided, however, That if disbursements from a trust fund account require two signatures, one additional member or officer may be a signatory as hereinbefore provided.

(i) The broker shall, at a minimum, maintain records of all funds deposited into the trust fund account, which shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, to whom the money belongs, for whose account the money was received.
and other pertinent information concerning the transaction.

All records shall be open to inspection by the commission or its duly authorized representative at all times during regular business hours at the broker's place of business.

(j) The broker shall cause the financial institution wherein a trust fund account is maintained, to execute a statement, prepared by the commission, which shall include, but is not limited to:

(1) Exact title of the account as registered by the financial institution;

(2) The account number of the trust fund account;

(3) Identification of all persons authorized to make withdrawals from the account;

(4) Name and address of the financial institution;

(5) Title of the person executing the statement on behalf of the financial institution;

(6) Date the statement was executed; and

(7) Certification that the financial institution will notify the real estate commission if any checks drawn against the account are returned for any cause.

(k) The broker shall execute a statement authorizing the commission, or its duly authorized representative, to make periodic inspections of the trust fund account and to obtain copies of records from any financial institution wherein a trust fund account is maintained. A copy of any authorization shall be accepted by any financial institution with the same force and effect as the original.
(1) The broker shall notify the commission, within ten days, of the establishment of or any change to a trust fund account.

§30-40-19. Refusal, suspension or revocation of a license.

(a) The commission shall have full power to refuse a license for reasonable cause or to revoke, suspend or impose any other sanction against a licensee if the licensee:

(1) Obtains, renews or attempts to obtain or renew a license, for himself, herself or another, through the submission of any application or other writing that contains false, fraudulent or misleading information;

(2) Makes any substantial misrepresentation;

(3) Makes any false promises or representations of a character likely to influence, persuade or induce a person involved in a real estate transaction;

(4) Pursues a course of misrepresentation or makes false promises or representations through agents or any medium of advertising or otherwise;

(5) Uses misleading or false advertising;

(6) Uses any trade name or insignia of membership in any organization in which the licensee is not a member;

(7) Acts for more than one party in a transaction without the knowledge and written consent of all parties for whom he or she acts;

(8) Fails, within a reasonable time, to account for or to remit moneys or other assets coming into his or her possession, which belong to others;
24 (9) Commingles moneys belonging to others with his or her own funds;

26 (10) Advertises or displays a "for sale", "for rent" or other such sign on any property without an agency relationship being established or without the owner's knowledge and written consent;

30 (11) Advertises any property on terms other than those authorized by the owner;

32 (12) Fails to disclose, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, buyer or both;

35 (13) Fails to voluntarily furnish copies of the notice of agency relationship, listing contract, sale contract, lease contract or any other contract to each party executing the same;

38 (14) Pays or receives any rebate, profit, compensation, commission or other valuable consideration, resulting from a real estate transaction, to or from any person other than the licensee's principal: Provided, That this subsection may not be construed to prevent the sharing of compensation or other valuable consideration between licensed brokers;

44 (15) Induces any person to a contract to break the contract for the purpose of substituting a new contract with a third party;

47 (16) Accepts compensation as a salesperson or associate broker for any act specified in this article from any person other than his or her employer who must be a broker;

50 (17) Pays compensation to any person for acts or services performed either in violation of this article or the real estate licensure laws of any other jurisdiction;
(18) Pays a compensation to any person knowing that they will pay a portion or all of that which is received, in a manner that would constitute a violation of this article if it were paid directly by a licensee of this state;

(19) Violates any of the provisions of this article, any rule or any order or final decision issued by the commission;

(20) Procures an attorney for any client or customer, or solicits legal business for any attorney-at-law;

(21) Engages in the unlawful or unauthorized practice of law as defined by the supreme court of appeals of West Virginia;

(22) Commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or other device whereby any other person relies upon the word, representation or conduct of the licensee;

(23) Continues in the capacity of or accepts the services of any broker, associate broker or salesperson who is not properly licensed;

(24) Fails to disclose any information within his or her knowledge or to produce any document, book or record in his or her possession for inspection of and copying by the commission or its duly authorized representatives;

(25) Accepts other than cash or its equivalent as earnest money or other deposit unless this fact is disclosed in the contract to which the deposit relates;

(26) Accepts, takes or charges any undisclosed compensation on expenditures made by or on behalf of the licensee's principal;
(27) Discriminates against any person involved in a real estate transaction which is in violation of any federal or state antidiscrimination law, including any fair housing law;

(28) Fails to preserve for five years following its consummation, records relating to any real estate transaction;

(29) Fails to maintain adequate records on the broker’s “trust fund account”;

(30) In the case of a broker, fails to adequately supervise all associate brokers and salespersons employed by him or her;

(31) Breaches a fiduciary duty owed by a licensee to his or her principal in a real estate transaction;

(32) Directs any party to a real estate transaction in which the licensee is involved, to any lending institution for financing with the expectation of receiving a financial incentive, rebate or other compensation, without first obtaining from his or her principal the signed acknowledgment of and consent to the receipt of the financial incentive, rebate or other compensation;

(33) Represents to any lending institution, or other interested party either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

(34) Fails to disclose to an owner the licensee’s true position if he or she directly or indirectly through a third party, purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase the property;
(35) Lends a broker's license to any person, including a salesperson, or permits a salesperson to operate as a broker;

(36) Has been convicted in a court of competent jurisdiction in this or any other jurisdiction of forgery, embezzlement, obtaining money under false pretense, bribery, larceny, extortion, conspiracy to defraud, any other similar offense, a crime involving moral turpitude, or a felony;

(37) Engages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing;

(38) Induces any person to alter, modify or change another licensee's fee or commission for brokerage services, without that licensee's prior written consent;

(39) Negotiates a real estate transaction directly with any person that is represented exclusively by another broker, unless the conduct is specifically authorized by the other broker;

(40) Obtains, negotiates or attempts to obtain or negotiate a contract whereby the broker is entitled to a commission only to the extent that the sales price exceeds a given amount, commonly referred to as a net listing;

(41) Fails or refuses, on demand, to furnish copies of a document to a person whose signature is affixed to the document;

(42) In the case of an associate broker or salesperson, represents or attempts to represent a broker other than his or her employing broker;

(43) Fails to reduce a bona fide offer to writing;
(44) Guarantees, or authorizes or permits another licensee to guarantee, future profits which may result from a real estate transaction;

(45) Is disciplined by another jurisdiction if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline in this article; or

(46) Engages in any other act or omission in violation of professional conduct requirements of licensees established by legislative rule of the commission.

(b) The provisions of this section shall be liberally construed in order to carry out the objectives and purposes of this article.

(c) As used in this section:

(1) The words "convicted in a court of competent jurisdiction" mean a plea of guilty or nolo contendere entered by a person or a verdict of guilt returned against a person at the conclusion of a trial;

(2) A certified copy of a conviction order entered in a court is sufficient evidence to demonstrate a person has been convicted in a court of competent jurisdiction.

(d) Every person licensed by the commission has an affirmative duty to report, in a timely manner, any known or observed violation of this article or the rules, orders or final decisions of the commission.

(e) The revocation of a broker's license shall automatically suspend the license of every associate broker and salesperson employed by the broker: Provided, That the commission shall issue a replacement license for any licensee so affected to a new employing broker, without charge, if a
proper application is submitted to the commission during the same license term.

(f) A licensee whose license has been revoked shall be ineligible to apply for a new license until after the expiration of two years from the date of revocation.

§30-40-20. Complaints; investigation.

(a) The commission may upon its own motion and shall upon the verified complaint in writing of any person filing a complaint setting forth a cause of action under this article or the rules promulgated thereunder, ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license, or the imposition of sanctions against a licensee.

(b) The commission shall consider complaints which are submitted in writing and set forth the details of the transaction.

(c) Upon initiation or receipt of the complaint, the commission shall provide a copy of the complaint to the licensee for his or her response to the allegations contained in the complaint. The accused party shall file an answer within twenty days of the date of service. Failure of the licensee to file a timely response may be considered an admission of the allegations in the complaint: Provided, That nothing contained herein shall prohibit the accused party from obtaining an extension of time to file a response, if the commission, its executive director or other authorized representative permits the extension.

(d) The commission may cause an investigation to be made into the facts and circumstances giving rise to the complaint and any person licensed by the commission has an affirmative duty to assist the commission, or its authorized representative, in the conduct of its investigation.
(e) After receiving the licensee's response and reviewing any information obtained through investigation, the commission shall determine if probable cause exists that the licensee has violated any provision of this article or the rules.

(f) If a determination that probable cause exists for disciplinary action, the commission may hold a hearing in compliance with section twenty-one of this article or may dispose of the matter informally through a consent agreement or otherwise.

§30-40-21. Hearings; judicial review; cost of proceedings.

(a) Hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code and the commission's rules.

(b) Hearings shall be held at a time and place determined by the commission, but in no event less than thirty days after the notice of hearing is given.

(c) Any member has the authority to administer oaths and to examine any person under oath.

(d) If, after hearing, the commission determines the licensee has violated any provision of this article, or the commission’s rules, a formal decision shall be prepared which contains findings of fact, conclusions of law and specifically lists the disciplinary actions imposed.

(e) The commission may elect to have an administrative law judge or hearing examiner conduct the hearing. If the commission makes this election, the administrative law judge or hearing examiner, at the conclusion of a hearing, shall prepare a proposed order which shall contain findings of fact and conclusions of law. The commission may request that disciplinary actions imposed be a part of the proposed order,
or may reserve this obligation for its consideration. The com-
mission may accept, reject or modify the decision of the ad-
ministrative law judge or hearing examiner.

(f) Any person adversely affected by any decision or final
order made by the commission, after a hearing, is entitled to
judicial review by the circuit court of the county where the
hearing was held.

(g) In addition to any other sanction imposed, the com-
mission may require a licensee to pay the costs of the pro-
ceeding.

§30-40-22. Penalties for violations.

(a) Any person violating a provision of this article or the
commission’s rules is guilty of a misdemeanor. Any person
convicted of a first violation shall be fined not less than one
thousand dollars nor more than two thousand dollars, or con-
fined in the county or regional jail not more than ninety days,
or both fined and imprisoned;

(b) Any person convicted of a second or subsequent vio-
lacion shall be fined not less than two thousand dollars nor
more than five thousand dollars, or confined in the county or
regional jail for a term not to exceed one year, or both fined
and imprisoned;

(c) Any corporation, association or partnership convicted
of a first violation of this article or the commission’s rules,
shall be fined not less than two thousand dollars nor more
than five thousand dollars;

(d) Any corporation, association or partnership convicted
of a second or subsequent violation, shall be fined not less
than five thousand dollars nor more than ten thousand dol-
lars;
(e) Any officer, member, employee or agent of a corporation, association or partnership, shall be subject to the penalties herein prescribed for individuals;

(f) Each and every day a violation of this article continues shall constitute a separate offense;

(g) In addition to the penalties herein provided, if any person receives compensation for acts or services performed in violation of this article, he or she shall also be subject to a penalty of not less than the value of the compensation received nor more than three times the value of the compensation received, as may be determined by a court of competent jurisdiction. Any penalty may be recovered by a person aggrieved as a result of a violation of this article.


One act by any person in consideration of receiving compensation, or with the expectation or intention of receiving such compensation, or upon the promise of receiving compensation for any act or service contained in this article shall constitute and consider the person a broker, associate broker or salesperson subject to the provisions of this article.

§30-40-24. Injunctions; criminal proceedings.

(a) Whenever the commission or other interested person believes that any person has engaged, is engaging or is about to engage in any act that constitutes a violation of this article, the commission or other interested person may make application to any court of competent jurisdiction for an order enjoining the acts or services. Upon a showing that the person has engaged in or is about to engage in any act which violates this article, an injunction, restraining order or another appropriate order may be granted by the court without bond.
(b) Whenever the commission, its executive director or its authorized representative has reason to believe that any person has knowingly violated a provision of this article, the commission or its authorized representative may bring its information to the prosecuting attorney in the county where the violation has occurred who shall cause appropriate criminal proceedings to be brought.

(c) Whenever any other interested person has reason to believe that any person has knowingly violated a provision of this article, such person may bring its information to the attention of the appropriate law-enforcement officer who may cause an investigation to be made in order for appropriate criminal proceedings to be brought.


No person may bring or maintain any action in any court of this state for the recovery of compensation for the performance of any act or service for which a broker’s license is required, without alleging and proving that he or she was the holder of a valid broker’s license at all times during the performance or rendering of any act or service: Provided, That an associate broker or salesperson shall have the right to institute suit in his or her own name for the recovery of compensation from his or her employing broker for acts or services performed while in the employ of said employing broker.


Every broker, associate broker and salesperson owes certain inherent duties to the consumer which are required by virtue of the commission granting a license under this article. The duties include, but are not limited to:
(a) At the time of securing any contract whereby the broker is obligated to represent a principal to a real estate transaction, every licensee shall supply a true legible copy of the contract to each person signing the contract.

(b) Any contract in which a broker is obligated to represent a principal to a real estate transaction shall contain a definite expiration date, and no provision may be included in any contract whereby the principal is required to notify the broker of his or her intention to cancel the contract after the definite expiration date.

(c) No provision may be inserted in any contract for representation that would obligate the person signing the contract to pay a fee, commission or other valuable consideration to the broker, after the contract’s expiration date, if the person subsequently enters into a contract for representation with a different broker.

(d) Every licensee shall disclose in writing, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, the buyer or both. The disclosure shall be made prior to any person signing any contract for representation by a licensee or a contract for the sale or purchase of real estate.

(e) Every licensee shall promptly deliver to his or her principal, every written offer received.

(f) Every licensee shall make certain that all the terms and conditions of a real estate transaction are contained in any contract prepared by the licensee.

(g) At the time of securing the signature of any party to a contract, the licensee shall deliver a true copy of the contract to the person whose signature was obtained.
(h) Upon the final acceptance or ratification of any contract, the licensee shall promptly deliver a true copy to each party that has signed the contract.

§30-40-27. Duration of existing licenses.

Any valid license issued by the commission to a broker, associate broker or salesperson pursuant to the provisions of article twelve, chapter forty-seven of this code prior to the effective date of this article shall continue to be valid until the thirtieth day of June, two thousand two.


The real estate commission shall continue to exist until the first day of July, two thousand four, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 246

(Com. Sub. for S. B. 115 — 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 amend and reenact section two, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the elimination of the twenty-year service cap on granting incremental salary increases to eligible state employees.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-2. Granting incremental salary increases based on years of service.

(a) Every eligible employee with three or more years of service shall receive an annual salary increase equal to fifty dollars times the employee’s years of service. In each fiscal year and on the first day of July, each eligible employee shall receive an annual increment increase of fifty dollars for that fiscal year.

(b) Every employee becoming newly eligible as a result of meeting the three years of service minimum requirement on the first day of July in any fiscal year, is entitled to the annual salary increase equal to fifty dollars times the employee’s years of service, where he or she has not in a previous fiscal year received the benefit of an increment computation. Thereafter, the employee shall receive a single annual increment increase of fifty dollars for each subsequent fiscal year.

(c) These incremental increases are in addition to any across-the-board, cost-of-living or percentage salary increases which may be granted in any fiscal year by the Legislature.

(d) This section shall not be construed to prohibit other pay increases based on merit, seniority, promotion or other reason, if funds are available for the other pay increases: Provided, That the executive head of each spending unit shall
24 first grant the mandated increase in compensation in this
25 section to all eligible employees prior to the consideration of
26 any increases based on merit, seniority, promotion or other
27 reason.

CHAPTER 247

(S. B. 639 — By Senators Unger, Fanning, Redd, Kessler, Caldwell,
Helmick, Anderson, McCabe, Snyder, Ross, Love, Hunter, Rowe,
Burnette, Facemyer, Boley, Minear, Sprouse, Mitchell, Edgell,
Prezioso, Plymale, Minard, Oliverio and Sharpe)

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

AN ACT to amend article five, chapter five of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section five; and to
amend and reenact section six, article five-e, chapter twenty­
one of said code, all relating to the expenditure of public funds
to provide gender-based pay equity generally; providing for a
limited gender-based pay equity salary adjustment for state
employees; delaying implementation of statutory provisions
prohibiting certain gender-based pay discrimination and dis­
crepancies; and requiring equal pay commission and others to
assess budgetary or other financial impact on the state if the
statutory provisions are implemented and report findings and
recommendations to the joint committee on government and
finance.

Be it enacted by the Legislature of West Virginia:

That article five, 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 five; and that sec-
tion six, article five-e, chapter twenty-one of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.


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 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-5. Pay equity adjustment.

The Legislature hereby directs that a gender-based pay equity salary adjustment be provided to public employees as determined by the secretary of the department of administration, based on recommendations of the equal pay commission, within the limitations provided by this section. This salary adjustment shall be provided from the funding appropriated to the department of administration, office of the secretary, for purposes of a "pay equity reserve" in the fiscal year two thousand two and may not be construed to require additional appropriations from the Legislature. If any provision of this section conflicts with any rule, policy or provision of this code, the provisions of this section shall control. Because the provisions of this section are rehabilitative in nature, the results of the pay equity salary adjustments are not subject to the provisions of article six-a, chapter twenty-nine of this code. Further, it is the specific intent of the Legislature that no private cause of action, either express or implied, is created by or otherwise arises from the enactment, provisions or implementation of this section.
CHAPTER 21. LABOR.

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.


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

(1) An analysis of state job descriptions which measures the inherent skill, effort, responsibility and working conditions of various jobs and classifications; and

(2) A review of similar efforts to eliminate gender-based wage differentials implemented by other governmental entities in this and other states.

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

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

(d) The Legislature finds that it has not fully assessed the potential cost to the state if the provisions of sections three and four of this article are implemented and that those provisions should not be implemented until a reasonable estimate of the amount of public funds that may be required for appropriation and expenditure as a result of the implementation can
be calculated. Accordingly, notwithstanding any other provi-
sions of this article to the contrary, the provisions of sections
three and four of this article shall not become effective until
enactment of general law specifically providing an effective
date of implementation of those sections. During the interim
period between the two thousand two regular session of the
Legislature and the two thousand three regular session of the
Legislature, the equal pay commission shall, in the manner
prescribed by the joint committee on government and fi-
nance, meet and consult with the joint standing committee on
the judiciary, the joint committee on finance and others as
may be prescribed for the purposes of conducting a joint
assessment of budgetary or other financial impact on the state
if the provisions of sections three and four of this article are
implemented. Prior to the two thousand three regular session
of the Legislature, those directed to conduct the joint assess-
ment shall report their findings to the joint committee on
government and finance and, if warranted, report any recom-
mendations for the passage of legislation that would effec-
tively lessen or eliminate the cost of implementation of sec-
tions three and four of this article in a manner that is consis-
tent with achieving the purposes for which this article was
initially enacted.

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CHAPTER 248

(S. B. 592 — By Senator Plymale)

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

AN ACT to amend and reenact section two, article sixteen, chapter
five of the code of West Virginia, one thousand nine hundred
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Agency" means the public employees insurance agency created by this article.

(2) "Director" means the director of the public employees insurance agency created by this article.

(3) "Employee" means any person, including elected officers, who works regularly full time in the service of the state of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including elected officers, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility estab-
lished, operated or licensed by the secretary of health and
human resources pursuant to section one, article two-a, chap-
ter twenty-seven of this code and which is supported in part
by state, county or municipal funds; any person who works
regularly full time in the service of the university of West
Virginia board of trustees or the board of directors of the
state college system; and any person who works regularly full
time in the service of a combined city-county health depart-
ment created pursuant to article two, chapter sixteen of this
code. On and after the first day of January, one thousand nine
hundred ninety-four, and upon election by a county board of
education to allow elected board members to participate in
the public employees insurance program pursuant to this
article, any person elected to a county board of education
shall be considered to be an “employee” during the term of
office of the elected member: Provided, That the elected
member shall pay the entire cost of the premium if he or she
elects to be covered under this article. Any matters of doubt
as to who is an employee within the meaning of this article
shall be decided by the director.

On or after the first day of July, one thousand nine hun-
dred ninety-seven, a person shall be considered an “em-
ployee” if that person meets the following criteria:

(i) Participates in a job-sharing arrangement as defined in
section one, article one, chapter eighteen-a of this code;

(ii) Has been designated, in writing, by all other partici-
pants in that job-sharing arrangement as the “employee” for
purposes of this section; and

(iii) Works at least one third of the time required for a
full-time employee.
(4) "Employer" means the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; and a combined city-county health department created pursuant to article two, chapter sixteen of this code. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the national guard.

(5) "Finance board" means the public employees insurance agency finance board created by this article.

(6) "Person" means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.
“Retired employee” means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the university of West Virginia board of trustees or the board of directors of the state college system or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system shall, in the case of education employees, meet the minimum eligibility requirements of the state teachers retirement system and in all other cases, meet the minimum eligibility requirements of the public employees retirement system.

CHAPTER 249

(H. B. 4136 — By Delegates Douglas, Kuhn, Butcher, Flanigan, Manchin, Border and Walters)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and twenty-seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the public employees insurance agency; deleting outdated language concerning advisory board; deleting severability clause.

Be it enacted by the Legislature of West Virginia:
That sections three and twenty-seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Composition of public employees insurance agency; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board.

§5-16-27. Continuation.

§5-16-3. Composition of public employees insurance agency; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board.

(a) The public employees insurance agency consists of the director, the finance board, the advisory board and any employees who may be authorized by law. The director shall be appointed by the governor, with the advice and consent of the Senate. He or she shall serve at the will and pleasure of the governor, unless earlier removed from office for cause as provided by law. The director shall have at least three years’ experience in health insurance administration prior to appointment as director. The director shall receive actual expenses incurred in the performance of official business. The director shall employ such administrative, technical and clerical employees that are required for the proper administration of the insurance programs provided for in this article. The director shall perform the duties that are required of him or her under the provisions of this article and is the chief administrative officer of the public employees insurance agency. The director may employ a deputy director.

(b) All positions in the agency, except for the director, his or her personal secretary, the deputy director and the chief financial officer shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine.
of this code. Any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection on or after the effective date of this article shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, That no person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection as of the effective date of this section shall be thereafter severed, removed or terminated in his or her employment prior to his or her entry into the classified service except for cause as if the person had been in the classified service when severed, removed or terminated.

(c) The director is responsible for the administration and management of the public employees insurance agency as provided for in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article limits the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and subrogation, or any other actions which would serve to implement the plan or plans designed by the finance board.

§5-16-27. Continuation.

The public employees insurance agency shall continue to exist, pursuant to article ten, chapter four of this code, until the first day of July, two thousand three, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section fourteen-a, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the permissible appropriation of moneys from the public employees insurance reserve fund.

Be it enacted by the Legislature of West Virginia:

That section fourteen-a, 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-2-14a. Reserves for the public employees insurance programs.

1 (a) There is hereby continued a special revenue account in the state treasury, designated the “Public Employees Insurance Reserve Fund”, which is an interest-bearing account and may be invested in accordance with the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund.

(b) The fund shall consist of moneys appropriated by the Legislature and moneys transferred annually pursuant to the provisions of subsection (c) of this section. These moneys shall be held in reserve and appropriated by the Legislature only for the support of the programs provided by the public employees
insurance agency: Provided, That in only the fiscal year beginning the first day of July, two thousand two, and in each of the next two fiscal years thereafter, and ending on the thirtieth day of June, two thousand five, the moneys held in the fund may be appropriated to the bureau of medical services of the department of health and human resources.

(c) Annually each state agency, except for the higher education central office created in article four, chapter eighteen-b of this code; the higher education governing boards as defined in articles two and three of said chapter; and the state institutions of higher education as defined in section two, article one of said chapter shall transfer one percent of its annualized expenditures from state funds, excluding federal funds based on filled full-time equivalents as determined by the state budget office as of the first day of April for that fiscal year, to the public employees insurance reserve fund. The secretary may exempt that transfer only upon a showing by the requesting agency that the continued operation of that agency is dependent upon receipt of the exemption.

(d) Annually the secretary shall provide a report to the governor and the Legislature on the amount of reserves established pursuant to the provisions of this section, the number of exemptions granted and the agencies receiving those exemptions.
AN ACT to amend and reenact section one, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring all new employees of the state, a state institution of higher education or the higher education policy commission and others hired after a certain date to be paid one pay cycle in arrears.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-1. State officials, officers and employees to be paid twice per month; new employees paid in arrears; effective date.

1 All full-time and part-time salaried and hourly officials, officers and employees of the state, state institutions of higher education and the higher education policy commission shall be paid twice per month, and under the same procedures and in the same manner as the state auditor currently pays agencies:

2 Provided, That on and after the first day of July, two thousand two, all new officials, officers and employees of the state, a state institution of higher education and the higher education policy commission, statutory officials, contract educators with higher education and any exempt official who does not earn annual and sick leave, except elected officials, shall be paid one pay cycle in arrears. The term new employee does not include an employee who transfers from one state agency, a state institution of higher education or the higher education policy commission to another state agency, another state institution of higher education or the higher education policy commission without a break in service. Nothing contained in this section is intended to increase or diminish the salary or wages of any official, officer or employee.
AN ACT to amend and reenact section eight, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for the chief inspector, pursuant to his or her statutory supervision of local government offices in the state, to transfer an amount not to exceed four hundred thousand dollars to the special operating fund in the securities division of the auditor's office; and establishing a date certain by which such amount or amounts must be transferred.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

1 (a) The cost of any service or act performed by the chief inspector under the provisions of this article as to any county or district office, officer or institution shall be paid by the county commission of the county; the cost of any service or act to any board of education shall be paid by the board; the cost of any service or act to any municipal corporation shall be paid by the authorities of the municipal corporation: Provided, That in
municipalities in which the total revenue from all taxes does not exceed the sum of two thousand dollars annually, the cost including the per diem and all actual costs and expenses of the services shall not exceed the sum of sixty dollars. The cost of this service shall be the actual cost and expense of the service performed, including transportation, hotel, meals, materials, per diem compensation of deputies, assistants, clerical help and the other costs that are necessary to enable them to perform the services required, but the costs shall not exceed the sum of two thousand dollars for services rendered to a Class III or a Class IV municipality: Provided, however, That the chief inspector may charge up to an additional two thousand dollars for costs incurred for each service or act performed for a utility or park system owned by a Class III or Class IV municipality: Provided further, That if a municipality is required to undergo a single audit by the federal agency or agencies making a grant, the cost limitations of this subsection do not apply: And provided further, That the chief inspector shall provide a written quote for all costs in advance for all services required by this article. The chief inspector shall render to the agency liable for the cost a statement of the cost as soon after the cost was incurred as practicable and the agency shall allow the cost and cause it to be paid promptly in the manner that other claims and accounts are allowed and paid and the total amount constitutes a debt against the local agency due the state. Whenever there is in the state treasury a sum of money due any county commission, board of education or municipality from any source, upon the application of the chief inspector, the sum shall be at once applied on the debt against the county commission, board of education or municipality and the fact of the application of the fund shall be reported by the auditor to the county commission, board of education or municipality, which report shall be a receipt for the amount named in the report. All money received by the chief inspector from this source shall be paid into the state treasury, shall be deposited to the credit of an account to
be known as chief inspector’s fund and shall be expended only for the purpose of covering the cost of the services, unless otherwise directed by the Legislature. The cost of any examination, service or act by the chief inspector made necessary, or the part thereof that was made necessary, by the willful fault of any officer or employee, may be recovered by the chief inspector from that person, on motion, on ten days’ notice in any court having jurisdiction.

(b) For the purpose of permitting payments to be made at definite periods to deputy inspectors and assistants for per diem compensation and expenses, there is hereby created a revolving fund for the chief inspector’s office. The fund shall be accumulated and administered as follows:

(1) There shall be appropriated from the state general revenue fund the sum of twenty-five thousand dollars to be transferred to this fund to create a revolving fund which, together with other payments into this fund as provided in this article, shall constitute a fund to defray the cost of this service;

(2) Payments received for the cost of services of the chief inspector’s office and interest earned on the invested balance of the chief inspector’s revolving fund shall be deposited into this revolving fund, which shall be known as the chief inspector’s fund;

(3) Any appropriations made to this fund may not be considered to have expired at the end of any fiscal period; and

(4) The chief inspector may transfer an amount not to exceed four hundred thousand dollars from the chief inspector’s fund to the special operating fund created in article four, chapter thirty-two of this code: Provided, That any transfers shall be completed prior to the first day of July, two thousand three.
AN ACT to amend and reenact article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia small business linked deposit program; providing for linked deposit loans of not more than one percent above the prime interest rate; providing for linked deposits of not less than one percent; suggesting that guaranteed loans be used; and requiring the program to be marketed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.
§12-1A-2. Legislative findings.
§12-1A-3. Limitations on investment in linked deposits.
§12-1A-4. Applications for loan priority; loan package; counseling.
§12-1A-5. Acceptance or rejection of loan package; deposit agreement for linked deposits.
§12-1A-6. Certification and monitoring of compliance; accountability and reporting.
§12-1A-7. Liability of state.
§12-1A-8. Penalties for violation of article.
§12-1A-9. Effective dates.
§12-1A-1. Definitions.

(a) "Treasurer" means the West Virginia treasurer's office.

(b) "Eligible small business" means any business that: (1) employs fifty or fewer employees and has gross annual receipts of five million dollars or less; (2) is headquartered in this state; (3) is organized for profit; and (4) complies with the terms and conditions of this article regarding eligibility.

(c) "Eligible lending institution" means a financial institution that is eligible to make commercial loans, is a public depository of state funds and agrees to participate in the linked deposit program and comply with its terms and conditions.

(d) "Linked deposit" means a certificate of deposit placed by the treasurer with an eligible lending institution that agrees to lend a linked deposit loan to an eligible small business. The amount of the certificate of deposit is equal to the amount of the linked deposit loan at an interest rate of three percent below the current market rate as determined and calculated by the treasurer, but in no event may the interest rate on the certificate of deposit be less than one percent. The linked deposit may be placed with the eligible lending institution for up to four years depending upon whether the small business remains eligible for the program. On an annual date, as determined by the treasurer, the rate paid to the treasurer shall be recomputed based upon the current market rate.

(e) "Linked deposit loan" means a loan between an eligible lending institution and an eligible small business for an amount not to exceed one hundred fifty thousand dollars at a rate of not more than one percent above the prime interest rate as published by the wall street journal on the date the eligible lending institution submits the loan package to the treasurer. In exchange for providing this reduced rate loan, the eligible lending institution receives a linked deposit. On an annual date, as
determined by the treasurer, the rate charged to the eligible small business may be recomputed but shall not exceed the prime interest rate plus one percent. The linked deposit loan may be part of a comprehensive loan package, including guaranteed loans by the United States small business administration, or other federal or state agency providing a partial or full guarantee against loss to the eligible lending institution.

(f) "Small business development center" means the West Virginia small business development center, a division of the West Virginia development office.

§12-1A-2. Legislative findings.

The Legislature finds that many small businesses throughout the state are experiencing economic stagnation or decline, that high interest rates have caused small businesses in this state to suffer disproportionately in profitability and competition and that high interest rates have fostered a serious increase in unemployment. The linked deposit program provided for by this article is intended to provide a statewide availability of lower cost funds for lending purposes that will materially contribute to the economic revitalization of this state. Accordingly, it is declared to be the public policy of the state through the small business linked deposit program in conjunction with various guaranteed loan programs to create an availability of lower-cost funds to inject needed capital into the small business community, sustain or improve business profitability, provide greater incentives to lending institutions to lend funds to small businesses and protect the jobs of citizens of this state. The Legislature further finds that the involvement of both the treasurer in facilitating the deposit of funds for the program and the small business development center in determining which businesses meet the eligibility requirements of the linked deposit program is necessary in order for state funds to be used in the most effective manner possible in assisting small
23 businesses throughout the state and thereby maximizing the
24 impact of the program.

§12-1A-3. Limitations on investment in linked deposits.

1 The treasurer shall invest in linked deposits. The total
2 amount deposited at any one time shall not exceed, in the
3 aggregate, twenty million dollars.

4 When deciding how much to invest in linked deposits, the
5 treasurer shall give priority to the investment, liquidity and cash
6 flow needs of the state.

§12-1A-4. Applications for loan priority; loan package; counsel-
ing.

1 (a) An eligible lending institution that desires to participate
2 in the linked deposit program shall accept and review loan
3 applications from eligible small businesses that have been
4 prepared with the advice of the small business development
5 center. The lending institution shall apply all usual lending
6 standards to determine the credit worthiness of each eligible
7 small business and whether the loan application meets the
8 criteria established in this article.

9 (b) An eligible small business shall certify on its loan
10 application that: (1) The small business is in good standing with
11 the state tax division and the bureau of employment programs
12 as of the date of the application; (2) the linked deposit loan will
13 be used to create new jobs or preserve existing jobs and
14 employment opportunities; and (3) the linked deposit loan shall
15 not be used to refinance an existing debt.

16 (c) In considering which eligible small businesses should
17 receive linked deposit loans, the eligible lending institution
shall give priority to the economic needs of the area in which
the business is located, the number of jobs to be created and
preserved by the receipt of the loan, the reasonable ability of the
small business to repay the loan and other factors considered
appropriate by the eligible financial institution.

(d) A small business receiving a linked deposit loan shall
receive supervision and counseling provided by the small
business development center when applying for the loan. The
services available from the small business development center
include eligibility certification, business planning, quarterly
financial statement review and loan application assistance. The
state tax division and the bureau of employment programs shall
provide the small business development center with information
as to the standing of each small business loan applicant. The
small business development center shall include these certifica-
tions with the loan application.

(e) The eligible financial institution shall forward to the
treasurer a linked deposit loan package, in the form and manner
prescribed by the treasurer. The treasurer shall forward notice
of approval of the loan to the small business development
center at the same time it is furnished to the eligible financial
institutions.

§12-1A-5. Acceptance or rejection of loan package; deposit
agreement for linked deposits.

(a) The treasurer may accept or reject a linked deposit loan
package or any portion of a package based on the criteria
prescribed by this article.
(b) Upon acceptance of the linked deposit loan package, the treasurer shall place a linked deposit with the lending institution.

c) The eligible lending institution shall enter into a deposit agreement with the treasurer in a form prescribed by the treasurer and in compliance with the requirements of this article.

§12-1A-6. Certification and monitoring of compliance; accountability and reporting.

(a) Upon the placement of a linked deposit with an eligible lending institution, the institution shall lend the funds to the approved eligible small business listed in the linked deposit loan package. A certification of compliance with this section shall be sent to the small business development center and the treasurer by the eligible lending institution.

(b) As a condition of remaining in good standing with the lending institution and the state and as a condition of having the loan renewed for up to four years, the loan recipient shall receive supervision and counseling provided by the small business development center. Eligible small businesses shall also grant the lending institution the right to provide information on the status of the loan to the small business development center so as to assist the small business.

c) The small business development center and the treasurer shall take any and all steps necessary to implement, advertise and monitor compliance with the linked deposit program.

d) By the thirty-first day of January of each year, the small business development center shall report on the linked deposit
program for the preceding calendar year to the West Virginia
development office, which shall then report to the joint commit-
tee on government and finance. The reports shall set forth the
name of the small business, terms, delinquency and default
rates, job growth, gross income evaluation and amounts of the
loans upon which the linked deposits were based.

§12-1A-7. Liability of state.

The state, the treasurer and the small business development
center are not liable to any eligible lending institution in any
manner for payment of the principal or interest on the loan to an
eligible small business. Any delay in payment or default on the
part of an eligible small business does not in any manner affect
the deposit agreement between the eligible lending institution
and the treasurer.

§12-1A-8. Penalties for violation of article.

(a) Any person who knowingly makes a false statement
concerning an application or violates another provision of this
article is guilty of a misdemeanor and, upon conviction thereof,
shall be fined not less than one hundred nor more than five
hundred dollars or confined in the county or regional jail not
less than one month nor more than one year.

(b) In addition to the criminal penalties provided in this
section, no person who is convicted of a violation of subsection
(a) of this section is eligible to participate in the linked deposit
program.

§12-1A-9. Effective dates.

This article shall be effective from the first day of July, two
thousand one, through the first day of July, two thousand six.
AN ACT to amend and reenact section ten-d, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that interest or other return earned be deposited in the special revenue revolving fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10d. Purchasing card fund created; expenditures.

1 All money received by the state pursuant to any agreement with vendors providing purchasing charge cards, and any interest or other return earned on the money, shall be deposited in a special revenue revolving fund, designated the “Purchasing Card Administration Fund”, in the state treasury to be administered by the auditor. All expenses by the auditor in the implementation and operation of the purchasing card program shall be paid from the fund. Expenditures from the fund shall be made in accordance with appropriations by the Legislature pursuant to the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code.
AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-f, relating to requiring that a state spending unit submit a receiving report to the state auditor when issuing a requisition on the auditor in payment of a claim for commodities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10f. Receiving report required for commodities received.

A receiving report shall be submitted to the state auditor verifying the receipt of commodities by a state spending unit. The receiving report shall be an internally-generated document, either written or prepared using electronic media, that identifies commodities received. Commodities as defined in this section include, but are not limited to, the following: Materials, equipment, supplies, printing and automated data processing hardware and software.

The state officer or employee acting as head of each spending unit is responsible for the completion and timely
submission of the receiving reports, which shall be prepared at
the original point of receipt of the commodities at the spending
unit by employees designated by the head of the spending unit
to receive the commodities and prepare the receiving reports.
The receiving reports shall include, but not be limited to, the
following information: Vendor name, description and quantity
of commodities received, date commodities are received,
whether commodities are acceptable for payment, and a signed
acknowledgment of receipt by the employees receiving the
commodities. The receiving reports required by this section
shall be prepared within twenty-four hours of the receipt of the
commodities.

The head of a spending unit may not issue a requisition on
the state auditor in payment of a claim for commodities
received by the spending unit unless the receiving report
required by this section accompanies the claim for payment.
The spending unit is liable for a debt improperly incurred or for
a payment improperly made if the receiving report was not filed
with the state auditor as set forth in this section.

The state auditor shall propose rules for legislative approval
in accordance with provisions of article three, chapter
twenty-nine-a of this code, to implement the provisions of this
section.

No provision of this section shall apply to the West
Virginia Legislature.

CHAPTER 256

(S. B. 737 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Anderson, Edgell,
Unger, McCabe, Boley and Minear)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section eleven, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the secretary of administration to pay travel expenses for visitors; and authorizing the payment of moving expenses for new and transferred employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-11. Travel expenses: rules to be promulgated concerning travel expenses; dues to voluntary organizations; recruitment expenses for higher education policy commission and West Virginia higher education governing boards; moving expenses of employees of higher education policy commission and West Virginia higher education governing boards.

(a) The governor shall promulgate rules concerning out-of-state travel by state officials and employees, except those in the legislative and judicial branches of the state government and except for the attorney general, auditor, secretary of state, treasurer, board of investments, commissioner of agriculture and their employees, the higher education policy commission and the higher education governing boards under their jurisdiction. The Legislature, supreme court of appeals, attorney general, auditor, secretary of state, treasurer, board of investments, commissioner of agriculture, higher education policy commission and the higher education governing boards shall promulgate rules concerning out-of-state travel for their respective branches and departments of state government. Copies of the rules shall be filed with the auditor and the
secretary of state. It is unlawful for the auditor to issue a warrant in payment of any claim for out-of-state travel expenses incurred by a state officer or employee unless the claim meets all the requirements of the rules filed.

(b) Payment for dues or membership in annual or other voluntary organizations shall be made from the proper item or appropriation after an itemized schedule of the organizations, together with the amount of the dues or membership, has been submitted to the budget director and approved by the governor.

(c) The secretary of the department of administration, the higher education policy commission or a higher education governing board may authorize the payment of traveling expenses incurred by any person invited to visit a state agency, the campus of any state institution of higher education or any other facility under control of a higher education governing board or the higher education policy commission to be interviewed concerning his or her possible employment by a state agency, a higher education governing board, the higher education policy commission or agent thereof.

(d) The secretary of the department of administration, the higher education policy commission or a higher education governing board may authorize payment of: (1) All or part of the reasonable expense incurred by a person newly employed by a state agency, a higher education governing board or the higher education policy commission in moving his or her household furniture, effects and immediate family to his or her place of employment; and (2) all or part of the reasonable expense incurred by an employee of a state agency, a higher education governing board or the higher education policy commission in moving his or her household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interest of the state: Provided, That no part of the moving expenses of any one employee shall be paid more frequently than once in twelve months.
AN ACT to amend article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to state funds and accounts; requiring the state treasurer to transfer amounts required by the Legislature from statutorily created funds or accounts; authorizing the treasurer to monitor all state funds and accounts created by the Legislature; and requiring the treasurer to report to the joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-16. Transfer of specified excess funds.

(a) The treasurer has authority to monitor all state funds and accounts created by the Legislature. The treasurer shall transfer, using the state’s accounting system, the appropriate amount of excess funds whenever the Legislature has:
(1) Created a fund or account and provided that only a specified amount is allowed to remain in the fund or account from one fiscal year to another, or other specified period; and

(2) Required that excess amounts are to revert or be deposited into the general revenue fund, school fund or other specified fund or account.

(b)(1) If a statutory provision provides that only a specified amount is allowed to remain in a fund from one fiscal year to another, the treasurer shall transfer the excess amount, as of the date specified by the provision, no later than the fifteenth day of August of each year and give written notice of the transfer to all spending units that are authorized to use the fund or account.

(2) If a statutory provision provides for the transfer of excess amounts at a time other than the end of a fiscal year, the treasurer shall transfer the specified excess amounts within fifteen days of the time provided.

(c) The treasurer shall file quarterly reports with the joint committee on government and finance setting forth the accounts and funds from which excess funds were transferred and the amounts transferred.

CHAPTER 258

(Com. Sub. for H. B. 4021 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 9, 2002; in effect from passage. Approved by the Governor.]
AN ACT to repeal section fifteen, article eight, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article eight, chapter twelve of said code; and to amend and reenact section five of said article, all relating to repealing the requirement for a judicial determination that the issuance of bonds under the pension liability redemption act and the provisions of the act are in compliance with the constitution of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 8. PENSION LIABILITY REDEMPTION.

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

§12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

1 (a) Notwithstanding any other provision of this code and pursuant to section four, article ten of the constitution of West Virginia, the governor shall have the power, as provided by this article, to issue the bonds authorized in this section at a time or times as provided by a resolution adopted by the Legislature to redeem a previous liability of the state by funding all or a portion of the unfunded actuarial accrued liability, such bonds
(b) The aggregate principal amount of bonds issued pursuant to the provisions of this article is limited to no more than the lesser of the following: (1) The principal amount necessary, after deduction of costs, underwriter's discount and original issue discount, if any, to fund not in excess of one hundred percent of the unfunded actuarial accrued liability of the death, disability and retirement fund of the department of public safety established in article two, chapter fifteen of this code, one hundred percent of the unfunded actuarial accrued liability of the judges' retirement system established in article nine, chapter fifty-one of this code, and ninety-five percent of the unfunded actuarial accrued liability of the teachers retirement system established in article seven-a, chapter eighteen of this code, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section; or (2) three billion nine hundred million dollars; but in no event shall the aggregate principal amount of bonds issued exceed the principal amount necessary, after deduction of costs, underwriter's discount and original issue discount, if any, to fund not in excess of the total unfunded actuarial accrued liability, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section.

(c) The costs of issuance, excluding fees for bond insurance, credit enhancements and liquidity facilities, plus under-
writer's discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of bonds issued. All such costs shall be subject to the review and approval of a majority of the members of a review committee. The review committee shall consist of two members appointed by the governor from a list of three persons submitted by the president of the Senate; two members appointed by the governor from a list of three persons submitted by the speaker of the House of Delegates; the state treasurer; and four persons having skill and experience in bond issuance, appointed by the governor.

(d) The limitation on the aggregate principal amount of bonds provided in this section shall not preclude the issuance of bonds from time to time or in one or more series.

(e) No later than ten days after receipt of a request from the department of administration, the consolidated public retirement board shall provide the department of administration with a certified statement of the amount of each pension system's unfunded actuarial accrued liability calculated in an actuarial valuation report that establishes the amount of the unfunded actuarial accrued liability as of a date specified by the department of administration, based upon each pension system's most recent actuarial valuation.

(f) No later than fifteen days after receipt of a request from the governor, the department of administration shall provide the governor with a certification of the maximum aggregate principal amount of bonds that may be issued at that time pursuant to subsection (b) of this section.

(g) Prior to any request of the governor that the Legislature prepare and consider a resolution authorizing the issuance of bonds, the bonds shall be authorized by a majority of the
members of the review committee described in subsection (c) of this section.

§12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.

(a) The governor shall, by executive message, request the Legislature prepare and consider a resolution authorizing the issuance of bonds described in section four of this article. The executive message shall specify the maximum costs associated with the issue. Upon the adoption of a resolution by the Legislature authorizing the issuance of the bonds in the amount and upon the terms specified in the resolution, the bonds shall be authorized by an executive order issued by the governor. The executive order shall be received by the secretary of state and filed in the state register pursuant to section three, article two, chapter twenty-nine-a of this code. The governor, either in the executive order authorizing the issuance of the bonds or by the execution and delivery by the governor of a trust indenture or agreement authorized in such executive order, shall stipulate the form of the bonds, whether the bonds are to be issued in one or more series, the date or dates of issue, the time or times of maturity, which shall not exceed the longest remaining term of the current amortization schedules for the unfunded actuarial accrued liability, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, the conversion or registration privileges applicable to some or all of the bonds, the sources and medium of payment and place or places of payment, the terms of redemption, any privileges of exchangeability or interchangeability applicable to the bonds, and the entitlement of obligation holders to priorities of payment or security in the amounts deposited in the pension
liability redemption fund. Bonds shall be signed by the governor and attested by the secretary of state, by either manual or facsimile signatures. The governor shall not sign the bonds unless he shall first make a written finding, which shall be transmitted to the state treasurer, the secretary of state, the speaker of the House of Delegates and the president of the Senate, that: (i) The true interest cost of the bonds is at least thirty basis points less than the assumed actuarial interest rate used to calculate the unfunded actuarial accrued liability; and (ii) that the issuance of the bonds will not in any manner cause a down grade or reduction in the state’s general obligation credit rating by standard bond rating agencies.

(b) The bonds may be sold at public or private sale at a price or prices determined by the governor. The governor is authorized to enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds to any person and to comply with the laws of any jurisdiction relating thereto.

(c) The governor, in the executive order authorizing the issuance of bonds or by the execution and delivery by the governor of a trust indenture or agreement authorized in such executive order, may covenant as to the use and disposition of or pledge of funds made available for pension liability redemption payments or any reserve funds established pursuant to such executive order or established pursuant to any indenture authorized by such executive order. All costs may be paid by or upon the order of the governor from amounts received from the proceeds of the bonds and from amounts received pursuant to section eight of this article.

(d) Bonds may be issued by the governor upon resolution adopted by the Legislature authorizing the same.
(e) Neither the governor, the secretary of state, nor any other person executing or attesting the bonds or any agreement authorized in this article shall be personally liable with respect to payment of any pension liability redemption payments.

(f) Notwithstanding any other provision of this code, and subject to the approval of the review committee, the department of administration, in the department’s discretion: (i) Shall select, employ and compensate one or more persons or firms to serve as bond counsel or cobond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the bonds issued pursuant to this article; (ii) may select, employ and compensate one or more persons or firms to serve as underwriter or counderwriter for any issuance of bonds pursuant to this article; and (iii) may select, employ and compensate one or more fiduciaries, financial advisors and experts, other legal counsel, placement agents, appraisers, actuaries and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the governor or the department of administration regarding any bond issuance pursuant to this article and all other matters relating to the bonds.

(g) Notwithstanding any other provision of this code, and subject to the approval of the review committee, the state treasurer, in the state treasurer’s discretion shall select, employ and compensate an independent person or firm to serve as special counsel to the state treasurer to advise the state treasurer with respect to the state treasurer’s duties pursuant to this article.
AN ACT to amend and reenact section three, article two-d, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of protective services; defining certification requirements of members of the division; and eliminating certain rule-making requirements of the director.

Be it enacted by the Legislature of West Virginia:

That section three, article two-d, 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 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-3. Duties and powers of the director and officers.

(a) The director is responsible for the control and supervision of the division. The director and any officer of the division specified by the director may carry designated weapons and have the same powers of arrest and law enforcement in Kanawha County as members of the West Virginia state police as set forth in subsections (b) and (d), section twelve, article two of this chapter.

(b) Any officer of the division shall be certified as a law-enforcement officer by the governor’s committee on crime, delinquency and correction or may be conditionally employed
as a law-enforcement officer until certified in accordance with
the provisions of section five, article twenty-nine, chapter thirty
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended.

(c) The director may:

(1) Employ necessary personnel, all of whom shall be
classified exempt, assign them the duties necessary for the
efficient management and operation of the division, and specify
members who may carry, without license, weapons designated
by the director;

(2) Contract for security and other services;

(3) Purchase equipment as necessary to maintain security
at the capitol complex and other state facilities as may be
determined by the secretary of the department of military affairs
and public safety;

(4) Establish and provide standard uniforms, arms, weapons
and other enforcement equipment authorized for use by
members of the division and shall provide for the periodic
inspection of the uniforms and equipment. All uniforms, arms,
weapons and other property furnished to members of the
division by the state of West Virginia is and remains the
property of the state;

(5) Appoint security officers to provide security on pre-
mises owned or leased by the state of West Virginia;

(6) Upon request by the superintendent of the West Virginia
state police, provide security for the speaker of the West
Virginia House of Delegates, the president of the West Virginia
Senate, the governor, or a justice of the West Virginia supreme
court of appeals;
(7) Gather information from a broad base of employees at 
and visitors to the capitol complex to determine their security 
needs and develop a comprehensive plan to maintain and 
improve security at the capitol complex based upon those 
needs; and

(8) Assess safety and security needs and make recommen-
dations for safety and security at any proposed or existing state 
facility as determined by the secretary of the department of 
military affairs and public safety, upon request of the secretary 
of the department to which the facility is or will be assigned.

(d) The director shall:

(1) On or before the first day of July, one thousand nine 
hundred ninety-nine, propose legislative rules for promulgation 
in accordance with the provisions of article three, chapter 
twenty-nine-a of this code. The rules shall, at a minimum 
establish ranks and the duties of officers within the membership 
of the division.

(2) On or before the first day of July, one thousand nine 
hundred ninety-nine, enter into an interagency agreement with 
the secretary of the department of military affairs and public 
safety and the secretary of the department of administration, 
which delineates their respective rights and authorities under 
any contracts or subcontracts for security personnel. A copy of 
the interagency agreement shall be delivered to the governor, 
the president of the West Virginia Senate and the speaker of the 
West Virginia House of Delegates, and a copy shall be filed in 
the office of the secretary of state and shall be a public record.

(3) Deliver a monthly status report to the speaker of the 
West Virginia House of Delegates and the president of the West 
Virginia Senate.
AN ACT to amend article seven, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating generally to the powers of the public service commission; setting forth legislative findings; authorizing the public service commission to acquire certain properties in its own name; authorizing the public service commission to enter into agreements with other entities concerning the financing and use of the acquisitions; and authorizing the public service commission to use excess moneys from its special revenue funds to pay for the acquisitions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. HEADQUARTERS.

§24-7-4. Legislative findings; authority to acquire further properties.

1 (a) The Legislature hereby finds that the public service commission should be authorized to acquire and manage further
properties contiguous with its existing property at 201 Brooks street in Charleston, West Virginia, and to make improvements on the property necessary to ensure the efficient operations of the commission’s business. Furthermore, the Legislature finds that the public service commission should be given the necessary authority to enter into agreements with other entities concerning financing and use of the acquisitions. The Legislature further finds that the commission should be allowed to pay for the acquisitions using excess funds from the special revenues received by the commission pursuant to section six, article three of this chapter and from funds received by the use of the properties.

(b) The public service commission may contract to acquire, lease, rent, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights of any property, real or personal, contiguous with its existing property at 201 Brooks street in Charleston, West Virginia, consistent with the objectives of the commission as set forth in this chapter.

(c) The public service commission may enter into contracts, agreements or other undertakings with other appropriate entities concerning the financing and use of property acquisitions.

(d) The public service commission may pay for property acquisitions and related activities from excess funds obtained from the commission’s assessments upon utility gross revenue and property as provided for in section six, article three of this chapter. Furthermore, the commission may receive funds from other entities through the use and management of its properties and use those funds for the payment of the property acquisitions. The authority granted to the public service commission by the provision of this section shall expire the thirty-first day of December, two thousand four.
(e) Expenditures for any purpose set forth in this section may be made only pursuant to legislative appropriation expressly authorizing by line item expenditure for the specific purpose. Notwithstanding any provision of section eighteen, article two, chapter five-a of this code to the contrary, no increase in the amount of the appropriation may be authorized.

CHAPTER 261

(Com. Sub. for S. B. 608 — By Senator Plymale)

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

AN ACT to amend and reenact sections two and twenty-seven-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-seven-d; to amend and reenact section two, article ten-b of said chapter; to amend and reenact section seven, article ten-d of said chapter; to amend and reenact sections two-a and nine-c, article fourteen-d, chapter seven of said code; to further amend said article by adding thereto a new section, designated section nine-d; to amend article two, chapter fifteen of said code by adding thereto a new section, designated section twenty-five-a; to amend and reenact section forty-six of said article; to amend and reenact sections two and six-c, article two-a of said chapter; to further amend said article by adding thereto a new section, designated section six-d; to amend and reenact sections three and twenty-eight-c, article seven-a, chapter eighteen of said code; to further amend said article by adding thereto a new section, designated section twenty-eight-d; to amend and reenact sections
two and thirteen-b, article seven-b of said chapter; to further amend said article by adding thereto a new section, designated section eleven-a; to amend and reenact sections one-a and twelve-c, article nine, chapter fifty-one of said code; and to further amend said article by adding thereto a new section, designated section twelve-d, all relating to amending the definition of internal revenue code for the public retirement systems administered by the consolidated public retirement board to comply with federal tax law amendments; increasing the limitation on compensation for benefits or contributions to qualified state retirement systems in accordance with changes in federal limitations; incorporating changes to the direct rollover rules as required by federal law for the public retirement systems which are qualified under Section 401(a) of the Internal Revenue Code; permitting the use of rollovers from IRAs, 401(a) and 457 plans and trustee to trustee transfers from 401(a) plans to the teachers’ defined contribution retirement system to repay cashed-out or withdrawn contributions; and permitting the use of rollovers and trustee to trustee transfers to the teachers retirement system, the public employees retirement system, the deputy sheriff retirement system, the judges’ retirement system and the state police retirement system from IRA’s, 401(a), 403(b) and 457 plans to purchase service credit or repay contributions previously withdrawn which resulted in forfeited service.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-seven-c, article ten, 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 twenty-seven-d; that section two, article ten-b of said chapter be amended and reenacted; that section seven, article ten-d of said chapter be amended and reenacted; that sections two-a and nine-c, article fourteen-d, chapter seven of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated
section nine-d; that article two, chapter fifteen of said code be amended by adding thereto a new section, designated section twenty-five-a; that section forty-six of said article be amended and reenacted; that sections two and six-c, article two-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-d; that sections three and twenty-eight-c, article seven-a, chapter eighteen of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-eight-d; that sections two and thirteen-b, article seven-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven-a; that sections one-a and twelve-c, article nine, chapter fifty-one of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-d, 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.

7. County Commissions and Officers.
15. Public Safety.
18. Education.
51. Courts and Their Officers.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

Article
  10. West Virginia Public Employees Retirement Act.
  10B. Government Employees Deferred Compensation Plans.
  10D. Consolidated Public Retirement Board.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.
§5-10-2. Definitions.
§5-10-27c. Direct rollovers.
§5-10-27d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article, have the following meanings:

(1) "State" means the state of West Virginia;

(2) "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;

(3) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;

(4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: Provided, That any mental health agency participating in the public employees retirement system before the first day of July, one thousand nine hundred ninety-seven, is considered a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the retirement system at their option after the first day of July, one thousand nine hundred ninety-seven: Provided, however, That the regional community
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Policing institute which participated in the public employees retirement system before the first day of July, two thousand, is considered a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the public employees retirement system after the first day of July, two thousand;

(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and includes any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system;

(6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation, in whole or in part, is paid by the federal government: Provided, That members of the Legislature, the clerk of the House of Delegates, the clerk of the Senate, employees of the Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in which the employee served, members of the legislative body of
any political subdivision and judges of the state court of claims are considered to be employees, anything contained in this article to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(7) “Member” means any person who is included in the membership of the retirement system;

(8) “Retirant” means any member who retires with an annuity payable by the retirement system;

(9) “Beneficiary” means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(10) “Service” means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;

(11) “Prior service” means service rendered prior to the first day of July, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(12) “Contributing service” means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article. This revised definition is retroactive and applicable to the first day of April, one thousand nine hundred eighty-eight, and thereafter;

(13) “Credited service” means the sum of a member’s prior service credit and contributing service credit standing to his or her credit as provided in this article;
(14) "Limited credited service" means service by employees of the West Virginia educational broadcasting authority, in the employment of West Virginia university, during a period when the employee made contributions to another retirement system, as required by West Virginia university, and did not make contributions to the public employees retirement system: Provided, That while limited credited service can be used for the formula set forth in subsection (e), section twenty-one of this article, it may not be used to increase benefits calculated under section twenty-two of this article;

(15) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him or her to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of his or her remuneration which is not paid in money;

(16) "Final average salary" means either:

(A) The average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) during any period of three consecutive years of his or her credited service contained within his or her ten years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If he or she has less than five years of credited service, the average of the annual rate of compensation received by him or her during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the
Legislature in the year one thousand nine hundred seventy-one or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code) in the year one thousand nine hundred seventy-one or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the state of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: Provided, That “final average salary” for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one who, in either event, was a member of the Legislature on the thirtieth day of November, one thousand nine hundred sixty-eight, or the thirtieth day of November, one thousand nine hundred sixty-nine, or the thirtieth day of November, one thousand nine hundred seventy, or on the thirtieth day of November in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either (notwithstanding the provisions of this subdivision preceding this proviso) one thousand five hundred dollars multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the state of West Virginia; or (ii) “final average salary” determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary (and in determining the annual compensation under (ii) of this proviso, the legislative compensation of the former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this proviso or on the basis of one thousand five hundred
dollars multiplied by eight, whichever computation as to the
member produces the higher annual compensation);

(17) "Accumulated contributions" means the sum of all
amounts deducted from the compensations of a member and
credited to his or her individual account in the members’
deposit fund, together with regular interest on the contributions;

(18) "Regular interest" means the rate or rates of interest
per annum, compounded annually, as the board of trustees
adopts from time to time;

(19) "Annuity" means an annual amount payable by the
retirement system throughout the life of a person. All annuities
shall be paid in equal monthly installments, using the upper
cent for any fraction of a cent;

(20) "Annuity reserve" means the present value of all
payments to be made to a retirant or beneficiary of a retirant on
account of any annuity, computed upon the basis of mortality
and other tables of experience, and regular interest, adopted by
the board of trustees from time to time;

(21) "Retirement" means a member’s withdrawal from the
employ of a participating public employer with an annuity
payable by the retirement system;

(22) "Actuarial equivalent" means a benefit of equal value
computed upon the basis of a mortality table and regular
interest adopted by the board of trustees from time to time;

(23) "Retroactive service" means: (1) Service an employee
was entitled to, but which the employer has not withheld or paid
for; or (2) that service from the first day of July, one thousand
nine hundred sixty-one, and the date an employer decides to
become a participating member of the public employees
retirement system; or (3) service prior to the first day of July,
§5-10-27c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or
for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year. For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal
Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the retirement system to an eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the retirement board.

§5-10-27d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after the first day of January, two thousand two. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole or in part, with respect to a previous forfeiture of service credit as otherwise provided in
this article: (i) One or more rollovers within the meaning of
Section 408(d)(3) of the Internal Revenue Code from an
individual retirement account described in Section 408(a) of the
Internal Revenue Code or from an individual retirement annuity
described in Section 408(b) of the Internal Revenue Code; (ii)
one or more rollovers described in Section 402(c) of the
Internal Revenue Code from a retirement plan that is qualified
under Section 401(a) of the Internal Revenue Code or from a
plan described in Section 403(b) of the Internal Revenue Code;
(iii) one or more rollovers described in Section 457(e)(16) of
the Internal Revenue Code from a governmental plan described
in Section 457 of the Internal Revenue Code; or (iv) direct
trustee-to-trustee transfers or rollovers from a plan that is
qualified under Section 401(a) of the Internal Revenue Code,
from a plan described in Section 403(b) of the Internal Revenue
Code or from a governmental plan described in Section 457 of
the Internal Revenue Code: Provided, That any rollovers or
transfers pursuant to this section shall be accepted by the
system only if made in cash or other asset permitted by the
board and only in accordance with policies, practices and
procedures established by the board from time to time. For
purposes of this section, the following definitions apply:

(1) "Permissive service credit" means service credit which
is permitted to be purchased under the terms of the retirement
system by voluntary contributions in an amount which does not
exceed the amount necessary to fund the benefit attributable to
the period of service for which the service credit is being
purchased, all as defined in Section 415(n)(3)(A) of the Internal
Revenue Code.

(2) "Repayment of withdrawn or refunded contributions"
means the payment into the retirement system of the funds
required pursuant to this article for the reinstatement of service
credit previously forfeited on account of any refund or with-
drawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-2. Definitions.

Unless the context in which used clearly indicates a different meaning, as used in this article:

(a) “Board” means the consolidated public retirement board provided for in article ten of this chapter.

(b) “Deferred compensation plan” means a trust whereby the state of West Virginia, as the public employer, or a public employer agrees with an employee for the voluntary reduction in employee compensation for the payment of benefits by the state employer or the public employer to the employee at a later date pursuant to this article and the federal laws and regulations relating to eligible state deferred compensation plans as described in Section 457 of the Internal Revenue Code.
(c) "Employee" means any person, whether appointed, elected, or under contract, providing services for the state employer or public employer for which compensation is paid.

(d) "Public employer" means counties, municipalities or political subdivisions of those governmental bodies which meet the definition of "state" as described in Internal Revenue Code Section 457 (d)(1), but which do not meet the definition of "state employer" as used in this article.

(e) "State employer" means the state of West Virginia and any state agency or instrumentality of the state.

(f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-7. Compensation limitations; effective dates.

(a) Effective for plan years beginning after the thirty-first day of December, one thousand nine hundred ninety-five, and prior to the first day of January, two thousand two, the annual compensation of a participant taken into account in determining benefits or contributions under any of the public retirement plans administered by the board and which are qualified plans under Section 401(a) of the Internal Revenue Code may not exceed one hundred fifty thousand dollars, as indexed in accordance with the provisions of Section 401(a)(17) of the Internal Revenue Code. Effective for plan years beginning on or after the first day of January, two thousand two, the annual compensation of each participant taken into account in determining allocations for any plan year beginning on or after the first day of January, two thousand two, shall not exceed two hundred thousand dollars as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. In determining benefit accruals in plan years beginning after the thirty-first day of December, two thousand
one, the annual compensation limit for determination periods
beginning before the first day of January, two thousand two,
shall be two hundred thousand dollars. Annual compensation
means compensation during the plan year or any other consecu-
tive twelve-month period over which compensation is otherwise
determined (the determination period). The cost-of-living
adjustment in effect for a calendar year applies to annual
compensation for the determination period that begins with or
within that calendar year. This provision applies notwithstand-
ing any other provision to the contrary in this code and notwith-
standing any provisions of any legislative rule.

(b) In applying the limitations of subsection (a) of this
section, the consolidated public retirement board may: (1)
Adopt policies or procedures that may be necessary or appropri-
ate in applying the compensation limitations of Section
401(a)(17) to participants, including, without limitation, the
adoption and application of any transitional rules to implement
the compensation limitations; and (2) to take any actions that
may at any time be required by the internal revenue service
regarding compliance with the requirements of Section
401(a)(17), including, without limitation, distributions, credits,
set-asides or other adjustments.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM.

§7-14D-9c. Direct rollovers.
§7-14D-9d. Rollovers and transfers to purchase service credit or repay withdrawn
contributions.


Any term used in this article has the same meaning as when
used in a comparable context in the laws of the United States,
unless a different meaning is clearly required. Any reference in
this article to the Internal Revenue Code means the Internal Revenue Code of 1986, as it has been amended.

§7-14D-9c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year. For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because
the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) "Distributee" means an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the
Internal Revenue Code with respect to governmental plans, are
distributees with regard to the interest of the spouse or former
spouse.

(4) "Direct rollover" means a payment by the plan to the
eligible retirement plan.

(b) Nothing in this section shall be construed as permitting
rollovers to this plan or any other retirement system adminis-
tered by the board.

§7-14D-9d. Rollovers and transfers to purchase service credit or
repay withdrawn contributions.

(a) This section applies to rollovers and transfers as
specified in this section made on or after the first day of
January, two thousand two. Notwithstanding any provision of
this article to the contrary that would otherwise prohibit or limit
rollovers and plan transfers to this system, the retirement
system shall accept the following rollovers and plan transfers
on behalf of a member solely for the purpose of purchasing
permissive service credit, in whole or in part, as otherwise
provided in this article or for the repayment of withdrawn or
refunded contributions, in whole and in part, with respect to a
previous forfeiture of service credit as otherwise provided in
this article: (i) One or more rollovers within the meaning of
Section 408(d)(3) of the Internal Revenue Code from an
individual retirement account described in Section 408(a) of the
Internal Revenue Code or from an individual retirement annuity
described in Section 408(b) of the Internal Revenue Code; (ii)
one or more rollovers described in Section 402(c) of the
Internal Revenue Code from a retirement plan that is qualified
under Section 401(a) of the Internal Revenue Code or from a
plan described in Section 403(b) of the Internal Revenue Code;
(iii) one or more rollovers described in Section 457(e)(16) of
the Internal Revenue Code from a governmental plan described
in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes of this section, the following definitions apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.
(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

CHAPTER 15. PUBLIC SAFETY.

Article
2. West Virginia State Police.
2A. West Virginia State Police Retirement System.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-46. Direct rollovers.


Any term used in this article relating to the death, disability and retirement fund shall have the same meaning as when used in a comparable context of the laws of the United States, unless a different meaning as clearly required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code, as it has been amended.

§15-2-46. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this fund, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:
(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) [26 USCS §401(k)(2)(B)(i)(iv)] of the Internal Revenue Code; and (v) any other distribution or distributions that are reasonably expected to total less than two hundred dollars during a year. For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan
described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) "Distributee" means a member. In addition, the member's surviving spouse and the member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-6c. Direct rollovers.
§15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) “Active military duty” means full-time active duty with the armed forces of the United States, namely, the United States air force, army, coast guard, marines or navy; and service with the national guard or reserve military forces of any of the armed forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any person other than the armed forces.

3 (2) “Base salary” means compensation paid to a member without regard to any overtime pay.

4 (3) “Board” means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

5 (4) “Division” means the division of public safety.

6 (5) “Final average salary” means the average of the highest annual compensation received for employment with the division, including compensation paid for overtime service, received by the member during any five years within the member’s last ten years of service.

7 (6) “Fund” means the West Virginia state police retirement fund created pursuant to section four of this article.

8 (7) “Member” or “employee” means a person regularly employed in the service of the division of public safety after the effective date of this article.

9 (8) “Salary” means the compensation of a member, excluding any overtime payments.
(9) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(10) "Plan year" means the twelve-month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(11) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half; or (b) the calendar year in which he or she retires or otherwise separates from service with the department.

(12) "Retirement system" or "system" means the West Virginia state police retirement system created and established by this article.

§15-2A-6c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of
the distributee and the distributee's designated beneficiary, or
for a specified period of ten years or more; (ii) any distribution
to the extent such distribution is required under Section
401(a)(9) of the Internal Revenue Code; (iii) the portion of any
distribution that is not includable in gross income determined
without regard to the exclusion for net unrealized appreciation
with respect to employer securities; (iv) any hardship distribu-
tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
Revenue Code; and (v) any other distribution or distributions
expected to total less than two hundred dollars during a year.
For distributions after the thirty-first day of December, two
thousand one, a portion of a distribution shall not fail to be an
eligible rollover distribution merely because the portion
consists of after-tax employee contributions which are not
includable in gross income. However, this portion may be paid
only to an individual retirement account or annuity described in
Section 408(a) or (b) of the Internal Revenue Code, or to a
qualified defined contribution plan described in Section 401(a)
or 403(a) of the Internal Revenue Code that agrees to separately
account for amounts transferred, including separately account-
ing for the portion of the distribution which is includable in
gross income and the portion of the distribution which is not
includable.

(2) "Eligible retirement plan" means an individual retire-
ment account described in Section 408(a) of the Internal
Revenue Code, an individual retirement annuity described in
Section 408(b) of the Internal Revenue Code, an annuity plan
described in Section 403(a) of the Internal Revenue Code or a
qualified plan described in Section 401(a) of the Internal
Revenue Code that accepts the distributee's eligible rollover
distribution: Provided, That in the case of an eligible rollover
distribution to the surviving spouse, an eligible retirement plan
is an individual retirement account or individual retirement
annuity. For distributions after the thirty-first day of December,
two thousand one, an eligible retirement plan also means an
annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other retirement system administered by the board.

§15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

1 (a) This section applies to rollovers and transfers as specified in this section made on or after the first day of January, two thousand two. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole and in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a
previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this section, the following definitions apply:

(1) “Permissive service credit” means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code.

(2) “Repayment of withdrawn or refunded contributions” means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or with-
drawal of contributions permitted in this article, as set forth in
Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section shall be construed as permitting
rollovers or transfers into this system or any other system
administered by the retirement board other than as specified in
this section and no rollover or transfer shall be accepted into the
system in an amount greater than the amount required for the
purchase of permissive service credit or repayment of with-
drawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting
the purchase of service credit or repayment of withdrawn or
refunded contributions except as otherwise permitted in this
article.

CHAPTER 18. EDUCATION.

Article
7A. State Teachers Retirement System.
7B. Teachers' Defined Contribution Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-28c. Direct rollovers.
§18-7A-28d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.


"Teacher member" means the following persons, if regu-
larly employed for full-time service: (a) Any person employed
for instructional service in the public schools of West Virginia;
(b) principals; (c) public school librarians; (d) superintendents
of schools and assistant county superintendents of schools; (e)
any county school attendance director holding a West Virginia
teacher’s certificate; (f) the executive secretary of the retire-
ment board; (g) members of the research, extension, administra-
tive or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents [abolished], any county board of education, the state department of education or the teachers retirement board, if that person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the division of corrections, the division of health or the division of human services; and (l) employees of the state board of school finance, if that person was formerly employed as a teacher in the public schools.

“Nonteaching member” means any person, except a teacher member, who is regularly employed for full-time service by: (a) Any county board of education; (b) the state board of education; (c) the West Virginia board of regents [abolished]; or (d) the teachers retirement board.

“Members of the administrative staff of the public schools” means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

“Members of the extension staff of the public schools” means every agricultural agent, boys’ and girls’ club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

“Retirement system” means the state teachers retirement system provided for in this article.

“Present teacher” means any person who was a teacher within the thirty-five years beginning the first day of July, one
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thousand nine hundred thirty-four, and whose membership in
the retirement system is currently active.

"New entrant" means a teacher who is not a present teacher.

"Regularly employed for full-time service" means employ-
ment in a regular position or job throughout the employment
term regardless of the number of hours worked or the method
of pay. "Employment term" means employment for at least ten
months, a month being defined as twenty employment days.

"Present member" means a present teacher who is a
member of the retirement system.

"Total service" means all service as a teacher while a
member of the retirement system since last becoming a member
and, in addition thereto, credit for prior service, if any.

"Prior service" means all service as a teacher completed
prior to the first day of July, one thousand nine hundred
forty-one, and all service of a present member who was
employed as a teacher, and did not contribute to a retirement
account because he or she was legally ineligible for member-
ship during the service.

"Pick-up service" means service that a member was entitled
to, but which the employer has not withheld or paid for.

"Average final salary" means the average of the five
highest fiscal year salaries earned as a member within the last
fifteen fiscal years of total service credit, including military
service as provided in this article, or if total service is less than
fifteen years, the average annual salary for the period on which
contributions were made.

"Accumulated contributions" means all deposits and all
deductions from the earnable compensation of a contributor
minus the total of all supplemental fees deducted from his or her compensation.

"Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the consolidated public retirement board.

"Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the consolidated public retirement board.

"Employer" means the agency of and within the state which has employed or employs a member.

"Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

"Earnable compensation" means the full compensation actually received by members for service as teachers whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be considered a part of earnable compensation for those members whose allowances were approved by the teachers retirement board and contributions to the teachers retirement system were made, in accordance therewith, on or before the first day of July, one thousand nine hundred eighty.
“Annuities” means the annual retirement payments for life granted beneficiaries in accordance with this article.

“Member” means a member of the retirement system.

“Public schools” means all publicly supported schools, including normal schools, colleges and universities in this state.

“Deposit” means a voluntary payment to his or her account by a member.

“Plan year” means the twelve-month period commencing on the first day of July and ending the following thirtieth day of June of any designated year.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

“Required beginning date” means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half; or (b) the calendar year in which the member retires or ceases covered employment under the system.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be considered to be seventy years.

§18-7A-28c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible
rollover distribution that is equal to at least five hundred dollars
paid directly to an eligible retirement plan specified by the
distributee in a direct rollover. For purposes of this section, the
following definitions apply:

(1) "Eligible rollover distribution" means any distribution
of all or any portion of the balance to the credit of the
distributee, except that an eligible rollover distribution does not
include any of the following: (i) Any distribution that is one of
a series of substantially equal periodic payments not less
frequently than annually made for the life or life expectancy of
the distributee or the joint lives or the joint life expectancies of
the distributee and the distributee’s designated beneficiary, or
for a specified period of ten years or more; (ii) any distribution
to the extent such distribution is required under Section
401(a)(9) of the Internal Revenue Code; (iii) the portion of any
distribution that is not includable in gross income determined
without regard to the exclusion for net unrealized appreciation
with respect to employer securities; (iv) any hardship distribu-
tion described in Section 401(k)(2)(B)(i)(iv) of the Internal
Revenue Code; and (v) any other distribution reasonably or
distributions expected to total less than two hundred dollars
during a year. For distributions after the thirty-first day of
December, two thousand one, a portion of a distribution shall
not fail to be an eligible rollover distribution merely because
the portion consists of after-tax employee contributions which
are not includable in gross income. However, this portion may
be paid only to an individual retirement account or annuity
described in Section 408(a) or (b) of the Internal Revenue Code,
or to a qualified defined contribution plan described in Section
401(a) or 403(a) of the Internal Revenue Code that agrees to
separately account for amounts transferred, including separately
accounting for the portion of the distribution which is
includable in gross income and the portion of the distribution
which is not includable.
(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) "Distributee" means an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, as applicable to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other retirement system administered by the board.
§18-7A-28d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after the first day of January, two thousand two. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole or in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this section, the following definitions apply:
(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.
§18-7B-11a. Rollovers and transfers to repay cashed-out or withdrawn contributions.
§18-7B-13b. Direct rollovers.

§18-7B-2. Definitions.
As used in this article, unless the context clearly requires a different meaning:

(1) "Defined contribution system" or "system" means the teachers’ defined contribution retirement system created and established by this article;

(2) "Existing retirement system" means the state teachers retirement system established in article seven-a of this chapter;

(3) "Existing employer" means any employer who employed or employs a member of the existing retirement system;

(4) "Consolidated board" or "board" means the consolidated public retirement board created and established pursuant to article ten-d, chapter five of this code;

(5) "Member" or "employee" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher’s certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, any county board of education, the state department of education or the teachers retirement board, if that person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the division.
of corrections and the department of health and human re-
resources; (l) any person who is regularly employed for full-time
service by any county board of education, the state board of
education or the teachers retirement board; and (m) the admin-
istrative staff of the public schools including deans of instruc-
tion, deans of men and deans of women, and financial and
administrative secretaries;

(6) "Regularly employed for full-time service" means
employment in a regular position or job throughout the employ-
ment term regardless of the number of hours worked or the
method of pay;

(7) "Year of employment service" means employment for
at least ten months, a month being defined as twenty employ-
ment days: Provided, That no more than one year of service
may be accumulated in any twelve-month period;

(8) "Employer" means the agency of and within the state
which has employed or employs a member;

(9) "Compensation" means the full compensation actually
received by members for service whether or not a part of the
compensation is received from other funds, federal or other-
wise, than those provided by the state or its subdivisions;

(10) "Public schools" means all publicly supported schools,
including normal schools, colleges and universities in this state;

(11) "Member contribution" means an amount reduced
from the employee's regular pay periods, and deposited into the
member's individual annuity account within the defined
contribution retirement system;

(12) "Employer contribution" means an amount deposited
into the member's individual annuity account on a periodic
basis coinciding with the employee’s regular pay period by an employer from its own funds;

(13) “Annuity account” or “annuity” means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(14) “Retirement” means a member’s withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(15) “Permanent, total disability” means a mental or physical incapacity requiring the absence from employment service for at least six months: Provided, That the incapacity is shown by an examination by a physician or physicians selected by the board;

(16) “Plan year” means the twelve-month period commencing on the first day of July of any designated year and ending on the following thirtieth day of June;

(17) “Required beginning date” means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy-one and one-half; or (b) the calendar year in which the member retires or otherwise ceases employment with a participating employer; and

(18) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

§18-7B-11a. Rollovers and transfers to repay cashed-out or withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after the first day of January, two thousand two. Notwithstanding any provision of
this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the defined contribution system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of repayment of cashed-out or withdrawn contributions, in whole or in part, as otherwise provided in this article or the rules applicable to the defined contribution system: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies established by the board from time to time.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the repayment of cashed-out or withdrawn contributions.

(c) Nothing in this section shall be construed as permitting the repayment of cashed-out or withdrawn contributions except
§18-7B-13b. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year. For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because
the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) “Distributee” means an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the
Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) “Direct rollover” means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this retirement system or any other retirement system administered by the board.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

§51-9-12c. Direct rollovers.

§51-9-12d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

§51-9-1a. Definitions.

(a) As used in this article, the term “judge”, “judge of any court of record” or “judge of any court of record of this state” means, refers to and includes judges of the several circuit courts and justices of the supreme court of appeals. For purposes of this article, the terms do not mean, refer to or include family court judges.

(b) “Beneficiary” means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(c) “Board” means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

(d) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.
(e) "Member" means a judge participating in this system.

(f) "Plan year" means the twelve-month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(g) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half; or (b) the calendar year in which the member retires or otherwise separates from covered employment.

(h) "Retirement system" or "system" means the judges retirement system created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to circuit judges and justices of the supreme court of appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the judges retirement system or used in any manner as credit toward eligibility for retirement benefits under the judges retirement system.

§51-9-12c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:
(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions expected to total less than two hundred dollars during a year. For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a
qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee’s eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) “Distributee” means a judge or former judge. In addition, the judge’s or former judge’s surviving spouse and the judge’s or former judge’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) “Direct rollover” means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the board.

§51-9-12d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after the first day of January, two thousand two. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit
rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole and in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with policies, practices and procedures established by the board from time to time. For purposes of this section, the following definitions apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code.
(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

CHAPTER 262

(H. B. 4658 — By Delegates Campbell, J. Smith, Keener and Browning)

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

AN ACT to amend and reenact sections fourteen, twenty-two-c and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seventeen, article seven-a, chapter eighteen of said code, all relating generally to public employee's and state teachers retirement; extending the time frame for claiming service credit for having worked under the comprehensive employment and training act; requiring due diligence to notify affected
employees of the extension of time; allowing certain legislative employees who have been employed during regular sessions for thirteen consecutive years to receive a service credit of twelve months for each regular session served; setting forth eligibility criteria; increasing the amount of compensation a retiree may earn from temporary state employment; setting forth legislative findings and definitions; providing for limitations upon the reemployment of retired persons by the Legislature required by federal law; relating to reemployment after retirement of certain legislative employees; setting forth limitations on reemployment of former legislative employees; providing for granting of service credit in the teachers retirement system for certain former members of the state police death, disability and retirement system and setting forth requirements to be met for this service credit.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, twenty-two-c and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seventeen, article seven-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

18. Education.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.
§5-10-14. Service credit; retroactive provisions.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon rules adopted by the board of trustees and based upon the following:

2 (1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

3 (2) Except for hourly employees, ten or more months of service credit earned in any calendar year shall be credited as a year of service: Provided, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full-year credit for that year; and
(3) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of thirty years immediately preceding the date the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers retirement system and shall require the transfer of the member's contributions to the system and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to the member's retirement. Repayment of withdrawals shall be as directed by the board of trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or state auditor, may receive prior service credit for time served in that capacity.

(d) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this
subsection: Provided, however, That the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of March, two thousand three: And provided further, That the board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(e) Employees of the state Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following. For purposes of this section, the term “regular session” means day one through day sixty of a sixty-day legislative session or day one through day thirty of a thirty-day legislative session. Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions and who have been or are employed during regular sessions or during the interim time between regular sessions in seven consecutive calendar years, as certified by the clerk of the houses in which the employee served, shall receive service credit of six months for all regular sessions served, as certified by the clerk of the houses in which the employee served, or shall receive service credit of three months for each regular thirty-day session served prior to one thousand nine hundred seventy-one: Provided, That employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions and who have been or are employed during the regular sessions in thirteen consecutive calendar years as either temporary employees or full-time employees or a combination thereof, as certified by the clerk of the houses in which the employee served, shall
receive a service credit of twelve months for each regular session served, as certified by the clerk of the houses in which the employee served: Provided, however, That the amendments made to this subsection during the two thousand two regular session of the Legislature only apply to employees of the Legislature who are employed by the Legislature as either temporary employees or full-time employees as of the first day of January, two thousand two, or who become employed by the Legislature as temporary or full-time employees for the first time after the first day of January, two thousand two. Employees of the state Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature during the interim time between regular sessions shall receive service credit of one month for each ten days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit: Provided further, That no more than one year of service may be credited to any temporary legislative employee for all service rendered by that employee in any calendar year and no days may be carried over by a temporary legislative employee from one calendar year to another calendar year where the member has received a full year credit for that year. Service credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that member's retirement annuity, pursuant to section twenty-two of this article, and determining eligibility as it relates to credited service, notwithstanding any other provision of this section. Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the houses in which the employee served, based upon employment records. Service of fifty-five days of a regular session constitutes an absolute presumption of service for a complete legislative session and service of twenty-seven days of a thirty-day regular session occurring prior to one thousand nine hundred seventy-one constitutes an absolute presumption of
service for a complete legislative session. Once a legislative employee has been employed during regular sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this section for all regular and interim sessions and interim days worked by that employee, as certified by the clerk of the houses in which the employee served, regardless of when the session or interim legislative employment occurred: And provided further, That regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature.

(f) Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee's pay. In the purchase of service credit for employment prior to the year one thousand nine hundred eighty-nine in any department, including the Legislature, which operated from the general revenue fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state's share of public employees' retirement coverage in the years prior to the year one thousand nine hundred eighty-nine, the employee shall pay the employee's share. Other employees shall pay the state's share and the employee's share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after the year one thousand nine hundred eighty-eight, that employee shall pay for the employee's share and the employer shall pay its share for the purchase of retroactive service credit: Provided, That no legislative employee and no current or former member of the Legislature may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years he or she is purchasing retroactive credit for or had the employee attempted to contribute to the system during the years he or she is purchasing retroactive service credit for and such contributions would have been refused by the board: Provided, however, That a legislative
employee purchasing retroactive credit under this section does so within twenty-four months of becoming a member of the system or no later than the last day of December, two thousand five, whichever occurs last: Provided further, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each sixty-day session worked, three months for each thirty-day session worked or twelve months for each sixty-day session for legislative employees who have been employed during regular sessions in thirteen consecutive calendar years, as certified by the clerk of the houses in which the employee served, and credit for interim employment as provided in this subsection: And provided further, That this legislative service credit shall also be used for months of service in order to meet the sixty-month requirement for the payments of a temporary legislative employee member’s retirement annuity: And provided further, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: And provided further, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(g) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the thirteen consecutive calendar years requirement and the service credit requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven and thirteen consecutive calendar years referenced in this section: Provided, That the employee has not retired prior to the effective date of the
amendments made to this section in the two thousand two
regular session of the Legislature.

(h) The board of trustees shall grant service credit to any
former or present member of the state police death, disability
and retirement fund who has been a contributing member of this
system for more than three years for service previously credited
by the state police death, disability and retirement fund if the
member transfers all of his or her contributions to the state
police death, disability and retirement fund to the system
created in this article, including repayment of any amounts
withdrawn any time from the state police death, disability and
retirement fund by the member seeking the transfer allowed in
this subsection: Provided, That there shall be added by the
member to the amounts transferred or repaid under this subsec-
tion an amount which shall be sufficient to equal the contribu-
tions he or she would have made had the member been under
the public employees retirement system during the period of his
or her membership in the state police death, disability and
retirement fund plus interest at a rate determined by the board.

§5-10-22c. Temporary early retirement incentives program;
legislative declaration and finding of compelling
state interest and public purpose; specifying
eligible and ineligible members for incentives
program; options, conditions, and exceptions;
certain positions abolished; special rule of eighty;
effective, termination, and notice dates.

The Legislature hereby finds and declares that a compelling
state interest exists in providing a temporary early retirement
incentives program for encouraging the early, voluntary
retirement of those public employees who were current, active
contributing members of this retirement system on the first day
of April, one thousand nine hundred eighty-eight, in the
reduction of the number of such employees and in reduction of
governmental costs therefor; that such program constitutes a public purpose; and that the special classifications and differentiations provided in respect of such program are reasonable and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H. B. No. 4672, regular session, one thousand nine hundred eighty-eight, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid. The Legislature further finds that maintaining an actuarially sound retirement fund is a necessity and that the reemployment of persons who retire under this section in any manner, including reemployment on a contract basis, is contrary to the intent of the early retirement program and severely threatens the fiscal integrity of the retirement fund.

(a) For the purposes of this section: (1) "Contract" means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or that exceeds two thousand five hundred dollars in any twelve-month period. The term "contract" does not include any agreement obtained by a retirant through a bidding process and which is for the furnishing of any commodity to a government agency and that term does not include any person who retired under this section who works as a contract employee for the Legislature when such employment commences after the thirty-first day of December, one thousand nine hundred ninety-nine: Provided, That such employment may not exceed one hundred ten days; (2) "governmental entity" means the state of West Virginia; a constitutional branch or office of the state government, or any subdivision thereof; a county, city or town in the state; a county board of education; a separate corporation or instrumentality established pursuant to a state statute; any other entity currently permitted to participate in any state public retirement system or the public employees insurance agency; or any officer or official of any entity listed above who is acting in his or her official capacity; (3) "part-time elected or ap-
"pointed office" means any elected or appointed office that pays annual compensation of less than two thousand five hundred dollars or requires less than sixty days of service in any twelve-month period; (4) "substitute teacher" means a teacher, public school librarian, registered professional nurse employed by the county board of education or any other person employed for counseling or instructional purposes in a public school in this state who is temporarily fulfilling the duties of an existing real person employed in a specific position who is temporarily absent from that specified position.

(b) Beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through the thirty-first day of December, one thousand nine hundred eighty-eight (or as extended by eligibility qualification requirement, as hereinafter specified), eligible members, being those active, contributing members actually and currently employed on such beginning date, retiring pursuant to this section, and from any state, county or municipal position, covered under the two divisions of this retirement system (the state division and the public employer, nonstate division) including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this incentive program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

For the purpose of computing the member's annuity, the normal final average salary shall be computed and one-eighth thereof shall be added thereto in arriving at the true final average salary for use in actual computation of retirement benefit.

(2) Retirement incentive option two:
A member may elect a lump sum payment, in addition to his or her regular retirement annuity, equal to ten percent of his final average salary not to exceed five thousand dollars, and in the case of a deferred retirement electing this option, such lump sum payment shall be receivable and deferred to the time of receipt of such deferred retirement annuity.

(3) Retirement incentive option three:

A person shall be credited with an additional two years of contributing service and an additional two years of age. The years credited under this option shall in no way add to a member's final average salary factor of computation.

Active, contributing members who desire to retire under this section but who are unable to retire by the thirty-first day of December, one thousand nine hundred eighty-eight, and make use of the incentive retirement program because an element of eligibility for retirement, such as age or other element, will not be met until a date after the thirty-first day of December, one thousand nine hundred eighty-eight, and before the first day of July, one thousand nine hundred eighty-nine, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on the thirtieth day of June, one thousand nine hundred eighty-nine, with proper credit to be granted for such extended period: Provided, That they shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by the thirty-first day of December, one thousand nine hundred eighty-eight, although postponing actual retirement, as aforesaid.

(c) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from any
governmental entity: Provided, That nothing in this section shall affect any contract entered into prior to the effective date of this section: Provided, however, That the executive director may approve, upon written request and for good cause shown, an exception allowing a retirant to perform work on a contract basis. The executive director shall report all approved exceptions to the board of trustees: Provided further, That a person may retire under this section and thereafter serve in an elective office: And provided further, That he or she shall not receive an incentive option under this section during the term of service in said office, but shall receive his or her annuity calculated on regular basis, as if originally taken not under this section but on such regular basis. At the end of such term and cessation of service in such office during which the member shall rejoin and reenter the retirement system and pay contributions therefor, such regular annuity shall be recalculated and an increased annuity due to such additional employment shall be granted and computed on regular basis and in similar manner as under section forty-eight of this article. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in such appointive office shall not receive an incentive option under this section during the term of service in said office, but the same shall be suspended during such period: And provided further, That at the end of such term and cessation of service in such appointive office the incentive option provided for under this section shall be resumed: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in such office and who does not receive any income therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted by the statutes governing such office shall continue to receive an incentive option under this section. Such service shall not be counted as contributed or credited service for purposes of computing retirement benefits.
If such elected or appointed office is a part-time elected or appointed office, a person electing retirement under this section may serve in such elected or appointed office without a loss of the benefits provided under this section.

Prior to the initiation or renewal of any contract entered into pursuant to the provisions of this section or the acceptance of any elective or appointive office by a person who has elected to retire under the early retirement provisions of this article, such person shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall promulgate rules, pursuant to chapter twenty-nine-a of this code regarding the form and contents of the disclosure and waiver statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive benefits are reduced in accordance with the provisions of this section. The administrator shall then certify such action in writing to the appropriate governmental entity.

In any event, an eligible member may retire under this section and thereafter continue to receive his or her incentive annuity and be employed as a substitute teacher or as adjunct faculty.

Any such incentive retirants, under this section, may not thereafter receive such annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by constitutional provision or as hereby specifically permitted to those retiring and thereafter serving in elective office, as aforesaid.

The additional annuity allowed for temporary early retirement under these options, in respect of state division
retirants of this system, is intended to be paid from the retire-
ment incentive account hereby created as a special account in
the state treasury and from the funds therein established with
moneys required to be transferred by heads of spending units
from the unused portion of salary and fringe benefits in their
budgets accruing in respect of such positions vacated and
subsequently canceled under this temporary early retirement
program. Salary and fringe benefit moneys actually saved in a
particular fiscal year shall constitute the fund source for
payment of such additional annuity, the funds of the retirement
system to be used for payment of the base annuity under the
early retirement incentive program: Provided, That such
additional annuity shall be paid from the unused portion of both
salary and fringe benefits and with any remainder of any fringe
benefit moneys, as such, to remain with the spending unit and
any remainder of salary, as such, to be directed as additional
funding to the teachers retirement system and as a part of the
assets thereof. No such additional annuity shall be disallowed
even though initial receipts may not be sufficient, with funds of
the system to be applied for such purpose, as for the base
annuity. With respect to public employer division retirants
(nonstate division retirants of the system), such incentive
annuity shall be paid from the nonstate division funds of the
system.

(d) The executive secretary of the retirement system shall
provide forms for applicants. Such forms shall include a
detailed description of the incentive plan options.

The executive secretary of the retirement system shall file
a report to the Legislature no later than the fifteenth day of
February, one thousand nine hundred eighty-nine, and quarterly
thereafter, detailing the number of retirees who have elected to
accept early retirement incentive options, the dollar cost to date
by option selected, and the projected annual cost through the
year two thousand.
(e) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member’s retirement. The vacant position abolition requirement shall not apply to elective positions or appointed public officers whose positions are established by state constitutional or statutory provision. The retirant’s employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer the remaining salary and fringe benefits as aforesaid: Provided, That this vacant position abolition provision shall not apply to any county or municipal position except those under the authority of a county board of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the governor in respect of the executive branch, or the chief justice of the supreme court of appeals in respect of the judicial branch, or the president of the Senate or speaker of the House of Delegates, in respect of the legislative branch, may exempt or amend, under such abolishment provision. upon his or her respective recommendation that such exemption or amendment is necessary to provide for continuity of governmental operation or to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the joint committee on government and finance in such recommendation, after the chairmen thereof shall cause such committee to meet.
(f) **Special rule of eighty.** — Any active, contributing member of the retirement system as of the first day of April, one thousand nine hundred eighty-eight, who selects one of the incentive options in this section, may retire under the special early retirement provisions with full pension rights, without reduction of benefits if the sum of such member’s age plus years of contributing service equals or exceeds eighty: Provided, That such person has at least twenty years of contributing service; up to two years of which may be military service, or prior service, or any combination thereof not exceeding an aggregate of two years.

(g) **Termination of temporary retirement incentives program.** — The right to elect, choose, select or use any of the options, special rule of eighty, or other benefits set forth in this section shall terminate on the thirtieth day of June, one thousand nine hundred eighty-nine.

(h) The board shall promulgate rules and regulations in accordance with the provisions of article three, chapter twenty-nine of this code regarding the calculation of the amount of incentive option that may be forfeited pursuant to the provisions of subsection (b) of this section.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual’s ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within
certain limitations, to render post-retirement employment in
positions of public service, either in elected or appointed
capacities. The Legislature further finds and declares that it has
the need for qualified employees and that in many cases an
employee of the Legislature will retire and be available to
return to work for the Legislature as a per diem employee. The
Legislature further finds and declares that in many instances
these employees have particularly valuable expertise which the
Legislature cannot find elsewhere. The Legislature further finds
and declares that reemploying these persons on a limited per
diem after they have retired is not only in the best interests of
this state, but has no adverse effect whatsoever upon the
actuarial soundness of this particular retirement system.

(a) For the purposes of this section: (1) “Regularly em-
ployed on a full-time basis” means employment of an individ-
ual by a participating public employer, in a position other than
as an elected or appointed public official, which normally
requires twelve months per year service and/or requires at least
one thousand forty hours of service per year in that position; (2)
“temporary full-time employment or temporary part-time
employment” means employment of an individual on a tempo-
rary or provisional basis by a participating public employer,
other than as an elected or appointed public official, in a
position which does not otherwise render the individual as
regularly employed; (3) “former employee of the Legislature”
means any person who has retired from the Legislature and who
has at least ten years contributing service with the Legislature;
and (4) “reemployed by the Legislature” means a former
employee of the Legislature who has been reemployed on a per
diem basis not to exceed one hundred seventy-five days per
calendar year.

(b) In the event a retirant becomes regularly employed on
a full-time basis by a participating public employer, payment of
his or her annuity shall be suspended during the period of his or
her reemployment and he or she shall become a contributing
member to the retirement system. If his or her reemployment is
for a period of one year or longer, his or her annuity shall be
recalculated and he or she shall be granted an increased annuity
due to such additional employment, said annuity to be com-
puted according to section twenty-two of this article. A retirant
can accept temporary full-time or temporary part-time employ-
ment from a participating employer without suspending his or
her retirement annuity so long as he or she does not receive
annual compensation in excess of fifteen thousand dollars.

(c) In the event a member retires and is then subsequently
elected to a public office or is subsequently appointed to hold
an elected public office, or is a former employee of the Legisla-
ture who has been reemployed by the Legislature, he or she has
the option, notwithstanding subsection (b) of this section, to
either:

(1) Continue to receive payment of his or her annuity while
holding such public office or during any reemployment of a
former employee of the Legislature on a per diem basis, in
addition to the salary he or she may be entitled to as such office
holder or as a per diem reemployed former employee of the
Legislature; or

(2) Suspend the payment of his or her annuity and become
a contributing member of the retirement system as provided in
subsection (b) of this section. Notwithstanding the provisions
of this subsection, a member who is participating in the system
as an elected public official may not retire from his or her
elected position and commence to receive an annuity from the
system and then be reappointed to the same position unless and
until a continuous six-month period has passed since his or her
retirement from the position: Provided, That a former employee
of the Legislature may not be reemployed by the Legislature on
a per diem basis until at least sixty days after the employee has
Provided, however, That the limitation on compensation provided by subsection (b) of this section does not apply to the reemployed former employee: Provided further, That in no event may reemployment by the Legislature of a per diem employee exceed one hundred seventy-five days per calendar year.

(d) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: Provided, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(e) Notwithstanding the provisions of section twenty-seven-b of this article, any publicly elected member of the legislative body of any political subdivision or of the state Legislature, the clerk of the House of Delegates and the clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of seventy and one-half years: Provided, That the member is eligible to retire under the provisions of section twenty or section twenty-one of this article: Provided, however, That the member elects to stop actively contributing to the system while receiving such in-service distributions.

CHAPTER 18. EDUCATION.
ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers’ service; qualified military service.

(a) Under rules adopted by the retirement board, each teacher shall file a detailed statement of his or her length of service as a teacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month’s duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, “armed forces” includes women’s army corps, women’s appointed volunteers for emergency service, army nurse corps, spars, women’s reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section
414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

(c) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he or she contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the transferred service as additional service only: Provided, however, That a transfer of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: Provided further, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system.

(d) Service credit for members or retired members shall not be denied on the basis of minimum income rules promulgated by the teachers retirement board: Provided, That the member or retired member shall pay to the system the amount he or she would have contributed during the year or years of public
school service for which credit was denied as a result of the
minimum income rules of the teachers retirement board.

(e) No members shall be considered absent from service
while serving as a member or employee of the Legislature of
the state of West Virginia during any duly constituted session
of that body or while serving as an elected member of a county
commission during any duly constituted session of that body.

(f) No member shall be considered absent from service as
a teacher while serving as an officer with a statewide profes-
sional teaching association, or who has served in that capacity,
and no retired teacher, who served in that capacity while a
member, shall be considered to have been absent from service
as a teacher by reason of that service: Provided, That the period
of service credit granted for that service shall not exceed ten
years: Provided, however, That a member or retired teacher
who is serving or has served as an officer of a statewide
professional teaching association shall make deposits to the
teachers retirement board, for the time of any absence, in an
amount double the amount which he or she would have
contributed in his or her regular assignment for a like period of
time.

(g) The teachers retirement board shall grant service credit
to any former or present member of the West Virginia public
employees retirement system who has been a contributing
member for more than three years, for service previously
credited by the public employees retirement system and: (1)
Shall require the transfer of the member’s contributions to the
teachers retirement system; or (2) shall require a repayment of
the amount withdrawn any time prior to the member’s retire-
ment: Provided, That there shall be added by the member to the
amounts transferred or repaid under this subsection an amount
which shall be sufficient to equal the contributions he or she
would have made had the member been under the teachers
retirement system during the period of his or her membership in the public employees retirement system plus interest at a rate of six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

(h) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia department of education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member’s total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the board shall grant credit for the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(i) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member’s CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that
the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: Provided, however, That the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of March, two thousand three: And provided further, That the board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(j) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service.

(k) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(l) Subject to the provisions of subsections (a) through (l), inclusive, of this section, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

(m) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office
are credited as time served for purposes of computing service
credit: *Provided,* That the board may not require any additional
contributions from that member in order for the board to credit
him or her with the contributing service credit earned while
discharging official legislative duties: *Provided, however,* That
nothing herein may be construed to relieve the employer from
making the employer contribution at the member’s regular
salary rate or rate of pay from that employer on the contributing
service credit earned while the member is discharging his or her
official legislative duties. These employer payments shall
commence as of the first day of June, two thousand: *Provided
further,* That any member to which the provisions of this
subsection apply may elect to pay to the board an amount equal
to what his or her contribution would have been for those
periods of time he or she was serving in the Legislature. The
periods of time upon which the member paid his or her contri-
bution shall then be included for purposes of determining his or
her final average salary as well as for determining years of
service: *And provided further,* That a member utilizing the
provisions of this subsection is not required to pay interest on
any contributions he or she may decide to make.

(n) The teachers retirement board shall grant service credit
to any former member of the state police death, disability and
retirement system who has been a contributing member for
more than three years, for service previously credited by the
state police death, disability and retirement system; and: (1)
Shall require the transfer of the member’s contributions to the
teachers retirement system; or (2) shall require a repayment of
the amount withdrawn any time prior to the member’s retire-
ment: *Provided,* That the member shall add to the amounts
transferred or repaid under this paragraph an amount which is
sufficient to equal the contributions he or she would have made
had the member been under the teachers retirement system
during the period of his or her membership in the state police
death, disability and retirement system plus interest at a rate of
six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

CHAPTER 263

(S. B. 652 — By Senator Plymale)

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

AN ACT to amend and reenact section twenty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the amount of contributory service required for a deferred annuity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-21. Deferred retirement and early retirement.

(a) Any member who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death, shall be entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the
date of his or her separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund: Provided, however, That on and after the first day of July, two thousand two, any person who becomes a new member of this retirement system shall, in qualifying for retirement hereunder, have five or more years of service, all of which years shall be actual, contributory ones. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-two years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has ten or more years of credited service in force and who has attained age fifty-five as of the date of his or her separation, may, prior to the effective date of his or her retirement, but not thereafter, elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her date of separation and his or her attainment of age sixty-two years and payable throughout his or her life.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has twenty or more years of credited service in force may elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her fifty-fifth birthday and his or her attainment of age sixty-two years and payable throughout his or her life.

(d) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and pursuant to rules promulgated by the board, any member who has thirty or more years
of credited service in force, at least three of which are contrib-
uting service, and who elects to take early retirement, which for
the purposes of this subsection means retirement prior to age
sixty, whether an active employee or a separated employee at
the time of application, shall be entitled to the full computation
of annuity according to section twenty-two of this article, as
that section was in force as of the date of retirement application,
but with the reduced actuarial equivalent of the annuity the
member would have received if his or her benefit had com-
menced at age sixty when he or she would have been entitled to
full computation of benefit without any reduction.

(e) Notwithstanding any of the other provisions of this
section or of this article, except sections twenty-seven-a and
twenty-seven-b of this article, any member of the retirement
system may retire with full pension rights, without reduction of
benefits, if he or she is at least fifty-five years of age and the
sum of his or her age plus years of contributing service and
limited credited service, as defined in section two of this article,
equals or exceeds eighty.

CHAPTER 264

(S. B. 615 — By Senators Wooton, Caldwell, Fanning,
Hunter, Kessler, Minard, Mitchell, Oliverio, Redd,
Ross, Rowe, Facemyer and McKenzie)

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

AN ACT to amend and reenact section eight, article ten-a, chapter
five of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to disqualification for public
retirement benefits; setoffs against unpaid benefits; and freezing
of moneys pending court resolution where theft of government moneys occurs.

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

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

**ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.**

§5-10A-8. Setoff; unpaid benefits subject to execution, freezing of account upon finding of probable cause.

(a) The state of West Virginia or any of its political subdivisions shall have the right of setoff against any unpaid benefits which have accrued or may thereafter accrue under the plan, including any contributions by the participant, for any claim caused by less than honorable service by the participant.

(b) Notwithstanding any provision of this article to the contrary, upon being notified by an agency of the state of West Virginia or any of its political subdivisions that an employee has been charged by criminal complaint, indictment or information with an offense which constitutes less than honorable service and larceny of funds or property from a state agency or political subdivision, the retirement board shall withhold payment or refunding of any participant contributions until it receives an order from a court of competent jurisdiction reflecting that the charge has been dismissed, the participant found not guilty or ordering the release of all or part of the funds or directing restitution to the state or political subdivision.

(c) Notwithstanding any provision of the law to the contrary, any unpaid benefits which have accrued or may
thereafter accrue shall be subject to execution, garnishment, attachment or any other legal process for collection of a judgment for the recovery of loss or damages incurred by the state or its political subdivision, caused by the participant’s less than honorable service.

CHAPTER 265

(H. B. 4484 — By Delegate Campbell)

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

AN ACT to amend and reenact section twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the teachers retirement system; and providing for the right of members to name a new joint annuitant upon the death of a spouse who is a joint annuitant.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, 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.


Annuitants whose annuities were approved by the retirement board effective before the first day of July, one thousand nine hundred eighty, shall be paid the annuities which were approved by the retirement board.
Annuities approved by the board effective after the thirtieth day of June, one thousand nine hundred eighty, shall be computed as provided herein.

Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of the following:

(a) Two percent of the member's average salary multiplied by his or her total service credit as a teacher. In this paragraph "average salary" shall mean the average of the highest annual salaries received by the member during any five years contained within his or her last fifteen years of total service credit: Provided, That the highest annual salary used in this calculation for certain members employed by the West Virginia higher education policy commission under its control shall be four thousand eight hundred dollars, as provided by section fourteen-a of this article and chapter;

(b) The actuarial equivalent of the voluntary deposits of the member in his or her individual account up to the time of his or her retirement, with regular interest.

The disability annuities of all teachers retired for disability shall be based upon a disability table prepared by a competent actuary approved by the retirement board.

Upon the death of an annuitant who qualified for an annuity as the surviving spouse of an active member or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose, shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments. Upon the death of a spouse, a retainer may elect an annuity option approved by the retirement board in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect.
relative to the surviving member at the time the new option is elected.

All annuities shall be paid in twelve monthly payments. In computing the monthly payments, fractions of a cent shall be deemed a cent. The monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the annuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are retroactive after the board receives his or her application for annuity. Beginning with the first day of July, one thousand nine hundred ninety-four, the monthly payments shall be made on the twenty-fifth day of each month, except the month of December, when the payment shall be made on the eighteenth day of December. If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday.

In case the retirement board receives data affecting the approved annuity of a retired teacher, the annuity shall be changed in accordance with the data, the change being effective with the payment for the month within which the board received the new data.

Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher prior to the first day of July, one thousand nine hundred forty-one, shall be eligible for prior service credit and for prior service pensions as prescribed in this section.
AN ACT to amend and reenact section eight, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the commissioner of the division of highways to provide family restrooms at each rest area on interstate highways in West Virginia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.


1 In addition to all other duties, powers and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

4 (1) Exercise general supervision over the state road program and the construction, reconstruction, repair and maintenance of state roads and highways;
(2) Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways in the various sections and areas of the state;

(3) Conduct investigations and experiments, hold hearings and public meetings and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

(4) Enter private lands to make inspections and surveys for road and highway purposes;

(5) Acquire, in name of the department, by lease, grant, right of eminent domain or other lawful means all lands and interests and rights in lands necessary and required for roads, rights-of-way, cuts, fills, drains, storage for equipment and materials and road construction and maintenance in general;

(6) Procure photostatic copies of any or all public records on file at the state capitol of Virginia which may be considered necessary or proper in ascertaining the location and legal status of public road rights-of-way located or established in what is now the state of West Virginia, which when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

(7) Plan for and hold annually a school of good roads, of not less than three or more than six days’ duration, for instruction of his or her employees, which is held in conjunction with West Virginia university and may be held at the university or at any other suitable place in the state;
(8) Negotiate and enter in reciprocal contracts and agreements with proper authorities of other states and of the United States relating to and regulating the use of roads and highways with reference to weights and types of vehicles, registration of vehicles and licensing of operators, military and emergency movements of personnel and supplies and all other matters of interstate or national interest;

(9) Classify and reclassify, locate and relocate, expressway, trunkline, feeder and state local service roads and designate by number the routes within the state road system;

(10) Create, extend or establish, upon petition of any interested party or parties or on the commissioner's own initiative, any new road or highway found necessary and proper;

(11) Exercise jurisdiction, control, supervision and authority over local roads, outside the state road system, to the extent determined by him or her to be expedient and practicable;

(12) Discontinue, vacate and close any road or highway, or any part of any road or highway, the continuance and maintenance of which are found unnecessary and improper, upon petition and hearing or upon investigation initiated by the commissioner;

(13) Close any state road while under construction or repair and provide a temporary road during the time of the construction or repair;

(14) Adjust damages occasioned by construction, reconstruction or repair of any state road or the establishment of any temporary road;

(15) Establish and maintain a uniform system of road signs and markers;
(16) Fix standard widths for road rights-of-way, bridges and approaches to bridges and fix and determine grades and elevations therefor;

(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right-of-way, to the cost of construction, reconstruction, improvement or maintenance;

(19) Acquire, establish, construct, maintain and operate, in the name of the department, roadside recreational areas along and adjacent to state roads and highways;

(20) Exercise general supervision over the construction and maintenance of airports and landing fields under the jurisdiction of the West Virginia state aeronautics commission, of which the commissioner is a member, and make a study and general plan of a statewide system of airports and landing fields;

(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any municipality and upon terms that are agreeably arranged;

(22) Institute complaints before the public service commission or any other appropriate governmental agency relating to freight rates, car service and movement of road materials and equipment;

(23) Invoke any appropriate legal or equitable remedies to enforce his or her orders, to compel compliance with requirements of law and to protect and preserve the state road and highway system or any part of the system;
(24) Make and promulgate rules for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him or her by law;

(25) Delegate powers and duties to his or her appointees and employees who shall act by and under his or her direction and be responsible to him or her for their acts;

(26) Designate and define any construction and maintenance districts within the state road system that is found expedient and practicable;

(27) Contract for the construction, improvement and maintenance of the roads;

(28) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with and cooperation in programs of the United States government and any proper department, bureau or agency of the United States government relating to plans, surveys, construction, reconstruction, improvement and maintenance of state roads and highways;

(29) Prepare budget estimates and requests;

(30) Establish a system of accounting covering and including all fiscal and financial matters of the department;

(31) Establish and advance a right-of-way acquisition revolving fund, a materials revolving fund and an equipment revolving fund;

(32) Enter into contracts and agreements with and cooperate in programs of counties, municipalities and other governmental agencies and subdivisions of the state relating to plans,
surveys, construction, reconstruction, improvement, maintenance and supervision of highways, roads, streets and other travel ways when and to the extent determined by the department to be expedient and practical;

(33) Report, as provided by law, to the governor and the Legislature;

(34) Purchase materials, supplies and equipment required for the state road program and system;

(35) Dispose of all obsolete and unusable and surplus supplies and materials which cannot be used advantageously and beneficially by the department in the state road program by transfer of the supplies and materials to other governmental agencies and institutions by exchange, trade or sale of the supplies and materials;

(36) Investigate road conditions, official conduct of department personnel and fiscal and financial affairs of the department and hold hearings and make findings thereon or on any other matters within the jurisdiction of the department;

(37) Establish road policies and administrative practices;

(38) Fix and revise from time to time tolls for transit over highway projects constructed by the division of highways after the first day of May, one thousand nine hundred ninety-nine, that have been authorized by the provisions of section five-b, article seventeen-a of this chapter;

(39) Take actions necessary to alleviate any conditions as the governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the department of highways; and
(40) Provide family restrooms at all rest areas along interstate highways in this state, all to be constructed in accordance with federal law.

CHAPTER 267

(Com. Sub. for S. B. 690 — By Senators Bowman, Helmick, Craigo, Edgell, Jackson, Plymale, Snyder, Bailey, Sharpe, Ross, Mitchell, Rowe and Fanning)

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

AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article one, chapter twenty-two-c of said code, all relating generally to salary increases for public officials; and increasing the salary of members of the West Virginia racing commission and water development authority board members from five thousand dollars to twelve thousand dollars a year.

Be it enacted by the Legislature of West Virginia:

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

Chapter
22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.
ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the governor for the term for which the governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Prior to the first day of July, two thousand one, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand one, and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:

Administrator, division of highways, ninety thousand dollars; administrator, state tax division, sixty-five thousand dollars; administrator, division of corrections, seventy-five thousand dollars; administrator, division of natural resources, seventy thousand dollars; superintendent, state police, seventy-five thousand dollars; administrator, lottery division, seventy-five thousand dollars; director, public employees insurance agency, seventy-five thousand dollars; administrator, division
of banking, sixty thousand dollars; administrator, division of insurance, sixty thousand dollars; administrator, division of culture and history, fifty-five thousand dollars; administrator, alcohol beverage control commission, seventy thousand dollars; administrator, division of motor vehicles, seventy thousand dollars; director, division of personnel, fifty-five thousand dollars; adjutant general, seventy-five thousand dollars; chairman, health care authority, seventy thousand dollars; members, health care authority, sixty thousand dollars; director, human rights commission, forty-five thousand dollars; administrator, division of labor, sixty thousand dollars; administrator, division of veterans' affairs, forty-five thousand dollars; administrator, division of emergency services, forty-five thousand dollars; members, board of parole, forty-five thousand dollars; members, employment security review board, seventeen thousand dollars; members, workers' compensation appeal board, seventeen thousand eight hundred dollars; administrator, bureau of employment programs, seventy thousand dollars; administrator, bureau of commerce, seventy thousand dollars; administrator, bureau of environment, seventy thousand dollars; and director, office of miner's health, safety and training, sixty-five thousand dollars. Secretaries of the departments shall be paid an annual salary as follows: Health and human resources, ninety thousand dollars; transportation, seventy-five thousand dollars; tax and revenue, seventy-five thousand dollars; military affairs and public safety, seventy-five thousand dollars; administration, seventy-five thousand dollars; education and the arts, seventy-five thousand dollars; and environmental protection, seventy-five thousand dollars.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and, prior to the first day of July, two thousand two, each of the state officers named in this subsection shall continue to receive the annual salaries he or she was receiving as of the effective date of the enactment of this section in two thousand two, and
shall thereafter, notwithstanding any other provision of this code to the contrary, be paid an annual salary as follows:

Administrator, division of risk and insurance management, fifty-five thousand dollars; director, division of rehabilitation services, sixty thousand dollars; executive director, educational broadcasting authority, sixty thousand dollars; secretary, library commission, sixty-seven thousand dollars; director, geological and economic survey, fifty-two thousand five hundred dollars; executive director, prosecuting attorneys institute, sixty thousand dollars; executive director, public defender services, sixty thousand dollars; commissioner, bureau of senior services, seventy thousand dollars; director, state rail authority, fifty-five thousand dollars; executive secretary, women's commission, thirty-one thousand dollars; director, hospital finance authority, twenty-six thousand dollars; member, racing commission, twelve thousand dollars; chairman, public service commission, seventy thousand dollars; and members, public service commission, seventy thousand dollars.

(c) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless the appointive state officer has first filed with the state auditor and the legislative auditor a sworn statement, on a form to be prescribed by the attorney general, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The attorney general shall prepare and distribute the form to the affected spending units.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.
§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority; compensation.

(a) The water development authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

(b) The authority is controlled, managed and operated by the seven-member board known as the water development board. The director of the division of environmental protection, the commissioner of the bureau for public health and the state officer or employee who, in the judgment of the governor, is most responsible for economic or community development are members ex officio of the board. The governor shall designate annually the member who is the state officer or employee most responsible for economic or community development. The other four members of the board are appointed by the governor, by and with the advice and consent of the Senate, for terms of two, three, four and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. Each board member serves until the appointment and qualification of his or her successor. No more than two of the appointed board members shall at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms.
(c) All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his or her duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two of said chapter. The governor may remove any board member for cause as provided in article six of said chapter.

(d) Annually the board shall elect one of its appointed members as chair and another as vice chair and shall appoint a secretary-treasurer, who need not be a member of the board. Four members of the board is a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if he or she is appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

(e) The secretary of the division of environmental protection, the commissioner of the bureau for public health and the state officer or employee most responsible for economic or community development shall not receive any compensation for serving as board members. Each of the four appointed members of the board shall receive an annual salary of twelve thousand dollars, payable in monthly installments. Each of the seven board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of the board. All expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for that purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.
(f) There shall also be a director of the authority appointed by the board. The compensation of the director shall be fixed by the board.

CHAPTER 268

(H. B. 4060 — By Delegates Swartzmiller, Varner, Stemple and DeLong)

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

AN ACT to amend and reenact section seventeen-c, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary increments for deputy sheriffs; and removing the sixteen-year cap for determining years of service to calculate salary increment.

Be it enacted by the Legislature of West Virginia:

That section seventeen-c, article fourteen, 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 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17c. Salary increment.

Every deputy sheriff with one year or more of service shall receive an annual salary increase in the sum of five dollars per month for each year of service. Any incremental salary increase in effect prior to the effective date of this section that is more favorable to the deputy sheriffs entitled to such increase shall remain in full force and effect to the exclusion of the provisions of this section.
CHAPTER 269

(S. B. 164 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

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

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an increase in the annual base salary of all sworn state police personnel by eight hundred four dollars, effective on the first day of July, two thousand two.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia state police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic labora-
(b) The superintendent may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Beginning on the first day of July, two thousand two, and continuing thereafter, members shall receive annual salaries as follows:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Monthly Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$2,106 Mo.</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
<td>$2,509 Mo.</td>
</tr>
<tr>
<td>Trooper Second Year</td>
<td>$30,572</td>
</tr>
<tr>
<td>Trooper Third Year</td>
<td>$30,944</td>
</tr>
<tr>
<td>Trooper Fourth &amp; Fifth Year</td>
<td>$31,244</td>
</tr>
<tr>
<td>Senior Trooper</td>
<td>$33,332</td>
</tr>
<tr>
<td>Trooper First Class</td>
<td>$35,420</td>
</tr>
<tr>
<td>Corporal</td>
<td>$37,508</td>
</tr>
<tr>
<td>Sergeant</td>
<td>$41,684</td>
</tr>
<tr>
<td>First Sergeant</td>
<td>$43,772</td>
</tr>
<tr>
<td>Second Lieutenant</td>
<td>$45,860</td>
</tr>
<tr>
<td>First Lieutenant</td>
<td>$47,948</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Captain</td>
<td>50,036</td>
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<tr>
<td>Major</td>
<td>52,124</td>
</tr>
<tr>
<td>Lieutenant Colonel</td>
<td>54,212</td>
</tr>
</tbody>
</table>

43  ANNUAL SALARY SCHEDULE (BASE PAY)
44  ADMINISTRATION SUPPORT
45  SPECIALIST CLASSIFICATION

<table>
<thead>
<tr>
<th>Classification</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>31,244</td>
</tr>
<tr>
<td>II</td>
<td>33,332</td>
</tr>
<tr>
<td>III</td>
<td>35,420</td>
</tr>
<tr>
<td>IV</td>
<td>37,508</td>
</tr>
<tr>
<td>V</td>
<td>41,684</td>
</tr>
<tr>
<td>VI</td>
<td>43,772</td>
</tr>
<tr>
<td>VII</td>
<td>45,860</td>
</tr>
<tr>
<td>VIII</td>
<td>47,948</td>
</tr>
</tbody>
</table>

54  ANNUAL SALARY SCHEDULE (BASE PAY)
55  CRIMINALIST CLASSIFICATION

<table>
<thead>
<tr>
<th>Classification</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>31,244</td>
</tr>
<tr>
<td>II</td>
<td>33,332</td>
</tr>
<tr>
<td>III</td>
<td>35,420</td>
</tr>
<tr>
<td>IV</td>
<td>37,508</td>
</tr>
<tr>
<td>V</td>
<td>41,684</td>
</tr>
<tr>
<td>VI</td>
<td>43,772</td>
</tr>
<tr>
<td>VII</td>
<td>45,860</td>
</tr>
</tbody>
</table>

63  Each member of the West Virginia state police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in subsection (e) of this section and supplemental pay as provided in subsection (g) of this section.

(e) Each member of the West Virginia state police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set
forth in subsection (d) of this section, for grade in rank, based
on length of service, including that service served before and
after the effective date of this section with the West Virginia
state police as follows: At the end of five years of service with
the West Virginia state police, the member shall receive a
salary increase of six hundred dollars to be effective during his
or her next three years of service and a like increase at three-
year intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section
where salary increases are provided for length of service,
members of the West Virginia state police in service at the time
the schedules become effective shall be given credit for prior
service and shall be paid the salaries the same length of service
entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the
unique duties of members of the West Virginia state police, it
is not appropriate to apply the provisions of state wage and hour
laws to them. Accordingly, members of the West Virginia state
police are excluded from the provisions of state wage and hour
law. This express exclusion shall not be construed as any
indication that the members were or were not covered by the
wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have
received under the wage and hour law, and in addition to their
salaries and increases for length of service, members who have
completed basic training and who are exempt from federal Fair
Labor Standards Act guidelines may receive supplemental pay
as provided in this section.

The superintendent shall, within thirty days after the
effective date of this section, propose a legislative rule for
promulgation in accordance with article three, chapter
twenty-nine-a of this code to establish the number of hours per
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month which constitute the standard work month for the
members of the West Virginia state police. The rule shall
further establish, on a graduated hourly basis, the criteria for
receipt of a portion or all of supplemental payment when hours
are worked in excess of the standard work month. The superin-
tendent shall certify monthly to the West Virginia state police’s
payroll officer the names of those members who have worked
in excess of the standard work month and the amount of their
entitlement to supplemental payment. The supplemental
payment may not exceed two hundred thirty-six dollars
monthly. The superintendent and civilian employees of the
West Virginia state police are not eligible for any supplemental
payments.

(h) Each member of the West Virginia state police, except
the superintendent and civilian employees, shall execute, before
entering upon the discharge of his or her duties, a bond with
security in the sum of five thousand dollars payable to the state
of West Virginia, conditioned upon the faithful performance of
his or her duties, and the bond shall be approved as to form by
the attorney general and as to sufficiency by the governor.

(i) Any member of the West Virginia state police who is
called to perform active duty training or inactive duty training
in the national guard or any reserve component of the armed
forces of the United States annually shall be granted, upon
request, leave time not to exceed thirty calendar days for the
purpose of performing the active duty training or inactive duty
training and the time granted may not be deducted from any
leave accumulated as a member of the West Virginia state
police.
CHAPTER 270

(S. B. 648 — By Senators Kessler, Helmick, Edgell, Unger, Minard, Prezioso, Anderson, Fanning, Mitchell, Snyder, Plymale, Sharpe, Ross, Rowe, Hunter, Caldwell, Oliverio, Facemyer, Minear, Wooton, Jackson, Craigo, McCabe, McKenzie, Tomblin, Mr. President, Bowman, Redd, Burnette, Love and Bailey)

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

AN ACT to amend and reenact sections one-a and one-c, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to increasing salaries for conservation officers; and establishing a new pay plan.

Be it enacted by the Legislature of West Virginia:

That sections one-a and one-c, article seven, chapter twenty 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. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1a. Conservation officers salary increase based on length of service.

1 (a) Effective the first day of July, two thousand two, each conservation officer shall receive and be entitled to an increase in salary based on length of service, including that heretofore and hereafter served as a conservation officer as follows: For five years of service with the division, a conservation officer shall receive a salary increase of six hundred dollars per year payable during his or her next three years of service and a like
8 increase at three-year intervals thereafter, with these increases
9 to be cumulative. A salary increase shall be based upon years of
10 service as of the first day of July of each year and may not be
11 recalculated until the first day of July of the following year.

12 Conservation officers in service at the time the amendment
13 to this section becomes effective shall be given credit for prior
14 service and shall be paid such salaries as the same length of
15 service will entitle them to receive under the provisions hereof.

16 (b) This section does not apply to special or emergency
17 conservation officers appointed under the authority of section
18 one of this article.

§20-7-1c. Conservation officers, ranks, salary schedule, base pay,
exceptions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the ranks within the law-enforcement section of the
3 division of natural resources are colonel, lieutenant colonel,
4 major, captain, lieutenant, sergeant, corporal, conservation
5 officer first class, senior conservation officer, conservation
6 officer and conservation officer-in-training. Each officer while
7 in uniform shall wear the insignia of rank as provided by the
8 chief conservation officer.

9 (b) Beginning on the first day of July, two thousand two,
10 and continuing thereafter, conservation officers shall be paid
11 the minimum annual salaries based on the following schedule:

12 ANNUAL SALARY SCHEDULE (BASE PAY)
13 SUPERVISORY AND NONSUPERVISORY RANKS

14 Conservation Officer-In-Training
15 (first year until end of probation) ............... $26,337
16 Conservation Officer (second year) ............... $29,768
17 Conservation Officer (third year) ............... $30,140
<table>
<thead>
<tr>
<th>Rank</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 Senior Conservation Officer (fourth and fifth year)</td>
<td>$30,440</td>
</tr>
<tr>
<td>19 Senior Conservation Officer First Class</td>
<td></td>
</tr>
<tr>
<td>20 (after fifth year)</td>
<td>$32,528</td>
</tr>
<tr>
<td>21 Senior Conservation Officer (after tenth year)</td>
<td>$33,104</td>
</tr>
<tr>
<td>22 Senior Conservation Officer (after fifteenth year)</td>
<td>$33,528</td>
</tr>
<tr>
<td>23 Corporal (after sixteenth year)</td>
<td>$36,704</td>
</tr>
<tr>
<td>24 Sergeant</td>
<td>$40,880</td>
</tr>
<tr>
<td>25 First Sergeant</td>
<td>$42,968</td>
</tr>
<tr>
<td>26 Lieutenant</td>
<td>$47,144</td>
</tr>
<tr>
<td>27 Captain</td>
<td>$49,232</td>
</tr>
<tr>
<td>28 Major</td>
<td>$51,320</td>
</tr>
<tr>
<td>29 Lieutenant Colonel</td>
<td>$53,408</td>
</tr>
<tr>
<td>30 Colonel</td>
<td></td>
</tr>
</tbody>
</table>

Conservation officers in service at the time the amendment to this section becomes effective shall be given credit for prior service and shall be paid salaries as the same length of service will entitle them to receive under the provisions of this section.

(c) This section does not apply to special or emergency conservation officers appointed under the authority of section one of this article.

(d) Nothing in this section prohibits other pay increases as provided for under section two, article five, chapter five of this code: Provided, That any across-the-board pay increase granted by the Legislature or the governor will be added to, and reflected in, the minimum salaries set forth in this section; and that any merit increases granted to an officer over and above the annual salary schedule listed in subsection (b) of this section are retained by an officer when he or she advances from one rank to another.
AN ACT to amend and reenact section twelve, article two-a, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the benefits of surviving spouses of certain members of the state police who die in the performance of duty.

Be it enacted by the Legislature of West Virginia:

That section twelve, article two-a, 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 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-12. Awards and benefits to dependents of member - When member dies in performance of duty, etc.; dependent child scholarship and amount.

1 The surviving spouse, the dependent child or children or dependent parent or parents of any member who has lost or shall lose his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members while the member was or shall be engaged in the performance of his or her duties as a member of the division, or the survivor of a member who dies from any cause after having been retired pursuant to the
provisions of section nine of this article, shall be entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime, one or the other of two amounts, which shall become immediately available and which shall be the greater of:

(1) An amount equal to seven tenths of the base salary received in the preceding twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the division for twelve months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

In addition thereto, the surviving spouse shall be entitled to receive and there shall be paid to such person one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the fund a sum equal to one fourth of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is but one dependent parent surviving, that parent is entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

Any person qualifying as a surviving dependent child under this section shall, in addition to any other benefits due under this or other sections of this article, be entitled to receive a scholarship to be applied to the career development education
of that person. This sum, up to but not exceeding seven thousand five hundred dollars, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

Awards and benefits for a surviving spouse or dependents of a member received under any section or any of the provisions of this retirement system shall be in lieu of receipt of any benefits for these persons under the provisions of any other state retirement system. Receipt of benefits under any other state retirement system shall be in lieu of any right to receive any benefits under this retirement system, so that only a single receipt of state retirement benefits shall occur.

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CHAPTER 272

(H. B. 4619—By Delegate Staton)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections one-c, two, three, five, seven, eight, nine, fourteen, eighteen-a and twenty-four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to establishment of stormwater systems and associated stormwater management programs within a public service district; general purpose of districts, including authority for stormwater systems and stormwater management programs, excluding drainage easements or stormwater facilities owned or operated by the West Virginia division of highways; creation of districts by county commission; providing for contracts between a public service district and a city, town or other municipal corporation to furnish stormwater services; allowing a general manager of a municipal stormwater system or a public service district to provide professional management to another public service district purchasing services from such municipal system or district; acquisition, construction, operation and extension of stormwater systems and stormwater management programs by a public service district; right of eminent domain; service rates, fees and charges for stormwater service; authority to charge rates, fees and charges after thirty days notice of availability of a stormwater system; liens for delinquent fees; cost of properties acquired; sale, lease or rental of stormwater system; and acceptance of loans, grants and temporary advances.

Be it enacted by the Legislature of West Virginia:

That sections one-c, two, three, five, seven, eight, nine, fourteen, eighteen-a and twenty-four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.
§16-13A-1c. General purpose of districts.

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water, sewerage or stormwater services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with: (1) The diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as “water facilities”); (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as “sewer facilities” or “landfills”); (3) the distribution or the furnishing of natural gas to the public for industrial, public,
private or other uses (herein sometimes referred to as "gas utilities or gas system"); or (4) the collection, control or disposal of stormwater (herein sometimes referred to as "stormwater system" or "stormwater systems"), or (5) the management, operation, maintenance and control of stormwater and stormwater systems (herein sometimes referred to as "stormwater management program" or "stormwater management programs"). As used in this article "stormwater system" or "stormwater systems" means a stormwater system in its entirety or any integral part thereof used to collect, control or dispose of stormwater, and includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations: Provided, That the term "stormwater system" or "stormwater systems" does not include highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways. As used in this article "stormwater management program" or "stormwater management programs" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and includes, but is not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law: Provided, however, That the term "stormwater management program" or "stormwater management programs" does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West
55 Virginia division of highways without the express agreement of
56 the commissioner of highways.

§16-13A-2. Creation of districts by county commission; enlarging,
reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers
of county commission; filing list of members and
districts with the secretary of state.

(a) The county commission of any county may propose the
creation, enlargement, reduction, merger, dissolution, or
consolidation of a public service district by any of the following
methods: (1) On its own motion by order duly adopted, (2)
upon the recommendation of the public service commission, or
(3) by petition of twenty-five percent of the registered voters
who reside within the limits of the proposed public service
district within one or more counties. The petition shall contain
a description, including metes and bounds, sufficient to identify
the territory to be embraced therein and the name of such
proposed district: Provided, That after the effective date of this
section, no new public service district shall be created, en-
larged, reduced, merged, dissolved or consolidated under this
section without the written consent and approval of the public
service commission, which approval and consent shall be in
accordance with rules promulgated by the public service
commission and may only be requested after consent is given
by the appropriate county commission or commissions pursuant
to this section. Any territory may be included regardless of
whether or not the territory includes one or more cities,
incorporated towns or other municipal corporations which own
and operate any public service properties and regardless of
whether or not it includes one or more cities, incorporated
towns or other municipal corporations being served by privately
owned public service properties: Provided, however, That the
same territory shall not be included within the boundaries of
more than one public service district except where the territory
or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services, stormwater services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county
commission and clerk thereof of each of the other counties into
which the territory extends of the date so fixed. The clerk of the
county commission of each county in which any territory in the
proposed public service district is located shall cause notice of
the hearing and the time and place thereof, and setting forth a
description of all of the territory proposed to be included
therein to be given by publication as a Class I legal advertise-
ment in compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for the publica-
tion shall be by publication in each city, incorporated town or
municipal corporation if available in each county in which any
territory in the proposed public service district is located. The
publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlarge-
ment, reduction, merger, dissolution or consolidation of the
public service districts are initiated by petition as aforesaid, the
person filing the petition shall advance or satisfactorily indem-
nify the payment of the cost and expenses of publishing the
hearing notice, and otherwise the costs and expenses of the
notice shall be paid in the first instance by the county commis-
sion out of contingent funds or any other funds available or
made available for that purpose. In addition to the notice
required herein to be published, there shall also be posted in at
least five conspicuous places in the proposed public service
district, a notice containing the same information as is con-
tained in the published notice. The posted notices shall be
posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest
in property in the proposed public service district shall have an
opportunity to be heard for and against its creation, enlarge-
ment, reduction, merger, dissolution or consolidation. At the
hearing the county commission before which the hearing is
conducted shall consider and determine the feasibility of the
creation, enlargement, reduction, merger, dissolution or
consolidation of the proposed district. If the county commission
determines that the construction or acquisition by purchase or
otherwise and maintenance, operation, improvement and
extension of public service properties by the public service
district will be conducive to the preservation of public health,
comfort and convenience of such area, the county commission
shall by order create, enlarge, reduce, merge, dissolve or
consolidate such public service district. If the county commis-
sion, after due consideration, determines that the proposed
district will not be conducive to the preservation of public
health, comfort or convenience of the area or that the creation,
enlargement, reduction, merger, dissolution or consolidation of
the proposed district as set forth and described in the petition or
order is not feasible, it may refuse to enter an order creating the
district or it may enter an order amending the description of the
proposed district and create, enlarge, reduce, merge, dissolve or
consolidate the district as amended.

(f) If the county commission determines that any other
public service district or districts can adequately serve the area
of the proposed public service district, whether by enlargement,
reduction, merger, dissolution or consolidation, it shall refuse
to enter the order, but shall enter an order creating, enlarging,
reducing, merging, dissolving or consolidating the area with an
existing public service district, in accordance with rules adopted
by the public service commission for such purpose: Provided,
That no enlargement of a public service district may occur if the
present or proposed physical facilities of the public service
district are determined by the appropriate county commission
or the public service commission to be inadequate to provide
such enlarged service. The clerk of the county commission of
each county into which any part of such district extends shall
retain in his office an authentic copy of the order creating,
enlarging, reducing, merging, dissolving or consolidating the
district: Provided, however, That within ten days after the entry
of an order creating, enlarging, reducing, merging, dissolving
or consolidating a district, such order must be filed for review
and approval by the public service commission. The public
service commission shall provide a hearing in the affected
county on the matter and may approve, reject or modify the
order of the county commission if it finds it is in the best
interests of the public to do so. The public service commission
shall adopt rules relating to such filings and the approval,
disapproval or modification of county commission orders for
creating, enlarging, merging, dissolving or consolidating
districts. The provisions of this section shall not apply to the
implementation by a county commission of an order issued by
the public service commission pursuant to this section and
section one-b, of this article.

(g) The county commission may, if in its discretion it
deems it necessary, feasible and proper, enlarge the district to
include additional areas, reduce the area of the district, where
facilities, equipment, service or materials have not been
extended, or dissolve the district if inactive or create or consoli-
date two or more such districts. If consolidation of districts is
not feasible, the county commission may consolidate and
centralize management and administration of districts within its
county or multi-county area to achieve efficiency of operations:
Provided, That where the county commission determines on its
own motion by order entered of record, or there is a petition to
enlarge the district, merge and consolidate districts, or the
management and administration thereof, reduce the area of the
district or dissolve the district if inactive, all of the applicable
provisions of this article providing for hearing, notice of
hearing and approval by the public service commission shall
apply. The commission shall at all times attempt to bring about
the enlargement or merger of existing public service districts in
order to provide increased services and to eliminate the need for
creation of new public service districts in those areas which are
not currently serviced by a public service district: Provided,
however, That where two or more public service districts are
consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, or for furnishing stormwater services for the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years,
but provisions may be included therein for a renewal or
successive renewals thereof and shall conform to and comply
with the rights of the holders of any outstanding bonds issued
by the municipalities for the public service properties.

The powers of each public service district shall be vested in
and exercised by a public service board consisting of not less
than three members, who shall be persons residing within the
district, who possess certain educational, business or work
experience which will be conducive to operating a public
service district. Each board member shall, within six months of
taking office, successfully complete the training program to be
established and administered by the public service commission
in conjunction with the division of environmental protection
and the bureau of public health. Board members shall not be or
become pecuniarily interested, directly or indirectly, in the
proceeds of any contract or service, or in furnishing any
supplies or materials to the district nor shall a former board
member be hired by the district in any capacity within a
minimum of twelve months after board member’s term has
expired or such board member has resigned from the district
board. The members shall be appointed in the following
manner:

Each city, incorporated town or other municipal corporation
having a population of more than three thousand but less than
eighteen thousand is entitled to appoint one member of the
board, and each city, incorporated town or other municipal
corporation having a population in excess of eighteen thousand
shall be entitled to appoint one additional member of the board
for each additional eighteen thousand population. The members
of the board representing such cities, incorporated towns or
other municipal corporations shall be residents thereof and shall
be appointed by a resolution of the governing bodies thereof
and upon the filing of a certified copy or copies of the resolu-
tion or resolutions in the office of the clerk of the county
commission which entered the order creating the district, the
persons so appointed become members of the board without any
further act or proceedings. If the number of members of the
board so appointed by the governing bodies of cities, incorpor-
rated towns or other municipal corporations included in the
district equals or exceeds three, then no further members shall
be appointed to the board and the members so appointed are the
board of the district except in cases of merger or consolidation
where the number of board members may equal five.

If no city, incorporated town or other municipal corporation
having a population of more than three thousand is included
within the district, then the county commission which entered
the order creating the district shall appoint three members of the
board, who are persons residing within the district and residing
within the state of West Virginia, which three members become
members of the board of the district without any further act or
proceedings except in cases of merger or consolidation where
the number of board members may equal five.

If the number of members of the board appointed by the
governing bodies of cities, incorporated towns or other munici-
pal corporations included within the district is less than three,
then the county commission which entered the order creating
the district shall appoint such additional member or members
of the board, who are persons residing within the district, as is
necessary to make the number of members of the board equal
tree except in cases of merger or consolidation where the
number of board members may equal five, and the member or
members appointed by the governing bodies of the cities,
incorporated towns or other municipal corporations included
within the district and the additional member or members
appointed by the county commission as aforesaid, are the board
of the district. A person may serve as a member of the board in
one or more public service districts.
The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner.
as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member’s name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district’s operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

§16-13A-5. General manager of board.
The board may employ a general manager to serve a term of not more than five years and until his or her successor is employed, and his or her compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his or her time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he or she shall perform and exercise such other powers and duties as may be conferred upon him or her by the board.

Such general manager shall be chosen without regard to his or her political affiliations and upon the sole basis of his or her administrative and technical qualifications to manage public service properties and affairs of the district and he or she may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he or she is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water, sewer or stormwater service from a municipal water, sewer or stormwater system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water, sewer or stormwater system or public service district from which such water, sewer or stormwater service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service.

§16-13A-7. Acquisition and operation of district properties.
The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same, including, but not limited to, those activities necessary to comply with all federal and state requirements, including water quality improvement activities. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.
§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities, stormwater facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or other municipal corporations and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.
Whenever such district has constructed, acquired or established water facilities, sewer facilities, a stormwater system, stormwater management program or gas facilities for water, sewer, stormwater or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That the power of eminent domain provided in this section does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways: Provided, however, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made
§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates, fees and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways. Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any
premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall deposit a minimum of fifty dollars with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates, fees and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, fees, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other
public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the bureau of public health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be transported by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section
nine, article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the bureau of public health; maintenance and operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available
to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the bureau of public health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

Whenever any district has made available a stormwater system to any owner, tenant or occupant of any real property located near such stormwater system, and where stormwater from such real property affects or drains into such stormwater system, it is hereby found, determined and declared that such owner, tenant or occupant is being served by such stormwater system, and it is further hereby found, determined and declared that the mandatory use of such stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of such district and of the state. The district may charge, and such owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-day notice of the availability of the stormwater system has been received by the owner.

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, stormwater systems or stormwater management systems or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall
pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.

Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven, article eleven, chapter twenty-two of this code, is exempt from the provisions of this section.


The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, water quality improvement activities necessary to comply with all federal and state requirements; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.
§16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.

In any case where a public service district owns a water, sewer, stormwater or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer, stormwater or gas system to any municipality or privately-owned water, sewer, stormwater or gas system, or to any water, sewer, stormwater or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer, stormwater or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer, stormwater or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer, stormwater or gas

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems, stormwater systems or stormwater management systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said water system, sewage system, stormwater system or associated stormwater management system or gas facilities, or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.
CHAPTER 273

(S. B. 471 — By Senators Bowman, Bailey, Burnette, Jackson, Kessler, Minard, Redd, Rowe and Snyder)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six, all relating to continuing the capitol building commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-1. Creation; composition; qualifications.

§4-8-6. Continuation of commission.

§4-8-1. Creation; composition; qualifications.

There is a capitol building commission, hereinafter referred to as the commission, which is composed of five members who are appointed by the governor, with the advice and consent of the Senate, plus the secretary of the department of administration who shall be a nonvoting member. No more than three members may be of the same political party. One member shall
be an architect selected from three persons recommended by the
board of architects, one member shall be a registered profes-
sional engineer selected from three persons recommended by
the board of engineers, one member shall be the commissioner
of the division of culture and history who is chairman of the
commission and two members shall be selected from the public
at large.

§4-8-6. Continuation of commission.

Pursuant to the provisions of article ten of this chapter, the
capitol building commission shall continue to exist until the
first day of July, two thousand four, unless sooner terminated,
continued or reestablished by act of the Legislature.

CHAPTER 274

(H. B. 4662 — By Delegates Douglas, Kuhn, Varner,
Butcher, Prunty, Leggett and Border)

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

AN ACT to amend and reenact sections four, four-a, five, five-a and
five-b, article ten, chapter four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, changing agency
termination dates pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

That sections four, four-a, five, five-a and five-b, article ten,
chapter four of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted, all to read as
follows:
ARTICLE 10. WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.
§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.
§4-10-5. Termination of agencies following preliminary performance reviews.
§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.
§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a full performance evaluation has been conducted upon the agency:

4 (1) On the first day of July, two thousand three: Division of culture and history; division of motor vehicles; division of environmental protection; division of natural resources; department of health and human resources; purchasing division within the department of administration; investment management board; and school building authority.

10 (2) On the first day of July, two thousand four: Division of personnel; division of rehabilitation services; division of labor; and workers’ compensation.

13 (3) On the first day of July, two thousand five: Parkways, economic development and tourism authority; department of tax and revenue; division of highways; division of corrections; West Virginia public land corporation; office of insurance commissioner; James ‘Tiger’ Morton catastrophic illness commission; and tourism functions within the development office.
§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a full performance evaluation:

(1) On the first day of July, two thousand three: Office of judges in workers’ compensation.

§4-10-5. Termination of agencies following preliminary performance reviews.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a preliminary performance review has been conducted upon the agency:

(1) On the first day of July, one thousand nine hundred ninety-six: Juvenile facilities review panel.

(2) On the first day of July, one thousand nine hundred ninety-seven: Public employees insurance agency advisory board; cable television advisory board.

(3) On the first day of July, one thousand nine hundred ninety-nine: Tree fruit industry self-improvement assessment program.

(4) On the first day of July, two thousand: Terms of family law master and family law master system.

(5) On the first day of July, two thousand three: Driver’s licensing advisory board; West Virginia commission for national and community service; West Virginia’s membership in the southern regional education board; bureau of senior
services; public employees insurance agency finance board; state police; oil and gas inspector's examining board; advisory council on public health; office of explosives and blasting; office of coalfield community development; workers' compensation appeal board; holocaust education commission; governors' office of fiscal analysis and management; marketing and development division of the department of agriculture; manufactured housing construction and safety board; records management and preservation board; public energy authority and public energy authority board; and environmental quality board.

(6) On the first day of July, two thousand four: Meat inspection program of the department of agriculture; state board of risk and insurance management; real estate commission; rural health advisory panel; state fire commission; motorcycle safety awareness board; motor vehicle dealers advisory board; interstate commission on uniform state laws; design-build board; center for professional development board; parks section and parks functions of the division of natural resources; office of water resources of the division of environmental protection; division of protective services; state rail authority; care home advisory board; steel advisory commission and steel futures program; children's health policy board; capitol building commission; public defender services; and interstate commission on the Potomac River basin.

(7) On the first day of July, two thousand five: Board of banking and financial institutions; lending and credit rate board; governor's cabinet on children and families; oil and gas conservation commission; health care authority; educational broadcasting authority; clean coal technology council; racing commission; and emergency medical services advisory council.

(8) On the first day of July, two thousand six: Family protection services board; medical services fund advisory council; West Virginia stream partners program; Ohio River valley water sanitation commission; state lottery commission;
whitewater commission within the division of natural resources; unemployment compensation; women’s commission; and soil conservation committee.

(9) On the first day of July, two thousand seven: Human rights commission.

(10) On the first day of July, two thousand eight: Ethics commission.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a preliminary performance review:

(1) On the first day of July, two thousand: State building commission.

(2) On the first day of July, two thousand three: Commission for the deaf and hard-of-hearing; state geological and economic survey; public employees insurance agency; West Virginia contractor licensing board; personal assistance service program; and public service commission.

(3) On the first day of July, two thousand four: Office of the environmental advocate; and veterans’ council.

(4) On the first day of July, two thousand five: Bureau for child support enforcement.

§4-10-5b. Termination of boards created to regulate professions and occupations.
(a) The legislative auditor shall evaluate each board created under chapter thirty of this code to regulate professions and occupations, at least once every twelve years. The evaluation shall assess whether the board complies with the policies and provisions of chapter thirty of this code and other applicable laws and rules, whether the board follows a disciplinary procedure which observes due process rights and protects the public interest, and whether the public interest requires that the board be continued.

(b) The following boards terminate on the date indicated, but no board terminates under this section unless a regulatory board evaluation has been conducted upon the board:

(1) On the first day of July, two thousand one: Board of licensed dietitians.

(2) On the first day of July, two thousand three: Board of pharmacy; board of dental examiners; board of osteopathy; board of examiners of psychologists; and massage therapy licensure board.

(3) On the first day of July, two thousand four: Board of examiners of land surveyors; board of landscape architects; board of architects; and board of registration for foresters.

(4) On the first day of July, two thousand five: Board of social work examiners; board of accountancy; board of veterinary medicine; acupuncture board; and board of medicine.

(5) On the first day of July, two thousand six: Board of examiners in counseling.

(6) On the first day of July, two thousand seven: Board of registration for sanitarians; board of embalmers and funeral directors; board of optometry; and board of respiratory care practitioners.
(7) On the first day of July, two thousand eight: Nursing home administrators board; board of hearing aid dealers; and board of barbers and cosmetologists.

(8) On the first day of July, two thousand nine: Board of physical therapy; board of chiropractic examiners; and board of occupational therapy.

(9) On the first day of July, two thousand ten: Board of registration for professional engineers; board of examiners for registered professional nurses; board of examiners for licensed practical nurses; board of examiners for speech language pathology and audiology; and radiologic technology board of examiners.

CHAPTER 275

(S. B. 468 — By Senators Bowman, Bailey, Burnette, Jackson, Kessler, Minard, Redd, Rowe and Snyder)

[Passed February 15, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of purchasing within the department of administration.

Be it enacted by the Legislature of West Virginia:

That section fifty-seven, article three, 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 3. PURCHASING DIVISION.
§5A-3-57. Continuation of the division of purchasing.

Pursuant to the provisions of article ten, chapter four of this code, the division of purchasing within the department of administration shall continue to exist until the first day of July, two thousand three, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 276

(S. B. 472 — By Senators Bowman, Bailey, Burnette, Jackson, Kessler, Minard, Redd, Rowe and Snyder)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen-a, all relating to continuing the records management and preservation board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.
§5A-8-15. Records management and preservation of county records; alternate storage of county records; records management and preservation board created; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

§5A-8-15a. Continuation of board.

§5A-8-15. Records management and preservation of county records; alternate storage of county records; records management and preservation board created; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

1 The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.

4 (a) The governing body and the chief elected official of any unit of each county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. Such county governing entity may, as far as practical, follow the program established for the uniform management and preservation of county records as set out in a rule or rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as proposed by the records management and preservation board established herein.

15 (b) In the event any such governing body or the chief elected official of a unit of a county government entity decides to destroy or otherwise dispose of a county record, the governing body or such chief elected official may, prior to destruction or disposal thereof, offer the record to the director of the section of archives and history of the division of culture and history for
preservation of the record as a document of historical value. Unless authorized by the supreme court of appeals, the records of courts of record and magistrate courts are not affected by the provisions of this section.

(c) A preservation duplicate of a county government entity record may be stored in any format, approved by the board as hereinafter established, where the image of the original record is preserved in a form, including CD-ROM and optical image storage media, in which the image thereof is incapable of erasure or alteration and from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original county government record.

Except for those formats, processes and systems used for the storage of records on the effective date of this section, no alternate format for the storage of county government entity records described in this section is authorized for the storage of county government entity records unless the particular format has been approved pursuant to a legislative rule promulgated by the board as herein created in accordance with the provisions of chapter twenty-nine-a of this code. The board as herein established may prohibit the use of any format, process or system used for the storage of records upon its determination that the same is not reasonably adequate to preserve the records from destruction, alteration or decay.

Upon creation of a preservation duplicate which stores an original county government entity record in an approved format in which the image thereof is incapable of erasure or alteration and from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record, the county government entity may destroy or otherwise dispose of the original in accordance with the provisions of section seven-c, article one, chapter fifty-seven of this code.
(d) There is hereby created a records management and preservation board for county government entities, to be composed of nine members.

(1) Three members shall serve ex officio. One member shall be the commissioner of the division of culture and history who shall be the chairman of the board. One member shall be the administrator of the supreme court of appeals. One member shall be the administrator of the governor’s office of technology or his or her designee.

(2) The governor shall appoint six members of the board with the advice and consent of the Senate. Not more than five appointments to the board may be from the same political party and not more than three members may be appointed from the same congressional district. Of the six members appointed by the governor: (i) Three appointments shall be county elected officials, one of whom shall be a clerk of the county commission, one of whom shall be a circuit court clerk and one of whom shall be a county commissioner, to be selected from a list of nine names, including the names of three clerks of county commissions and three circuit court clerks submitted to the governor by the West Virginia association of counties and the names of three county commissioners submitted to the governor jointly by the West Virginia association of counties and the West Virginia county commissioners association; (ii) one appointment shall be a county prosecuting attorney to be selected from a list of three names submitted by the West Virginia prosecuting attorneys institute; (iii) one appointment shall be an attorney licensed in West Virginia and in good standing as a member of the state bar with experience in real estate and mineral title examination, to be selected from a list of three names submitted by the state bar; and (iv) one appointment shall be a representative of a local historical or genealogical society.
(e) The members of the board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board. In the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.

(f) The staff of the board shall consist of the director of the archives and history section of the division of culture and history and such staff as he or she may designate to assist him or her.

(g) On or before the first day of July, two thousand one, the board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish a system of records management and preservation for county governments: Provided, That, for the retention and disposition of records of courts of record and magistrate courts, the implementation of the rule is subject to action of the West Virginia supreme court of appeals. The proposed rule or rules shall include provisions for establishing a program of grants to county governments for making records management and preservation uniform throughout the state. The board is not authorized to propose or promulgate emergency rules under the provisions of this section.

(h) On or before the first day of April, two thousand two, the board, in cooperation with the administrator and state executive agencies under the general authority of the governor, shall conduct a study of the records management and preservation needs of state executive agencies. Should the board determine a need for a uniform records management and preservation system for such agencies, it shall recommend that the administrator propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide for the implementation of a
uniform records management and preservation system for state executive agencies.

(i) In addition to the fees charged by the clerk of the county commission under the provisions of section ten, article one, chapter fifty-nine of this code, the clerk shall charge and collect an additional one-dollar fee for every document containing less than ten pages filed for recording and an additional one-dollar fee for each additional ten pages of such document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the special public records and preservation account as herein established in the state treasury all fees collected: Provided, That the clerk may retain not more than ten percent of such fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for the collection and deposit in the state treasury of all fees collected by such clerk under the provisions of this section.

There is hereby created in the state treasury a special account entitled the "public records and preservation revenue account". The account shall consist of all fees collected under the provisions of this section, legislative appropriations, interest earned from fees, investments, gifts, grants or contributions received by the board. Expenditures from the account shall be for the purposes set forth in this article and are not authorized 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 one, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

Subject to the above provision, the board may expend the funds in the account to implement the provisions of this article. In expending funds from the account, the board shall allocate not more than fifty percent of such funds for grants to counties
for records management, access and preservation purposes. The
board shall provide for applications, set guidelines and establish
procedures for distributing grants to counties including a
process for appealing an adverse decision on a grant applica-
tion. Expenditures from the account shall be for the purposes
set forth in this section, including the cost of additional staff of
the division of archives and history.

§5A-8-15a. Continuation of board.

The records management and preservation board shall
continue to exist until the first day of July, two thousand three,
pursuant to the provisions of article ten, chapter four of this
code, unless sooner terminated, continued or reestablished
pursuant to the provisions of that article.

CHAPTER 277

(S. B. 241 — By Senators Bowman, Bailey, Jackson, Kessler,
Minard, Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse)

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

AN ACT to amend and reenact section eleven, article two, chapter
six-b of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to continuing the ethics commis-
sion.

Be it enacted by the Legislature of West Virginia:

That section eleven, article two, chapter six-b of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted to read as follows:
ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-11. Continuation of commission.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia ethics commission shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished pursuant to that article.

CHAPTER 278

(H. B. 4256 — By Delegates Kuhn, Varner, Prunty, Flanigan, Manchin, Yeager and Border)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SER-
§9-2-1a. Continuation of the department of health and human resources.

The department of health and human resources shall be charged with the administration of this chapter. The department of health and human resources shall continue to exist pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand three, unless sooner terminated, continued or reestablished pursuant to that article.
§9A-1-2. Veterans' council; administration of division.

There shall be a "veterans' council" which shall consist of seven members who shall be citizens and residents of this state who have served in and been honorably discharged or separated under honorable conditions from the armed forces of the United States and whose service was within a time of war as defined by the laws of the United States, either Public Law No. 2 — 73rd Congress or Public Law No. 346 — 78th Congress, and any and all amendments thereto. At least one member of the council shall be a veteran of World War II, at least one member of the council shall be a veteran of the Korean Conflict and at least two members of the council shall be veterans of the Vietnam era. The members of the veterans' council shall be selected with special reference to their ability and fitness to effectuate the purposes of this article.

The West Virginia division of veterans' affairs shall be administered by a director and such veterans' affairs officers, assistants and employees as may be deemed advisable.

§9A-1-2a. Continuation of council.

The veterans' council is continued until the first day of July, two thousand four, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section two, article five, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six, all relating to continuing the West Virginia educational broadcasting authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

§10-5-6. Continuation of educational broadcasting authority.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

1 The West Virginia educational broadcasting authority, heretofore created, is hereby continued as a public benefit corporation. It shall consist of eleven voting members, who shall be residents of the state, of whom one shall be the state
The superintendent of schools, one shall be a member of the West Virginia board of education to be selected by it annually, one shall be a member of the university of West Virginia board of trustees to be selected by it annually, and one shall be a member of the board of directors of the state college system to be selected by it annually. The other seven members shall be appointed by the governor by and with the advice and consent of the Senate for overlapping terms of seven years, one term expiring each year, except that the appointment to fill the membership position for the term expiring in the year one thousand nine hundred eighty-three, shall be for a term of six years. Not less than one appointive member shall come from each congressional district. Employees of noncommercial broadcasting stations in West Virginia are not eligible for appointment to the authority. The present members of the authority shall continue to serve out the terms to which they were appointed. Any vacancy among the appointive members shall be filled by the governor by appointment for the unexpired term.

The chairperson and vice chairperson of the authority as of the effective date of this section shall continue in their respective offices until their successors are elected. Thereafter, at its annual meeting in each year the authority shall elect one of its members as chairperson and one as vice chairperson. The authority is authorized to select an executive director and such other personnel as may be necessary to perform its duties and to fix the compensation of such personnel to be paid out of moneys appropriated for this purpose. The executive director shall keep a record of the proceedings of the authority and shall perform such other duties as it may prescribe. The authority is authorized to establish such office or offices as may be necessary for the proper performance of its duties.

The authority shall hold an annual meeting and may meet at such other times and places as may be necessary, such meetings to be held upon its own resolution or at the call of the chairperson of the authority. The members shall serve without
compensation but may be reimbursed for actual expenses incident to the performance of their duties upon presentation to the chairperson of an itemized sworn statement thereof.

§10-5-6. Continuation of educational broadcasting authority.

1 The West Virginia educational broadcasting authority 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 281

(H. B. 4510 — By Delegates Douglas, Kuhn, Varner, Butcher, Prunty, Leggett and Border)

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

AN ACT to amend and reenact section twenty, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia investment management board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-20. Continuation of board.
Pursuant to the provisions of article ten, chapter four of this code, the West Virginia investment management board shall continue to exist until the first day of July, two thousand three, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 282

(H. B. 4299 — By Delegates Kuhn, Varner, Butcher, Ennis, Manchin, Prunty and Azinger)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-d, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto a new section, designated section six, all relating to continuing the division of protective services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-2. Division established; purpose; appointment and qualifications of director.

§15-2D-6. Continuation of the division.

§15-2D-2. Division established; purpose; appointment and qualifications of director.
(a) The state facilities protection division within the department of military affairs and public safety shall hereafter be designated the division of protective services. The purpose of the division is to provide safety and security at the capitol complex and other state facilities.

(b) The governor shall appoint, with the advice and consent of the Senate, the director of the division whose qualifications shall include at least ten years of service as a law-enforcement officer with at least three years in a supervisory law-enforcement position, the successful completion of supervisory and management training, and the professional training required for police officers at the West Virginia state police academy or an equivalent professional law-enforcement training at another state, federal or United States military institution.

§15-2D-6. Continuation of the division.

The division of protective services shall terminate on the first day of July, two thousand four, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 283

(S. B. 238 — By Senators Bowman, Bailey, Jackson, Kessler, Minard, Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse)

[Passed February 8, 2002; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section one, article two-a, chapter seventeen 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 one-a, all to read as follows:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-1. Duties of state road commissioner transferred to division of highways; department to act through commissioner of highways; office of commissioner of highways created; appointment, etc.

§17-2A-1a. Continuation of the division.

§17-2A-1. Duties of state road commissioner transferred to division of highways; department to act through commissioner of highways; office of commissioner of highways created; appointment, etc.

The office of state road commissioner heretofore existing is hereby continued in all respects as heretofore constituted, but is hereby designated as the West Virginia division of highways. All duties and responsibilities heretofore imposed upon the state road commissioner and the powers exercised by him are hereby transferred to the West Virginia division of highways and such duties and responsibilities shall be performed by said division and the powers may be exercised thereby through the West Virginia commissioner of highways who shall be the chief executive officer of the division.

There is hereby continued the office of West Virginia commissioner of highways who shall be appointed by the governor, by and with the advice and consent of the Senate,
subject to the provisions of section two-a, article seven, chapter six of this code.

§17-2A-1a. Continuation of the division.

The division of highways shall be continued 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 284

(H. B. 4321 — By Delegates Douglas, Kuhn, Varner, Butcher, DeLong, Manchin and Leggett)

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

AN ACT to amend and reenact section thirty, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the racing commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-30. Continuation of the racing commission.
Pursuant to the provisions of article ten, chapter four of this code, the racing commission shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 285

(S. B. 353 — By Senators Bowman, Bailey, Burnette, Kessler, Minard, Redd, Rowe, Snyder, Boley, Minear and Sprouse)

[Passed February 28, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty 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-one; and to amend article five of said chapter by adding thereto a new section, designated section twenty, all relating to continuing the parks section of the division of natural resources; and continuing the division of natural resources.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty 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-one; and that article five of said chapter be amended by adding thereto a new section, designated section twenty, all to read as follows:

Article

1. Organization and Administration.
5. Parks and Recreation.
ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. Division of natural resources, office of director and commission established.

§20-1-21. Continuation of the division of natural resources.

§20-1-3. Division of natural resources, office of director and commission established.

A division of natural resources, the office of director of the division of natural resources and a natural resources commission are hereby created and established in the state government with jurisdiction, powers, functions, services and enforcement processes as provided in this chapter and elsewhere by law.

§20-1-21. Continuation of the division of natural resources.

The division of natural resources shall continue to exist until the first day of July, two thousand three, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

ARTICLE 5. PARKS AND RECREATION.

§20-5-20. Continuation of the parks section of division of natural resources.

Pursuant to the provisions of article ten, chapter four of this code, the parks section and parks functions of the division of natural resources shall continue to exist within the division of natural resources until the first day of July, two thousand four, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend article one-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to continuing the public land corporation.

Be it enacted by the Legislature of West Virginia:

That article one-a, 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 nine, to read as follows:

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.


1 Pursuant to the provisions of article ten, chapter four of this code, the public land corporation shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished by act of the Legislature.
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 twenty-three-f, relating to continuing the whitewater commission.

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 twenty-three-f, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23f. Continuing the whitewater commission.

1 Pursuant to the provisions of article ten, chapter four of this code, the whitewater commission shall continue to exist until
2 the first day of July, two thousand six, unless sooner terminated, continued or reestablished by act of the Legislature.
CHAPTER 288

(S. B. 469 — By Senators Bowman, Bailey, Burnette, Jackson, Kessier, Minard, Redd, Rowe and Snyder)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of labor.

Be it enacted by the Legislature of West Virginia:

That section five, article one, 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 1. DIVISION OF LABOR.

§21-1-5. Continuation of division.

1 Pursuant to article ten, chapter four of this code, the division of labor shall continue to exist until the first day of July, two thousand four, unless sooner terminated, continued or reestablished pursuant to that article.
AN ACT to amend and reenact section nineteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia contractor licensing board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.


1 The West Virginia contractor licensing board shall continue
2 to exist pursuant to the provisions of article ten, chapter four of
3 this code, until the first day of July, two thousand three, unless
4 sooner terminated, continued or reestablished pursuant to that
5 article.
AN ACT to amend and reenact section nine, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of authority of commissioner to administer the bureau of employment programs.

Be it enacted by the Legislature of West Virginia:

That section nine, article two, chapter twenty-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. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.

§21A-2-9. Continuation of authority of commissioner to administer unemployment compensation.

Pursuant to the provisions of article ten, chapter four of this code, the commissioner shall continue to administer this article until the first day of July, two thousand six, unless the authority to so administer is sooner terminated, continued or reestablished pursuant to that article.
AN ACT to amend and reenact section seven-a, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the office of water resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-7a. Continuation of office of water resources.

1 The office of water resources shall continue to exist until the first day of July, two thousand four, pursuant to the provisions of article ten, chapter four of this code unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of corrections.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§25-1-2. Continuation of the division of corrections.

1 Pursuant to the provisions of article ten, chapter four of this code, the division of corrections shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section four, article two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section ten, all relating to continuing the West Virginia state geological and economic survey; and establishing requirements for appointment as director.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GEODETIC AND GEOLOGICAL SURVEY.

§29-2-4. State geological and economic survey director; qualifications for appointment; administrative powers and duties.

§29-2-10. Continuation.

§29-2-4. State geological and economic survey director; qualifications for appointment; administrative powers and duties.

1 The governor shall appoint as director of the survey a
2 geologist of established reputation. At the time of his or her
initial appointment, the director must be at least thirty years of age and must be selected with special reference and consideration given to his or her administrative experience and ability and to his or her demonstrated interest in the effective and responsible management of the state geological and economic survey. The director must have a master’s degree in geology or in a related field and at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office. The director may not be a candidate for or hold any other public office, may not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

The director may employ such assistants and employees as he may deem necessary. He shall also determine the compensation of all persons employed by the survey and may remove them at pleasure.

The director may set such reasonable fees as may be necessary to recover additional costs incurred in performing geological and analytical analyses. These fees shall be deposited in the state treasury in a special revenue account to be known as the “Geological and Analytical Services Fund”. The director is hereby authorized to expend such funds, as are appropriated by the Legislature, from this fund for the purpose of defraying said costs.

§29-2-10. Continuation.

Pursuant to the provisions of article ten, chapter four of this code, the state geological and economic survey shall continue to exist until the first day of July, two thousand three.
AN ACT to amend and reenact section twenty-four, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state rail authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.


1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia state rail authority shall continue to exist until the first day of July, two thousand four, unless sooner terminated, continued or reestablished by act of the Legislature.
AN ACT to amend and reenact section one, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, relating to continuing the women’s commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WOMEN’S COMMISSION.

§29-20-1. Membership; appointment and terms of members; organization; reimbursement for expenses.

§29-20-7. Continuation of commission.

§29-20-1. Membership; appointment and terms of members; organization; reimbursement for expenses.

The West Virginia commission on the status of women is hereby abolished, and there is hereby continued within the department of health and human resources the West Virginia women’s commission, to consist of eighteen members, seven of
whom shall be ex officio members, not entitled to vote: The attorney general, the state superintendent of schools, the commissioner of labor, the commissioner of the bureau of human resources of the department of health and human resources, the director of the human rights commission, the director of the division of personnel and the chancellor of the board of directors of the state college system. Each ex officio member may designate one representative employed by his or her department to meet with the commission in his or her absence. The governor shall appoint the additional eleven members, by and with the advice and consent of the Senate, from among the citizens of the state. The governor shall designate the chairman and vice chairman of the commission and the commission may elect such other officers as it deems necessary. The members shall serve a term beginning the first day of July, one thousand nine hundred seventy-seven, three to serve for a term of one year, four to serve for a term of two years and the remaining four to serve for a term of three years. The successors of the members initially appointed as provided herein shall be appointed for a term of three years each in the same manner as the members initially appointed under this article, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Each member shall serve until the appointment and qualification of his or her successor.

No member may receive any salary for his or her services, but each may be reimbursed for actual and necessary expenses incurred in the performance of his or her duties out of funds received by the commission under section four of this article, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the commission.

§29-20-7. Continuation of commission.
The women's commission is continued until the first day of July, two thousand six, 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 296

(H. B. 4320 — By Delegates Douglas, Butcher, Flanigan, Manchin, Perdue, Prunty and Border)

[Passed February 27, 2002; in effect ninety days from passage. Approved by the Governor.] AN ACT to amend and reenact section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three-a, relating to continuing public defender services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3. Establishment of public defender services.
§29-21-3a. Continuation of public defender services.

§29-21-3. Establishment of public defender services.
There is hereby created an executive agency known as public defender services. The agency shall administer, coordinate and evaluate programs by which the state provides legal representation to indigent persons, monitor the progress of various delivery systems and recommend improvements. The agency shall maintain its office at the state capitol.

§29-21-3a. Continuation of public defender services.

Pursuant to the provisions of article ten, chapter four of this code, public defender services shall continue to exist until the first day of July, two thousand four, unless sooner terminated, continued or reestablished by act of the Legislature.
ARTICLE 7A. PRACTICAL NURSES.

§30-7A-12. Continuation of board.

Pursuant to the provisions of article ten, chapter four of this code, the board of examiners for licensed practical nurses shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to that article.

CHAPTER 298

(H. B. 4122 — By Delegates Douglas, Kuhn, Varner, Flanigan, Angotti, Leggett and Border)

[Passed February 20, 2002; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section fifteen, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of architects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. ARCHITECTS.

§30-12-15. Continuation of board.

The board of architects shall terminate on the first day of July, two thousand four, pursuant to the provisions of article
CHAPTER 299

(S. B. 240 — By Senators Bowman, Bailey, Jackson, Kessler, Minard, Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse)

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

AN ACT to amend and reenact section twenty-two, article thirty-two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners for speech-language pathology and audiology.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-22. Continuation of board.

1 The West Virginia board of examiners for speech-language pathology and audiology shall be terminated pursuant to the provisions of article ten, chapter four of this code on the first day of July, two thousand ten, unless sooner terminated or unless continued or reestablished pursuant to that article.
AN ACT to amend and reenact section one hundred one, article eighteen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto a new section, designated section one hundred thirty-four, all relating to continuing the bureau for child support enforcement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-101. Establishment of the bureau for child support enforcement; cooperation with the division of human services.

§48-18-134. Continuation of bureau.

§48-18-101. Establishment of the bureau for child support enforcement; cooperation with the division of human services.
(a) Effective the first day of July, one thousand nine hundred ninety-five, there is hereby established in the department of health and human resources the bureau for child support enforcement. The bureau is under the immediate supervision of the commissioner, who is responsible for the exercise of the duties and powers assigned to the bureau under the provisions of this chapter. The bureau is designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support according to 42 U.S.C. §654(3).

(b) The division of human services shall cooperate with the bureau for child support enforcement. At a minimum, such cooperation shall require that the division of human services:

(1) Notify the bureau for child support enforcement when the division of human services proposes to terminate or provide public assistance payable to any obligee;

(2) Receive support payments made on behalf of a former or current recipient to the extent permitted by Title IV-D, Part D of the Social Security Act; and

(3) Accept the assignment of the right, title or interest in support payments and forward a copy of the assignment to the bureau for child support enforcement.

§48-18-134. Continuation of bureau.

Pursuant to the provisions of article ten, chapter four of this code, the bureau for child support enforcement shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished by act of the Legislature.
AN ACT to amend and reenact article eleven-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to tax increment financing; making legislative findings; stating legislative purpose; defining certain terms and phrases; imposing public bid and prevailing wage rate requirements and exceptions thereto; providing certain powers to county commissions relating to implementation of tax increment financing plan; requiring notice and public hearing on proposal to create a development or redevelopment area; requiring approval of plan by director of West Virginia development office; establishing and providing for distribution of tax revenues and the tax increment portion thereof; providing restrictions on implementation of plan; providing for modification of plan; providing certain requirements for plan; providing for valuation of property in development or redevelopment project area; providing for distribution of payment in lieu of taxes receipts; authorizing issuance of tax increment obligation instruments; providing terms and conditions of obligations issued; providing for payment of obligations; providing tax exemption for obligations; providing for distribution of excess funds received; providing for computation of local share for support of schools; and providing effective date for provisions of act.
Be it enacted by the Legislature of West Virginia:

That article eleven-b, 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 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-1. Short title.
§7-11B-2. Findings and legislative purpose.
§7-11B-3. Definitions.
§7-11B-4. Powers generally.
§7-11B-5. Powers supplemental.
§7-11B-6. Application for development or redevelopment plan.
§7-11B-7. Creation of a development or redevelopment project area or district.
§7-11B-8. Project plan – Approval.
§7-11B-9. Project plan – Amendment.
§7-11B-10. Termination of development or redevelopment project area or district.
§7-11B-11. Costs of formation of development or redevelopment project area or district.
§7-11B-12. Overlapping districts prohibited.
§7-11B-13. Conflicts of interest; required disclosures and abstention.
§7-11B-14. Projects financed by tax increment financing considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.
§7-11B-15. Reports by county commissions and municipalities, contents, and publication; procedure to determine progress of project; reports by development office, content of reports; rule-making authority.
§7-11B-16. Valuation of real property.
§7-11B-17. Division of ad valorem real property tax revenue.
§7-11B-18. Payments in lieu of taxes and other revenues.
§7-11B-20. Tax increment financing obligations — Authority to issue.
§7-11B-22. Tax increment financing obligations — Terms, conditions.
§7-11B-24. Tax increment financing obligations — Special fund for repayment.
§7-11B-25. Tax increment financing obligations — Tax exemption.
§7-11B-27. Computation of local share for support of public schools when tax increment financing is used.

§7-11B-28. Effective date.

§7-11B-1. Short title.

This article may be known and cited as “The West Virginia Tax Increment Financing Act”.

§7-11B-2. Findings and legislative purpose.

(a) It is found and declared to be the policy of this state to promote and facilitate the orderly development and economic stability of its communities. County commissions need the ability to raise revenue to finance public improvements that are designed to encourage economic growth and development in geographic areas characterized by high levels of unemployment, stagnate employment, slow income growth, contaminated property or inadequate infrastructure. The construction of necessary public improvements in accordance with local economic development plans will encourage investing in job-producing private development and expand the public tax base.

(b) It is also found and declared that capital improvements or facilities in any area that result in the increase in the value of property located in the area or encourage increased employment within the area will serve a public purpose for each taxing unit possessing the authority to impose ad valorem taxes in the area.

(c) It is the purpose of this article:

(1) To encourage local levying bodies to cooperate in the allocation of future tax revenues that are used to finance public improvements designed to encourage private development in selected areas; and
(2) To assist local governments that have a competitive disadvantage in their ability to attract business, private investment or commercial development due to their location; to encourage remediation of contaminated property; to prevent or arrest the decay of selected areas due to the inability of existing financing methods to provide public improvements; and to encourage private investment designed to promote and facilitate the orderly development or redevelopment of selected areas.

§7-11B-3. Definitions.

(a) General. — When used in this article, words and phrases defined in this section shall have the meanings ascribed to them in this section, unless a different meaning is clearly required either by the context in which the word or phrase is used or by specific definition in this article.

(b) Words and phrases defined. —

(1) “Agency” includes a municipality, a county or municipal development agency established pursuant to authority granted in section one, article twelve of this chapter, a port authority, an airport authority or any other entity created by this state or an agency or instrumentality of this state that engages in economic development activity.

(2) “Base assessed value” means:

(A) The taxable assessed value of real and tangible personal property of a project developer having a tax situs within a development or redevelopment project area or district as shown upon the landbook and personal property records of the assessor on the first day of July of the year preceding the effective date of the order authorizing the tax increment financing plan; or
(B) The taxable assessed value of all real and tangible personal property having a tax situs within a development or redevelopment project area or district as shown upon the landbooks and personal property books of the assessor on the first day of July preceding the formation of the development or redevelopment project area or district.

(3) "Blighted area" means an area in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals or welfare. "Blighted area" includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.
(4) "Conservation area" means any improved area within the boundaries of a development or redevelopment project area or district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation area shall meet at least three of the factors provided in this subdivision.

(5) "County commission" means the governing body of a county of this state and, for purposes of this article only, includes the governing body of a Class I or II municipality in this state.

(6) "Current assessed value" means:

(A) The annual taxable assessed value of all real and tangible personal property of a project developer having a tax situs within a development project area as shown upon the landbook and personal property records of the assessor; or

(B) The annual taxable assessed value of real and tangible personal property having a tax situs within a development or redevelopment project area or district as shown upon the landbook and personal property records of the assessor.
(7) "Development office" means the West Virginia development office created in section one, article two, chapter five-b of this code.

(8) "Development project" or "redevelopment project" means a project undertaken by a county commission or the governing body of a municipality in a development or redevelopment project area or district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment, or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any within the development or redevelopment project area and clearance of the land so acquired; or

(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing, or industrial or commercial development or revitalization, to eliminate unhealthful unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare, or otherwise remove or prevent the spread of blight or deterioration;

(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation
of any sites and making any land or improvements acquired in the project area available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a development or redevelopment project area or district designed to increase or enhance the development of commerce, industry or housing within the development project area; or

(E) Any other projects the county commission or the agency deems appropriate to carry out the purposes of this article.

(9) “Development or redevelopment project area or district” means an area proposed by one or more agencies as a development or redevelopment project area or district, which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body of a municipality if the project area is located within a municipality, or by both the county commission and the governing body of the municipality when the development or redevelopment project area or district is located both within and without a municipality.

(10) “Economic development area” means any area or portion of an area located within the territorial limits of a municipality or county that does not meet the requirements of subdivisions (3) and (4) of this subsection and for which the county commission finds that development or redevelopment will not be solely used for development of commercial busi-
nesses that will unfairly compete in the local economy and that
development or redevelopment is in the public interest because
it will:

(A) Discourage commerce, industry or manufacturing from
moving their operations to another state;

(B) Result in increased employment in the municipality or
county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base
of the county or municipality.

(11) “Governing body of a municipality” means the city
council of a Class I or Class II municipality in this state.

(12) “Incremental value,” for any development or redevelop-
ment project area or district, means the difference between
the base assessed value and the current assessed value. The
incremental value will be positive if the current value exceeds
the base value, and the incremental value will be negative if the
current value is less than the base assessed value.

(13) “Includes” and “including” when used in a definition
contained in this article shall not be deemed to exclude other
things otherwise within the meaning of the term being defined.

(14) “Local levying body” means the county board of
education, and the county commission and includes the
governing bodies of a municipality when the development or
redevelopment project area or district is located, in whole or in
part, within the boundaries of the municipality.

(15) “Obligations” or “tax increment financing obligations”
means bonds, loans, debentures, notes, special certificates, or
other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

(16) "Order" means an order of the county commission adopted in conformity with the provisions of this article and as provided in chapter seven of this code.

(17) "Ordinance" means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in chapter eight of this code.

(18) "Payment in lieu of taxes" means those estimated revenues from real property and tangible personal property having a tax situs in the area selected for a development or redevelopment project, which revenues according to the development or redevelopment project or plan are to be used for a private use, which levying bodies would have received had a county or municipality not adopted one or more tax increment financing plans, and which would result from levies made after the date of adoption of a tax increment financing plan during the time the current assessed value of all taxable real and tangible personal property in the area selected for the development or redevelopment project exceeds the total base assessed value of all taxable real and tangible personal property in the development or redevelopment project area or district until the designation is terminated as provided in this article.

(19) "Person" means any natural person, and any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature, other than a government agency or instrumentality.
(20) “Private project” means any project that is subject to ad valorem property taxation in this state or to a payment in lieu of tax agreement that is undertaken by a project developer in accordance with a tax increment financing plan in a development or redevelopment project area or district.

(21) “Project” means any facility requiring an investment of capital, including extensions, additions or improvements to existing facilities including water or wastewater facilities, and the remediation of contaminated property as provided for in article twenty-two, chapter twenty-two of this code, but does not include performance of any governmental service by a county or municipal government.

(22) “Project costs” means expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as costs of public works or improvements within a development or redevelopment project area or district, plus any costs incidental thereto. “Project costs” include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment, and site clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to
pay for project costs, all costs of issuance and any redemption
premiums, credit enhancement or other related costs;

(C) Real property assembly costs, meaning any deficit
incurred resulting from the sale or lease as lessor by the county
commission of real or personal property having a tax situs
within a development or redevelopment project area or district
for consideration that is less than its cost to the county commis-
sion;

(D) Professional service costs, including, but not limited to,
those costs incurred for architectural planning, engineering and
legal advice and services;

(E) Imputed administrative costs, including, but not limited
to, reasonable charges for time spent by county employees or
municipal employees in connection with the implementation of
a project plan;

(F) Relocation costs, including, but not limited to, those
relocation payments made following condemnation and job
training and retraining;

(G) Organizational costs, including, but not limited to, the
costs of conducting environmental impact and other studies,
and the costs of informing the public with respect to the
creation of a project development area and the implementation
of project plans;

(H) Payments made, in the discretion of the county com-
mission or the governing body of a municipality, which are
found to be necessary or convenient to creation of development
or redevelopment project areas or districts or the implementa-
tion of project plans; and
That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment project area or district, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

(23) "Project developer" means any person who engages in the development of projects in the state.

(24) "Project development or redevelopment area" means a contiguous geographic area within a county, or within two contiguous counties, in which a development or redevelopment project will be undertaken, as defined and created by order of the county commission, or county commissions in the case of an area located in two counties.

(25) "Project plan" means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the requirements of this article and chapter seven or eight of this code.

(26) "Real property" means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest, and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

(27) "Redevelopment area" means an area designated by a county commission, or the governing body of a municipality, in
respect to which the commission or governing body has made a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area or a combination thereof, which area includes only those parcels of real property directly and substantially benefited by the proposed redevelopment project located within the development or redevelopment project area or district, or land contiguous thereto.

(28) "Redevelopment plan" means the comprehensive program under this article of a county or municipality for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment project area or district as a blighted area, conservation area, economic development area or combination thereof, and to thereby enhance the tax bases of the levying bodies which extend into the redevelopment project area or district. Each redevelopment plan shall conform to the requirements of this article.

(29) "Tax increment" means:

(A) The amount of regular levy property taxes attributable to the amount by which the current assessed value of a private project in a development or redevelopment project area or district exceeds the base assessed value, if any, of the private project; or

(B) The amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment project area or district exceeds the base assessed value of the property.
(30) "Tax increment financing fund" means a separate fund for a development or redevelopment project or for a development or redevelopment project area or district established by the county commission, or governing body of the municipality, that issues tax increment financing obligations into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

(31) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended by the Legislature.

(32) "Total ad valorem property tax regular levy rate" means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment project area or district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

§7-11B-4. Powers generally.

In addition to any other powers conferred by law, a county commission or governing body of a Class I or II municipality may exercise any powers necessary and convenient to carry out the purpose of this article, including the power to:

(1) Create development and redevelopment areas or districts and to define the boundaries of those areas or districts;

(2) Cause project plans to be prepared, to approve the project plans, and to implement the provisions and effectuate the purposes of the project plans;
(3) Issue tax increment financing obligations and pledge tax increments and other revenues for repayment of the obligations;

(4) Deposit moneys into the tax increment financing fund for any development or redevelopment project area or district, or project;

(5) Enter into any contracts or agreements, including agreements with bondholders, determined by the county commission to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

(6) Receive from the federal government or the state loans and grants for, or in aid of, a development or redevelopment project and to receive contributions from any other source to defray project costs;

(7) Exercise the right of eminent domain to condemn property for the purposes of implementing the project plan. The rules and procedures set forth in chapter fifty-four of this code shall govern all condemnation proceedings authorized in this article;

(8) Make relocation payments to those persons, businesses, or organizations that are displaced as a result of carrying out the development or redevelopment project;

(9) Clear and improve property acquired by the county commission pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration or repair of the property;
(10) Cause parks, playgrounds or water, sewer or drainage facilities, or any other public improvements, including, but not limited to, fire stations, community centers and other public buildings, which the county commission is otherwise authorized to undertake, to be laid out, constructed, or furnished in connection with the development or redevelopment project. When the public improvement of the county commission is to be located, in whole or in part, within the corporate limits of a municipality, the county commission shall consult with the mayor and the governing body of the municipality regarding the public improvement and shall pay for the cost of the public improvement from the tax increment financing fund;

(11) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon, or discontinue public ways and construct sidewalks in, or adjacent to, the development or redevelopment project: Provided, That when the public way or sidewalk is located within a municipality, the governing body of the municipality shall consent to the same and if the public way is a state road, the consent of the commissioner of highways shall be necessary;

(12) Cause private ways, sidewalks, ways for vehicular travel, playgrounds or water, sewer or drainage facilities and similar improvements to be constructed within the development or redevelopment project for the particular use of the development or redevelopment project area or district, or those dwelling or working in it;

(13) Construct any capital improvements of a public nature;

(14) Construct capital improvements to be leased or sold to private entities in connection with the goals of the development or redevelopment project;
(15) Designate one or more official or employee of the county commission to make decisions and handle the affairs of development and redevelopment project areas or districts created by the county commission pursuant to this article;

(16) Adopt orders, ordinances or bylaws or repeal or modify such ordinances or bylaws or establish exceptions to existing ordinances and bylaws regulating the design, construction, and use of buildings within the development or redevelopment project area or district created by a county commission or governing body of a municipality under this article;

(17) Enter orders, adopt bylaws or repeal or modify such orders or bylaws or establish exceptions to existing orders and bylaws regulating the design, construction, and use of buildings within the development or redevelopment project area or district created by a county commission or governing body of a municipality under this article;

(18) Sell, mortgage, lease, transfer, or dispose of any property or interest therein, acquired by it pursuant to the project plan for development, redevelopment or rehabilitation in accordance with the project plan;

(19) Expend project revenues as provided in this article; and

(20) Do all things necessary or convenient to carry out the powers granted in this article.

§7-11B-5. Powers supplemental.

The powers conferred by this article are in addition and supplemental to the powers conferred upon county commis-
sions and municipalities by the Legislature relating to the issuance of industrial and commercial development bonds and refunding bonds.

§7-11B-6. Application for development or redevelopment plan.

(a) An agency or a project developer may apply to a county commission or the governing body of a municipality for adoption of a development or redevelopment plan with respect to a development or redevelopment project to be developed in conjunction with a private project of a project developer. The application shall state the project’s economic impact, viability, estimated revenues and potential for job creation and such other information as the county commission or the governing body of the municipality may require.

(b) Copies of the application shall be made available to the public in the county clerk’s office, or the municipal recorder’s office when the application is filed with the governing body of a municipality.

§7-11B-7. Creation of a development or redevelopment project area or district.

(a) County commissions and the governing bodies of Class I and II municipalities, upon their own initiative or upon application of an agency or a developer, may propose creation of a development or redevelopment project area or district and designate the boundaries of the area or district: Provided, That an area or district may not include noncontiguous land.

(b) The county commission or municipality proposing creation of a development or redevelopment area or district shall then hold a public hearing at which interested parties are
afforded a reasonable opportunity to express their views on the proposed creation of a development or redevelopment project area or district and its proposed boundaries.

(1) Notice of the hearing shall be published once each week for three successive weeks immediately preceding the public hearing as a Class III legal advertisement in accordance with section two, article three, chapter fifty-nine of this code.

(2) The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, the proposed boundaries of the development or redevelopment project area or district and the proposed tax increment financing obligations to be issued to finance the development or redevelopment project costs.

(3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other local levying bodies having the power to levy taxes on property located within the proposed development or redevelopment project area or district.

(4) All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to undertake and finance the project.

(c) After the public hearing, the county commission, or the governing body of the municipality, shall finalize the development or redevelopment project plan and the boundaries of the development or redevelopment project area or district and submit it to the director of the development office for his or her review and approval. The director, within sixty days after receipt of the plan, shall approve the plan as submitted, reject the plan, or return the plan to the county commission or
governing body of the municipality for further development or
review in accordance with instructions of the director of the
development office. A plan may not be adopted by the county
commission or the governing body of a municipality until after
it has been approved by the executive director of the develop-
ment office.

(d) Upon approval of the development or redevelopment
plan by the development office, the county commission may
enter an order, and the governing body of the municipality
proposing the plan may adopt an ordinance, that:

(1) Describes the boundaries of a development or redevel-
opment project area or district sufficiently to identify with
ordinary and reasonable certainty the territory included in the
area or district, which boundaries shall create a contiguous area
or district;

(2) Creates the development or redevelopment project area
or district as of a date provided in the order or ordinance;

(3) Assigns a name to the development or redevelopment
project area or district for identification purposes.

(A) The name may include a geographic or other designa-
tion, shall identify the county or municipality authorizing the
area or district, and shall be assigned a number, beginning with
the number one.

(B) Each subsequently created area or district in the county
or municipality shall be assigned the next consecutive number;

(4) Contains findings that the real property within the
development or redevelopment project area or district will be
benefited by eliminating or preventing the development or
spread of slums or blighted, deteriorated or deteriorating areas,
discouraging the loss of commerce, industry or employment,
increasing employment, or any combination thereof;

(5) Approves the development or redevelopment plan;

(6) Establishes a tax increment financing fund as a separate
fund into which all tax increment revenues and other revenues
designated by the county commission, or governing body of the
municipality, for the benefit of the development or redevelopment
project area or district shall be deposited, and from which
all project costs shall be paid, which may be assigned to and
held by a trustee for the benefit of bondholders if tax increment
financing obligations are issued by the county commission, or
the governing body of the municipality; and

(7) Provides that ad valorem property taxes on real and
tangible personal property having a tax situs in the development
or redevelopment project area or district shall be assessed,
collected and allocated in the following manner for so long as
any tax increment financing obligations payable from the tax
increment financing fund, herinafter authorized, are outstanding
and unpaid:

(A) For each tax year, the county assessor shall record in
the land and personal property books both the base assessed
value and the current assessed value of the real and tangible
personal property having a tax situs in the development or
redevelopment project area or district;

(B) Ad valorem taxes collected from regular levies upon
real and tangible personal property having a tax situs in the area
or district that are attributable to the lower of the base assessed
value or the current assessed value of real and tangible personal property located in the development project area shall be allocated to the levying bodies in the same manner as applicable to the tax year in which the development or redevelopment project plan is adopted by order of the county commission or by ordinance adopted by the governing body of the municipality;

(C) The tax increment with respect to real and tangible personal property in the development or redevelopment project area or district shall be allocated and paid into the tax increment financing fund and shall be used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of the development or redevelopment projects in the development or redevelopment project area or district. Any levying body having a development or redevelopment project area or district within its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise provided in this article; and

(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in article eight, chapter eleven of this code.

(e) Proceeds from tax increment financing obligations issued under this article may only be used to pay for costs of development and redevelopment projects to foster economic development in the development or redevelopment project area or district, or land contiguous thereto, including infrastructure and other public improvements prerequisite to private improvements, when such development or redevelopment project or projects would not reasonably be expected to occur without tax increment financing.
(f) Notwithstanding subsection (e) of this section, a county commission may not enter an order approving a development or redevelopment project plan unless the county commission expressly finds and states in the order that the primary development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(g) Notwithstanding subsection (e) of this section, the governing body of a municipality may not adopt an ordinance approving a development or redevelopment project plan unless the governing body expressly finds and states in the ordinance that the primary development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(h) No county commission shall establish a development or redevelopment project area or district any portion of which is within the boundaries of a municipality without the formal consent of the governing body of the municipality.

(i) A tax increment financing plan that has been approved by a county commission or the governing body of a municipality may be amended by following the procedures set forth in this article for adoption of a new development or redevelopment project plan.

(j) The county commission may modify the boundaries of the development or redevelopment project area or district from time to time by entry of an order modifying the order creating the development or redevelopment project area or district.

(k) The governing body of a municipality may modify the boundaries of the development or redevelopment project area
or district from time to time by amending the ordinance establishing the boundaries of the area or district.

(l) Before a county commission or the governing body of a municipality may enter such an order or amend the ordinance, the county commission or municipality shall give the public notice, hold a public hearing and obtain the approval of the director of the development office, following the procedures for establishing a new development or redevelopment project area or district. In the event any tax increment financing obligations are outstanding with respect to the development or redevelopment project area or district, any change in the boundaries shall not reduce the amount of tax increment available to secure the outstanding tax increment financing obligations.

§7-11B-8. Project plan – Approval.

(a) Upon the creation of the development or redevelopment area or district, the county commission or municipality creating the area or district shall cause the preparation of a project plan for each development or redevelopment area or district, and the project plan shall be adopted by order of the county commission, or ordinance adopted by the governing body of the municipality, after it is approved by the executive director of the development office. This process shall conform to the procedures set forth in this section.

(b) Each project plan shall include:

(1) A statement listing the kind, number, and location of all proposed public works or other improvements within the area or district and on land outside but contiguous to the area or district;
(2) A cost-benefit analysis showing the economic impact of the plan on each levying body that is at least partially within the boundaries of the development or redevelopment project area or district. This analysis shall show the impact on the economy if the project is not built, and is built pursuant to the development or redevelopment plan under consideration. The cost-benefit analysis shall include a fiscal impact study on every affected levying body, and sufficient information from the developer for the agency, if any proposing the plan, the county commission be asked to approve the project and the development office to evaluate whether the project as proposed is financially feasible;

(3) An economic feasibility study;

(4) A detailed list of estimated project costs;

(5) A description of the methods of financing all estimated project costs, including the issuance of tax increment obligations, and the time when the costs or monetary obligations related thereto are to be incurred;

(6) A certification by the county assessor of the base assessed value of real and tangible personal property having a tax situs in a development or redevelopment project area or district;

(7) The type and amount of any other revenues that are expected to be deposited to the tax increment financing fund of the development or redevelopment project area or district;

(8) A map showing existing uses and conditions of real property in the development or redevelopment project area or district;
(9) A map of proposed improvements and uses in the area or district;

(10) Proposed changes of zoning ordinances, if any;

(11) Appropriate cross-references to any master plan, map, building codes, and municipal ordinances or county commission orders affected by the project plan;

(12) A list of estimated nonproject costs; and

(13) A statement of the proposed method for the relocation of any persons, businesses or organizations to be displaced.

(c) If the project plan is to include tax increment financing, the tax increment financing portion of the plan shall set forth:

(1) The amount of indebtedness to be incurred pursuant to this article;

(2) An estimate of the tax increment to be generated as a result of the project;

(3) The method for calculating the tax increment, which shall be in conformance with the provisions of this article, together with any provision for adjustment of the method of calculation;

(4) Any other revenues, such as payment in lieu of tax revenues, to be used to secure the tax increment financing; and

(5) Any other provisions as may be deemed necessary in order to carry out any tax increment financing to be used for the development or redevelopment project.
(d) If less than all of the tax increment is to be used to fund a development or redevelopment project or to pay project costs or retire tax increment financing, the project plan shall set forth the portion of the tax increment to be deposited in the tax increment financing fund of the development or redevelopment project area or district, and provide for the distribution of the remaining portion of the tax increment to the levying bodies in whose jurisdiction the area or district lies.

(e) The county commission or governing body of the municipality that established the tax increment financing fund shall hold a public hearing at which interested parties shall be afforded a reasonable opportunity to express their views on the proposed project plan being considered by the county commission or the governing body of the municipality.

(1) Notice of the hearing shall be published in a newspaper of general circulation in the county or the municipality, if the development or redevelopment project is located in a municipality, at least fifteen days prior to the hearing.

(2) Prior to this publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other levying bodies having the power to levy taxes on property located within the proposed development or redevelopment area or district.

(f) Approval by the county commission of a development or redevelopment project plan must be within one year after the date of the county assessor’s certification required by subdivision (5), subsection (b) of this section. The approval shall be by order of the county commission or ordinance of the municipality, which shall contain a finding that the plan is economically feasible.
§7-11B-9. Project plan – Amendment.

(a) The county commission may by order, or the governing body of a municipality by ordinance, adopt an amendment to a project plan.

(b) Adoption of an amendment to a project plan shall be preceded by a public hearing held by the county commission, or governing body of the municipality, at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment.

(1) Notice of the hearing shall be published in a newspaper of general circulation in the county or municipality in which the project is to be located once a week for three consecutive weeks prior to the date of the public hearing.

(2) Prior to publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other local levying bodies having the power to levy taxes on property within the development or redevelopment project area or district.

(3) Copies of the proposed plan amendments shall be made available to the public at the county clerk’s office, or municipal clerk’s office, at least fifteen days prior to the hearing.

(c) One or more existing development or redevelopment areas or districts may be combined pursuant to lawfully adopted amendments to the original plans for each area or district: Provided, That the county commission, or governing body of the municipality, finds that the combination of the areas or districts will not impair the security for any tax increment financing obligations previously issued pursuant to this article.
§7-11B-10. Termination of development or redevelopment project area or district.

(a) No development or redevelopment project area or district may be in existence for a period longer than thirty years and no tax increment financing obligations may have a final maturity date later than the termination date of the area or district.

(b) The county commission or governing body of the municipality creating the development or redevelopment area or district may set a shorter period for the existence of the area or district. In this event, no tax increment financing obligations may have a final maturity date later than the termination date of the area or district.

(c) Upon termination of the area or district, no further ad valorem tax revenues shall be distributed to the tax increment financing fund of the area or district.

(d) The county commission shall adopt, upon the expiration of the time periods set forth in this section, an order terminating the development or redevelopment project area or district created by the county commission: Provided, That no area or district shall be terminated so long as bonds with respect to the area or district remain outstanding.

(e) The governing body of county commission shall repeal, upon the expiration of the time periods set forth in this section, the ordinance establishing the development or redevelopment project area or district: Provided, That no area or district shall be terminated so long as bonds with respect to the area or district remain outstanding.
§7-11B-11. Costs of formation of development or redevelopment project area or district.

(a) The county commission, or the governing body of a municipality, may pay, but shall have no obligation to pay, the costs of preparing the project plan or forming the development or redevelopment project area or district created by them.

(b) If the county commission, or the governing body of the municipality, elects not to incur those costs, they shall be made project costs of the area or district and reimbursed from bond proceeds or other financing, or may be paid by developers, property owners or other persons interested in the success of the development or redevelopment project.

§7-11B-12. Overlapping districts prohibited.

The boundaries of any development and redevelopment project areas or districts shall not overlap with any other development or redevelopment project area or district.

§7-11B-13. Conflicts of interest; required disclosures and abstention.

(a) If any member of the governing body of the agency applying for a development or redevelopment project or a development or redevelopment project plan, a member of the county commission considering the application, a member of the governing body of a municipality considering the application, or an employee or consultant of the agency, county commission or municipality involved in the planning and preparation of a development or redevelopment plan, or a development or redevelopment project for a development or redevelopment project area or district, or a proposed develop-
ment or redevelopment project area or district, owns or controls
an interest, direct or indirect, in any property included in any
development or redevelopment project area or district, or a
proposed development or redevelopment project area or district,
he or she shall disclose the same in writing to the clerk of the
county commission, or to recorder of the municipality if he or
she is an official or employee of the municipality, and shall also
so disclose the dates, terms, and conditions of any disposition
of any such interest, which disclosures shall be acknowledged
by county commission, or the governing body of the municipal-
ity if he or she is an official or employee of the municipality,
and entered upon the minutes books of the county commission,
or the governing body of the municipality, acknowledging the
disclosure.

(b) If an individual holds or held an interest required to be
disclosed under subsection (a) of this section, then that individ-
ual shall refrain from any further official involvement in regard
to the development or redevelopment plan, the development or
redevelopment project or the development or redevelopment
project area or district, shall abstain from voting on any matter
pertaining to the development or redevelopment plan, the
development or redevelopment project or the development or
redevelopment project area or district, and shall abstain from
communicating with other members concerning any matter
pertaining to that plan, project or area.

(c) Additionally, no member of the county commission or
governing body of a municipality considering a project or plan,
no member of the governing body of an agency proposing a
project or plan, or any employee of the county, municipality or
agency shall acquire any interest, direct or indirect, in any
property in a development or redevelopment project area or
district, or a proposed development or redevelopment project area or district, after either: (1) The individual obtains knowledge of the plan or project; or (2) the first published public notice of the plan, project or area, whichever first occurs.

§7-11B-14. Projects financed by tax increment financing considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

(a) Any project acquired, constructed or financed, in whole or in part, by a county commission or municipality under this article shall be considered to be a "public improvement" within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code.

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

(c) Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the county commission, municipality or other person soliciting the bids may reject all bids and solicit new bids on the project.

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

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

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

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

(e) The provisions of subsection (b) of this section apply to privately owned projects or infrastructure projects constructed on lands not owned by the county commission, a municipality or a government agency or instrumentality when the owner or the owner's agent or person financing the owner's project receives money from the tax increment financing fund for the owner's project.
§7-11B-15. Reports by county commissions and municipalities, contents, and publication; procedure to determine progress of project; reports by development office, content of reports; rule-making authority; development office to provide manual and assistance.

(a) Each year, the county commission, or its designee, and the governing body of a municipality, or its designee, that has approved a development or redevelopment project plan shall prepare a report giving the status of each plan and each development and redevelopment project included in the plan and file it with the executive director of the development office by the first day of October each year. The report shall include the following information:

(1) The aggregate amount and the amount by source of revenue in the tax increment financing fund;

(2) The amount and purpose of expenditures from the tax increment financing fund;

(3) The amount of any pledge of revenues, including principal and interest on any outstanding tax increment financing indebtedness;

(4) The base assessed value of the development or redevelopment project, or the development or redevelopment project area or district, as appropriate;

(5) The assessed value for the current tax year of the development or redevelopment project property, or of the taxable property having a tax situs in the development or redevelopment project area or district, as appropriate;
(6) The assessed value added to base assessed value of the development or redevelopment project, or the taxable property having a tax situs in the development or redevelopment area or district, as the case may be;

(7) Payments made in lieu of taxes received and expended;

(8) Reports on contracts made incidental to the implementation and furtherance of a development or redevelopment plan or project;

(9) A copy of any development or redevelopment plan, which shall include the required findings and cost-benefit analysis;

(10) The cost of any property acquired, disposed of, rehabilitated, reconstructed, repaired or remodeled;

(11) The number of parcels of land acquired by or through initiation of eminent domain proceedings;

(12) The number and types of jobs projected by the project developer to be created, if any, and the estimated annualized wages and benefits paid or to be paid to persons filling those jobs;

(13) The number, type and duration of the jobs created, if any, and the annualized wages and benefits paid;

(14) The amount of disbursements from the tax increment financing fund during the most recently completed fiscal year, in the aggregate and in such detail as the executive director of the development office may require;
(15) An annual statement showing payments made in lieu of taxes received and expended during the fiscal year;

(16) The status of the development or redevelopment plan and projects therein;

(17) The amount of outstanding tax increment financing obligations; and

(18) Any additional information the county commission or the municipality preparing the report deems necessary or that the executive director of the development office may by procedural rule require.

(b) Data contained in the report required by subsection (a) of this section shall be deemed a public record, as defined in article one, chapter twenty-nine-b of this code.

(1) The county commission's annual report shall be published on its web site, if it has a web site. If the county does not have a web site, the annual report shall be published on the web site of the development office.

(2) The municipality's annual report shall be published on its web site, if it has a web site. If the municipality does not have a web site, the annual report shall be published on the web site of the development office.

(c) After the close of the fiscal year, but on or before the first day of October each year, the county commission and the governing body of a municipality that approved a development or redevelopment plan shall publish in a newspaper of general circulation in the county or municipality, as appropriate, an annual statement showing for each development or redevelop-
ment project or plan for which tax increment financing obligations have been issued:

(1) A summary of receipts and disbursements, by major category, of moneys in the tax increment financing fund during that fiscal year;

(2) A summary of the status of the development or redevelopment plan and each project therein;

(3) The amount of tax increment financing principal outstanding as of the close of the fiscal year; and

(4) Any additional information the county commission or municipality deems necessary or appropriate to publish.

(d) Five years after the establishment of a development or redevelopment plan, and every five years thereafter, the county commission or municipality that approved the plan shall hold a public hearing regarding that development or redevelopment plan and the projects created or to be created in the development or redevelopment project area or district pursuant to this article.

(1) The purpose of the public hearing is to determine if the development or redevelopment plan and the proposed project or projects are making satisfactory progress under the proposed time schedule contained within the approved plans for completion of the projects.

(2) Notice of this public hearing shall be given in a newspaper of general circulation in the county, or in the municipality for a municipal plan, once each week for four successive weeks immediately prior to the hearing.
(3) Public hearings on development and redevelopment plans and projects may be held as part of a regular or special meeting of the county commission, or governing body of the municipality, that adopted the plan.

(e) The executive director of the development office shall submit a report to the governor, the speaker of the House of Delegates and the president of the Senate no later than February first of each year. The report shall contain a summary of all information received by the executive director pursuant to this section.

(f) For the purpose of facilitating and coordinating the reports required by this section, the executive director of the development office may promulgate procedural rules in the manner provided in article three, chapter twenty-nine-a of this code, to ensure compliance with this section.

(g) The executive director of the development office shall provide information and technical assistance, as requested by a county commission or the governing body of a municipality, on the requirements of this article. The information and technical assistance shall be provided in the form of a manual, written in an easy-to-follow manner, and through consultations with staff of the development office.

(h) By the first day of October each year, each agency that proposed a development or redevelopment plan that was approved by a county commission, or the governing body of a municipality, and each county commission, or governing body of a municipality, that approved a development or redevelopment plan that was not proposed by an agency shall report to the executive director of the development office the name, address, phone number and primary line of business of any
§7-11B-16. Valuation of real property.

(a) Upon and after the effective date of the creation of a development or redevelopment project area or district, the county assessor of the county in which the area or district is located shall transmit to the county clerk a certified statement of the base value, total ad valorem regular levy rate, total general obligation bond debt service ad valorem rate, and total excess levy rate applicable for the development or redevelopment area or district.

(1) The assessor shall undertake, upon request of the county commission, or the governing body of the municipality, creating the development or redevelopment project area or district, an investigation, examination and inspection of the taxable real and tangible personal property having a tax situs in the area or district and shall reaffirm or revalue the base value for assessment of the property in accordance with the findings of the investigation, examination and inspection.

(2) The county assessor shall determine, according to his or her best judgment from all sources available to him or her, the full aggregate assessed value of the taxable property in the area or district, which aggregate assessed valuation, upon certification thereof by the assessor to the clerk, constitutes the base value of the development or redevelopment project area or district.
(b) The county assessor shall give notice annually to the designated finance officer of each levying body having the power to levy taxes on property within each area or district of the current value and the incremental value of the property in the development or redevelopment project area or district.

(c) The assessor shall also determine the tax increment by applying the applicable ad valorem regular levy rates to the incremental value.

(d) The notice shall also explain that the entire amount of the tax increment allocable to property within the development or redevelopment project area or district will be paid to the tax increment financing fund of the development or redevelopment project area or district until it is terminated.

(e) The assessor shall identify upon the landbooks those parcels of property that are within each existing development or redevelopment project area or district, specifying on landbooks the name of each area or district.

§7-11B-17. Division of ad valorem real property tax revenue.

(a) For so long as the development or redevelopment project area or district exists, the county sheriff shall divide the ad valorem tax revenue collected, with respect to taxable property in the area or district, as follows:

(1) The assessor shall determine for each tax year:

(A) The amount of ad valorem property tax revenue that should be generated by multiplying the assessed value of the property for the then current tax year by the aggregate of applicable levy rates for the tax year;
(B) The amount of ad valorem tax revenue that should be generated by multiplying the base assessed value of the property by the applicable regular ad valorem levy rates for the tax year;

(C) The amount of ad valorem tax revenue that should be generated by multiplying the assessed value of the property for the current tax year by the applicable levy rates for general obligation bond debt service for the tax year;

(D) The amount of ad valorem property tax revenue that should be generated by multiplying the assessed value of the property for the current tax year by the applicable excess levy rates for the tax year; and

(E) The amount of ad valorem property tax revenue that should be generated by multiplying the incremental value by the applicable regular levy rates for the tax year.

(2) The sheriff shall determine from the calculations set forth in subdivision (1), subsection (a) of this section the percentage share of total ad valorem revenue for each levying body according to paragraphs (B) through (D), subdivision (1), subsection (a) of this section, by dividing each of such amounts by the total ad valorem revenue figure determined by the calculation in paragraph (A), subdivision (1), subsection (a) of this section; and

(3) On each date on which ad valorem tax revenue is to be distributed to the levying bodies, such revenue shall be distributed by:

(A) Applying the percentage share determined according to paragraph (B), subdivision (1), subsection (a) of this section to
the revenues received and distributing such share to the levying bodies entitled to such distribution pursuant to current law;

(B) Applying the percentage share determined according to paragraph (C), subdivision (1), subsection (a) of this section to the revenues received and distributing such share to the levying bodies entitled to such distribution by reason of having general obligation bonds outstanding;

(C) Applying the percentage share determined according to paragraph (D), subdivision (1), subsection (a) of this section to the revenues received and distributing such share to the levying bodies entitled to such distribution by reason of having excess levies in effect for the tax year; and

(D) Applying the percentage share determined according to paragraph (E), subdivision (1), subsection (a) of this section to the revenues received and distributing such share to the tax increment financing fund of the development or redevelopment project area or district.

(b) In each year for which there is a positive tax increment, the county sheriff shall remit to the tax increment financing fund of the development or redevelopment project area or district that portion of the ad valorem property taxes collected that consists of the tax increment.

(c) Any additional moneys appropriated to the development or redevelopment project area or district pursuant to an appropriation by the county commission that created the district and any additional moneys dedicated to the fund from other sources shall be deposited to the tax increment financing fund for the development or redevelopment project area or district by the sheriff.
(d) Any funds deposited into the tax increment financing fund of the development or redevelopment project area or district may be used to pay project costs, principal and interest on bonds, and the cost of any other improvements in the development or redevelopment project area or district deemed proper by the county commission.

(e) Unless otherwise directed pursuant to any agreement with the holders of tax increment financing obligations, moneys in the tax increment financing fund may be temporarily invested in the same manner as other funds of the county commission, or the municipality, that established the fund.

(f) If less than all of the tax increment is to be used for project costs or pledged to secure tax increment financing as provided in the plan for the development or redevelopment project area or district, the sheriff shall account for that fact in distributing the ad valorem property tax revenues.

§7-11B-18. Payments in lieu of taxes and other revenues.

(a) The county commission or municipality that created the development or redevelopment project area or district shall deposit in the tax increment financing fund of the development or redevelopment project area or district all payments in lieu of taxes on tax exempt property located within the development or redevelopment project area or district.

(b) As a condition of receiving tax increment financing, the lessee of property that is exempt from property taxes because it is owned by this state, a political subdivision of this state or an agency or instrumentality thereof, the lessee shall execute a payment in lieu of tax agreement that shall remain in effect until the tax increment financing obligations are paid, during
which period of time the lessee agrees to pay to the county sheriff an amount equal to the amount of ad valorem property taxes that would have been levied against the assessed value of the property were it owned by the lessee rather than a tax exempt entity. The portion of the payment in lieu of taxes attributable to the incremental value shall be deposited in the tax increment financing fund. The remaining portion of the in lieu payment shall be distributed among the levying bodies as follows:

(1) The portion of the in lieu tax payment attributable to the base value of the property shall be distributed to the levying bodies in the same manner as taxes attributable to the base value of other property in the area or district are distributed; and

(2) The portions of the in lieu tax payment attributable to levies for bonded indebtedness and excess levies shall be distributed in the same manner as those levies on other property in the area or district are distributed.

(c) Other revenues to be derived from the development or redevelopment project area or district may also be deposited in the tax increment financing fund at the direction of the county commission.


(a) Tax increment obligations may be issued by a county commission, or the governing body of the municipality, to pay project costs for projects included in the development or redevelopment plan approved by the development office and adopted by the county commission, or the governing body of the municipality, that are located in a development or redevelop-
(1) Tax increment financing obligations may be issued for project costs, as defined in section three of this article, which may include interest prior to and during the carrying out of a project and for a reasonable time thereafter, with such reserves as may be required by any agreement securing the obligations and all other expenses incidental to planning, carrying out and financing the project.

(2) The proceeds of tax increment financing obligations may also be used to reimburse the costs of any interim financing entered on behalf of projects in the development or redevelopment project area or district.

(b) Tax increment financing obligations issued under this article shall be payable solely from the tax increment or other revenues deposited to the credit of the tax increment financing fund of the development or redevelopment project area or district.

(c) Under no event shall tax increment financing obligations be secured or be deemed to be secured by the full faith and credit of the county commission or the municipality issuing the tax increment financing obligations.

(d) Every tax increment financing bond, note or other obligation issued under this article shall recite on its face that it is a special obligation payable solely from the tax increment and other revenues pledged for its repayment.

§7-11B-20. Tax increment financing obligations — Authority to issue.
For the purpose of paying project costs, or for the purpose of refunding notes issued under this article for the purpose of paying project costs, the county commission or municipality creating the development or redevelopment project area or district may issue tax increment financing obligations payable out of positive tax increments and other revenues deposited to the tax increment financing fund of the development or redevelopment project area or district.


(a) Issuance of tax increment financing obligations shall be authorized by order of the county commission, or resolution of the municipality, that created the development or redevelopment project area or district.

(b) The order, or resolution, shall state the name of the development or redevelopment project area or district, the amount of tax increment financing obligations authorized, the type of obligation authorized, and the interest rate to be borne by the bonds, notes or other tax increment financing obligations.

(c) The order or ordinance may prescribe the terms, form, and content of the tax increment financing obligations and other particulars or information the county commission, or governing body of the municipality, issuing the obligations deems useful, or it may include by reference the terms and conditions set forth in a trust indenture or other document securing the development or redevelopment project tax increment financing obligations.

§7-11B-22. Tax increment financing obligations — Terms, conditions.
(a) Tax increment financing obligations may not be issued in an amount exceeding the estimated aggregate project costs, including all costs of issuance of the tax increment financing obligations.

(b) Tax increment financing obligations shall not be included in the computation of the constitutional debt limitation of the county commission or municipality issuing the tax increment financing obligations.

(c) Tax increment financing obligations shall mature over a period not exceeding thirty years from the date of entry of the county commission’s order, or the effective date of the municipal ordinance, creating the development or redevelopment project area or district and approving the development or redevelopment plan, or a period terminating with the date of termination of the development or redevelopment project area or district, whichever period terminates earlier.

(d) Tax increment financing obligations may contain a provision authorizing their redemption, in whole or in part, at stipulated prices, at the option of the county commission or municipality issuing the obligations, on any interest payment date and, if so, the obligations shall provide the method of selecting the tax increment financing obligations to be redeemed.

(e) The principal and interest on tax increment financing obligations may be payable at any place set forth in the resolution, trust indenture, or other document governing the obligations.

(f) Bonds or notes shall be issued in registered form.
(g) Bonds or notes may be issued in any denomination.

(h) Each tax increment financing obligation issued under this article is declared to be a negotiable instrument.

(i) The tax increment financing obligations may be sold at public or private sale.

(j) Insofar as they are consistent with subdivision (1), subsection (a) and subsections (b) and (c) of this section, the procedures for issuance, form, contents, execution, negotiation, and registration of county and municipal industrial or commercial revenue bonds set forth in article two-c, chapter thirteen of this code are incorporated by reference herein.

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: Provided, That the last maturity of the refunding bonds shall not be later than the last maturity of the bonds being refunded.


To increase the security and marketability of tax increment financing obligations, the county commission or municipality issuing the obligations may:

(1) Create a lien for the benefit of the holders of the obligations upon any public improvements or public works financed by the obligations; or

(2) Make such covenants and do any and all such actions, not inconsistent with the constitution of this state, which may be necessary, convenient or desirable in order to additionally secure the obligations, or which tend to make the obligations
§7-11B-24. Tax increment financing obligations — Special fund for repayment.

(a) Tax increment financing obligations issued by a county commission or municipality are payable out of the tax increment financing fund created for each development and redevelopment project area or district created under this article.

(b) The county commission or municipality issuing the tax increment financing obligations shall irrevocably pledge all or part of the tax increment financing fund to the payment of the obligations. The tax increment financing fund, or the designated part thereof, may thereafter be used only for the payment of the obligations and their interest until they have been fully paid.

(c) A holder of the tax increment financing obligations shall have a lien against the tax increment financing fund for payment of the obligations and interest on them and may bring suit to enforce the lien.

§7-11B-25. Tax increment financing obligations — Tax exemption.

Tax increment financing obligations issued under this article, together with the interest and income therefrom, shall be exempt from all state income taxes, whether imposed on individuals, corporations or other persons, from state business franchise taxes and from ad valorem property taxes.

(a) Moneys received in the tax increment financing fund of the development or redevelopment project area or district in excess of amounts needed to pay project costs and debt service may be used by the county commission or municipality that created the development or redevelopment project area or district for other projects within the area or district, or distributed to the levying bodies as provided in this article.

(b) Upon termination of the area or district, all amounts in the tax increment financing fund of the area or district shall be paid over to the levying bodies in the same proportion that ad valorem property taxes on the base value was paid over to those levying bodies for the tax year in which the area or district is terminated.

§7-11B-27. Computation of local share for support of public schools when tax increment financing is used.

For purposes of any computation made in accordance with the provisions of section eleven, article nine-a, chapter eighteen of this code, for a county in which there is tax increment financing in effect pursuant to this article, the assessed value shall be the current assessed value minus the amount of assessed value used to determine the tax increment amount, minus any other adjustments allowed by section eleven of said article.

§7-11B-28. Effective date.

Notwithstanding the effective date of this act of the Legislature, this article shall not become operational and shall have no force and effect until the day the people ratify an amendment to the constitution of this state authorizing tax increment financing secured by ad valorem property taxes.
AN ACT to amend and reenact section fourteen, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the tax commissioner to share confidential property tax returns, maps and geographic information and property tax audit information with the West Virginia geological and economic survey; and providing that any representative of the West Virginia geological and economic survey who discloses confidential information is guilty of a misdemeanor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-14. Confidentiality and disclosure of return information to develop or maintain a mineral mapping or geographic information system; offenses; penalties.
(a) All information provided by or on behalf of a natural resources property owner or by or on behalf of an owner of an interest in natural resources property to any state or county representative, including property tax returns, maps and geological information and property tax audit information provided to the West Virginia geological and economic survey, for use in the valuation or assessment of natural resources property or for use in the development or maintenance of a legislatively funded mineral mapping or geographic information system is confidential. The information is exempt from disclosure under section four, article one, chapter twenty-nine-b of this code, and shall be kept, held and maintained confidential except to the extent the information is needed by the state tax commissioner to defend an appraisal challenged by the owner or lessee of the natural resources property subject to the appraisal: Provided, That this section may not be construed to prohibit the publication or release of information generated as a part of the minerals mapping or geographic information system, whether in the form of aggregated statistics, maps, articles, reports, professional talks or otherwise, presented in accordance with generally accepted practices and in a manner so as to preclude the identification or determination of information about particular property owners: Provided, however, That the tax commissioner may disclose return information described in this article to the West Virginia geological and economic survey.

(b) Any state or county representative, or representative of the West Virginia geological and economic survey, who violates this section by disclosing confidential information is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for not more than one year, or both fined and confined, and shall be assessed the cost of prosecution. As used in this section, the term "state or county representative" includes any current or former state or county employee,
AN ACT to amend and reenact sections four, eight, nine, nine-a, ten, fourteen and seventeen, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto three new sections, designated sections ten-a, twenty-three and twenty-four; and to amend said chapter by adding thereto a new article, designated article ten-a, all relating to tax administration and hearing procedures; requiring filing of new petitions and transferring certain pending petitions to office of tax appeals; requiring tax commissioner to issue certain decisions; authorizing tax commissioner to acquiesce or not acquiesce; increasing amount of interest charged on underpayments of taxes; requiring establishment of alternative dispute resolution mechanisms; requiring tax commissioner to study need for taxpayer resolution program and report to Legislature; stating legislative finding and purpose; defining certain terms; creating office of tax appeals; requiring principal office at state capital; allowing hearings at other locations; requiring a seal; providing for appointment, term, vacancy, qualification, compensation and removal of chief administrative law judge and prohibiting conflicts of interest; setting forth powers and duties of chief administrative law judge;
requiring certain employees be members of classified service; setting forth qualifications of administrative law judges; authorizing transfer of current employees; stating jurisdiction of office of tax appeals; requiring filing of petition and answer to initiate proceedings; setting forth hearing procedures; authorizing small claims hearings; specifying powers to decide matters; authorizing the issuance of subpoenas and stating procedures; requiring certain hearings be recorded; transcript; providing for appearances before the office of tax appeals; requiring all decisions to be in writing and certain decisions be published; requiring service of notice of decisions; establishing finality of decisions; providing for judicial review; requiring rules of practice and procedure; defining timely filing; setting forth time for performance of act when last day falls on weekend or legal holiday; and confidentiality.

Be it enacted by the Legislature of West Virginia:

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

Article

10. Procedure and Administration.

10A. West Virginia Office of Tax Appeals.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-4. Definitions.
§11-10-8. Notice of assessment; petition for reassessment or payment of assessment within sixty days; finality of assessment; payment of final assessment; effective date.
§11-10-9a. Small claims procedure; disputes involving $10,000 or less.
§11-10-10. Appeals.
§11-10-10a. Commissioner allowed to acquiesce or not acquiesce in decisions of office of tax appeals or circuit court.

§11-10-14. Overpayments; credits; refunds and limitations.

§11-10-17. Interest.

§11-10-23. Alternative dispute resolution of tax disputes.

§11-10-24. Commissioner to review taxpayer problem resolution procedures; report to Legislature.

§11-10-4. Definitions.

For the purpose of this article, the term:

(a) "Officer or employee of this state" shall include, but is not limited to, any former officer or employee of the state of West Virginia.

(b) "Office of tax appeals" means the West Virginia office of tax appeals created by section three, article ten-a of this chapter.

(c) "Person" shall include, but is not limited to, any individual, firm, partnership, limited partnership, copartnership, joint venture, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, and also any officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article and the provisions of any of the other articles of this chapter which impose taxes administered by the tax commissioner, unless the intention to give a more limited or broader meaning is disclosed by the context of this article or any of the other articles of this chapter which impose taxes administered by the tax commissioner.

(d) "State" means any state of the United States or the District of Columbia.
(e) “Tax” or “taxes” includes within the meaning thereof taxes specified in section three of this article, additions to tax, penalties and interest, unless the intention to give the same a more limited meaning is disclosed by the context.

(f) “Tax commissioner” or “commissioner” means the tax commissioner of the state of West Virginia or his or her delegate.

(g) “Taxpayer” means any person required to file a return for any tax administered under this article, or any person liable for the payment of any tax administered under this article.

(h) “Tax administered under this article” means any tax to which this article applies as set forth in section three of this article.

(i) “This code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(j) “This state” means the state of West Virginia.

§11-10-8. Notice of assessment; petition for reassessment or payment of assessment within sixty days; finality of assessment; payment of final assessment; effective date.

(a) Notice of assessment. — The tax commissioner shall give the taxpayer written notice of any assessment or amended or supplemental assessment made pursuant to this article. The assessment or amended or supplemental assessment, as the case may be, shall become final and conclusive of the liability of the taxpayer and not subject to either administrative or judicial review under the provisions of sections nine or nine-a, and ten of this article, or under the provisions of sections ten or eleven, and nineteen of article ten-a of this chapter, unless the taxpayer to whom a notice of assessment or amended or supplemental
assessment, is given, shall within sixty days after service thereof (except in the case of jeopardy assessments, as to which the time for filing a petition is specified in section seven of this article) either:

(1) Petition for reassessment. — Personally or by certified mail, files with the tax commissioner a petition in writing, verified under oath by the taxpayer or his or her duly authorized agent, having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections: Provided, That for all assessments received after the thirty-first day of December, two thousand two, the taxpayer shall file the petition with the office of tax appeals in accordance with the provisions of section nine, article ten-a of this chapter; or

(2) Payment of assessment. — Personally or by certified mail, remits to the tax commissioner the total amount of the assessment or amended or supplemental assessment, including the additions to tax and penalties as may have been assessed and the amount of interest due.

(b) Finality of assessment. — The amount of an assessment or amended or supplemental assessment shall be due and payable on the day following the date upon which the assessment or amended or supplemental assessment becomes final. Payment of the amount of the assessment, or amended or supplemental assessment, as provided in subdivision (2), subsection (a) of this section, within sixty days after service of notice of the assessment does not prohibit or otherwise bar the taxpayer from filing a claim for refund or credit under the provisions of section fourteen of this article within the time prescribed therein for the filing of a claim for refund or credit.

(c) Payment of assessment after petition filed. — A taxpayer who has timely filed a petition for reassessment may, at
any time prior to issuance of the administrative decision under section nine or nine-a of this article, or under sections ten or eleven, article ten-a of this chapter, pay under protest the amount of the assessment. Upon payment, the contested case shall thereafter be treated for all purposes as a petition for refund: Provided, That if payment is made after the administrative hearing under section nine or nine-a of this article or under section ten or eleven, article ten-a of this chapter, has commenced or concluded, a new hearing may not be held, but the record shall be properly amended to show that the amount assessed has been paid under protest by the taxpayer and that the petition for reassessment previously filed under this section or under section nine, article ten-a of this chapter is now to be treated as a petition for refund filed under section fourteen of this article.


(a) When a petition for reassessment provided for in section eight of this article, or a petition for refund or credit provided for in section fourteen of this article, is filed within the time prescribed for filing, or a hearing is requested pursuant to the provisions of any other article of this chapter which is administered under this article, the tax commissioner shall assign a time and place for a hearing upon the same and shall notify the petitioner of the hearing by written notice at least twenty days in advance thereof. The hearing shall be held within ninety days from the date of filing the petition or other written request for hearing unless continued by agreement of the parties or by the tax commissioner for good cause.

The hearing shall be informal and shall be conducted in an impartial manner by the tax commissioner or a hearing examiner designated by him or her. If the hearing is on a petition for reassessment the burden of proof shall be upon the taxpayer to show the assessment is incorrect and contrary to law, either in
whole or in part. If the hearing is on a petition for refund or credit, the petitioner shall also have the burden of proof.

After the hearing, the tax commissioner shall, within a reasonable time, give notice in writing of his or her decision. Unless an appeal from the decision of the tax commissioner rendered in any hearing is taken, pursuant to the provisions of section ten of this article, within sixty days after service of the notice, the tax commissioner’s decision shall become final and conclusive and not subject to either administrative or judicial review. The amount, if any, due the state under the decision shall be due and payable on the day following the date upon which the decision becomes final. The amount, if any, due the taxpayer under the decision shall be promptly refunded, or the same may be credited pursuant to section fourteen of this article.

(b) All petitions which are on the tax commissioner’s docket on the thirty-first day of December, two thousand two, for which no administrative hearing has been held, shall be transferred by the tax commissioner to the office of tax appeals no later than the thirty-first day of January, two thousand three; and thereafter, the petition shall, for all purposes except timeliness of filing, be treated as if it had been filed with the office of tax appeals.

(c) All petitions which are on the tax commissioner’s docket on the thirty-first day of December, two thousand two, for which an administrative hearing has been held prior to that date, shall remain on the tax commissioner’s docket and the tax commissioner shall issue an administrative decision no later than the thirty-first day of March, two thousand three.

§11-10-9a. Small claims procedure; disputes involving $10,000 or less.
(a) In general. — Notwithstanding the provisions of section nine of this article, if the amount in dispute in any petition for reassessment filed under section eight or in any petition for refund or credit filed under section fourteen does not exceed ten thousand dollars for any one taxable year, then, at the option of the taxpayer and concurred in by the tax commissioner before the hearing of the case, proceedings in the case shall be conducted under this section. The proceedings shall be conducted in an informal manner and in accordance with the rules of evidence and rules of procedure as the tax commissioner may prescribe. A decision, together with a brief summary of the reasons therefor shall be issued by the tax commissioner.

(1) All small claims petitions which are on the tax commissioner's docket on the thirty-first day of December, two thousand two, for which no administrative hearing has been held, shall be transferred by the tax commissioner to the office of tax appeals no later than the thirty-first day of January, two thousand three; and thereafter, the petition shall, for all purposes except timeliness of filing, be treated as if it had been filed with the office of tax appeals.

(2) All small claims petitions which are on the tax commissioner's docket on the thirty-first day of December, two thousand two, for which an administrative hearing has been held prior to that date, shall remain on the tax commissioner's docket and the tax commissioner shall issue an administrative decision no later than the thirty-first day of March, two thousand three.

(b) Finality of decision. — A decision entered in any case in which proceedings are conducted under this section is not subject to review, administrative or judicial, and may not be treated as precedent for any other case.

(c) Discontinuance of proceedings. — At any time before commencement of the hearing held under this section, the
taxpayer may unilaterally withdraw its election made under subsection (a); and at any time before a decision is issued under this section, the taxpayer may request or the tax commissioner, on his or her own motion, may order that further proceedings under this section be discontinued because there are reasonable grounds for believing that the amount in dispute exceeds the amount described in subsection (a) of this section. Upon any discontinuance, or change of election, a hearing shall be held in the same manner as other cases to which section nine of this article applies.

(d) Amount of deficiency in dispute. — For purposes of this section, the amount in dispute includes tax, additions to tax, additional amounts and penalties. It excludes interest.

§11-10-10. Appeals.

(a) Right of appeal. —

(1) A taxpayer may appeal the administrative decision of the tax commissioner issued under section nine or fourteen of this article, by taking an appeal to the circuit courts of this state within sixty days after being served with notice of the administrative decision.

(2) A taxpayer may appeal the administrative decision of the office of tax appeals in accordance with the provisions of section nineteen, article ten-a of this chapter.

(b) Venue. — The appeal may be taken in the circuit court of any county:

(1) Wherein the activity taxed was engaged in; or

(2) Wherein the taxpayer resides; or

(3) Wherein the will of the decedent was probated or letters of administration granted; or
(4) To the circuit court of Kanawha County.

(c) Petition for appeal. — The appeal proceeding shall be instituted by filing a petition with the circuit court, or the judge thereof in vacation, within the sixty-day period prescribed in subsection (a) of this section. The clerk of the circuit court shall, within ten days after date the petition is filed, serve the tax commissioner with a copy of the same by registered or certified mail. This petition shall be in writing, verified under oath by the taxpayer, or his or her duly authorized agent, having knowledge of the facts, set forth with particularity the items of the administrative decision or the assessment objected to, together with the reasons for the objections.

(d) Appeal bond. — If the appeal is of any assessment for additional taxes (except a jeopardy assessment for which security in the amount thereof was previously filed with the tax commissioner), then within ninety days after the petition for appeal is filed, or sooner if ordered by the circuit court, the taxpayer shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned that the taxpayer shall perform the orders of the court. The penalty of this bond shall be not less than the total amount of tax, additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the tax commissioner. Notwithstanding the foregoing and in lieu of the bond, the tax commissioner, in his or her discretion upon the terms as he or she may prescribe, may upon a sufficient showing by the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer subject to the lien imposed by section twelve of this article, or other indemnification, are adequate to secure performance of the orders of the court: Provided, That if the tax commissioner refuses to certify that the assets of the taxpayer or other indemnification are adequate
to secure performance of the orders of the court, then the taxpayer may apply to the circuit court for the certification.

(e) Hearing of appeal. — The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. In the appeal a certified copy of the tax commissioner’s notice of assessment or amended or supplemental assessment and administrative decision thereon shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of those articles of this chapter to which this article is applicable. The court shall render its decree thereon and a certified copy of the decree shall be filed by the clerk of the court with the tax commissioner who shall then correct the assessment in accordance with the decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.

§11-10-10a. Commissioner allowed to acquiesce or not acquiesce in decisions of office of tax appeals or circuit court.

(a) The commissioner may state and periodically publish the tax division’s acquiescence or nonacquiescence to indicate its position on an adverse decision of the office of tax appeals or a circuit court.

(b) Acquiescence in a decision means acceptance by the commissioner of the conclusion reached, but does not necessarily mean acceptance and approval of any or all of the reasons assigned by the office of tax appeals or circuit court for its conclusion.

(c) Nonacquiescence means that the commissioner does not accept one or more of the adverse conclusions reached by the office of tax appeals or the circuit court even though no appeal is taken from the decision. The decision is binding on the
commissioner in the case not appealed but is not binding in any other case.

§11-10-14. Overpayments; credits; refunds and limitations.

(a) Refunds of credits of overpayments. — In the case of overpayment of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the tax commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer’s liability for the tax for other periods. The refund or credit shall include any interest due the taxpayer under the provisions of section seventeen of this article.

(b) Refunds or credits of gasoline and special fuel excise tax or motor carrier road tax. — Any person who seeks a refund or credit of gasoline and special fuel excise taxes under the provisions of section ten, eleven or twelve, article fourteen of this chapter, or section nine or eleven, article fourteen-a of this chapter, shall file his or her claim for refund or credit in accordance with the provisions of the applicable sections. The ninety-day time period for determination of claims for refund or credit provided in subsection (d) of this section does not apply to these claims for refund or credit.

(c) Claims for refund or credit. — No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the tax commissioner. A person against whom an assessment or administrative decision has become final is not entitled to file a claim for refund or credit with the tax commissioner as prescribed herein. The tax commissioner shall determine the taxpayer’s claim and notify the taxpayer in writing of his or her determination.

(d) Petition for refund or credit; hearing. —
(1) If the taxpayer is not satisfied with the tax commissioner’s determination of taxpayer’s claim for refund or credit, or if the tax commissioner has not determined the taxpayer’s claim within ninety days after the claim was filed, or six months in the case of claims for refund or credit of the taxes imposed by articles twenty-one, twenty-three and twenty-four of this chapter, after the filing thereof, the taxpayer may file, with the tax commissioner, either personally or by certified mail, a petition for refund or credit: Provided, That no petition for refund or credit may be filed more than sixty days after the taxpayer is served with notice of denial of taxpayer’s claim: Provided, however, That after the thirty-first day of December, two thousand two, the taxpayer shall file the petition with the office of tax appeals in accordance with the provisions of section nine, article ten-a of this chapter.

(2) The petition for refund or credit shall be in writing, verified under oath by the taxpayer, or by taxpayer’s duly authorized agent having knowledge of the facts, and shall set forth with particularity the items of the determination objected to, together with the reasons for the objections.

(3) When a petition for refund or credit is properly filed, the procedures for hearing and for decision applicable when a petition for reassessment is timely filed shall be followed.

(e) Appeal. — An appeal from the tax commissioner’s administrative decision upon the petition for refund or credit may be taken by the taxpayer in the same manner and under the same procedure as that provided for judicial review of an administrative decision on a petition for reassessment, but no bond shall be required of the taxpayer. An appeal from the administrative decision of the office of tax appeals on a petition for refund or credit, if taken by the taxpayer, shall be taken as provided in section nineteen, article ten-a of this chapter.
(f) Decision of the court. — Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event shall it enter a judgment for money.

(g) Refund made or credit established. — The tax commissioner shall promptly issue his or her requisition on the treasury or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of any tax (or fee) administered under this article. The auditor shall issue his or her warrant on the treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the treasurer shall pay the warrant out of the fund into which the amount so refunded was originally paid: Provided, That refunds of personal income tax may also be paid out of the fund established pursuant to section ninety-three, article twenty-one of this chapter.

(h) Forms for claim for refund or a credit; where return shall constitute claim. — The tax commissioner may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter, a return signed by the taxpayer which shows on its face that an overpayment of tax has been made shall constitute a claim for refund or credit.

(i) Remedy exclusive. — The procedure provided by this section shall constitute the sole method of obtaining any refund, or credit, or any tax (or fee) administered under this article, it being the intent of the Legislature that the procedure set forth in this article shall be in lieu of any other remedy, including the uniform declaratory judgments act embodied in article thirteen, chapter fifty-five of this code, and the provisions of section two-a, article one of this chapter.
(j) Applicability of this section. — The provisions of this section shall apply to refunds or credits of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, to which this article is applicable.

(k) Erroneous refund or credit. — If the tax commissioner believes that an erroneous refund has been made or an erroneous credit has been established, he or she may proceed to investigate and make an assessment or institute civil action to recover the amount of the refund or credit, within two years from the date the erroneous refund was paid or the erroneous credit was established, except that the assessment may be issued or civil action brought within five years from the date if it appears that any portion of the refund or credit was induced by fraud or misrepresentation of a material fact.

(l) Limitation on claims for refund or credit. —

(1) General rule. — Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax, (or fee), was paid, whichever of the periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.

(2) Extensions of time for filing claim by agreement. — The tax commissioner and the taxpayer may enter into a written agreement to extend the period within which the taxpayer may
file a claim for refund or credit, which period may not exceed
two years. The period so agreed upon may be extended for
additional periods not in excess of two years each by subse-
quent agreements in writing made before expiration of the
period previously agreed upon.

(3) **Special rule where agreement to extend time for making an assessment.** — Notwithstanding the provisions of subdivi-
sions (1) and (2) of this subsection, if an agreement is made
under the provisions of section fifteen of this article extending
the time period in which an assessment of tax can be made, then
the period for filing a claim for refund or credit for overpay-
ment of the same tax made during the periods subject to
assessment under the extension agreement shall also be
extended for the period of the extension agreement plus ninety
days.

(4) **Overpayment of federal tax.** — Notwithstanding the
provisions of subdivisions (1) and (2) of this subsection, in the
event of a final determination by the United States Internal
Revenue Service or other competent authority of an overpay-
ment in the taxpayer’s federal income or estate tax liability, the
period of limitation upon claiming a refund reflecting the final
determination in taxes imposed by articles eleven, twenty-one
and twenty-four of this chapter may not expire until six months
after the determination is made by the United States Internal
Revenue Service or other competent authority.

(5) **Tax paid to the wrong state.** — Notwithstanding the
provisions of subdivisions (1) and (2) of this subsection, when
an individual, or the fiduciary of an estate, has in good faith
erroneously paid personal income tax, estate tax or sales tax, to
this state on income or a transaction which was lawfully taxable
by another state and, therefore, not taxable by this state, and no
dispute exists as to the jurisdiction to which the tax should have
been paid, then the time period for filing a claim for refund, or
credit, for the tax erroneously paid to this state does not expire until ninety days after the tax is lawfully paid to the other state.

(6) Exception for gasoline and special fuel excise tax and motor carrier road tax. — This subsection does not apply to refunds of gasoline and special fuel excise tax or motor carrier road tax sought under the provisions of article fourteen or fourteen-a of this chapter.

(m) Effective date. — This section, as amended in the year one thousand nine hundred ninety-six, shall apply to claims for refund or credit filed on or after the first day of July, one thousand nine hundred ninety-six.

§11-10-17. Interest.

(a) Underpayments. — If any amount of a tax administered under this article is not paid on or before the last date prescribed for payment, interest on the amount at the rate of eight percent per annum shall be paid for the period from the last date to the date paid: Provided, That on and after the first day of July, one thousand nine hundred eighty-six, interest on underpayments shall be paid at the annual rate established under section seventeen-a of this article, from the period beginning on the first day of July, or from the last day prescribed for payment, whichever is the later, to the date paid, regardless of when liability for the tax arose: Provided, however, That on and after the first day of July, two thousand two, interest on underpayments shall be paid at an annual rate of one and one-half percent above the annual rate established under section seventeen-a of this article, from the period beginning on the first day of July, or from the last day prescribed for payment, whichever is the later, to the date paid, regardless of when liability for the tax arose. For purposes of this subsection, the last date prescribed for payment shall be the due date of the
return and shall be determined without regard to any extension of time for payment.

(b) Last date for payment not otherwise prescribed. — In the case of taxes payable by stamp or other indicia of tax payment and in all other cases in which the last day for payment is not otherwise prescribed, the last date for payment shall be considered to be the date the liability for tax arises and in no event shall be later than the date notice and demand for payment of the tax is made by the tax commissioner.

(c) Erroneous refund or credit. — If any refund is made or credit is established upon an erroneous claim for refund or credit, interest on the amount refunded or credited at the annual rate established under section seventeen-a of this article, shall be paid by the claimant from the date the refund was made or the credit was taken to the date the amount is recovered.

(d) Overpayments. — Interest shall be allowed and paid at the annual rate of eight percent per annum upon any amount which has been finally administratively or judicially determined to be an overpayment in respect of each tax administered under this article except the taxes imposed by articles twelve, fourteen and fourteen-a of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-six, interest on overpayments shall be paid at the annual rate established under section seventeen-a of this article, from the first day of July, or the date the claim for refund or credit is filed, whichever is the later, regardless of when the tax was paid. The interest shall be allowed and paid for the period commencing with the date of the filing by the taxpayer of a claim for refund or credit with the tax commissioner and ending with the date of a final administrative or judicial determination of overpayment. The tax commissioner shall, within thirty days after the determination of entitlement to refund, issue his or her requisition or establish a credit as requested by the taxpayer. When-
ever the tax commissioner fails or refuses to issue any requisition or establish the credit within said thirty-day period, the interest provided herein shall commence to accrue until performance by the tax commissioner. The acceptance of the refund check or credit shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(e) Applicable rules. — For purposes of this section:

(1) No interest payable on tax refunded or credited within ninety days after claim for refund or credit is filed. — In the event of the overpayment of any tax administered under this article, except the tax imposed by articles twenty-one and twenty-four of this chapter, where the tax commissioner issues his or her requisition or establishes a credit as requested by the taxpayer within ninety days after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.

(2) No interest payable where personal income tax and corporation net income tax refunded or credited within six months after claim for refund or credit is filed. — In the event of the overpayment of the tax imposed by articles twenty-one and twenty-four of this chapter, where the tax commissioner issues his or her requisition or establishes a credit as requested by the taxpayer within six months after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.

(3) Interest treated as tax. — Interest prescribed under this section on any tax shall be collected and paid in the same manner as taxes.

(4) No interest on interest. — No interest under this section shall be imposed on the interest provided by this section prior to the first day of July, one thousand nine hundred eighty-six.
(5) **Interest on penalties or additions to tax.** — Interest shall be imposed under subsection (a) of this section on any assessable penalty or additions to tax only if the penalty or additions to tax is not paid within fifteen days from the date of notice and demand therefor, and in that case, interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(6) **Payments made within fifteen days after notice and demand.** — If notice and demand is made for payment of any amount, and if the amount is paid within fifteen days after the date of the notice and demand, interest under this section on the amount so paid may not be imposed for the period after the date of the notice and demand.

(7) **Limitation on collection.** — Interest prescribed under this section on any tax may be collected at any time during the period within which the tax to which the interest relates may be collected.

(8) **Exception as to estimated tax.** — This section does not apply to any failure to pay any estimated tax required to be paid under articles thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three or twenty-four of this chapter.

§11-10-23. **Alternative dispute resolution of tax disputes.**

On or before the thirty-first day of December, two thousand two, the tax commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which adopt and implement alternative dispute resolution mechanisms which offer taxpayers voluntary and cost-effective methods of resolving tax disputes in order to encourage voluntary settlements and minimize the number of disputes that require litigation to resolve the controversy.
§11-10-24. Commissioner to review taxpayer problem resolution procedures; report to Legislature.

The commissioner shall review the procedures utilized to resolve taxpayer complaints and problems to determine whether taxpayer complaints and problems are being remedied promptly and to assure that taxpayer rights are safeguarded and protected during tax determination and collection processes. The commissioner shall, on or before the first day of October, two thousand four, report the findings of the review to the joint committee on government and finance with recommendations on the need for legislation to implement a taxpayer resolution program.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-1. Legislative finding; purpose.
§11-10A-4. Principal office; place for hearings; county commission to provide facilities.
§11-10A-5. Seal; authenticating records; judicial notice.
§11-10A-6. Chief administrative law judge; appointment, term and vacancy; qualifications; compensation; conflicts of interest prohibited; removal.
§11-10A-7. Powers and duties of chief administrative law judge; all employees, except chief administrative law judge members of classified service; qualifications of administrative law judges; closure of tax division office of hearings and appeals and transfer of employees to office of tax appeals.
§11-10A-9. Appeal to office of tax appeals; petition; answer.
§11-10A-13. Subpoenas; service; cost; fees; relief; disobedience; oath.
§11-10A-14. Recording hearings; notice; record; transcripts; costs.
§11-10A-17. Service of notice of final decisions and orders.
§11-10A-1. Legislative finding; purpose.

The Legislature finds that there is a need for an independent quasi-judicial agency separate and apart from the tax division to resolve disputes between the tax commissioner and taxpayers in order to maintain public confidence in the state tax system. The Legislature does therefore declare that the purpose of this article is to create the West Virginia office of tax appeals to resolve disputes between the tax commissioner and taxpayers and to prescribe the powers and duties of the office of tax appeals.


(a) “Division” means the tax division of the West Virginia department of tax and revenue.

(b) “Tax commissioner” or “commissioner” means the tax commissioner of the state of West Virginia or his or her authorized designee.

(c) “Office of tax appeals” means the West Virginia office of tax appeals created by this article.


There is hereby created the West Virginia office of tax appeals, a quasi-judicial agency which, for administrative purposes only, is in the department of tax and revenue.
§11-10A-4. Principal office; place for hearings; county commis-

sion to provide facilities.

1 The principal office shall be at the state capital, but the
2 office of tax appeals may hold hearings at any place within this
3 state. A county commission, upon request by the office of tax
4 appeals, shall provide it with suitable rooms and facilities for
5 hearings it holds in that county at times convenient to the
6 county commission and the office of tax appeals.

§11-10A-5. Seal; authenticating records; judicial notice.

1 The office of tax appeals shall have a seal. The seal shall
2 have the following words engraved thereon: “West Virginia
3 Office of Tax Appeals.” The office of tax appeals shall authen-
4 ticate all of its orders, records and proceedings with the seal;
5 and the courts of this state shall take judicial notice of the seal.

§11-10A-6. Chief administrative law judge; appointment, term
and vacancy; qualifications; compensation; conflicts of interest prohibited; removal.

1 (a) The governor, with the advice and consent of the Senate,
2 shall appoint the chief administrative law judge from a list of
3 three qualified nominees submitted to the governor by the board
4 of governors of the West Virginia state bar for a six-year term.
5 An appointment to fill a vacancy in the position shall be for the
6 unexpired term.

7 (b) Prior to appointment, the chief administrative law judge
8 shall be a citizen of the United States and a resident of this state
9 who is admitted to the practice of law in this state and who has
10 five years of full-time or equivalent part-time experience as an
11 attorney with federal or state tax law expertise or as a judge of
12 a court of record.
(c) The salary of the chief administrative law judge shall be set by the secretary of the department of tax and revenue created in section two, article one, chapter five-f of this code. The salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by section six, article six, chapter twenty-nine of this code.

(d) The chief administrative law judge, during his or her term shall:

1. Devote his or her full time to the duties of the position;

2. Not otherwise engage in the active practice of law or be associated with any group or entity which is itself engaged in the active practice of law: Provided, That nothing in this paragraph may be construed to prohibit the chief administrative law judge from being a member of a national, state or local bar association or committee, or of any other similar type group or organization, or to prohibit the chief administrative law judge from engaging in the practice of law by representing himself, herself or his or her immediate family in their personal affairs in matters not subject to this article.

3. Not engage directly or indirectly in any activity, occupation or business interfering or inconsistent with his or her duties as chief administrative law judge;

4. Not hold any other appointed public office or any elected public office or any other position of public trust; and

5. Not be a candidate for any elected public office, or serve on or under any committee of any political party.

(e) The governor may remove the chief administrative law judge only for incompetence, neglect of duty, official misconduct or violation of subsection (d) of this section, and removal
shall be in the same manner as that specified for removal of elected state officials in section six, article six, chapter six of this code.

§11-10A-7. Powers and duties of chief administrative law judge; all employees, except chief administrative law judge members of classified service; qualifications of administrative law judges; closure of tax division office of hearings and appeals and transfer of employees to office of tax appeals.

(a) The chief administrative law judge is the chief executive officer of the office of tax appeals and he or she may employ up to two administrative law judges, no more than one person to serve as executive director, no more than one staff attorney and other clerical personnel as necessary for the proper administration of this article. The chief administrative law judge may delegate administrative duties to other employees, but the chief administrative law judge shall be responsible for all official delegated acts.

(1) All employees of the office of tax appeals, except the chief administrative law judge, shall be in the classified service and shall be governed by the provisions of the statutes, rules and policies of the classified service in accordance with the provisions of article six, chapter twenty-nine of this code.

(2) Prior to employment by the office of tax appeals, all administrative law judges shall be admitted to the practice of law in this state and have at least two years of full-time or equivalent part-time experience as an attorney with federal or state tax law expertise.

(3) The chief administrative law judge and all administrative law judges shall be members of the public employees retirement system and do not qualify as participants in the
judicial retirement system during their tenure with the office of tax appeals.

(4) Notwithstanding any provisions of this code to the contrary, the chief administrative law judge shall employ any person not a temporary or probationary employee employed full-time and in good standing by the tax division in its hearings office applying for a position with the office of tax appeals. A former tax division employee employed by the office of tax appeals under the provisions of this subdivision shall retain his or her classified service classification, salary and benefits: Provided, That if an employee is currently classified as a chief administrative law judge, he or she may not retain that classification and must be reclassified as determined by the secretary of the department of tax and revenue.

(b) The chief administrative law judge shall:

(1) Direct and supervise the work of the legal staff;

(2) Make hearing assignments;

(3) Maintain the records of the office of tax appeals;

(4) Review and approve decisions of administrative law judges as to legal accuracy, clarity and other requirements;

(5) Publish decisions in accordance with the provisions of section sixteen of this article;

(6) Submit to the Legislature, on or before the fifteenth day of February, an annual report summarizing the office of tax appeals' activities since the end of the last report period, including a statement of the number and type of matters handled by the office of tax appeals during the preceding fiscal year and the number of matters pending at the end of the year; and
(7) Perform the other duties necessary and proper to carry out the purposes of this article.


The office of tax appeals has exclusive and original jurisdiction to hear and determine all:

1. Appeals from tax assessments issued by the tax commissioner pursuant to article ten of this chapter;
2. Appeals from decisions or orders of the tax commissioner denying refunds or credits for all taxes administered in accordance with the provisions of article ten of this chapter;
3. Appeals from orders of the tax commissioner denying, suspending, revoking, refusing to renew any license or imposing any civil money penalty for violating the provisions of any licensing law administered by the tax commissioner;
4. Questions presented when a hearing is requested pursuant to the provisions of any article of this chapter which is administered by the provisions of article ten of this chapter;
5. Matters which the tax division is required by statute or legislatively approved rules to hear, except employee grievances filed pursuant to article six-a, chapter twenty-nine of this code; and
6. Other matters which may be conferred on the office of tax appeals by statute or legislatively approved rules.

§11-10A-9. Appeal to office of tax appeals; petition; answer.

(a) A proceeding before the office of tax appeals appealing a tax assessment, a denial of a tax refund or credit or any other order of the tax commissioner, or requesting a hearing pursuant to the provisions of any article of this chapter which is adminis-
(2) The facts on which the appeal is based; and

(3) Each question presented for review by the office of tax appeals.

(b) A petition filed pursuant to subsection (a) of this section is timely filed if postmarked or hand delivered to the office of tax appeals within sixty days of the date a person received written notice of an assessment, denial of a refund or credit, order or other decision of the tax commissioner.

(c) The office of tax appeals shall, within five days of receipt of a timely petition filed pursuant to subsection (a) of this article, provide the tax commissioner with a copy of the petition. The tax commissioner shall submit a written answer to the petition within forty days of his or her receipt of the petition. The answer shall succinctly state:

(1) The nature of the case;

(2) The facts relied upon by the commissioner;

(3) An answer to each question presented for review.

(d) A proceeding before the office of tax appeals in other matters conferred by statute or legislatively approved rules shall be initiated by filing a petition with the office of tax appeals in accordance with the provisions of the applicable statute or rule.


(a) The office of tax appeals shall assign a date, time and place for a hearing on a petition and shall notify the parties to
the hearing by written notice at least twenty days in advance of the hearing date. The hearing shall be held within forty-five days of the due date of the commissioner's answer unless continued by order of the office of tax appeals for good cause.

(b) A hearing before the office of tax appeals shall be heard de novo and conducted pursuant to the provisions of the contested case procedure set forth in article five, chapter twenty-nine-a of this code to the extent not inconsistent with the provisions of this article. In case of conflict, the provisions of this article shall govern. The provisions of section five, article five, chapter twenty-nine-a of this code are not applicable to a hearing before the office of tax appeals.

(c) The office of tax appeals is not bound by the rules of evidence as applied in civil cases in the circuit courts of this state. The office of tax appeals may admit and give probative effect to evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs.

(d) All testimony shall be given under oath.

(e) Except as otherwise provided by this code or legislative rules, the taxpayer or petitioner has the burden of proof.

(f) The administrative law judge may ask for proposed findings of fact and conclusions of law from the parties prior to the issuance by the office of tax appeals of the decision in the matter.

(g) Hearings shall be exempt from the requirements of article nine-a, chapter six and article one, chapter twenty-nine-b of this code.

(a) If the amount in dispute in any petition filed with the office of tax appeals does not exceed ten thousand dollars for any one taxable year, then, at the option of the taxpayer and with the concurrence of the office of tax appeals, the hearing shall be conducted under this section. Notwithstanding the provisions of section fourteen of this article, a hearing under this section shall be conducted in an informal manner and in accordance with the rules of practice and procedure as the office of tax appeals may prescribe.

(b) At any time before commencement of the hearing held under this section, the petitioner may unilaterally withdraw the election made under subsection (a) of this section. Upon a change of election, a hearing shall be held in the same manner as other contested matters to which this article applies.

(c) A decision entered in any hearing conducted under this section is not subject to administrative or judicial review under this article, article ten of this chapter or article five, chapter twenty-nine-a of this code, and may not be treated as precedent for any other contested matter. The amount, if any, owed by the taxpayer to the state shall be paid within thirty days after notice of the decision is served on the taxpayer. The amount, if any, of overpayment by the taxpayer shall be promptly refunded or credited to the taxpayer.

(d) For purposes of this section, the amount in dispute includes tax, additions to tax and penalties, but excludes interest.


In determining the outcome of a case, the office of tax appeals may affirm, reverse, modify or vacate an assessment of tax; may order the payment of or deny a refund, in whole or part; may authorize or deny a credit, in whole or part; or may grant other relief necessary or appropriate to dispose of the matter.
§11-10A-13. Subpoenas; service; cost; fees; relief; disobedience; 
oath.

(a) The office of tax appeals has the power to issue subpoenas and subpoenas duces tecum requiring the attendance of 
witnesses and the production of books, papers, records, documents and testimony at the time and place specified. The office 
of tax appeals may exercise the power upon the request of any 
person who is a party to a hearing before the office of tax 
appeals.

(b) Every subpoena and subpoena duces tecum must be 
served at least five days before the return date thereof, by either 
personal service made by any person over eighteen years of age, 
or by registered or certified mail, but a return receipt signed by 
the person to whom subpoena or subpoena duces tecum is 
directed shall be required to prove service by registered or 
certified mail. Any party requesting a subpoena or subpoena 
duces tecum is responsible for service thereof and payment of 
any fee for service. Any person who serves any subpoena or 
subpoena duces tecum shall be entitled to the same fee as 
sheriffs who serve witness subpoenas for the circuit courts of 
this state.

(c) Fees for the attendance of witnesses subpoenaed shall be 
the same as for witnesses before the circuit courts of this state. 
All fees related to any subpoena or subpoena duces tecum 
issued at the request of a party to an administrative hearing 
shall be paid by the party who requested the subpoena or 
subpoena duces tecum be issued. All requests by parties for 
issuance of subpoena or subpoena duces tecum shall be in 
writing and shall contain a statement acknowledging that the 
requesting party agrees to pay the fees.

(d) Upon motion made promptly, and in any event before 
the time specified in a subpoena or subpoena duces tecum for 
compliance therewith, the circuit court of the county in which
the hearing is to be held or the circuit court of the county in which the person upon whom any subpoena or subpoena duces tecum was served resides, has his, her or its principal place of business or is employed, or the circuit court of the county in which any subpoena or subpoena duces tecum was served, or the judge of any circuit court in vacation, may grant any relief with respect to the subpoena or subpoena duces tecum which any circuit court, under the West Virginia rules of civil procedure, could grant, and for any of the same reasons, with respect to any subpoena or subpoena duces tecum issued from any circuit court.

(e) In case of disobedience to or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the circuit court of Kanawha County or of the county in which the person resides, has his, her or its principal place of business or is employed, or the judge thereof in vacation, upon application of the chief administrative law judge of the office of tax appeals, may compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court for a refusal to testify therein.

(f) Witnesses subpoenaed under this section shall testify under oath or affirmation.

§11-10A-14. Recording hearings; notice; record; transcripts; costs.

(a) Except in the small claims division, all hearings before the office of tax appeals shall be recorded by means acceptable for use in courts of this state. All parties shall receive notice
that the hearing will be recorded and that each is entitled to receive a copy of the recording at cost.

(b) A copy of the written exhibits made part of the record shall be available to any party upon request and payment of a reasonable fee.

(c) Upon appeal to circuit court, a verbatim transcript and copy of written exhibits shall be prepared for submission to the circuit court with the cost paid by the party taking the appeal: Provided, That if both parties appeal, the cost of the transcript shall be shared equally by the two parties.


(a) A person may appear before the office of tax appeals in his or her own behalf, or may be represented by an attorney or by any other person as he or she may choose.

(b) Nothing in this section may be construed to permit the unauthorized practice of law as defined by the West Virginia supreme court of appeals.


(a) Every final decision or order of the office of tax appeals shall be in writing and shall include a concise statement of the material facts and conclusions of law.

(b) All final decisions or orders of the office of tax appeals shall be issued within a reasonable time, not to exceed six months, from the date the petition is filed or from the date the hearing record is closed, whichever is later.

(c) All final decisions and orders, except small claims decisions, shall be published in the state register after having been redacted to maintain confidentiality. The office of tax appeals may also post its redacted decisions on the internet.
§11-10A-17. Service of notice of final decisions and orders.

(a) Notice of final decisions and orders of the office of tax appeals shall be served upon the parties either by personal or substituted service, or by certified mail.

(1) Service of notice by personal or substituted service is valid if made by any method authorized by the rules of the West Virginia rules of civil procedure.

(2) Service of notice by certified mail is valid if accepted by the party, or if addressed to and mailed to the party's usual place of business or usual place of abode or last known address and accepted by any person.

(b) Any notice addressed and mailed in the manner specified in subsection (a), which is refused or not claimed, may then be served by first-class mail, postage prepaid, to the same address and the date of posting in the United States mail is the date of service.

§11-10A-18. Finality of decision by the office of tax appeals; amount due payable; prompt refunds.

Unless an appeal from the decision of the office of tax appeals is taken pursuant to section nineteen of this article, within sixty days after service of notice of the decision, the office of tax appeals's decision shall become final and conclusive and not subject to either administrative or judicial review. The amount, if any, owed by the taxpayer shall be due and payable to the tax commissioner on the day following the date upon which the decision became final. The amount of overpayment by the taxpayer, if any, shall be promptly refunded or credited to the taxpayer.

(a) Either the taxpayer or the commissioner, or both, may appeal the final decision or order of the office of tax appeals by taking an appeal to the circuit courts of this state within sixty days after being served with notice of the final decision or order.

(b) The office of tax appeals may not be made a party in any judicial review of a decision or order it issued.

(c)(1) If the taxpayer appeals, the appeal may be taken in the circuit court of Kanawha County or any county:

(A) Wherein the activity sought to be taxed was engaged in;

(B) Wherein the taxpayer resides; or

(C) Wherein the will of the decedent was probated or letters of administration granted.

(2) If the tax commissioner appeals, the appeal may be taken in Kanawha County: Provided, That the taxpayer shall have the right to remove the appeal to the county:

(A) Wherein the activity sought to be taxed was engaged in;

(B) Wherein the taxpayer resides; or

(C) Wherein the will of the decedent was probated or letters of administration granted.

(3) In the event both parties appeal to different circuit courts, the appeals shall be consolidated. In the absence of agreement by the parties, the appeal shall be consolidated in the circuit court of the county in which the taxpayer filed the petition for appeal.

(d) The appeal proceeding shall be instituted by filing a petition for appeal with the circuit court, or the judge thereof in
vacation, within the sixty-day period prescribed in subsection (a) of this section. A copy of the petition for appeal shall be served on all parties appearing of record, other than the party appealing, by registered or certified mail. The petition for appeal shall state whether the appeal is taken on questions of law or questions of fact, or both, and set forth with particularity the items of the decision objected to, together with the reasons for the objections.

(e) If the appeal is of an assessment, except a jeopardy assessment for which security in the amount thereof was previously filed with the tax commissioner, then within ninety days after the petition for appeal is filed, or sooner if ordered by the circuit court, the petitioner shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned upon the petitioner performing the orders of the court. The penalty of this bond shall be not less than the total amount of tax or revenue plus additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the office of tax appeals. Notwithstanding the foregoing and in lieu of the bond, the tax commissioner, upon application of the petitioner, may upon a sufficient showing by the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer are adequate to secure performance of the orders of the court: Provided, That if the tax commissioner refuses to certify that the assets of the taxpayer or other indemnification are adequate to secure performance of the orders of the court, then the taxpayer may apply to the circuit court for the certification. No bond may be required of the tax commissioner.

(f) The circuit court shall hear the appeal as provided in section four, article five, chapter twenty-nine-a of this code: Provided, That when the appeal is to review a decision or order on a petition for refund or credit, the court may determine the
legal rights of the parties, but in no event shall it enter a judgment for money.

(g) Unless the tax commissioner appeals an adverse court decision, the commissioner, upon receipt of the certified order of the court, shall promptly correct his or her assessment or issue his or her requisition on the treasury or establish a credit for the amount of an overpayment.

(h) Either party may appeal to the supreme court of appeals as provided in article six, chapter twenty-nine-a of this code.


The office of tax appeals shall adopt rules of practice and procedure in accordance with the provisions of article three, chapter twenty-nine-a of this code no later than the thirty-first day of March, two thousand three.


(a) Any petition, statement or other document required to be filed within a prescribed period or on or before a prescribed date under authority of this article is timely filed if it is delivered in person on or before the date to the office of tax appeals at its office during normal business hours.

(b) Any petition, statement or other document required to be filed within a prescribed period or on or before a prescribed date under authority of this article that is delivered by the United States mail to the office of tax appeals is timely filed if the date of the United States postmark stamped on the envelope is within the prescribed period or on or before the prescribed date for filing, and the envelope was deposited in the United States mail, postage prepaid and properly addressed to the office of tax appeals.
(c) The last date for timely filing includes any extension of time authorized by law or rule and any extension of time granted in writing by the office of tax appeals.

§11-10A-22. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.

When the last day prescribed under authority of this article for performing any act falls on Saturday, Sunday or a legal holiday, the performance of the act is considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time. The term "legal holiday" means a legal holiday in this state.


The provisions of section five-d, article ten of this chapter, to the extent not inconsistent with the provisions of this article, are applicable to all employees of the office of tax appeals.

CHAPTER 304

(Com. Sub. for S. B. 290 — By Senator Bowman)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]
of information agreement or otherwise pursuant to the provisions of subsections (d) through (n), inclusive, of said section which is in the possession of any officer, employee, agent or representative of any local or municipal governmental entity or other governmental subdivision is subject to the confidentiality and disclosure restrictions set forth in said article; and specifying that unlawful disclosure of such information by any officer, employee or agent of any local, municipal or governmental subdivision is subject to the sanctions set forth in said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5d. Confidentiality and disclosure of returns and return information.

1 (a) General rule. — Except when required in an official investigation by the tax commissioner into the amount of tax due under any article administered under this article or in any proceeding in which the tax commissioner is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in subsections (d) through (n), inclusive, of this section, it shall be unlawful for any officer, employee or agent of this state or of any county, municipality or governmental subdivision to divulge or make known in any manner the tax return, or any part thereof, of any person or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration or return required to be filed with the tax commissioner by any article of this chapter imposing any tax administered under this article or by any rule or regulation of the tax commissioner issued thereunder, or disclosed in any audit or investigation conducted under
this article. For purposes of this article, tax returns and return information obtained from the tax commissioner pursuant to an exchange of information agreement or otherwise pursuant to the provisions of subsections (d) through (n), inclusive, of this section which is in the possession of any officer, employee, agent or representative of any local or municipal governmental entity or other governmental subdivision is subject to the confidentiality and disclosure restrictions set forth in this article: Provided, That such officers, employees or agents may disclose the information in an official investigation, by a local or municipal governmental authority or agency charged with the duty and responsibility to administer the tax laws of the jurisdiction, into the amount of tax due under any lawful local or municipal tax administered by that authority or agency, or in any proceeding in which the local or municipal governmental subdivision, authority or agency is a party before a court of competent jurisdiction to collect or ascertain the amount of the tax. Unlawful disclosure of the information by any officer, employee or agent of any local, municipal or governmental subdivision is subject to the sanctions set forth in this article.

(b) Definitions. — For purposes of this section:

(1) Background file document. — The term “background file document”, with respect to a written determination, includes the request for that written determination, any written material submitted in support of the request and any communication (written or otherwise) between the state tax department and any person outside the state tax department in connection with the written determination received before issuance of the written determination.

(2) Disclosure. — The term “disclosure” means making known to any person in any manner whatsoever a return or return information.

(3) Inspection. — The terms “inspection” and “inspected” means any examination of a return or return information.
(4) Return. — The term "return" means any tax or information return or report, declaration of estimated tax, claim or petition for refund or credit or petition for reassessment that is required by, or provided for, or permitted under the provisions of this article (or any article of this chapter administered under this article) which is filed with the tax commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments or lists which are supplemental to, or part of, the return so filed.

(5) Return information. — The term "return information" means:

(A) A taxpayer's identity; the nature, source or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to or collected by the tax commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) or by any person under the provisions of this article (or any article of this chapter administered under this article) for any tax, additions to tax, penalty, interest, fine, forfeiture or other imposition or offense; and

(B) Any part of any written determination or any background file document relating to such written determination. "Return information" does not include, however, data in a form which cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of this code, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination or data used or to be used for determining such standards.
(6) Tax administration. — The term “tax administration” means:

(A) The administration, management, conduct, direction and supervision of the execution and application of the tax laws or related statutes of this state and the development and formulation of state and local tax policy relating to existing or proposed state and local tax laws and related statutes of this state; and

(B) Includes assessment, collection, enforcement, litigation, publication and statistical gathering functions under the laws of this state and of local governments.

(7) Taxpayer identity. — The term “taxpayer identity” means the name of a person with respect to whom a return is filed, his or her mailing address, his or her taxpayer identifying number or a combination thereof.

(8) Taxpayer return information. — The term “taxpayer return information” means return information as defined in subdivision (5) of this subsection which is filed with, or furnished to, the tax commissioner by or on behalf of the taxpayer to whom such return information relates.

(9) Written determination. — The term “written determination” means a ruling, determination letter, technical advice memorandum or letter or administrative decision issued by the tax commissioner.

(c) Criminal penalty. — Any officer, employee or agent (or former officer, employee or agent) of this state or of any county, municipality or governmental subdivision who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with costs of prosecution.
(d) Disclosure to designee of taxpayer. — Any person protected by the provisions of this article may, in writing, waive the secrecy provisions of this section for such purpose and such period as he shall therein state. The tax commissioner may, subject to such requirements and conditions as he or she may prescribe, thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of the tax articles administered under the provisions of this article, but only to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the tax commissioner determines that such disclosure would seriously impair administration of this state's tax laws.

(e) Disclosure of returns and return information for use in criminal investigations. —

(1) In general. — Except as provided in subdivision (3) of this subsection, any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a federal district court judge, federal magistrate or circuit court judge of this state, under subdivision (2) of this subsection, be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any federal agency, or of any agency of this state, who personally and directly engaged in:

(A) Preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated state or federal criminal statute to which this state, the United States or such agency is or may be a party;

(B) Any investigation which may result in such a proceeding; or
(C) Any state or federal grand jury proceeding pertaining to enforcement of such a criminal statute to which this state, the United States or such agency is or may be a party.

Such inspection or disclosure shall be solely for the use of such officers and employees in such preparation, investigation or grand jury proceeding.

(2) Application of order. — Any United States attorney, any special prosecutor appointed under Section 593 of Title 28, United States Code, or any attorney in charge of a United States justice department criminal division organized crime strike force established pursuant to Section 510 of Title 28, United States Code, may authorize an application to a circuit court judge or magistrate, as appropriate, for the order referred to in subdivision (1) of this subsection. Any prosecuting attorney of this state may authorize an application to a circuit court judge of this state for the order referred to in said subdivision. Upon the application, the judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that:

(A) There is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(B) There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and

(C) The return or return information is sought exclusively for use in a state or federal criminal investigation or proceeding concerning such act and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(3) The tax commissioner may not disclose any return or return information under subdivision (1) of this subsection if he determines and certifies to the court that the disclosure would
identify a confidential informant or seriously impair a civil or
criminal tax investigation.

(f) Disclosure to person having a material interest. — The
tax commissioner may, pursuant to legislative regulations
promulgated by him or her, and upon such terms as he or she
may require, disclose a return or return information to a person
having a material interest therein: Provided, That such disclo-
sure shall only be made if the tax commissioner determines, in
his or her discretion, that the disclosure would not seriously
impair administration of this state’s tax laws.

(g) Statistical use. — This section shall not be construed to
prohibit the publication or release of statistics so classified as
to prevent the identification of particular returns and the items
thereof.

(h) Disclosure of amount of outstanding lien. — If notice of
lien has been recorded pursuant to section twelve of this article,
the amount of the outstanding obligation secured by such lien
may be disclosed to any person who furnishes written evidence
satisfactory to the tax commissioner that such person has a right
in the property subject to the lien or intends to obtain a right in
such property.

(i) Reciprocal exchange. — The tax commissioner may,
pursuant to written agreement, permit the proper officer of the
United States, or the District of Columbia or any other state, or
any political subdivision of this state, or his authorized repre-
sentative, who is charged by law with responsibility for
administration of a similar tax, to inspect reports, declarations
or returns filed with the tax commissioner or may furnish to
such officer or representative a copy of any document, provided
any other jurisdiction grants substantially similar privileges to
the tax commissioner or to the attorney general of this state.
The disclosure shall be only for the purpose of, and only to the
extent necessary in, the administration of tax laws: Provided,
That the information may not be disclosed to the extent that the
tax commissioner determines that such disclosure would
identify a confidential informant or seriously impair any civil
or criminal tax investigation.

(j) Exchange with municipalities. — The tax commissioner
shall, upon the written request of the mayor or governing body
of any West Virginia municipality, allow the duly authorized
agent of the municipality to inspect and make copies of the state
business and occupation tax return filed by taxpayers of the
municipality and any other state tax returns (including, but not
limited to, consumers sales and services tax return information
and health care provider tax return information) as may be
reasonably requested by the municipality. Such inspection or
copying shall include disclosure to the authorized agent of the
municipality for tax administration purposes of all available
return information from files of the tax department relating to
taxpayers who transact business within the municipality. The
tax commissioner shall be permitted to inspect or make copies
of any tax return and any return information or other informa-
tion related thereto in the possession of any municipality or its
employees, officers, agents or representatives that has been
submitted to or filed with the municipality by any person for
any tax including, but not limited to, the municipal business and
occupation tax, public utility tax, municipal license tax, tax on
purchases of intoxicating liquors, license tax on horse racing or
dog racing and municipal amusement tax.

(k) Release of administrative decisions. — The tax commis-
ioner shall release to the public his administrative decisions, or
a summary thereof: Provided, That unless the taxpayer appeals
the administrative decision to circuit court or waives in writing
his rights to confidentiality, any identifying characteristics or
facts about the taxpayer shall be omitted or modified to an
extent so as to not disclose the name or identity of the taxpayer.

(l) Release of taxpayer information. —
(1) If the tax commissioner believes that enforcement of the tax laws administered under this article will be facilitated and enhanced thereby, he shall disclose, upon request, the names and address of persons:

(A) Who have a current business registration certificate.

(B) Who are licensed employment agencies.

(C) Who are licensed collection agencies.

(D) Who are licensed to sell drug paraphernalia.

(E) Who are distributors of gasoline or special fuel.

(F) Who are contractors.

(G) Who are transient vendors.

(H) Who are authorized by law to issue a sales or use tax exemption certificate.

(I) Who are required by law to collect sales or use taxes.

(J) Who are foreign vendors authorized to collect use tax.

(K) Whose business registration certificate has been suspended or canceled or not renewed by the tax commissioner.

(L) Against whom a tax lien has been recorded under section twelve of this article (including any particulars stated in the recorded lien).

(M) Against whom criminal warrants have been issued for a criminal violation of this state’s tax laws.

(N) Who have been convicted of a criminal violation of this state’s tax laws.
(m) Disclosure of return information to child support enforcement division.—

(1) State return information. — The tax commissioner may, upon written request, disclose to the child support enforcement division created by article two, chapter forty-eight-a of this code:

(A) Available return information from the master files of the tax department relating to the social security account number, address, filing status, amounts and nature of income and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be enforced; and

(B) Available state return information reflected on any state return filed by, or with respect to, any individual described in paragraph (A) of this subdivision relating to the amount of the individual's gross income, but only if such information is not reasonably available from any other source.

(2) Restrictions on disclosure. — The tax commissioner shall disclose return information under subdivision (1) of this subsection only for purposes of, and to the extent necessary in, collecting child support obligations from and locating individuals owing such obligations.

(n) Disclosure of names and addresses for purposes of jury selection.—

The tax commissioner shall, at the written request of a circuit court or the chief judge thereof, provide to the circuit court within thirty calendar days a list of the names and addresses of individuals residing in the county or counties comprising the circuit who have filed a state personal income tax return for the preceding tax year. The list provided shall set forth names and addresses only. The request shall be limited to counties within the jurisdiction of the requesting court.
306 The court, upon receiving the list or lists, shall direct the
307 jury commission of the appropriate county to merge the names
308 and addresses with other lists used in compiling a master list of
309 residents of the county from which prospective jurors are to be
310 chosen. Immediately after the master list is compiled, the jury
311 commission shall cause the list provided by the tax commis-
312 sioner and all copies thereof to be destroyed and shall certify to
313 the circuit court and to the tax commissioner that the lists have
314 been destroyed.

CHAPTER 305

(Com. Sub. for S. B. 661 — By Senators Ross,
Mitchell, Sharpe and Rowe)

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

AN ACT to amend and reenact sections two and seven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article one, chapter forty-four of said code, all relating to estate taxes; phasing out state estate tax in accordance with the provisions of the federal estate tax; providing that nonprobate inventory form be submitted to the tax commissioner by clerk of county commission, together with appraisal form; providing that nonprobate inventory form shall be confidential tax information; and eliminating requirement that certain forms be mailed to heirs and beneficiaries.

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

Chapter
11. Taxation.
44. Administration of Estates and Trusts.

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-7. Nonprobate inventory of estates; penalties.


1 (a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) shall 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.

6 (b) Terms defined.

7 (1) Alien. — The term “alien” means a decedent who, at the time of his or her death, was not domiciled in this state or any other state of the United States and was not a citizen of the United States.

11 (2) Decedent or transferor. — The terms “decedent” or “transferor” are used herein interchangeably and mean a deceased natural person by or from whom a transfer is made; and include any testator, intestate grantor, bargainor, vendor, assignor, donor, joint tenant or insured.
(3) Delegate. — The term “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 department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function or functions mentioned or described in the context.

(4) Estate or property. — The terms “estate” or “property” mean the real or personal property or interest therein of a decedent or transferor and includes all the following:

(A) All intangible personal property of a resident decedent within or without this state or subject to the jurisdiction of this state.

(B) All intangible personal property in this state belonging to a deceased nonresident of the United States, including all stock of a corporation organized under the laws of this state, or which has its principal place of business or does the major part of its business in this state, or of a federal corporation or national bank which has its principal place of business or does the major part of its business in this state, excluding, however, savings accounts and savings and loan associations operating under the authority of the state banking commissioner or the federal home loan bank board, and bank deposits, unless those deposits are held and used in connection with a business conducted or operated, in whole or in part, in this state.

(5) Federal credit. — The term “federal credit” means the maximum amount of the credit for state death taxes allowable by Section 2011, credit against federal estate tax (or Section 2102 in the case of an alien) and Section 2602, credit against the federal tax on generation-skipping transfers of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to a decedent’s taxable estate. The term
"maximum amount" shall be construed so as to take full advantage of such credit as the laws of the United States may allow: Provided, That in no event shall such amount be less than the federal credit allowable by Sections 2011, 2102 and 2602 of the Internal Revenue Code, as it existed on January one, one thousand nine hundred eighty-five: Provided, however, That for estates of decedents dying after the thirty-first day of December, two thousand one, such amount may in no event be less than the federal credit allowable by Sections 2011, 2102, and 2604 of the Internal Revenue Code, as amended by the estate, gift and generation - skipping transfer tax provisions of Public Law 107-16, the Economic Growth and Tax Relief Reconciliation Act of 2001.

(6) Gross estate. — The term "gross estate" means the gross estate of the decedent as defined in Section 2031 (or Section 2103 in the case of an alien) of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

(7) Includes and including. — The words "includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(8) Intangible personal property. — The term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in personal property, evidences of debt and choses in action generally.

(9) Internal revenue code. — The term "Internal Revenue Code" means the United States Internal Revenue Code of 1954, as amended and in effect on the first day of January, one thousand nine hundred eighty-five, including all changes to
such code enacted subsequent to such date, that are similar to
or a replacement of the section cited or referred to.

(10) **Net estate.** — The term "net estate" means the net
estate of the decedent as defined in Section 2051 of the United
States Internal Revenue Code of 1954, as amended or renum-
bered, or in successor provisions of the laws of the United
States.

(11) **Nonresident.** — The term "nonresident" means a
decedent who was a citizen of the United States, but was
domiciled outside the state of West Virginia at the time of his
or her death.

(12) **Notice.** — The term "notice" means a written notice
sent to the last known address of the addressee and shall be
effective upon mailing.

(13) **Other state.** — The term "other state" means any state
of the fifty states in the United States (other than this state) and
includes the District of Columbia and any possession or
territory of the United States.

(14) **Person.** — The term "person" includes natural person,
corporation, society, association, partnership, joint venture,
syndicate, estate, trust or other entity under which business or
other activities may be conducted.

(15) **Person required to file.** — The phrase "person required
to file" means any person, including a personal representative,
qualified heir, distributee or trustee required or permitted to file
a federal estate tax return, or a West Virginia estate tax return,
pursuant to the provisions of the Internal Revenue Code or this
article.
(16) Personal representative. — The terms "personal representative" and "fiduciary" are used interchangeably and mean:

(A) The personal representative of the estate of the decedent, appointed, qualified and acting within this state; or

(B) If there is no personal representative appointed, qualified and acting within this state, then any person in actual or constructive possession of the West Virginia gross estate of the decedent. The term "personal representative" includes the executor of a will, the administrator of the estate of a deceased person, the administrator of such estate with the will annexed, the administrator de bonis non of such estate, whether there be a will or not, the sheriff or other officer lawfully charged with the administration of the estate of a deceased person, and every other curator or committee of a decedent's estate for or against whom suits may be brought for causes of action which accrued to or against such decedent.

(17) Real property situated in this state. — The phrase "real property situated in this state" means any and all interests in real property located in this state, including leasehold interests, royalty interests, production payments and working interests in coal, oil, gas and other natural resources.

(18) Resident. — The term "resident" means a decedent who was domiciled in the state of West Virginia at the time of his or her death.

(19) State. — The term "state" means any state, territory or possession of the United States and the District of Columbia.

(20) Tangible personal property. — The term "tangible personal property" means corporeal personal property including money.
(21) **Tax.** — The term “tax” means the tax imposed by this article, and includes any additions to tax, penalties and interest imposed by this article or article ten of this chapter.

(22) **Tax commissioner.** — The term “tax commissioner” means the tax commissioner of the state of West Virginia or his or her delegate.

(23) **Taxable estate.** — The term “taxable estate” means the taxable estate of the decedent as defined in Section 2051 (or Section 2106 in the case of an alien) of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

(24) **Taxpayer.** — The term “taxpayer” means any person required to file a return for the tax imposed by this article and any person liable for payment of the tax imposed by this article.

(25) **This code.** — The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(26) **This state.** — The term “this state” means the state of West Virginia.

(27) **Transfer.** — The term “transfer” means “transfer” as defined in Sections 2001, 2101, 2601 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States. It includes the passage of any property, or any interest therein, or income therefrom, in possession or enjoyment, present or future, in trust or otherwise, whether by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment.

(28) **Transferee.** — The term “transferee” means any person to whom a transfer is made and includes any legatee,
devisee, heir, next of kin, grantee, donee, vendee, assignee, successor, survivor or beneficiary.

(29) United States. — The term "United States", when used in a geographical sense, includes only the fifty states and the District of Columbia.

(30) Value. — The term "value" means the value of property, the value of the gross estate or the value of the taxable estate as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

(c) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relative to estate taxes, unless a different meaning is clearly required by the provisions of this article. Any reference in this article to the laws of the United States relating to federal estate taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate taxes, as the same may be or become effective at any time or from time to time.

§11-11-7. Nonprobate inventory of estates; penalties.

(a) The personal representative of every resident decedent who owned or had an interest in any nonprobate personal property, and the personal representative of every nonresident decedent who owned or had an interest in any nonprobate personal property which is a part of the taxable estate located in West Virginia, shall, under oath, list and appraise on a nonprobate inventory form prescribed by the tax commissioner, all tangible and intangible nonprobate personal property owned by the decedent or in which the decedent had an interest, at its fair market value on the date of the decedent's death. The
nonprobate personal property to be included on the nonprobate
inventory form includes, but is not limited to, the following:

(1) Personalty held as joint tenants with right of
survivorship with one or more third parties;

(2) Personalty payable on the death of the decedent to one
or more third parties;

(3) Personalty held by the decedent as a life tenant;

(4) Insurance on the decedent’s life payable to beneficiaries
other than the executor or administrator of the decedent’s
estate;

(5) Powers of appointment;

(6) Annuities;

(7) Transfers during the decedent’s life in which any
beneficial interest passes by trust or otherwise to another person
by reason of the death of the decedent;

(8) Revocable transfers in trust or otherwise;

(9) Taxable gifts under section 2503 of the United States
Internal Revenue Code of 1986; and

(10) All other nonprobate personalty included in the federal
gross estate of the decedent.

(b) For purposes of this section, “nonprobate personal
property” means all property which does not pass by operation
of the decedent’s will or by the laws of intestate descent and
distribution or is otherwise not subject to administration in a
decedent’s estate at common law.
(c) The personal representative shall prepare the nonprobate inventory form and file it, together with the appraisement form required by section fourteen, article one, chapter forty-four of this code for estates of decedents dying on or after the thirteenth day of July, two thousand one, with the clerk of the county commission or the fiduciary supervisor within ninety days of the date of qualification of the personal representative in this state: Provided, That for estates of decedents dying on or after the said thirteenth day of July but before the date the amendments to this section become effective, the requirement to file the nonprobate inventory form with the clerk or supervisor shall apply only if that form has not already been filed with tax commissioner.

(d) Any personal representative who fails to comply with the provisions of this section, without reasonable cause, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisement of real estate and probate personal property of decedents; disposition of appraisement and inventory forms; 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.

*Clerk’s Note: This section was also amended by S. B. 474 (Chapter 142) which passed subsequent to this act.
(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.

(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.
(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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

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CHAPTER 306

(Com. Sub. for S. B. 651 — By Senators Redd, Anderson, Snyder, Chafin, Mitchell, Love, Caldwell, Facemyer, Hunter, Rowe, Kessler, Helmick, Fanning, Edgell, Minard, Unger, Sharpe and Sprouse)

[Passed March 7, 2002; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section three, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to explicitly eliminating community care services from the severance tax definition of “certain health care services”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3. Imposition of tax or privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.

(a) Imposition of tax. — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as otherwise provided in this article. In the case of coal, this five percent rate of tax includes the thirty-five one hundredths of one percent additional severance
tax on coal imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(c) "Certain health care services" defined. — For purposes of this section, the term "certain health care services" means, and is limited to, behavioral health services.

(d) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing or processing (or both severing and processing) in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (c) of this section and shall be in addition to all other taxes imposed by law.

(e) Effective date. — This section, as amended in the year one thousand nine hundred ninety-three, shall apply to gross proceeds derived after the thirty-first day of May of such year. The language of this section, as in effect on the first day of January of such year, shall apply to gross proceeds derived prior to the first day of June of such year and, with respect to such gross proceeds, shall be fully and completely preserved.

(f) Reduction of severance tax rate. — For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:

(i) For coal mined by underground methods from seams with an average thickness of thirty-seven inches to forty-five inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than thirty-seven inches, the tax imposed in
subsection (a) of this section shall be one percent of the gross
value of the coal produced. Gross value is determined from the
sale of the mined coal by the producer. This rate of tax includes
the thirty-five one hundredths of one percent additional
severance tax imposed by the state for the benefit of counties
and municipalities as provided in section six of this article.

(ii) This reduced rate of tax applies to any new underground
mine producing coal after the effective date of this subsection,
from seams of less than forty-five inches in average thickness
or any existing mine that has not produced coal from seams
forty-five inches or less in thickness in the one hundred eighty
days immediately preceding the effective date of this subsec-
tion.

(iii) The seam thickness shall be based on the weighted
average isopach mapping of actual coal thickness by mine as
certified by a professional engineer.

CHAPTER 307

(S. B. 731 — By Senators Wooton, Caldwell, Hunter, Kessler,
Minard, Mitchell, Redd, Ross, Rowe, Snyder, Deem and Facemyer)

[Passed March 9, 2002; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; tax commissioner to develop a uniform reporting form.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: Provided, That effective for all taxable periods beginning on or after the first day of January, two thousand, there is an exemption from the imposition of the tax provided for in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.
(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d) (1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the state tax commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the public service commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before the first day of July, two thousand three, the tax commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.
AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing an exemption from the consumers sales tax for 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.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) Exemptions for which exemption certificate may be issued. — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the tax commissioner, and deliver it to the vendor of the property or service, in the manner required by the tax commissioner.
However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemptions certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education and the arts, the board of trustees of the university system of West Virginia or the board of directors for colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: Provided, That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the division of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of this code or like tax;

(5) Sales of property or services to churches which make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;
(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under article twelve of this chapter, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:

(A) A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;

(B) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions or membership fees;

(D) An organization which has no paid employees and its gross income from fund raisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the girl scouts of the United States of America, the boy scouts of America or the YMCA Indian guide/princess program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;
(F) For purposes of this subsection:

(i) The term “support” includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;

(II) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of an exemption from any federal, state or local tax or any similar benefit;

(ii) The term “charitable contribution” means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and
(iii) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: Provided, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The tax commissioner may propose a legislative rule for promulgation pursuant to article three, chapter twenty-nine-a of this code which he or she considers necessary for the efficient administration of this exemption;
(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: Provided, however, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that person or his or her agent into any real property, building or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(12) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a
A corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services:

(A) For purposes of this subdivision, the term "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character" means sales of tangible personal property or services at fund raisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases, when the fund raisers are of limited duration and are held no more than six times during any twelve-month period and "limited duration" means no more than eighty-four consecutive hours; and

(B) The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;

(15) Sales of property or services to a school which has approval from the board of trustees of the university system of West Virginia or the board of directors of the state college system to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel are taxable;

(16) Sales of mobile homes to be used by purchasers as their principal year-round residence and dwelling: Provided, That these mobile homes are subject to tax at the three-percent rate;

(17) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state
lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(18) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. This exemption applies to leases executed on or after the first day of July, one thousand nine hundred eighty-seven, and to payments under long-term leases executed before that date for months of the lease beginning on or after that date;

(19) Notwithstanding the provisions of section eighteen of this article or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the tax commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter twenty-nine-a of this code by the tax commissioner;

(20) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U.S.C. §2011, et seq., as amended, or with drafts issued through the West Virginia special supplement food program for women, infants and children codified in 42 U.S.C. §1786;

(21) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(22) Sales of electronic data processing services and related software: Provided, That, for the purposes of this subdivision, "electronic data processing services" means: (A) The processing of another's data, including all processes incident to
processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (B) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(23) Tuition charged for attending educational summer camps;

(24) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

(25) Food for the following are exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by
the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying on those functions and activities: Provided, That purchases made by the organizations are not exempt as a purchase for resale;

(26) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters or other school or athletic booster organizations supporting activities for grades
kindergarten through twelve and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That the purchases made by the organizations are not exempt as a purchase for resale;

(27) Charges for room and meals by fraternities and sororities to their members: Provided, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(28) Sales of or charges for the transportation of passengers in interstate commerce:

(29) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state;

(30) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of any other chapter of this code;

(31) Charges for the services of opening and closing a burial lot;

(32) Sales of livestock, poultry or other farm products in their original state by the producer of the livestock, poultry or other farm products or a member of the producer's immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: Provided, That the exemptions allowed by this subdivision apply to sales made on or after the first day of July,
one thousand nine hundred ninety, and may be claimed without
presenting or obtaining exemption certificates: Provided,
however, That the farmer shall maintain adequate records;

(33) Sales of motion picture films to motion picture
exhibitors for exhibition if the sale of tickets or the charge for
admission to the exhibition of the film is subject to the tax
imposed by this article and sales of coin-operated video arcade
machines or video arcade games to a person engaged in the
business of providing the machines to the public for a charge
upon which the tax imposed by this article is remitted to the tax
commissioner: Provided, That the exemption provided in this
subdivision applies to sales made on or after the first day of
July, one thousand nine hundred ninety, and may be claimed by
presenting to the seller a properly executed exemption certifi-
cate;

(34) Sales of aircraft repair, remodeling and maintenance
services when the services are to an aircraft operated by a
certified or licensed carrier of persons or property, or by a
governmental entity, or to an engine or other component part of
an aircraft operated by a certificated or licensed carrier of
persons or property, or by a governmental entity and sales of
tangible personal property that is permanently affixed or
permanently attached as a component part of an aircraft owned
or operated by a certificated or licensed carrier of persons or
property, or by a governmental entity, as part of the repair,
remodeling or maintenance service and sales of machinery,
tools or equipment, directly used or consumed exclusively in
the repair, remodeling or maintenance of aircraft, aircraft
engines or aircraft component parts, for a certificated or
licensed carrier of persons or property, or for a governmental
entity;
(35) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(36) Sales of services by individuals who baby-sit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed five thousand dollars in a taxable year;

(37) Sales of services after the thirtieth day of June, one thousand nine hundred ninety-seven, by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(38) Commissions received after the thirtieth day of June, one thousand nine hundred ninety-seven, by a manufacturer’s representative;

(39) Sales of primary opinion research services after the thirtieth day of June, one thousand nine hundred ninety-seven, when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term “primary opinion research” means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collec-
tion methods commonly used for quantitative and qualitative opinion research studies:

(40) Sales of property or services after the thirtieth day of June, one thousand nine hundred ninety-seven, to persons within the state when those sales are for the purposes of the production of value-added products: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use: For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;
(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked or frozen product;

(41) After the thirtieth day of June, one thousand nine hundred ninety-seven, sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed three thousand dollars: Provided, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows or any video or audio taped presentations or the sale or leasing of video or audio tapes, airshows, or any other public meeting, display or show other than those specified herein:
Provided, however, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The state tax commissioner shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: Provided further, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

(42) After the thirtieth day of June, one thousand nine hundred ninety-seven, charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or
the association or organization may avail itself of the exemption
set forth in subdivision (9) of this subsection relating to
purchases of tangible personal property for resale and then
collect the tax imposed by this article on those items from its
member;

(43) Sales of governmental services or governmental
materials after the thirtieth day of June, one thousand nine
hundred ninety-seven, by county assessors, county sheriffs,
county clerks or circuit clerks in the normal course of local
government operations:

(44) Direct or subscription sales by the division of natural
resources of the magazine currently entitled “Wonderful West
Virginia” and by the division of culture and history of the
magazine currently entitled “Goldenseal” and the journal
currently entitled “West Virginia History”;

(45) Sales of soap to be used at car wash facilities;

(46) Commissions received by a travel agency from an
out-of-state vendor; and

(47) 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. 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 such services that
are separately billed to the purchaser of such services, and on
which the tax imposed by this article has previously been paid
by the service provider.
(b) Refundable exemptions. — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are taxable;

(4) Sales and services, firefighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the
laws of the state of West Virginia: Provided, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.

CHAPTER 309

(Com. Sub. for H. B. 4017 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-g, relating generally to consumers sales and service tax; creating new exemption for purchases of back-to-school clothing and school supplies by consumers during a three-day period in August, two thousand two.

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand two.

1 (a) The sale of an article of clothing or footwear designed to be worn on or about the human body and the sale of school supplies, such as pens, pencils, binders, notebooks, reference books, book bags, lunch boxes, computers, computer accessories and calculators, is exempted from the taxes imposed by this article if:

7 (1) The sales price of the article or school supply, except for a computer or computer accessory, is less than one hundred dollars;

10 (2) The sales price of a computer or computer accessory is less than one hundred dollars after credit for any manufacturer's rebate; and

13 (3) The sale takes place during a period beginning at 12:01 a.m. eastern daylight time on the first Friday in August, two thousand two, and ending at 12 midnight eastern daylight time on the following Sunday in August, two thousand two.

17 (b) This section does not apply to:

18 (1) Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed;
(2) Accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(3) The rental of clothing, footwear or school supplies;

(4) Furniture; and

(5) Tangible personal property for use in a trade or business.

CHAPTER 310

(S. B. 245 — By Senators Helmick, Anderson, Love, Minear, Ross, Sharpe, Fanning, Minard, Rowe, Mitchell and Hunter)

[Passed February 22, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen-b, relating to authorizing state participation in review and amendment of a multistate streamlined sales and use tax agreement; providing definitions; authorizing tax commissioner to enter into the agreement when the agreement requires each cooperating state to abide by certain requirements; authorizing tax commissioner to establish certain standards and take other actions; limitations on the effect of the agreement; and limitations on liability of sellers, certified service providers and certified automated system providers.

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

ARTICLE 15B. SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-1. Title.
§11-15B-3. Legislative finding.
§11-15B-4. Authority to participate in multistate negotiations.
§11-15B-5. Authority to enter agreement.
§11-15B-6. Relationship to state law.
§11-15B-7. Agreement requirements.
§11-15B-10. Seller and third party liability.

§11-15B-1. Title.

The provisions of this article shall be known as and referred to as the "Simplified Sales and Use Tax Administration Act".


As used in this article:

(1) "Agreement" means the streamlined sales and use tax agreement.

(2) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(3) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.
(4) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

(5) “Sales tax” means the tax levied under article fifteen of this chapter.

(6) “Seller” means any person making sales, leases or rentals of personal property or services.

(7) “State” means any state of the United States and the District of Columbia.

(8) “Use tax” means the tax levied under article fifteen-a of this chapter.

§11-15B-3. Legislative finding.

The Legislature finds that a simplified sales and use tax system will reduce and over time eliminate the burden and cost for all vendors to collect this state’s sales and use tax. The Legislature further finds that this state should participate in multistate discussions to review and/or amend the terms of the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

§11-15B-4. Authority to participate in multistate negotiations.

For the purposes of reviewing and/or amending the agreement embodying the simplification requirements as contained in section seven of this article, the state shall enter into multistate discussions. For purposes of such discussions, the state shall be represented by no more than four delegates, two of whom shall be appointed by the president of the Senate and the speaker of the House of Delegates. The other two delegates shall be the secretary of tax and revenue and the tax commissioner, or their respective designees.
§11-15B-5. Authority to enter agreement.

Subject to approval of the Legislature, by concurrent resolution or general law, the tax commissioner is authorized and directed to enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the tax commissioner is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The tax commissioner is further authorized to take other actions reasonably required to implement the provisions set forth in this article. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement. The tax commissioner or the commissioner’s designee is authorized to represent this state before the other states that are signatories to the agreement.

§11-15B-6. Relationship to state law.

No provision of the agreement authorized by this article, in whole or part, invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at or after membership of this state in the agreement, must be by the action of this state.

§11-15B-7. Agreement requirements.

The tax commissioner may not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the following requirements:
(1) **Simplified state rate.** — The agreement must set restrictions to limit over time the number of state rates.

(2) **Uniform standards.** — The agreement must establish uniform standards for the following:

(A) The sourcing of transactions to taxing jurisdictions;

(B) The administration of exempt sales; and

(C) Sales and use tax returns and remittances.

(3) **Central registration.** — The agreement must provide a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(4) **No nexus attribution.** — The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(5) **Local sales and use taxes.** — The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

(A) Restricting variances between the state and local tax bases;

(B) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to or be subject to independent audits from local taxing jurisdictions;

(C) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application
of local jurisdictional boundary changes to local sales and use
taxes; and

(D) Providing notice of changes in local sales and use tax
rates and of changes in the boundaries of local taxing jurisdic-
tions.

(6) Monetary allowances. — The agreement must outline
any monetary allowances that are to be provided by the states
to sellers or certified service providers.

(7) State compliance. — The agreement must require each
state to certify compliance with the terms of the agreement
prior to joining and to maintain compliance, under the laws of
the member state, with all provisions of the agreement while a
member.

(8) Consumer privacy. — The agreement must require each
state to adopt a uniform policy for certified service providers
that protects the privacy of consumers and maintains the
confidentiality of tax information.

(9) Advisory councils. — The agreement must provide for
the appointment of an advisory council of private sector
representatives and an advisory council of nonmember state
representatives to consult with in the administration of the
agreement.


The agreement authorized by this article is an accord
among individual cooperating sovereigns in furtherance of their
governmental functions. The agreement provides a mechanism
among the member states to establish and maintain a coopera-
tive, simplified system for the application and administration of
sales and use taxes under the duly adopted law of each member
state.

(a) The agreement authorized by this article binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Consistent with subsection (a) of this section, no person shall have any cause of action or defense under the agreement or by virtue of this state’s approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

§11-15B-10. Seller and third party liability.

(a) (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller’s agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

(2) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the
seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

CHAPTER 311

(S. B. 140 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed February 22, 2002; in effect from passage. Approved by the Governor.]
by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand, but prior to the first day of January, two thousand two, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand two, shall be given any effect.

(b) Medical savings accounts. — The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections, are not “wages” for purposes of withholding under section seventy-one of this article.
(c) Surtax. — The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter which are collected by the tax commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year two thousand two are retroactive to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, two thousand one, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 312

(S. B. 713 — By Senators Hunter, Edgell, Bailey, Caldwell, Minard, Oliverio, Boley and Deem)

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

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting the first twenty thousand dollars in benefits derived from military retirement from personal income tax obligations.

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

ARTICLE 21. PERSONAL INCOME TAX.

PART II. RESIDENTS.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General. — The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income unless already included therein the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;
(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter, that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income.
— There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the state of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the state of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not
54 included in federal adjusted gross income under this article for the taxable year;

56 (4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

59 (5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: Provided, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first two thousand dollars of benefits received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and the first two thousand dollars of benefits received under any federal retirement system to which Title 4 U. S. C. §111 applies: Provided, however, That the total modification under this paragraph shall not exceed two thousand dollars per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after the last day of December, one thousand nine hundred eighty-eight;

83 (6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any West Virginia police, West Virginia firemen's retirement system or the West Virginia
state police death, disability and retirement fund, the West Virginia state police retirement system or the West Virginia deputy sheriff retirement system, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years beginning after the thirty-first day of December, two thousand, and ending prior to the first day of January, two thousand three, an amount equal to two percent multiplied by the number of years of active duty in the armed forces of the United States of America with the product thereof multiplied by the first thirty thousand dollars of military retirement income, including retirement income from the regular armed forces, reserves and national guard paid by the United States or by this state after the thirty-first day of December, two thousand, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after the thirty-first day of December, two thousand two, the first twenty thousand dollars of military retirement income, including retirement income from the regular armed forces, reserves and national guard paid by the United States or by this state after the thirty-first day of December, two thousand two, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.
(8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between eight thousand dollars and the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

(9) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That:
(i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between eight thousand dollars and the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

(10) Contributions from any source to a medical savings account established by or for the individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed two thousand dollars plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual; and

(11) Any other income which this state is prohibited from taxing under the laws of the United States.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer’s share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which
(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Effective date. — (1) Changes in the language of this section enacted in the year two thousand shall apply to taxable years beginning after the thirty-first day of December, two thousand.

(2) Changes in the language of this section enacted in the year two thousand two shall apply to taxable years beginning after the thirty-first day of December, two thousand two.
administration; specifying purpose for which the moneys of the fund may be expended; clarifying legislative intent that the moneys of the fund are not part of the general revenue fund of the state treasury; and clarifying that amounts in the fund which exceed amounts needed for the purpose of the fund may be transferred by appropriation of the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-93. Personal income tax reserve fund.

(a) Of the revenue collected under this article the state treasurer shall credit the amount as the tax commissioner may determine to be necessary for refunds to which taxpayers shall be entitled under this article to the personal income tax reserve fund described in subsection (b) of this section. The state treasurer shall credit all remaining interest, penalties and taxes collected under this article to the general revenue fund of the state treasury.

(b) The fund established by the prior enactment of this section is hereby reestablished as an account in the state treasury designated the "personal income tax reserve fund". The fund shall be administered by the secretary of administration and expended only for the purpose specified in subsection (c) of this section. Notwithstanding any provision of section two, article two, chapter twelve of this code to the contrary, the moneys of the fund are not part of the general revenue fund of the state treasury.
(c) The moneys of the personal income tax reserve fund must be expended to make timely refunds of moneys to which taxpayers may be entitled under this article as certified by the tax commissioner. Amounts in the fund which are found from time to time to exceed funds needed for the purposes set forth in this section may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

CHAPTER 314

(S. B. 114 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 22, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.
(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand, but prior to the first day of January, two thousand two, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand two, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the Federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the Federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the Federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year two thousand two are retroactive to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, two
That sections four, six and seven, article one-b, 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 twelve-a, all to read as follows:

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

§19-1B-4. Timbering license required; requirement for license; exemption; annual fee; rules.
§19-1B-6. Notification of duration of timbering operations or harvesting of timber for sale; requirements thereof.

§19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules.

19-1B-12a. Criminal penalties.

§19-1B-4. Timbering license required; requirement for license; exemption; annual fee; rules.

(a) No person may conduct timbering operations, purchase timber or buy logs for resale until he or she has obtained the license pursuant to this article from the division and met all other requirements pertaining to his or her timbering operation or other wood product business contained in this article: Provided, That a person who severs or removes, or hires or contracts with another to sever or remove, standing trees from his or her own land is specifically exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by or for this owner have an aggregate stumpage value that does not exceed fifteen thousand five hundred twenty-eight dollars: Provided, however, That a person hired or contracted to sever or remove standing trees from the land of another is specifically exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by this hired or contracted person have an aggregate stumpage value that does not exceed fifteen thousand five hundred twenty-eight dollars.

(b) An applicant for a license shall submit an application on a form to be designed and provided by the director. A fee of fifty dollars shall be submitted with each application and with each annual renewal of the license. The application shall, at a minimum, contain the following information:

(1) Name, address and telephone number of the applicant and if the applicant is a business entity other than a sole
proprietor, the names and addresses of the principals, officers
and resident agent of the business entity;

(2) The applicant's West Virginia business registration
number or a copy of the current West Virginia business
registration certificate. The division of forestry shall submit this
information and a list of all applicants to the tax commissioner
each quarter of the calendar year to ensure compliance with
payment of severance, income withholding and all other
applicable state taxes; and

(3) Any other information required by the director.

(c) The director shall promulgate legislative rules pursuant
to the provisions of article three, chapter twenty-nine-a of this
code which provide procedures by which a license may be
acquired, suspended or revoked under this article. The Legislature
expressly finds that these legislative rules are the proper
subject of emergency legislative rules which may be promul-
gated in accordance with the provision of section fifteen, article
three, section twenty-nine-a of this code.

(d) The director shall prescribe a form providing the
contents and manner of posting notice at the timbering opera-
tion. The notice shall include, at a minimum, the operator's
name and license number.

§19-1B-6. Notification of duration of timbering operations or
harvesting of timber for sale; requirements thereof.

(a) In addition to any other requirement of this article, no
person may conduct timbering operations and no person may
sever trees for sale unless the person notifies the director of the
specific location on which the timbering operations or harvest-
ing of timber are to be conducted. The notification shall be
made in a manner designated by the director.
(1) All persons who conduct timbering operations or who harvest timber for sale, including those persons who are specifically exempted from the licensure requirements of section four of this article, shall provide to the director of the division notification of harvesting of timber, which shall include:

(A) The name and address of the harvester of timber;

(B) The name and addresses of the owner or owners of the property upon which the timber is located;

(C) The business tax number or social security number of the harvester of timber; and

(D) An acknowledgment that the harvester of timber will conduct the harvest according to best management practices.

(2) In addition to the requirements of subdivision (1) of this subsection, persons who are subject to the licensure requirements of section four of this article shall provide to the director of the division notification of timbering operations, which shall include, at a minimum, the following:

(A) The specific topographic location where the timbering operations are to be conducted;

(B) The approximate dates that the timbering operation will begin and end;

(C) The approximate acreage over which timbering operations are contemplated;

(D) The names and addresses of the owner or owners of the timber to be harvested and, if different, the names and addresses of the owner or owners of the property upon which the timber is located;
(E) A sketch map of the proposed logging operation, including haul roads, landings and stream crossings;

(F) A description of the sediment control practices to be used by the logger during the timber harvesting operation;

(G) An acknowledgment that the operator will conduct the operations in compliance with the provisions of this article and any applicable rules promulgated pursuant to this article;

(H) A certification satisfactory to the director that all permits required under state law have been obtained or applied for and that all pertinent requirements for obtaining any permit applied for, but not yet obtained, have been complied with; and

(I) The name or names of the person or persons who will be supervising the timbering operations at the site of the operations and his or her logger certification numbers.

(b) The notification shall be made within at least three days of the beginning of the operation.

(c) Further notice shall be given if the operation is to be, for any reason, closed more than seven days before the estimated date for closing provided under paragraph (B), subdivision (2), subsection (a) of this section.

§19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules.

(a) Any individual supervising any licensed timbering operation, or any individual supervising any timbering operation that is not exempted from the licensing requirements set forth in section four of this article, must be certified pursuant to this section.
(b) The director is responsible for the development of standards and criteria for establishment of a regularly scheduled program of education, training and examination that all persons must successfully complete in order to be certified to supervise any timbering operation. The program for certified loggers shall provide, at a minimum, for education and training in the safe conduct of timbering operations, in first aid procedures and in the use of best management practices to prevent, insofar as possible, soil erosion on timbering operations. The goals of this program will be to assure that timbering operations are conducted in accordance with applicable state and federal safety regulations in a manner that is safest for the individuals conducting the operations and that they are performed in an environmentally sound manner.

(c) The director shall provide for such programs by using the resources of the division, other appropriate state agencies, educational systems and other qualified persons. Each inspector under the jurisdiction of the chief shall attend a certification program free of charge and complete the certification requirements of this section.

(d) The director shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code, which provide the procedure by which certification pursuant to this article may be obtained and shall require the payment of an application fee and an annual renewal fee of fifty dollars.

(e) Upon a person’s successful completion of the certification requirements, the director shall provide that person with proof of the completion by issuing a numbered certificate and a wallet-sized card to that person. The division shall maintain a record of each certificate issued and the person to whom it was issued.
(f) A certification granted pursuant to this section is renewable only for two succeeding years. For the third renewal and every third renewal thereafter, the licensee shall first attend a program designed by the director to update the training.

(g) Every timbering operation that is required to be licensed under section four of this article must have at least one person certified pursuant to this section supervising the operation at any time the timbering operation is being conducted and all timbering operators shall be guided by the West Virginia forest practice standards and the West Virginia silvicultural best management practices in selecting practices appropriate and adequate for reducing sediment movement during a timber operation.

(h) The director shall, at no more than three-year intervals after the effective date of this article, convene a committee to review the best management practices so as to ensure that they reflect and incorporate the most current technologies. The committee shall, at a minimum, include a person doing research in the field of silvicultural best management practices, a person doing research in the field of silviculture, two loggers certified under this article, a representative of the office of water resources of the division of environmental protection and a representative of an environmentally active organization. The director shall chair the committee and may adjust the then current best management practices according to the suggestions of the committee in time for the next certification cycle.

§19-1B-12a. Criminal penalties.

(a) After the first day of July, two thousand two, any person who knowingly or willingly commits one of the following violations is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than two hundred fifty dollars and not more than five hundred dollars for each violation:

(1) Conducts timbering operations or purchases timber or buys logs for resale in this state without holding a valid license from the director of the division of forestry, as required by subsection (a), section four of this article;

(2) Conducts timbering operations or severs trees for sale at a location in this state, without providing the director of the division of forestry with notice of the location where the timbering or harvesting operations are to be conducted, as required by section six of this article;

(3) Conducts a timbering operation in this state that is not supervised by a certified logger who holds a valid certificate from the director of the division of forestry, as required by section seven of this article; or

(4) Continues to conduct timbering or logging operations in violation of an existing suspension or revocation order that has been issued by the director of the division of forestry or a conference panel under section five, ten or eleven of this article.

(b) For the purposes of this section, each day that a person conducts logging or timbering operations in this state without a license that is required by this article, without the supervision of a certified logger as required by this article, without providing notice of the location to the director of forestry as required by this article, or in violation of an outstanding suspension or revocation order shall constitute a separate offense.

(c) In addition to any other law-enforcement agencies that have jurisdiction over criminal violations, any forester or forest ranger employed by the division of forestry, who, as a part of his or her official duties is authorized or designated by the director of the division of forestry to inspect logging or
timbering activities, is hereby authorized to issue citations for any of the listed violations set forth above that he or she has personally witnessed. The limited authority granted by this section to employees of the division of forestry to issue citations to enforce the provisions of this section does not include the power to place any individual or person under arrest.

CHAPTER 316

(Com. Sub. for S. B. 497 — By Senator Unger)

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

AN ACT to amend and reenact sections seventeen and twenty-eight, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to eligibility for unemployment compensation; clarifying the eligibility for benefits of certain members of the state national guard and the air national guard; and excluding appointed election officials from eligibility for benefits.

Be it enacted by the Legislature of West Virginia:

That sections seventeen and twenty-eight, article one-a, chapter twenty-one-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 1A. DEFINITIONS.

§21A-1A-17. Exclusions from employment.
§21A-1A-17. Exclusions from employment.

The term "employment" does not include:

(1) Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law are applicable to the instrumentalities and to service performed for the instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state is not certified for any year by the secretary of labor under 26 U.S.C. §3404, subsection (c), the payments required of the instrumentalities with respect to the year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter with respect to payments erroneously collected;

(2) Service performed with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement
shall become effective ten days after the publications which shall comply with the general rules of the department;

(3) Service performed by an individual in agricultural labor, except as provided in subdivision (12), section sixteen of this article, the definition of "employment". For purposes of this subdivision, the term "agricultural labor" includes all services performed:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, as codified in 12 U.S.C. §1141j, subsection (g), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the
operator produced more than one half of the commodity with respect to which the service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which the operators are members) in the performance of service described in subparagraph (i) of this paragraph, but only if the operators produced more than one half of the commodity with respect to which the service is performed; but the provisions of subparagraphs (i) and (ii) of this paragraph are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(E) On a farm operated for profit if the service is not in the course of the employer’s trade or business or is domestic service in a private home of the employer. As used in this subdivision, the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(4) Domestic service in a private home except as provided in subdivision (13), section sixteen of this article, the definition of “employment”;

(5) Service performed by an individual in the employ of his or her son, daughter or spouse;

(6) Service performed by a child under the age of eighteen years in the employ of his or her father or mother;

(7) Service as an officer or member of a crew of an American vessel, performed on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United
States are ordinarily and regularly supervised, managed, directed and controlled, is without this state;

(8) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(9) Service performed: (A) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (B) by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order; or (C) by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of either: (i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or (ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market: Provided, That this exemption does not apply to services performed by individuals if they are not receiving rehabilitation or remunerative work on account of their impaired capacity; or (D) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training; or (E) by an inmate of a custodial or penal institution;

(10) Service performed in the employ of a school, college or university, if the service is performed: (A) By a student who is enrolled and is regularly attending classes at the school,
college or university; or (B) by the spouse of a student, if the
spouse is advised, at the time the spouse commences to perform
the service, that: (i) The employment of the spouse to perform
the service is provided under a program to provide financial
assistance to the student by the school, college or university;
and (ii) the employment will not be covered by any program of
unemployment insurance;

(11) Service performed by an individual who is enrolled at
a nonprofit or public educational institution which normally
maintains a regular faculty and curriculum and normally has a
regularly organized body of students in attendance at the place
where its educational activities are carried on as a student in a
full-time program, taken for credit at the institution, which
combines academic instruction with work experience, if the
service is an integral part of the program and the institution has
so certified to the employer, except that this subdivision does
not apply to service performed in a program established for or
on behalf of an employer or group of employers;

(12) Service performed in the employ of a hospital, if the
service is performed by a patient of the hospital, as defined in
this article;

(13) Service in the employ of a governmental entity
referred to in subdivision (9), section sixteen of this article, the
definition of “employment”, if the service is performed by an
individual in the exercise of duties: (A) As an elected official;
(B) as a member of a legislative body, or a member of the
judiciary, of a state or political subdivision; (C) as a member of
the state national guard or air national guard, except as provided
in section twenty-eight of this article; (D) as an employee
serving on a temporary basis in case of fire, storm, snow,
earthquake, flood or similar emergency; (E) in a position which,
under or pursuant to the laws of this state, is designated as: (i)
A major nontenured policymaking or advisory position; or (ii)
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161 a policymaking or advisory position the performance of the
duties of which ordinarily does not require more than eight
hours per week; or (F) as any election official appointed to
serve during any municipal, county or state election;

165 (14) Service performed by a bona fide partner of a partner-
ship for the partnership; and

167 (15) Service performed by a person for his or her own sole
proprietorship.

169 Notwithstanding the foregoing exclusions from the defini-
tion of “employment”, services, except agricultural labor and
domestic service in a private home, are in employment if with
respect to the services a tax is required to be paid under any
federal law imposing a tax against which credit may be taken
for contributions required to be paid into a state unemployment
compensation fund, or which as a condition for full tax credit
against the tax imposed by the federal Unemployment Tax Act
are required to be covered under this chapter.


1 (a) “Wages” means all remuneration for personal service,
including commissions, gratuities customarily received by an
individual in the course of employment from persons other than
the employing unit, as long as such gratuities equal or exceed
an amount of not less than twenty dollars each month and which
are required to be reported to the employer by the employee,
bonuses, and the cash value of all remuneration in any medium
other than cash except for agricultural labor and domestic
service. The term wages includes remuneration for service
rendered to the state as a member of the state national guard or
air national guard only when serving on a temporary basis
pursuant to a call made by the governor under sections one and
two, article one-d, chapter fifteen of this code.

14 (b) The term “wages” does not include:
(1) That part of the remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this section, the term “employment” includes service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his or her computation of base period wages: Provided, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of eight thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided, however, That if the definition of the term “wages” as contained in Section 3306(b) of the Internal Revenue Code of 1954, as amended, is amended to include remuneration in excess of eight thousand dollars, paid to an individual by an employer under the federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this chapter or his or her predecessor with respect to employment during any calendar year up to an amount equal to
the amount of remuneration taxable under the federal Unemployment Tax Act;

(2) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an individual in its employ or any of his or her dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of: (A) Retirement; or (B) sickness or accident disability payments made to an employee under an approved state workers' compensation law; or (C) medical or hospitalization expenses in connection with sickness or accident disability; or (D) death;

(3) Any payment made by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made by an employer to, or on behalf of, an individual in its employ or his or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at the time
of such payment, is a plan described in Section 403(a) of the federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under Section 3101 of the federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home or the employer of agricultural labor;

(7) Remuneration paid by an employer in any medium other than cash to an individual in its employ for service not in the course of the employer’s trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer to an individual in its employ after the month in which he or she attains the age of sixty-five, if he or she did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his or her period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed; and

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, That the term totally or partially unemployed does not include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer’s request provided they are so informed at least ninety days prior to such vacation; or (C) employees who are on vacation by reason of the employer’s request where such vacation is in addition to the regular vacation and the employer
compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

(c) The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

CHAPTER 317

(Com. Sub. for S. B. 484 — By Senators Snyder, Caldwell, Fanning, Minard, Unger and Minear)

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

AN ACT to amend and reenact article six, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revising the uniform disclaimer of property interests act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

§42-6-1. Short title.
§42-6-2. Definitions.
§42-6-3. Scope.
§42-6-4. Article supplemented by other law.
§42-6-5. Power to disclaim; general requirements; when irrevocable.
§42-6-1. Short title.

This article may be cited as the “Uniform Disclaimer of Property Interests Act”.

§42-6-2. Definitions.

In this article:

(1) “Disclaimant” means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) “Disclaimed interest” means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) “Disclaimer” means the refusal to accept an interest in or power over property.

(4) “Fiduciary” means a personal representative, trustee, agent acting under a power of attorney or other person autho-
ized to act as a fiduciary with respect to the property of another
person.

(5) "Jointly held property with right of survivorship" means
property held in the name of two or more persons under an
arrangement in which all holders have concurrent interests and
under which the last surviving holder is entitled to the whole of
the property.

(6) "Person" means an individual, corporation, business
trust, estate, trust, partnership, limited liability company,
association, joint venture, government; governmental subdivi-
sion, agency or instrumentality; public corporation or any other
legal or commercial entity.

(7) "State" means a state of the United States, the District
of Columbia, Puerto Rico, the United States Virgin Islands or
any territory or insular possession subject to the jurisdiction of
the United States. The term includes an Indian tribe or band, or
Alaskan native village, recognized by federal law or formally
acknowledged by a state.

(8) "Trust" means:

(A) An express trust, charitable or noncharitable, with
additions thereto, whenever and however created; and

(B) A trust created pursuant to a statute, judgment or decree
which requires the trust to be administered in the manner of an
express trust.

§42-6-3. Scope.

This article applies to disclaimers of any interest in or
power over property whenever created.

§42-6-4. Article supplemented by other law.
(a) Unless displaced by a provision of this article, the principles of law and equity supplement this article.

(b) This article does not limit any right of a person to waive, release, disclaim or renounce an interest in or power over property under a law other than this article.

§42-6-5. Power to disclaim; general requirements; when irrevocable.

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) To be effective, a disclaimer must be in writing, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, be acknowledged in such a manner as would authorize a deed to be admitted of record and be delivered or filed in the manner provided in section twelve of this article.
(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when it is delivered, filed or recorded pursuant to the provisions of section twelve of this article or when it becomes effective as provided in sections six through eleven, inclusive, of this article, whichever occurs later.

(f) A disclaimer made under this article is not a transfer, assignment or release and relates back for all purposes to the time the disclaimer takes effect pursuant to the provisions of section six of this article.

§42-6-6. Disclaimer of interest property.

(a) In this section:

(1) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) Except for a disclaimer governed by section seven or eight of this article, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable or, if the interest arose under the law of intestate succession, as of the time of the intestate’s death.
(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in subdivision (2) of this subsection, the following rules apply:

(A) If the disclaimer is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. However, if, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(B) If the disclaimer is not an individual, the disclaimed interest passes as if the disclaimer did not exist.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

§42-6-7. Disclaimer of right of survivorship in jointly held property with right of survivorship.

(a) Upon the death of a holder of jointly held property with right of survivorship, a surviving holder may disclaim, in whole or part, the greater of:

(1) A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or
§42-6-8. Disclaimer of interest by trustee.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

§42-6-9. Disclaimer of power of appointment or other power not held in fiduciary capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.
§42-6-10. Disclaimer by appointee, object or taker in default of exercise of power of appointment.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

§42-6-11. Disclaimer of power held in fiduciary capacity.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust or other person for whom the fiduciary is acting.

§42-6-12. Delivery of disclaimer.

(a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) An annuity or insurance policy;

(2) An account with a designation for payment on death;
(3) A security registered in beneficiary form;

(4) A pension, profit-sharing, retirement or other employment-related benefit plan; or

(5) Any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l), inclusive, of this section, delivery of a disclaimer may be effected by personal delivery, first-class mail or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) A disclaimer must be delivered to the personal representative of the decedent’s estate; or

(2) If no personal representative is then serving, it must be filed in the office of the clerk of the county commission of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced.

(d) In the case of an interest in a testamentary trust:

(1) A disclaimer must be delivered to the trustee then serving or, if no trustee is then serving, to the personal representative of the decedent’s estate; or

(2) If no trustee is then serving, it must be filed in the office of the clerk of the county commission of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced.

(e) In the case of an interest in an inter vivos trust:
(1) A disclaimer must be delivered to the trustee then serving;

(2) If no trustee is then serving, it must be filed in the office of the clerk of the county commission of the county having in rem jurisdiction over the corpus of the trust; or

(3) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

(h) In the case of a disclaimer by a surviving holder of jointly held property with right of survivorship, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed in the office of the clerk of the county commission of the county
having in rem jurisdiction over the assets subject to the power of appointment.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) The disclaimer must be delivered to the holder, the personal representative of the holder’s estate or to the fiduciary under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed in the office of the clerk of the county commission of the county having in rem jurisdiction over assets subject to the power of appointment.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d) or (e) of this section, as if the power disclaimed were an interest in property.

(1) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal’s representative.

§42-6-13. When disclaimer barred or limited.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) The disclaimant accepts the interest sought to be disclaimed;
(2) The disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the interest sought to be disclaimed or contracts to do so; or

(3) A judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer of a power over property which is barred by this section is ineffective as a disclaimer: Provided, That a disclaimer of an interest in property which is barred by this section takes effect as a transfer or conveyance of the interest disclaimed to the persons who would have taken the interest under this article had the disclaimer not been barred.

§42-6-14. Tax qualified disclaimer.

Notwithstanding any other provision of this article, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this article.

§42-6-15. Recording of disclaimers; failure to record.
(a) A duly executed and acknowledged original or duplicate of the disclaimer may be recorded with the office of the clerk of county commission having jurisdiction to appoint the personal representative of the decedent, in which the trust is located or the trustee resides, in which the person making the beneficiary designation resides, in which the person obligated to distribute the interest resides or in which any of the property or interest disclaimed is located, as the case may be.

(b) If real property or an interest therein is disclaimed, in addition to delivery or filing as provided in section twelve of this article, a fully executed and acknowledged original or duplicate of the disclaimer shall be recorded in the deed books in the office of the clerk of the county commission of the county in which the real property or interest therein disclaimed is located.

(c) Failure to record a disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

§42-6-16. Application to existing relationships.

Except as otherwise provided in section thirteen of this article, an interest in or power over property existing on the effective date of this article as to which the time for delivering, filing or recording a disclaimer under law superseded by this article has not expired may be disclaimed after the effective date of this article.

§42-6-17. Uniformity of application and construction.

In applying and construing this uniform article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§42-6-18. Severability clause.
If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application and, to this end, the provisions of this article are severable.

§42-6-19. Effective date.

This article takes effect on the first day of July, two thousand two.

CHAPTER 318

(S. B. 485 — By Senators Snyder, Caldwell, Fanning, Minard, Rowe, Unger and Minear)

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

AN ACT to amend and reenact article sixteen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to interstate family support act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

§48-16-102. Definitions.
§48-16-103. Tribunal of state.
§48-16-104. Remedies cumulative.
§48-16-201. Basis for jurisdiction over nonresident.
§48-16-203. Initiating and responding tribunal of state.
§48-16-204. Simultaneous proceedings.
§48-16-205. Continuing, exclusive jurisdiction to modify child support order.
§48-16-206. Continuing jurisdiction to enforce child support order.
§48-16-207. Determination of controlling child support order.
§48-16-208. Child support orders for two or more obligees.
§48-16-209. Credit for payments.
§48-16-210. Application of article to nonresident subject to personal jurisdiction.
§48-16-211. Continuing, exclusive jurisdiction to modify spousal support order.
§48-16-301. Proceedings under article.
§48-16-303. Application of law of state.
§48-16-304. Duties of initiating tribunal.
§48-16-305. Duties and powers of responding tribunal.
§48-16-306. Inappropriate tribunal.
§48-16-307. Duties of support enforcement agency.
§48-16-308. Duty of West Virginia support enforcement commission.
§48-16-309. Private counsel.
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PART I. GENERAL PROVISIONS.


1 This article may be cited as the uniform interstate family support act.

§48-16-102. Definitions.

1 As used in this article:

2 (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

2 (2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.
(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's source of income as defined by section 1-240 of this chapter to withhold support from the income of the obligor.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this article or a law or procedure substantially similar to this article.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.
(11) "Law" includes decisional and statutory law and rules having the force of law.

(12) "Obligee" means:

(A) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(B) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(C) An individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual or the estate of a decedent:

(A) Who owes or is alleged to owe a duty of support;

(B) Who is alleged but has not been adjudicated to be a parent of a child; or

(C) Who is liable under a support order.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(16) "Register" means to record a support order or judgment determining parentage in the registry of foreign support orders.

(17) "Registering tribunal" means a tribunal in which a support order is registered.

(18) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this article or a law or procedure substantially similar to this article.

(19) "Responding tribunal" means the authorized tribunal in a responding state.

(20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(21) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

(A) An Indian tribe; and

(B) A foreign country or political subdivision that:

(i) Has been declared to be a foreign reciprocating country or political subdivision under federal law;

(ii) Has established a reciprocal arrangement for child support with this state as provided in section 308; or

(iii) Has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this article.
(22) “Support enforcement agency” means a public official or agency authorized to seek:

(A) Enforcement of support orders or laws relating to the duty of support;

(B) Establishment or modification of child support;

(C) Determination of parentage;

(D) Location of obligors or their assets; or

(E) Determination of the controlling child support order.

(23) “Support order” means a judgment, decree, order, or directive, whether temporary, final or subject to modification, issued by a tribunal for the benefit of a child, a spouse or a former spouse which provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest, income withholding, attorney’s fees and other relief.

(24) “Tribunal” means a court, administrative agency or quasijudicial entity authorized to establish, enforce or modify support orders or to determine parentage.

§48-16-103. Tribunal of state.

The family court is the tribunal of this state.

§48-16-104. Remedies cumulative.

(a) Remedies provided by this article are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision the basis of comity.

(b) This article does not:
(1) Provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in proceeding under this article.

PART II. JURISDICTION.

§48-16-201. Basis for jurisdiction over nonresident.

(a) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual’s guardian or conservator if:

(1) The individual is personally served with notice within this state;

(2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in this state;

(4) The individual resided in this state and provided prenatal expenses or support for the child;

(5) The child resides in this state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) The individual has committed a tortious act by failing to support a child resident in this state; or
(8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The basis of personal jurisdiction set forth in subsection (a) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless the requirements of sections 611 or 615 are met.


Personal jurisdiction acquired by a tribunal of this state in a proceeding under this article or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by sections 205, 206 and 211.

§48-16-203. Initiating and responding tribunal of state.

Under this article, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

§48-16-204. Simultaneous proceedings.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(1) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
(2) The contesting party timely challenges the exercise of jurisdiction in the other state; and

(3) If relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(1) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) The contesting party timely challenges the exercise of jurisdiction in this state; and

(3) If relevant, the other state is the home state of the child.

§48-16-205. Continuing, exclusive jurisdiction to modify child support order.

(a) A tribunal of this state that has issued a support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(1) At the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or

(2) Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.
(b) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the uniform interstate family support act or a law substantially similar to that article which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

§48-16-206. Continuing jurisdiction to enforce child support order.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:
(1) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the uniform family support act; or

(2) A money judgment for arrears of support and interest on the order accrued before a determination that an order of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

§48-16-207. Determination of controlling child support order.

(a) If a proceeding is brought under this article and only one tribunal has issued a child support order, the order of that tribunal is controlling and must be recognized.

(b) If a proceeding is brought under this article, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this article, the order of that tribunal is controlling and must be recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this article:

(A) An order issued by a tribunal in the current home state of the child; but

(B) If an order has not been issued in the current home state of the child, the order most recently issued controls.
(3) If none of the tribunals would have continuing, exclusive jurisdiction under this article, the tribunal of this state shall issue a child support order which controls.

(c) If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (b) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to article six or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the order that must be recognized as controlling under subsection (a), (b) or (c) has continuing jurisdiction to the extent provided in section 16-205 or 206.

(f) A tribunal of this state that determines by order which is the controlling child support order under subdivisions (1) and (2) of subsection (b) or subsection (c) or that issued a new controlling child support order under subdivision (3) of subsection shall state in that order:

(1) The basis upon which the tribunal made its determination;

(2) The amount of prospective support, if any; and
(3) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by section 209.

(g) Within thirty days after issuance of the order determining which is the controlling order, the party obtaining that order shall file a certified copy of it in each tribunal that had issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this article.

§48-16-208. Child support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

§48-16-209. Credit for payments.

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or another state.
§48-16-210. Application of article to nonresident subject to personal jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this article, under other law of this state relating to a support order, or recognizing a support order of a foreign country or political subdivision on the basis of comity may receive evidence from another state pursuant to section 316, communication with a tribunal or another state pursuant to section 317, and obtain discovery through a tribunal of another state pursuant to section 318. In all other respects, articles 3 through 7, inclusive, of this chapter do not apply and the tribunal shall apply the procedural and substantive law of this state.

§48-16-211. Continuing, exclusive jurisdiction to modify spousal support order.

(a) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(b) A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(1) An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(2) A responding tribunal to enforce or modify its own spousal support order.
§48-16-301. Proceedings under article.

(a) Except as otherwise provided in this article, this part applies to all proceedings under this article.

(b) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this article by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.


A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor’s child.

§48-16-303. Application of law of state.

Except as otherwise provided in this article, a responding tribunal of this state shall:

(1) Apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

§48-16-304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this article, an initiating tribunal of this state shall forward the petition and its accompanying documents:
(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign country or political subdivision, upon request, the tribunal shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported and provide any other documents necessary to satisfy the requirements of the responding state.

§48-16-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (b), section 16-301, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) Issue or enforce a support order, modify a child support order, or determine the controlling child support order to determine parentage;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;
(4) Determine the amount of any arrearages and specify a method of payment;

(5) Enforce orders by civil contempt;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor’s property;

(8) Order an obligor to keep the tribunal informed of the obligor’s current residential address, telephone number, employer, address of employment and telephone number at the place of employment;

(9) Issue a capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the capias in any local and state computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorney’s fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this article or, in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this article upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this article, the tribunal shall send a copy of the order to
the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

§48-16-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

§48-16-307. Duties of support enforcement agency.

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this article.

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

(1) Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
(4) Within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written notice from an initiating, responding or registering tribunal, send a copy of the notice to the petitioner;

(5) Within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written communication from the respondent or the respondent’s attorney, send a copy of the communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

c) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(1) To ensure that the order to be registered is the controlling order; or

(2) If two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

e) A support enforcement agency of this state shall request a tribunal of this state to issue a child support order and an income withholding order that redirect payment of current support, arrears and interest if requested to do so by a support
enforcement agency of another state pursuant to section 319 of
the uniform interstate family support act.

(f) This article does not create or negate a relationship of
attorney and client or other fiduciary relationship between a
support enforcement agency or the attorney for the agency and
the individual being assisted by the agency.

§48-16-308. Duty of West Virginia support enforcement commis-
sion.

(a) If the West Virginia support enforcement commission
determines that the support enforcement agency is neglecting
or refusing to provide services to an individual, the commission
may order the agency to perform its duties under this article or
may provide those services directly to the individual.

(b) The West Virginia support enforcement commission
may determine that a foreign country or political subdivision
has established a reciprocal arrangement for child support with
this state and take appropriate action for notification of the
determination.

§48-16-309. Private counsel.

An individual may employ private counsel to represent the
individual in proceedings authorized by this article.

§48-16-310. Duties of state information agency.

(a) The bureau for child support enforcement is the state
information agency under this article.

(b) The state information agency shall:

(1) Compile and maintain a current list, including ad-
resses, of the tribunals in this state which have jurisdiction
under this article and any support enforcement agencies in this
(2) Maintain a register of names and addresses tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this article received from an initiating tribunal or the state information agency of the initiating state; and

(4) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses and social security.

§48-16-311. Pleadings and accompanying documents.

(a) In a proceeding under this article, a petitioner seeking to establish a support order, to determine parentage or to register and modify a support order of another state must file a petition. Unless otherwise ordered under section 16-312, the petition or accompanying documents must provide, so far as known, the name, residential address and social security numbers of the obligor and the obligee or the parent and alleged parent and the name, sex, residential address, social security number and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have
been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§48-16-312. Nondisclosure of information in exceptional circumstances.

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

§48-16-313. Costs and fees.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney’s fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney’s fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney’s own name. Payment of support owed to the obligee has priority over fees, costs and expenses.
(c) The tribunal shall order the payment of costs and reasonable attorney’s fees if it determines that a hearing was requested primarily for delay. In a proceeding under part 16-601, et seq., a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

§48-16-314. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding under this article before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this article.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this article committed by a party while present in this state to participate in the proceeding.

§48-16-315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this article.

§48-16-316. Special rules of evidence and procedure.

(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.
(b) An affidavit, document substantially complying with federallv mandated forms or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier or other means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this article, a tribunal of this state shall permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony. The supreme court of appeals shall promulgate new rules or amend the rules of practice and procedure for family law to establish procedures pertaining to the exercise of cross examination in those instances involving
the receipt of testimony by means other than direct or personal testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this article.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this article.

(j) A voluntary acknowledgment or paternity, certified as a true copy is admissible to establish parentage of the child.

§48-16-317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal of another state or foreign country or political subdivision in a record, or by telephone or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal and the status of a proceeding in the other state or foreign country or political subdivision. A tribunal of this state may furnish similar information by similar means to a tribunal of another state or foreign country or political subdivision.

§48-16-318. Assistance with discovery.

A tribunal of this state may:

(1) Request a tribunal of another state to assist in obtaining discovery; and
(2) Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

§48-16-319. Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, a tribunal of this state shall:

(1) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) Issue and send to the obligor's employer a conforming income withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

PART IV. ESTABLISHMENT OF SUPPORT ORDER.

§48-16-401. Petition to establish support order.
(a) If a support order entitled to recognition under this article has not been issued, a responding tribunal of this state may issue a support order if:

1. The individual seeking the order resides in another state;
2. or
3. The support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

1. A presumed father of the child;
2. Petitioning to have his paternity adjudicated;
3. Identified as the father of the child through genetic testing;
4. An alleged father who has declined to submit to genetic testing;
5. Shown by clear and convincing evidence to be the father of the child;
6. An acknowledged father as provided by applicable state law;
7. The mother of the child; or
8. An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.
(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 16-305.

PART V. DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION.

§48-16-501. Employer’s receipt of income withholding order of another state.

An income withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor’s source of income under section 1-241 of this chapter without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

§48-16-502. Employer’s compliance with income withholding order of another state.

(a) Upon receipt of the order, the obligor’s employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as provided by subsection (d) and section 16-503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order, as applicable, that specify:

(1) The duration and the amount of periodic payments of current child support, stated as a sum certain;
(2) The person designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor’s employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal and the obligee’s attorney, stated as sums certain; and

(5) The amount of periodic payments of arrears and interest on arrears, stated as sums certain.

(d) The employer shall comply with the law of the state of the obligor’s principal place of employment for withholding from income with respect to:

(1) The employer’s fee for processing an income withholding order;

(2) The maximum amount permitted to be withheld from the obligor’s income;

(3) The time periods within which the employer must implement the withholding order and forward the child support payment.

§48-16-503. Employer’s compliance with two or more income withholding orders.

If an obligor’s employer receives two or more income withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor’s principal place of employment to establish the priorities for
§48-16-504. Immunity from civil liability.

An employer who complies with an income withholding order issued in another state in accordance with this article is not subject to civil liability to any individual or agency with regard to the employer's withholding of child support from the obligor's income.

§48-16-505. Penalties for noncompliance.

An employer who willfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

§48-16-506. Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in article six, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state. Section 604 applies to the contest.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;

(2) Each employer which has directly received an income withholding order relating to the obligor; and
(3) The person designated to receive payments in the income withholding order, or if no person is designated, to the obligee.

§48-16-507. Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this article.

PART VI. REGISTRATION, ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER.

§48-16-601. Registration of order for enforcement.

A support order or an income withholding order issued by a tribunal of another state may be registered in this state for enforcement.

§48-16-602. Procedure to register order for enforcement.

(a) A support order or income withholding order of another state may be registered in this state by sending the following records and information to the state information agency who shall forward the order to the appropriate tribunal:
(1) A letter of transmittal to the tribunal requesting registration and enforcement;

(2) Two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) The name of the obligor and, if known:
   (A) The obligor’s address and social security number;
   (B) The name and address of the obligor’s employer and any other source of income of the obligor; and
   (C) A description and the location of property of the obligor in this state not exempt from execution; and

(5) Except as otherwise provided in section 312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the clerk of the court shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:
(1) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) Specify the order alleged to be the controlling order, if any; and

(3) Specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

§48-16-603. Effect of registration for enforcement.

(a) A support order or income withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

§48-16-604. Choice of law.

(a) Except as otherwise provided in subsection (d) of this section, the law of the issuing state governs:

(1) The nature, extent, amount and duration of current payments under a registered support order;
(2) The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) The existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state registered in this state.

(d) After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state issuing the controlling order, including its law on interest on arrears, on current and future support and on consolidated arrears.

§48-16-605. Notice of registration of order.

(a) When a support order or income withholding order issued in another state is registered, the clerk of the court shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
(2) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) Of the amount of any alleged arrearages.

c) If the registering party asserts that two or more orders are in effect, a notice must also:

(1) Identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any;

(2) Notify the nonregistering party of the right to a determination of which is the controlling order;

(3) State the procedures provided in subsection (b) of this section apply to the determination of which is the controlling order; and

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

d) Upon registration of an income withholding order for enforcement, the registering tribunal shall notify the obligor’s source of income pursuant to part 14-401, et seq., of this chapter.
§48-16-606. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 16-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

§48-16-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party;

(2) The order was obtained by fraud;

(3) The order has been vacated, suspended or modified by a later order;

(4) The issuing tribunal has stayed the order pending appeal;
(5) There is a defense under the law of this state to the remedy sought;

(6) Full or partial payment has been made;

(7) The statute of limitation under section 16-604 precludes enforcement of some or all of the alleged arrearages; or

(8) The alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

§48-16-608. Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§48-16-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify or to modify and enforce a child support order issued in another state shall register that order in this state in the same manner provided in part 1 if the order has not been registered. A
petition for modification may be filed at the same time as a request for registration or later. The pleading must specify the grounds for modification.

§48-16-610. Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 16-611 have been met.

§48-16-611. Modification of child support order of another state.

(a) If section 613 does not apply, except as otherwise provided in section 615, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(1) The following requirements are met:

(A) Neither the child, the obligee who is an individual nor the obligor resides in the issuing state;

(B) A petitioner who is a nonresident of this state seeks modification; and

(C) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) This state is the state of residence of the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.
(b) Modification of a registered child support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) Except as otherwise provided in section 615, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under section 16-207 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(e) On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

§48-16-612. Recognition of order modified in another state.

If a child support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the uniform interstate family support act, a tribunal of this state:

(1) May enforce its order that was modified only as to arrears and interest accruing before the modification;
(2) May provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

(3) Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

§48-16-613. Jurisdiction to modify support order of another state when individual parties reside in this state.

(a) If all of the individual parties reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state’s child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction as provided in this section shall apply the provisions of parts 1 and 2 and this part to the enforcement or modification proceeding. Parts 3 through 5, inclusive, and parts 7 and 8 do not apply and the tribunal shall apply the procedural and substantive law of this state.

§48-16-614. Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows that earlier order has been registered. Failure of the party obtaining the order to file a certified copy as required subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction.
§48-16-615. Jurisdiction to modify child support order of foreign country or political subdivision.

(a) If a foreign country or political subdivision that is a state will not or may not modify its order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child support order otherwise required of the individual pursuant to section 611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country or political subdivision.

(b) An order issued pursuant to this section is the controlling order.

PART VII. DETERMINATION OF PARENTAGE.

§48-16-701. Proceeding to determine parentage.

A court of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage brought under this article or a law substantially similar to this article.

PART VIII. INTERSTATE RENDITION.

§48-16-801. Grounds for rendition.

(a) For purposes of this article, “governor” includes an individual performing the functions of governor or the executive authority of a state covered by this article.

(b) The governor of this state may:

(1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in
this state with having failed to provide for the support of an
obligee; or

(2) On the demand by the governor of another state,
surrender an individual found in this state who is charged
criminally in the other state with having failed to provide for
the support of an obligee.

(c) A provision for extradition of individuals not inconsis-
tent with this article applies to the demand even if the individ-
ual whose surrender is demanded was not in the demanding
state when the crime was allegedly committed and has not fled
therefrom.

§48-16-802. Conditions of rendition.

(a) Before making demand that the governor of another
state surrender an individual charged criminally in this state
with having failed to provide for the support of an obligee, the
governor of this state may require a prosecutor of this state to
demonstrate that at least sixty days previously the obligee had
initiated proceedings for support pursuant to this article or that
the proceeding would be of no avail.

(b) If, under this article or a law substantially similar to this
article, the governor of another state makes a demand that the
governor of this state surrender an individual charged crimi-
nally in that state with having failed to provide for the support
of a child or other individual to whom a duty of support is
owed, the governor may require a prosecutor to investigate the
demand and report whether a proceeding for support has been
initiated or would be effective. If it appears that a proceeding
would be effective but has not been initiated, the governor may
delay honoring the demand for a reasonable time to permit the
initiation of a proceeding.
(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

PART IX. MISCELLANEOUS PROVISIONS.

§48-16-901. Uniformity of application and construction.

In applying and construing this Uniform Act consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§48-16-902. Severability clause.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application and to this end the provisions of this article are severable.

§48-16-903. Effective date.

The provisions of this article originally enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-seven were effective on the first day of January, one thousand nine hundred ninety-eight. The provisions of this article enacted during the regular session of the Legislature in the year two thousand two take effect on the first day of July, two thousand two.
AN ACT to amend and reenact sections two hundred one, two hundred two and two hundred four, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four hundred one, four hundred six and four hundred seven, article four of said chapter, all relating to revising the uniform securities act generally; eliminating requirement that investment advisers must also be registered as a broker-dealers without the imposition of certain restrictions; requiring applicants for registration as broker-dealer or agent to be registered in securities business in state where principal place of business is located; providing for a waiver in certain instances upon written application to the commissioner; exempting certain investment advisers from requirement that federal-covered advisers must file certain documents with the commissioner; clarifying time limitations on filing certain civil actions; authorizing commissioner to place conditions upon a license; setting forth certain acts which constitute dishonest or unethical practices of broker-dealers and agents; setting forth further acts which constitute dishonest or unethical practices of agents; expanding authority of commissioner over applicants or registrants who have engaged in certain conduct; defining term "branch office"; increasing amount required to be on deposit in the operating fund before a transfer is made to the general revenue fund; and expanding authority of the commissioner to appoint special investigators.
Be it enacted by the Legislature of West Virginia:

That sections two hundred one, two hundred two and two hundred four, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four hundred one, four hundred six and four hundred seven, article four of said chapter be amended and reenacted, all to read as follows:

Article
2. Registration of Broker-Dealers, and Agents; Registration and Notice Filing for Investment Advisers.

ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AND AGENTS; REGISTRATION AND NOTICE FILING FOR INVESTMENT ADVISERS.

§32-2-201. Registration requirement.
§32-2-204. Denial, revocation, suspension, otherwise condition, cancellation and withdrawal of registration.

§32-2-201. Registration requirement.

1 (a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he or she is registered under this chapter.

4 (b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he or she is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him or her an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner.
(c) It is unlawful for any person to transact business in this state as an investment adviser unless: (1) He or she is so registered under this chapter; (2) he or she is a federal-covered adviser except that, until the tenth day of October, one thousand nine hundred ninety-nine, a federal-covered adviser for which a nonpayment or underpayment of a fee has not been promptly remedied following written notification to the adviser of such nonpayment or underpayment shall be required to register under this article; or (3) he or she has no place of business in this state and: (A) His or her only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal-covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or (B) during any period of twelve consecutive months he or she does not have more than five clients who are residents of this state, other than those specified in this subsection, whether or not he or she or any of the clients who are residents of this state is then present in the state.

(d) Every registration or notice filing expires one year from its effective date unless renewed. The commissioner by rule or order may prepare an initial schedule for renewals of registrations or notice filings so that subsequent renewals of registrations or notice filings effective on the effective date of this chapter may be staggered by calendar months. For this purpose the commissioner by rule may reduce the registration or notice filing fee proportionately.

(e) It is unlawful for any:
(1) Person required to be registered as an investment adviser under this article to employ an investment adviser representative unless the investment adviser representative is registered under this article: Provided, That the registration of an investment adviser representative is not effective during any period when he or she is not employed by an investment adviser registered under this article; or

(2) Federal-covered adviser to employ, supervise or associate with an investment adviser representative having a place of business located in this state, unless such investment adviser representative is registered under this article or is exempt from registration. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser (in the case of 401 (g)), or the investment adviser representative (in the case of 401 (f)), shall promptly notify the commissioner.

(f) Except with respect to advisers whose only clients are those described in subdivision (3), subsection (c) of this section, it is unlawful for any federal-covered adviser to conduct advisory business in this state unless such person complies with the provisions of subsection (b), section two hundred two of this article.

(g) An applicant must be registered or qualified in the securities business in the state of the applicant’s principal place of business. The commissioner may waive this requirement upon a finding that the applicant is registered with the securities and exchange commission or any other national securities exchange or national securities association registered under the Securities Exchange Act of 1934. A request to waive this requirement must be made upon written application to the commissioner which includes documentation upon which the applicant relies in requesting the waiver.

(a) A broker-dealer, agent or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application together with a consent to service of process pursuant to subsection (g), section four hundred fourteen, article four of this chapter. The application shall contain whatever information the commissioner by rule requires concerning matters such as: (1) The applicant's firm and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions or any person, directly or indirectly, controlling the broker-dealer or investment adviser and, in the case of an investment adviser, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) subject to the limitations of §15(h)(1) of the Securities Exchange Act of 1934, the applicant's financial condition and history. The commissioner may by rule or order require an applicant for initial registration to publish an announcement of the application as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area or areas for the publication shall be specified by the commissioner. If no denial order is in effect and no proceeding is pending under section two hundred four of this article, registration becomes effective at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date and he or she may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. Registration of a broker-dealer automatically constitutes registration of any agent
who is a partner, officer or director, or a person occupying a
similar status or performing similar functions, as designated by
the broker-dealer in writing to the commissioner and approved
in writing by the commissioner. Registration of an investment
adviser automatically constitutes registration of any investment
adviser representative who is a partner, officer or director or a
person occupying a similar status or performing similar
functions as designated by the investment adviser in writing to
the commissioner and approved in writing by the commis-
sioner.

(b) Except with respect to federal-covered advisers whose
only clients are those described in paragraphs (A) and (B),
subdivision (3), subsection (c), section two hundred one of this
article, a federal-covered adviser shall file with the commis-
sioner, prior to acting as a federal-covered adviser in this state,
such documents as have been filed with the securities and
exchange commissioner as the commissioner, by rule or order,
may require along with notice filing fees under subsection (c)
of this section.

(c) Every applicant for initial or renewal registration shall
pay a filing fee of two hundred fifty dollars in the case of a
broker-dealer and the agent of an issuer, fifty-five dollars in the
case of an agent, one hundred seventy dollars in the case of an
investment adviser and fifty dollars for each investment advisor
representative. When an application is denied or withdrawn, the
commissioner shall retain all of the fee.

(d) A registered broker-dealer or investment adviser may
file an application for registration of a successor, whether or not
the successor is then in existence, for the unexpired portion of
the year. A filing fee of twenty dollars shall be paid.

(e) The commissioner may, by rule or order, require a
minimum capital for registered broker-dealers, subject to the
limitations of section fifteen of the Securities Exchange Act of 1934 and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(f) The commissioner may, by rule or order, require registered broker-dealers, agents and investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts as the commissioner may prescribe, by rule or order, subject to the limitations of section fifteen of the Securities Exchange Act of 1934 (for broker-dealers) and section 222 of the Investment Advisers Act of 1940 (for investment advisers), up to twenty-five thousand dollars and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital, or, in the case of an investment adviser, whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the commissioner. Every bond shall provide for suit thereon by any person who has a cause of action under section four hundred ten, article four of this chapter and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations set forth in subsection (e), section four hundred ten, article four of this chapter.

(g) Every applicant, whether registered under this chapter or not, shall pay a fifty dollar fee for each name or address change.
(h) Every broker-dealer and investment advisor registered under this chapter shall pay an annual fifty dollar fee for each branch office located in West Virginia.

(i) Each agent, representative and associated person of a broker-dealer or investment advisor when applying for an initial license under section two hundred two of this article or changing employers shall pay a compliance assessment of twenty-five dollars. Each agent, representative and associated person, when applying for a renewal license under section two hundred two of this article, shall pay a compliance assessment of ten dollars.

§32-2-204. Denial, revocation, suspension, otherwise condition, cancellation and withdrawal of registration.

(a) The commissioner may by order deny, suspend, otherwise condition or revoke any registration if he or she finds:

(1) That the order is in the public interest; and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;
(C) Has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business or any felony;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) Is the subject of an order of the commissioner denying, suspending or revoking registration as a broker-dealer, agent or investment adviser;

(F) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a broker-dealer, agent or investment adviser, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the securities and exchange commission suspending or expelling him or her from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post-office-fraud order; but: (i) The commissioner may not institute a revocation or suspension proceeding under this subdivision more than one year from the date of the order relied on; and (ii) he or she may not enter an order under this subdivision on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) Has engaged in dishonest or unethical practices in the securities business.

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the commis-
The commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser; or

(I) Is not qualified on the basis of such factors as training, experience and knowledge of the securities business, except as otherwise provided in subsection (b).

The commissioner may by order deny, suspend or revoke any registration if he or she finds: (1) That the order is in the public interest; and (2) that the applicant or registrant:

(J) Has failed reasonably to supervise his or her agents if he or she is a broker-dealer or his or her employees if he or she is an investment adviser; or

(K) Has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this subdivision and he or she shall vacate any such order when the deficiency has been corrected.

The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him or her when registration became effective unless the proceeding is instituted within the next thirty days.

(b) With regard to broker-dealers and agents, dishonest or unethical practices in the securities business includes, but is not limited to:

(1) Causing any unreasonable and unjustifiable delay or engaging in a pattern of unreasonable and unjustifiable delays, in the delivery of securities purchased by any of the customers or in the payment upon request of free credit balances reflecting completed transactions of any of the customers;
(2) Inducing trading in a customer’s account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs and any other relevant information known by the broker-dealer and/or agent;

(4) Executing a transaction on behalf of a customer without authorization;

(5) Exercising any discretionary power in effecting a transaction for a customer’s account without first obtaining written authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Extending, arranging for or participating in arranging for credit to a customer in violation of the regulations of the securities and exchange commission or the regulations of the federal reserve board;

(7) Executing any transaction in a margin account without obtaining from the customer a written margin agreement prior to settlement date for the initial transaction in the account;

(8) Failing to segregate customers’ free securities or securities in safekeeping;

(9) Hypothecating a customer’s securities without having a lien thereon unless a properly executed written consent of the customer is first obtained, except as otherwise permitted by rules of the securities and exchange commission;
(10) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business;

(11) Entering into a transaction for its own account with a customer in a security at a price not reasonably related to the current market price of the security, or charging a commission which is not reasonable;

(12) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable or indeterminate commission or profit;

(13) Executing orders for the purchase by a customer of securities not registered under the provisions of this chapter, unless the securities or transaction are exempt from registration under this chapter;

(14) Engaging in a course of conduct constituting an egregious violation of the rules of a national securities association of which the broker-dealer is a member with respect to any customer, transaction or business;

(15) Introducing customer transactions on a fully disclosed basis to another broker-dealer or agent that is not registered under section 32-2-201 unless the customer is a person described in section 32-4-402(b)(8);

(16) Unreasonably or unjustifiably failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;
(17) Offering to buy from or sell to any person any security at a stated price unless the broker-dealer or agent is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated at the time of the offer to buy or sell;

(18) Representing that a security is being offered to a customer "at the market" or for a price relevant to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer or agent, or by any person for whom he or she is acting or with whom he or she is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer or agent;

(19) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include, but is not limited to: (A) Effecting any transaction in a security which involves no change in the beneficial ownership; (B) entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance with respect to the market for the security: Provided, That nothing in this paragraph prohibits a broker-dealer or agent from entering into a bona fide agency cross transaction for its customers; and (C) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;
(20) Guaranteeing a customer against market loss in any securities account of the customer carried by the broker-dealer or agent or in any securities transaction effected by the broker-dealer or agent with or for the customer;

(21) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer or agent believes that the transaction was a bona fide purchase or sale of the security, or which purports to quote the bid price or asked price for any security, unless the broker-dealer or agent believes the quotation represents a bona fide bid for or offer of the security;

(22) Using any advertising or sales presentation which is deceptive or misleading, such as the distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer or display by works, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(23) Failing to disclose to the customer that the broker-dealer or agent is controlled by, affiliated with or under common control with the issuer of any contract with or for a customer for the purchase or sale of the security and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(24) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer or agent for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;
(25) Failing or refusing to furnish a customer, upon reasonable request, information to which he or she is entitled, or to respond to a formal written request or complaint;

(26) Establishing, maintaining or operating an account under fictitious name or containing fictitious information;

(27) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer;

(28) Utilizing an agent or subagent in effecting or attempting to effect purchases or sales of securities where the agent or subagent is not registered as an agent pursuant to section 32-2-201;

(29) Associating, affiliating or entering into any arrangement with any person not registered as a broker-dealer or agent pursuant to section 32-2-201 for the purpose of engaging in the business of effecting transactions in securities, where the employees of such person assisting the broker-dealer or agent in effecting the transactions in securities are not either registered as an agent of the broker-dealer or the activities of the employees are not limited to duties that are exclusively clerical in nature for which the broker-dealer or agent has provided adequate supervision including instruction, training and safeguards against a violation of this chapter;

(30) Associating, affiliating or entering into any arrangement with any person not registered as a broker-dealer or agent pursuant to section 32-2-201 for the purpose of engaging in the business of effecting transactions in securities, where the person fails to conspicuously disclose to all customers in any advertisement or literature published or distributed by the person: (A) The identity of the registered broker-dealer or agency; (B) that a person is not subject to regulation by the securities commissioner of the state of West Virginia; and (C) the manner, form
and amount of compensation, commission or remuneration to be received by the person;

(31) Representing the availability of financial or investment capabilities when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services and method of compensation for the services;

(32) Engaging in any act or a course of conduct which resulted in the issuance by a securities agency or administrator of any state of an order to cease and desist the violation of the provisions of any state's securities laws or rules (or the equivalent of any such order); or

(33) Engaging in any other act or practice which the commissioner determines to constitute dishonest or unethical practices in the securities business.

(c) With regard to agents, dishonest or unethical practices in the securities business also includes, but is not limited to:

(1) Borrowing or engaging in the practice of borrowing money or securities from a customer (other than any institution or organization whose normal business activities include lending of moneys), or lending or engaging in the practice of lending money or securities to a customer;

(2) Acting as a custodian for money, securities or an executed stock power of a customer;

(3) Effecting securities transactions with a customer not recorded on the regular books or records of a broker-dealer which an agent represents, unless the transactions are disclosed to and authorized in writing by the broker-dealer prior to execution of the transactions;
(4) Establishing, maintaining or operating an account under a fictitious name or which contains fictitious information;

(5) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and broker-dealer which the agent represents;

(6) Dividing or otherwise splitting commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

(7) Entering into a transaction for agent’s own account with a customer in which a commission is charged;

(8) Entering in a course of conduct constituting an egregious violation of the rules of a national securities exchange or national securities association of which the agent is a member with respect to any customer, transaction or business; and

(9) Holding oneself out as representing any person other than the broker-dealer for whom the agent is registered and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of the broker-dealer for whom the agent is registered, when representing the broker-dealer in effecting or attempting to effect purchases or sales of securities.

(d) The commissioner may deny, suspend, otherwise condition or revoke the registration of an applicant or registrant or take any other action authorized by the provisions of this chapter if the commissioner determines the person has engaged in the conduct of forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts or manipulative or fraudulent practices.
(e) The following provisions govern the application of section 204(a)(2)(I):

(1) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than: (A) The broker-dealer himself or herself if he or she is an individual; or (B) an agent of the broker-dealer.

(2) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than: (A) The investment adviser himself or herself if he or she is an individual; or (B) any other person who represents the investment adviser in doing any of the acts which may make him or her an investment adviser.

(3) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he or she finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he or she may by order condition the applicant’s registration as a broker-dealer upon his or her not transacting business in this state as an investment adviser.

(6) The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him or her an investment adviser.
(f) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(g) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(h) Withdrawal from registration as a broker-dealer, agent or investment adviser becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at a time and upon the conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under section 204(a)(2)(B) within one year after withdrawal became effective.
and enter a revocation or suspension order as of the last date on which registration was effective.

(i) No order may be entered under any part of this section except the first sentence of subsection (f) without: (1) Appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent); (2) opportunity for hearing; and (3) written findings of fact and conclusions of law.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-401. Definitions.

(a) "Commissioner" means the auditor of the state of West Virginia.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in: (1) effecting transactions in a security exempted by subdivision (1), (2), (3), (10) or (11), subsection (a), section four hundred two of this article; (2) effecting transactions exempted by subsection (b), section four hundred two of this article; (3) effecting transactions in a covered security as described in section 18(b)(3) and section 18(b)(4)(d) of the Securities Act of 1933; (4) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state; or (5) effecting transactions...
in this state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. "Broker-dealer" does not include: (1) An agent; (2) an issuer; (3) a bank, savings institution or trust company; or (4) a person who has no place of business in this state if: (A) He or she effects transactions in this state exclusively with or through: (i) The issuers of the securities involved in the transactions; (ii) other broker-dealers; or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or (B) during any period of twelve consecutive months he or she does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in subparagraph (A), paragraph (4) of this subdivision, whether or not the offeror or any of the offerees is then present in this state.

(d) "Fraud", "deceit" and "defraud" are not limited to common-law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(f) "Federal-covered adviser" means a person who is: (1) Registered under section 203 of the Investment Advisers Act of 1940 or (2) is excluded from the definition of "investment advisor" under section two hundred two-a (11) of the Investment Advisers Act of 1940.
(g) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include: (1) A bank, savings institution or trust company; (2) a lawyer, accountant, engineer or teacher whose performance of those services is solely incidental to the practice of his or her profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them; (4) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication or an owner, operator, producer or employee of a cable, radio or television network, station or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; (5) a person whose advice, analyses or reports relate only to securities exempted by subdivision (1), subsection (a), section four hundred two of this article; (6) a person who has no place of business in this state if: (A) His or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or (B) during any...
period of twelve consecutive months he or she does not have more than five clients who are residents of this state other than those specified in subparagraph (A), paragraph (6), of this subdivision, whether or not he or she or any of the persons to whom the communications are directed is then present in this state; (7) an investment adviser representative; (8) a “federal-covered adviser”; or (9) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

(h) “Investment adviser representative” means any partner, officer, director of or a person occupying a similar status or performing similar functions or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this chapter or who has a place of business located in this state and is employed by or associated with a federal-covered adviser; and including clerical or ministerial personnel, who does any of the following: (1) Makes any recommendations or otherwise renders advice regarding securities; (2) manages accounts or portfolios of clients; (3) determines which recommendation or advice regarding securities should be given; (4) solicits, offers or negotiates for the sale of or sells investment advisory services unless the person is registered as an agent pursuant to this article; or (5) supervises employees who perform any of the foregoing unless the person is registered as an agent pursuant to this article.

(i) “Issuer” means any person who issues or proposes to issue any security, except that: (1) With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of deposi-
tor or manager pursuant to the provisions of the trust or other
agreement or instrument under which the security is issued; and
(2) with respect to certificates of interest or participation in oil,
gas or mining titles or leases or in payments out of production
under such titles or leases, there is not considered to be any
"issuer".

(j) "Nonissuer" means not, directly or indirectly, for the
benefit of the issuer.

(k) "Person" means an individual, a corporation, a partner-
ship, an association, a joint-stock company, a trust where the
interests of the beneficiaries are evidenced by a security, an
unincorporated organization, a government or a political
subdivision of a government.

(l) (1) "Sale" or "sell" includes every contract of sale of,
contract to sell, or disposition of a security or interest in a
security for value;

(2) "Offer" or "offer to sell" includes every attempt or offer
to dispose of, or solicitation of an offer to buy, a security or
interest in a security for value;

(3) Any security given or delivered with, or as a bonus on
account of, any purchase of securities or any other thing is
considered to constitute part of the subject of the purchase and
to have been offered and sold for value;

(4) A purported gift of assessable stock is considered to
involve an offer and sale;

(5) Every sale or offer of a warrant or right to purchase or
subscribe to another security of the same or another issuer, as
well as every sale or offer of a security which gives the holder
a present or future right or privilege to convert into another
security of the same or another issuer, is considered to include an offer of the other security;

(6) The terms defined in this subdivision do not include:
(A) Any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.


(n) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; viatical settlement contract; certificate of interest or participation in an oil, gas or mining
title or lease or in payments out of production under such a title
or lease; or, in general, any interest or instrument commonly
known as a “security” or any certificate of interest or participa-
tion in, temporary or interim certificate for, receipt for, guaran-
tee of or warrant or right to subscribe to or purchase any of the
foregoing. “Security” does not include any insurance or
endowment policy or annuity contract under which an insurance
company promises to pay money either in a lump sum or
periodically for life or some other specified period: Provided,
That “security” does include insurance or endowment policies
or annuity contracts that are viatical settlement contracts or
agreements for the purchase, sale, assignment, transfer, devise
or bequest of any portion of a death benefit or ownership of a
life insurance policy or certificate that is less than the expected
death benefit of the life insurance policy or certificate.

(o) “Federal-covered security” means any security that is a
covered security under section 18(b) of the Securities Act of
1933, as amended by the National Securities Markets Improve-
ment Act of 1996, or rules promulgated thereunder.

(p) “State” means any state, territory or possession of the
United States, the District of Columbia and Puerto Rico.

(q) “Branch office” means any location other than the main
office, identified to the public, customers or clients as a location
where a broker-dealer or investment adviser or federal-covered
adviser conducts a securities or investment adviser business.
Branch office does not include:

(1) A location identified solely in a telephone directory line
listing or on a business card or letterhead if: (A) The listing,
card or letterhead also includes the address and telephone
number of the broker-dealer or investment adviser or federal
covered adviser where the individuals conducting business from
the location are directly supervised; and (B) no more than one
§32-4-406. Administration of chapter; operating fund for securities department.

(a) This chapter shall be administered by the auditor of this state and he or she is hereby designated, and shall be, the commissioner of securities of this state. He or she has the power and authority to appoint or employ such assistants as are necessary for the administration of this chapter.

(b) The auditor shall set up a special operating fund for the securities division in his or her office. The auditor shall pay into the fund twenty percent of all fees collected as provided for in this chapter. If, at the end of any fiscal year, the balance in the operating fund exceeds three hundred fifty thousand dollars, the excess shall be withdrawn from the special fund and transferred to the general revenue fund.

The special operating fund shall be used by the auditor to fund the operation of the securities division located in his or her office. The special operating fund shall be appropriated by line item by the Legislature.

(c) Moneys payable for assessments established by section four hundred seven-a of this article shall be collected by the commissioner and deposited into the general revenue fund.

(d) It is unlawful for the commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this chapter authorizes the commissioner or any of his or her officers or employ-
ees to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of the chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his or her officers or employees.

§32-4-407. Sworn investigator, investigations and subpoenas.

(a) Sworn Investigators. –

(1) The commissioner may appoint special investigators to aid in investigations conducted pursuant to chapter thirty-two, thirty-two-a or thirty-two-b of this code.

(2) The commissioner, deputy commissioners and each investigator, prior to entering upon the discharge of his or her duties, shall take an oath before any justice of the West Virginia supreme court of appeals, circuit judge or magistrate which is to be in the following form:

State of West Virginia

County of ................................., to wit: I, .................................,
do solemnly swear that I will support the constitution of the United States, the constitution of the state of West Virginia, and I will honestly and faithfully perform the duties imposed upon me under the provisions of law as a member of the securities commission of West Virginia to the best of my skill and judgment.

(Signed)..............................

Taken, subscribed and sworn to before me, this ...... day of .............. 2 .....
(3) The oaths of the commissioner, deputy commissioner or commissioners and investigators of the West Virginia securities commission are to be filed and preserved in the office of the state auditor.

(b) Investigations and subpoenas. —

(1) The commissioner in his or her discretion: (A) May make such public or private investigations within or outside of this state as he or she considers necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; (B) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated; and (C) may publish information concerning any violation of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under this chapter, the commissioner, deputy commissioner or commissioners, if any, and special investigators appointed pursuant to this section may administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, take and store evidence in compliance with the policies and procedures of the West Virginia state police and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner finds relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the circuit court of Kanawha County, upon application by the commissioner, may issue to the person an order requiring him or her to appear before the commissioner, or the officer designated by him or her, to produce
53 documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

57 (4) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him or her, or in any proceeding instituted by the commissioner on the ground that the testimony or evidence (documentary or otherwise) required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he or she is compelled, after claiming his or her privilege against self-incrimination to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

52 (5) Civil and criminal investigations undertaken by the West Virginia securities commission are not subject to the requirements of article nine-a, chapter six of this code and chapter twenty-nine-b of this code.

66 (6) Nothing in this chapter may be construed to authorize the commissioner, a deputy commissioner, a special investigator appointed pursuant to this section or any other employee of the state auditor to carry or use a hand gun or other firearm in the discharge of his or her duties under this article.

71 (7) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime.
AN ACT to amend and reenact section four, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revising the duties and functions of the veterans' council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.

§9A-1-4. Duties and functions of veterans' council; appointment of director; term of office; removal.

It is the duty and function of the veterans' council to advise the director on the general administrative policies of the division, to select, at their first meeting in each fiscal year commencing on the first day of July, a chairman to serve one year, to advise the director on rules as may be necessary, to advise the governor and the Legislature with respect to legislation affecting the interests of veterans, their widows, dependents and orphans and to make annual reports to the governor respecting the service of the division. The director has the same eligibility and qualifications prescribed for members of the veterans' council. The governor shall appoint a director for a
term of six years, by and with the advice and consent of the Senate. Before making the appointment, the governor shall request the council of the West Virginia division of veterans' affairs to furnish a full and complete report concerning the qualifications and suitability of the proposed appointee. The director may only be removed by the governor for cause, but shall have upon his or her own request an open hearing before the governor on the complaints or charges lodged against him or her. The action of the governor shall be final. The director ex officio shall be the executive secretary of the veterans' council, keep the minutes of each meeting and be in charge of all records of the division.

CHAPTER 321

(H. B. 4553 — By Delegates Michael and Givens)

[Passed March 4, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article twenty-nine-a of said chapter; and to amend and reenact section nine-a, article twenty-two, chapter twenty-nine of said code, all relating to bonds and expenditures for veterans nursing facilities; and creating a special revenue account for the payment of architectural and associated costs for the veterans nursing home.

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

Chapter
29. Miscellaneous Boards and Officers.

CHAPTER 16. PUBLIC HEALTH.

Article
1B. Skilled Nursing Facilities for Veterans of the United States Armed Forces.
29A. West Virginia Hospital Finance Authority Act.

ARTICLE 1B. SKILLED NURSING FACILITIES FOR VETERANS OF THE UNITED STATES ARMED FORCES.

§16-1B-3. Issuance of bonds by the hospital finance authority; payment of bonds from net profits of the veterans lottery instant scratch-off game.

The director shall request that revenue bonds, not exceeding the principal amount of ten million dollars, be issued by the West Virginia hospital finance authority under provisions of section seven, article twenty-nine-a of this chapter. Net profit from the veterans lottery instant scratch-off game as authorized by section nine-a, article twenty-two, chapter twenty-nine of this code and other revenues that the Legislature may from time to time appropriate shall pay the principal and interest obligations of the bonds and the architectural and other project costs associated with the construction, reconstruction, renovation and maintenance of one or more skilled nursing facilities that will only serve the skilled nursing needs of West Virginia veterans who have performed active duty in an active component of the
14 armed forces or performed active service in a reserve com- 
15 ponent of the armed forces.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.


(a) The authority periodically may issue its negotiable 
bonds and notes in a principal amount which, in the opinion of 
the authority, shall be necessary to provide sufficient funds for 
the making of hospital loans, including temporary loans during 
the construction of hospital facilities, for the payment of 
interest on bonds and notes of the authority during construction 
of hospital facilities for which the hospital loan was made and 
for a reasonable time thereafter and for the establishment of 
reserves to secure those bonds and notes.

(b) The authority periodically may issue renewal notes, may 
issue bonds to pay notes and, if it considers refunding expedi-
tent, to refund or to refund in advance bonds or notes issued by 
the authority by the issuance of new bonds pursuant to the 
requirements of section thirteen of this article.

(c) The authority may, upon concurrent resolution passed 
by the Legislature, authorize the issuance of negotiable bonds 
and notes in a principal amount which are necessary to provide 
sufficient funds for the construction, reconstruction, renovation 
and maintenance of one or more skilled nursing facilities that 
will only serve the skilled nursing needs of West Virginia 
veterans who have performed active duty in an active compo-
nent of the armed forces or performed active service in a 
reserve component of the armed forces. These bonds issued by 
the authority may not exceed ten million dollars. The revenues 
pledged for the repayment of principal and interest of these 
bonds shall include the net profit of the veterans instant lottery 
scratch-off game authorized by section nine-a, article 
twenty-two, chapter twenty-nine of this code excluding all
architectural fees and associated project costs transferred
pursuant to that section.

(d) Except as may otherwise be expressly provided by the
authority, every issue of its notes or bonds shall be special
obligations of the authority, payable solely from the property,
revenues or other sources of or available to the authority
pledges therefor.

(e) The bonds and the notes shall be authorized by resolu-
tion of the authority, shall bear the date and shall mature at time
or times, in the case of any such note or any renewals thereof,
not exceeding seven years from the date of issue of the original
note and in the case of any bond not exceeding fifty years from
the date of issue, as the resolution may provide. The bonds and
notes shall bear interest at rate or rates, be in a denomination,
be in a form, either coupon or registered, carry registration
privileges, be payable in the medium of payment and at place
or places and be subject to the terms of redemption as the
authority may authorize. The bonds and notes of the authority
may be sold by the authority, at public or private sale, at or not
less than the price the authority determines. The bonds and
notes are executed by the chairman and vice chairman of the
board, both of whom may use facsimile signatures. The official
seal of the authority or a facsimile thereof shall be affixed to or
printed on each bond and note and attested, manually or by
facsimile signature, by the secretary-treasurer of the board, and
any coupons attached to any bond or note shall bear the
signature or facsimile signature of the chairman of the board. In
case any officer whose signature, or a facsimile of whose
signature, appears on any bonds, notes or coupons ceases to be
an officer before delivery of the bonds or notes, the signature or
facsimile is nevertheless sufficient for all purposes the same as
if he or she had remained in office until the delivery; and, in
case the seal of the authority has been changed after a facsimile
has been imprinted on the bonds or notes, the facsimile seal will continue to be sufficient for all purposes.

(f) A resolution authorizing bonds or notes or an issue of bonds or notes under this article may contain provisions, which are a part of the contract with the holders of the bonds or notes, as to any or all of the following:

1) Pledging and creating a lien on all or any part of the fees and charges made or received or to be received by the authority, all or any part of the moneys received in payment of hospital loans and interest on hospital loans and all or any part of other moneys received or to be received, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or noteholders which then exist;

2) Pledging and creating a lien on all or any part of the assets of the authority, including notes, deeds of trust and obligations securing the assets, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or noteholders which then exist;

3) Pledging and creating a lien on any loan, grant or contribution to be received from the federal, state or local government or other source;

4) The use and disposition of the income from hospital loans owned by the authority and payment of the principal of and interest on hospital loans owned by the authority;

5) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

6) Limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging the proceeds to
secure the payment of the bonds or notes or of any issue of the
bonds or notes;

(7) Limitations on the issuance of additional bonds or notes
and the terms upon which additional bonds or notes may be
issued and secured;

(8) The procedure by which the terms of a contract with the
bondholders or noteholders may be amended or abrogated, the
amount of bonds or notes the holders of which must consent
there to and the manner in which the consent may be given; and

(9) Vesting in a trustee or trustees the property, rights,
powers, remedies and duties which the authority considers
necessary or convenient.

CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9a. Veterans instant lottery scratch-off game.

(a) Beginning the first day of September, two thousand, the
commission shall establish an instant lottery scratch-off game
designated as the veterans benefit game, which is offered by the
lottery.

(b) Notwithstanding the provisions of section eighteen of
this article, and subject to the provisions of subsection (c) of
this section, all net profits received from the sale of veterans
benefit game lottery tickets, materials and games are deposited
with the state treasurer into the veterans lottery fund created
under this section, and upon the effective date of the enactment
of this section in two thousand two, the Legislature may make
appropriations from this fund for architectural and other project
costs associated with construction, and for payment of principal
and interest for revenue bonds issued under provisions of section seven, article twenty-nine-a, chapter sixteen of this code: *Provided*, That once the payment of the principal and interest and architectural and other project costs associated with construction are paid in full for the construction of the initial veterans skilled nursing facility, the Legislature may appropriate from the fund created under this section moneys for the construction, including the architectural fees and other associated costs, equipping and operation of additional skilled nursing facilities for veterans of the armed forces of the United States military: *Provided, however*, That after the payment of the above-mentioned items, the Legislature may appropriate any excess funds to the general revenue fund.

(c) Before appropriation of any of the net profits derived from the veterans benefit game for the uses set forth in this section, the Legislature shall first determine that the state has met all debt obligations for which lottery profits have been pledged for that fiscal year.

(d) There is hereby created in the state treasury a special revenue fund designated and known as the veterans lottery fund which shall consist of all revenues derived from the veterans benefit game, any appropriations to the fund by the Legislature and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. Revenues received by the veterans lottery fund shall be deposited in the West Virginia consolidated investment pool with the West Virginia investment management board, with the interest income a proper credit to all these funds.

(e) There is hereby created in the state treasury a special revenue fund designated and known as the veterans nursing home fund which shall consist of all funds for the architectural and other project costs related to the construction of the veteran’s nursing home. These funds shall be transferred from
the veterans lottery fund to the veterans nursing home fund
upon written request of the director of the division of veterans
affairs to the investment management board and the state
treasurer. Following the selection of the architect, the director
shall certify the estimated total cost of the architect and
associated costs to the joint committee on government and
finance prior to the transfer of funds. If funds transferred
exceed the estimated costs certified to the joint committee, the
director shall certify the additional costs to the joint committee.

(f) The commission shall change the design or theme of the
veterans benefit game regularly so that the game remains
competitive with the other instant lottery scratch-off games
offered by the commission. The tickets for the instant lottery
game created in this section shall clearly state that the profits
derived from the game are being used to benefit veterans in this
state.

CHAPTER 322

(Com. Sub. for S. B. 682 — By Senators Wooton, Ross, McCabe,
Kessler, Fanning, Edgell, McKenzie, Jackson, Snyder, Facemyer,
Bowman, Minard, Sprouse, Boley, Tomblin, Mr. President, Hunter,
Chafin, Sharpe, Anderson, Helmick, Prezioso, Unger, Bailey,
Oliverio, Mitchell, Love, Rowe, Redd, Plymale and Minear)

[Passed March 4, 2002; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and thirty, article
one, chapter seventeen-c of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to further amend
said article by adding thereto two new sections, designated
sections sixty-five and sixty-six; and to further amend said
chapter by adding thereto a new article, designated article ten-a, all relating to the definition of wheelchair and electric personal assistive mobility device, and the operation and equipment standards that are to be required for said devices; and establishing penalties for violations of article ten-a.

Be it enacted by the Legislature of West Virginia:

That sections two, three and thirty, article one, chapter seventeen-c 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 two new sections, designated sections sixty-five and sixty-six; and that said chapter be further amended by adding thereto a new article, designated article ten-a, all to read as follows:

Article

1. Words and Phrases Defined.

10A. Operation of Electric Personal Assistive Mobility Devices.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-2. Vehicle.

§17C-1-3. Motor vehicle.

§17C-1-30. Pedestrian.

§17C-1-65. Wheelchair.

§17C-1-66. Electric personal assistive mobility device.

§17C-1-2. Vehicle.

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks or wheelchairs.

§17C-1-3. Motor vehicle.

“Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power
§17C-1-30. Pedestrian.

“Pedestrian” means any person afoot or any person using a wheelchair.

§17C-1-65. Wheelchair.

“Wheelchair” means a motorized or nonmotorized wheeled device designed for, and used by, a person with disabilities that is incapable of a speed in excess of eight miles per hour.

§17C-1-66. Electric personal assistive mobility device.

“Electric personal assistive mobility device” or “EPAMD” means a self-balancing, two nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of seven hundred fifty watts (one horse power), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

ARTICLE 10A. OPERATION OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES.

§17C-10A-1. Definitions.

§17C-10A-2. Equipment requirements and operating standards for electric personal assistive mobility devices; applicability of motor vehicle code; penalties.

§17C-10A-1. Definitions.

For purposes of this article, the definition of an “electric personal assistive mobility device” is the same definition as previously set forth in section sixty-six, article one of this
4 chapter, and “operator” shall refer to the operator of an electric
5 personal assistive mobility device.

§17C-10A-2. Equipment requirements and operating standards
for electric personal assistive mobility devices;
applicability of motor vehicle code; penalties.

1 (a) An electric personal assistive mobility device shall be
2 equipped with:
3
4 (1) Front, rear and side reflectors;
5
6 (2) A braking system that enables the operator to bring the
7 device to a controlled stop; and
8
9 (3) If operated at any time from one-half hour after sunset
10 to one-half hour before sunrise, a lamp that emits a white light
11 that sufficiently illuminates the area in front of the device.

12 (b) An operator of an electric personal assistive mobility
device traveling on a sidewalk, roadway or bicycle path shall
have the rights and duties of a pedestrian and shall exercise due
care to avoid colliding with pedestrians. An operator shall yield
the right of way to pedestrians.

14 (c) Except as provided in this section, no other provisions
of the motor vehicle code shall apply to electric personal
assistive mobility devices.

17 (d) An operator who violates a provision of subsection (a)
or (b) of this section shall receive a warning for the first
offense. For a second or subsequent offense, the operator shall
be punished by a fine of no less than ten dollars and no greater
than one hundred dollars.
AN ACT to amend and reenact sections two, three, four, five, six, seven and eight, article fifteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the “White Cane Law”; updating terms and definitions; removing requirements for certification or accreditation of service animals; and providing a certified trainer of service animals with the same rights, privileges and responsibilities afforded to persons who are blind or deaf or have a disability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. WHITE CANE LAW.

§5-15-3. Definitions
§5-15-4. Equal right to use public facilities; service animals and trainers.
§5-15-5. Standard of care to be exercised by and with respect to persons who are blind or who have a disability.
§5-15-6. Annual proclamation of white cane day.
§5-15-7. Policy of the state on employment of persons who are blind or persons with disabilities.
§5-15-8. Interference with rights hereunder; penalties.

It is the policy of this state to encourage and enable persons who are blind or otherwise visually impaired or who have a disability to participate fully in the social and economic life of the state and to engage in remunerative employment.


For the purpose of this article:

(a) A “person who is blind” means a person whose central visual acuity does not exceed twenty/two hundred in the better eye with correcting lenses, or whose visual acuity is greater than twenty/two hundred but is occasioned by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(b) A “person with a disability” means any person who has a physical or mental impairment that substantially limits one or more of the major life activities of the individual; who has a record of such an impairment or who is regarded as having such an impairment.

(c) A “service animal” means any guide dog, signal dog or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or fetching dropped items.

§5-15-4. Equal right to use public facilities; service animals and trainers.

(a) A person who is blind or is a person with a disability shall have the same rights as other persons to the full and free
use of the highways, roads, streets, sidewalks, walkways, public
buildings, public facilities and other public places.

(b) Any person who is blind and any person with a disabil-
ity is entitled to full and equal accommodations, advantages,
facilities and privileges of all common carriers, airplanes, motor
vehicles, railroad trains, motor buses, streetcars, boats or any
other public conveyances or modes of transportation, hotels,
lodging places, restaurants, professional offices for health or
legal services, hospitals, other places of public accommodation,
amusement or resort, and other places, including places of
employment, to which the general public is invited, subject only
to the conditions and limitations established by law and
applicable alike to all persons.

(c) Every person who is blind, every person with a hearing
impairment and every person with a disability shall have the
right to be accompanied by a service animal in any of the
places, accommodations or conveyances specified in subsection
(b) of this section without being required to pay an extra charge
for the admission of the service animal. The person who is
blind, deaf or has a disability shall be liable for any damage
done by the service animal to the premises or facilities or to
persons using such premises or facilities: Provided, That the
person who is blind, deaf or has a disability shall not be liable
for any damage done by the service animal to any person or the
property of a person who has contributed to or caused the
service animal’s behavior by inciting or provoking such
behavior. A service animal shall not occupy a seat in any public
conveyance and shall be upon a leash while using the facilities
of a common carrier.

(d) The rights, privileges and responsibilities provided by
this section also apply to any person who is certified as a trainer
of a service animal while he or she is engaged in the training.
(e) A service animal as defined by section three of this article is not required to be licensed or certified by a state or local government, nor shall there be any requirement for the specific signage or labeling of a service animal.

§5-15-5. Standard of care to be exercised by and with respect to persons who are blind or who have a disability.

(a) A person who is blind or who has a disability shall exercise that degree of care for his or her own safety in any of the places, accommodations or conveyances specified in section four of this article which an ordinarily prudent person would exercise under similar circumstances.

(b) The driver of a vehicle approaching a pedestrian who is blind or who has a disability and who knows, or in the exercise of reasonable care should know, that the pedestrian is blind because the pedestrian is carrying a cane predominantly white or metallic in color, with or without a red tip, or is using a service animal or otherwise, shall exercise care commensurate with the situation to avoid injuring the pedestrian or the service animal.

§5-15-6. Annual proclamation of white cane day.

Each year the governor shall take suitable public notice of the fifteenth day of October as white cane day. The governor shall issue a proclamation that:

(a) Comments upon the significance of the white cane;

(b) Calls upon the citizens of the state to observe the provisions of the white cane law and to take precautions necessary for the safety of persons who are blind;
(c) Reminds the citizens of the state of the policies with respect to persons who are blind herein declared and urges the citizens to cooperate in giving effect to them;

(d) Emphasizes the need of the citizens to be aware of the presence of persons who are blind or visually impaired in the community and to keep safe for persons who are blind or visually impaired the highways, roads, streets, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort and other places to which the public is invited, and to offer assistance to persons who are blind upon appropriate occasions.

§5-15-7. Policy of the state on employment of persons who are blind or persons with disabilities.

It is the policy of this state that persons who are blind or visually impaired and persons with disabilities shall be employed in the state service, the service of the political subdivisions of the state, in the public schools and in all other employment supported, in whole or in part, by public funds on the same terms and conditions as any other person, unless it is shown that the blindness or disability prevents the performance of the work involved.

§5-15-8. Interference with rights hereunder; penalties.

Any person, firm or corporation, or the agent of any person, firm or corporation, who denies or interferes with admittance to or enjoyment of the places, accommodations or conveyances specified in section four of this article or otherwise interferes with the rights of a person who is blind or visually impaired or a person with a disability under the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed fifty dollars.
AN ACT to amend chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating to workforce investment; providing definitions; creating the West Virginia workforce investment council; establishing the membership of the council; setting meeting and quorum requirements; defining duties of the council; requiring certain state agencies to provide certain information to the council; providing for the administration of the council; creating the legislative oversight commission on workforce investment for economic development; establishing the powers and duties of the commission; allowing the commission to require disclosure of information through the use of subpoenas; and requiring memoranda of understanding between state agencies, the development office and local workforce investment boards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-1. Short title.
§5B-2B-2. Definitions.
§5B-2B-1. Short title.

1 This article shall be known and may be cited as the “West Virginia Workforce Investment Act”.

§5B-2B-2. Definitions.

As used in this article, the following terms have the following meanings, unless the context clearly indicates otherwise:

(1) “Commission” or “legislative oversight commission” means the legislative oversight commission on workforce investment for economic development created pursuant to section seven of this article.

(2) “Council” means the West Virginia workforce investment council.

§5B-2B-3. West Virginia workforce investment council; membership of board; meetings; quorum requirements.

(a) The West Virginia workforce investment council is hereby created and shall serve as the state’s workforce investment board, as required by the federal Workforce Investment Act, 29 U.S.C. § 2801 et seq. The council shall make general
recommendations regarding workforce investment in the state
to the governor and the Legislature.

(b) The council may consist of no more than thirty-nine
members, including ex officio members.

(c) The governor shall appoint, with the advice and consent
of the Senate, members to the council according to the follow-
ing criteria:

(1) Representatives of business in the state, including at
least one representing the tourism industry;

(2) No more than two members who are members of the
council for community and technical college education;

(3) Two members who are members of the West Virginia
council for community and economic development;

(4) Two members who are chief elected officials represent-
ing cities and counties;

(5) Two members who represent individuals and organiza-
tions having experience and expertise in the delivery of
workforce investment programs, including one chief executive
officer of a community and technical college and one chief
executive officer of a community-based organization operating
in the state;

(6) Two members who represent individuals and organiza-
tions having experience in youth activities, including at least
one youth from a post-secondary education institution; and

(7) Two members who represent labor organizations in the
state who have been nominated by state labor federations.
(d) The following shall serve on the council as ex officio members:

1. The governor, or his or her designee;

2. The superintendent of the department of education, or his or her designee;

3. The director of the division of rehabilitation services, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the division of rehabilitation services;

4. The commissioner of the bureau of senior services, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the bureau of senior services;

5. The commissioner of the bureau of employment programs, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the bureau of employment programs;

6. The director of the division of veterans’ affairs, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the division of veterans’ affairs;

7. The executive director of the West Virginia development office; and

8. The secretary of the department of health and human resources, or his or her designee: Provided, That the designee has policy-making authority over a workforce investment program within the department of health and human resources.
(e) The speaker of the House of Delegates shall appoint two members of the House of Delegates to serve on the council.

(f) The president of the Senate shall appoint two members of the Senate to serve on the council.

(g) The governor shall appoint a chair and vice-chair for the council from among the members appointed pursuant to subdivision (1), subsection (c) of this section.

(h) Initial terms for appointed members of the council are for up to three years as determined by the governor. All subsequent terms are for three years.

(i) The council shall meet at least quarterly and appointed members of the council may be reimbursed for reasonable expenses incurred within the scope of their service on the council.

(j) A majority of the members of the council constitute a quorum: Provided, That a majority of the members making the quorum are members appointed pursuant to subdivision (1), subsection (c) of this section.

(k) The council may create subcommittees to carry out any of its duties. Quorum requirements required by subsection (j) of this section also apply to subcommittees.

(l) No member of the council may:

(1) Vote on a matter under consideration by the council:

(A) Regarding the provision of services by the member or by an entity that the member represents; or

(B) That would provide direct financial benefit to the member or the immediate family of the member; or
(2) Engage in any other activity determined by the governor to constitute a conflict of interest as specified in the strategic five-year state workforce investment plan.

§5B-2B-4. Duties of the workforce investment council.

(a) The council shall assist the governor in the:

(1) Development and revision of a strategic five-year state workforce investment plan;

(2) Development and continuous improvement of a statewide system of workforce investment activities including:

(A) Development of linkages in order to assure coordination and nonduplication of services and activities of workforce investment programs conducted by various entities in the state; and

(B) The review of strategic plans created and submitted by local workforce investment boards;

(3) Commenting at least annually on the measures taken by the state pursuant to the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. § 2323;

(4) Designation and revision of local workforce investment areas;

(5) Development and revision of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas;

(6) Development and continuous improvement of comprehensive state performance measures, including state adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the state;
(7) Preparation of the annual report to the secretary of labor as required by the Workforce Investment Act, 29 U.S.C. § 2871;

(8) Development and continued improvement of a statewide employment statistics system; and

(9) Development and revision of an application for workforce investment incentive grants.

(b) The council shall make a report to the legislative oversight commission on or before the first day of September of each year detailing: (1) All the publicly funded workforce investment programs operating in the state, including the amount of federal and state funds expended by each program, how the funds are spent and the resulting improvement to the workforce; (2) its recommendations concerning future use of funds for workforce investment programs; (3) its analysis of operations of local workforce investment programs; and (4) any other information the commission may require.

§5B-2B-5. State agencies.

On or before the first day of August, any state agency that receives federal or state funding that may be used for workforce investment activities shall provide to the council a report, detailing the source and amount of federal, state or other funds received; the purposes for which the funds were provided; the services provided in each regional workforce investment area; the measures used to evaluate program performance, including current and baseline performance data; and any other information requested by the council. All reports submitted pursuant to this section are to be in a form approved by the council.

§5B-2B-6. Administration of council.
(a) The West Virginia development office shall provide administrative and other services to the council as the council requires.

(b) The West Virginia development office shall facilitate the coordination of council activities and local workforce investment activities, including holding meetings with the executive directors of each local workforce investment board at least monthly. Any executive director of a local workforce investment board who participates in a meeting held pursuant to this subsection shall report to his or her board and the county commission of each county represented by the board regarding the meeting.

(c) The development office shall make an annual report on or before the first day of October to the legislative oversight commission detailing the status of one-stop system operations in the state. The development office shall include with the report all memoranda of understanding entered into by the one-stop partners and local workforce investment boards. Each local workforce investment board shall report annually to the development office on or before the first day of September on the status of one-stop centers within the region they represent, attaching all memoranda of understanding entered into with one-stop partners.

§5B-2B-7. Legislative oversight commission on workforce investment for economic development.

(a) There is hereby created a joint commission of the Legislature known as the legislative oversight commission on workforce investment for economic development.

(b) The commission is to be composed of four members of the Senate appointed by the president of the Senate from the members of the joint commission on economic development.
and four members of the House of Delegates appointed by the speaker of the House of Delegates from the members of the joint commission on economic development. No more than three of the four members appointed by the president of the Senate and the speaker of the House of Delegates, respectively, may be members of the same political party. The president of the Senate and the speaker of the House of Delegates shall each appoint a chairperson from their respective houses. The members shall serve until their successors have been appointed.

(c) Members of the commission may receive compensation and expenses as provided in article two-a, chapter four of this code. Expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel, are to be approved by the joint committee on government and finance and paid from legislative appropriations.

(d) The commission may meet at any time both during sessions of the Legislature and in the interim or as often as may be necessary.


(a) The commission shall make a continued investigation, study and review of the practices, policies and procedures of the workforce investment strategies and programs implemented in the state.

(b) The commission has the authority to conduct or cause to be conducted performance audits upon local workforce investment boards.

(c) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena persons, books, records, documents, papers or any
other tangible things it believes should be examined to make a
complete investigation. All witnesses appearing before the
commission shall testify under oath or affirmation, and any
member of the commission may administer oaths or affirmations
to witnesses. To compel the attendance of witnesses at
hearings or the production of any books, records, documents,
papers or any other tangible things, the commission is hereby
empowered and authorized to issue subpoenas, signed by one
of the chairpersons, in accordance with section five, article one,
chapter four of this code. Subpoenas are to be served by any
person authorized by law to serve and execute legal process and
service is to be made without charge. Witnesses subpoenaed to
attend hearings are to be allowed the same mileage and per
diem as are allowed witnesses before any petit jury in this state.
If any person subpoenaed to appear at any hearing refuses to
appear or to answer inquiries there propounded, or fails or
refuses to produce books, records, documents, papers or other
tangible things within his or her control when they are de-
manded, the commission shall report the facts to the circuit
court of Kanawha County or any other court of competent
jurisdiction and the court may compel obedience to the sub-
poena as though the subpoena had been issued by the court in
the first instance.

§5B-2B-9. Coordination between agencies providing workforce
investment programs, local workforce investment
boards and the executive director of the West
Virginia development office.

(a) Beginning the first day of January, two thousand three,
in order to lawfully continue any workforce investment
activities, any agency subject to the reporting provisions of
section five of this article shall enter into a memorandum of
understanding with the executive director of the West Virginia
development office and any local workforce investment board
representing an area of this state in which the agency is engaged
in workforce investment activities. To the extent permitted by
federal law, the agreements are to maximize coordination of
workforce investment activities and eliminate duplication of
services on both state and local levels.

(b) No memorandum of understanding may be effective for
more than one year without annual reaffirmation by the parties.

(c) Any state agency entering a memorandum of under-
standing shall deliver a copy thereof to both the West Virginia
workforce investment council and the legislative oversight
commission.

CHAPTER 325

(S. B. 171 — By Senator Snyder)

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

AN ACT to amend and reenact section forty-eight, article
twenty-four, chapter eight of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
authorizing a county commission or the governing body of a
municipality to place a proposed zoning ordinance before the
voters for approval or rejection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. PLANNING AND ZONING.
§8-24-48. Election on zoning ordinance; form of ballots or ballot labels; procedure.

(a) The governing body of a municipality or the county commission may submit a proposed zoning ordinance to the qualified voters residing within the jurisdiction of that governing body for approval or rejection at any regular primary election, general election or special election. Notice of the election shall be provided and the ballots shall be printed as set forth in subsection (c) of this section. The zoning ordinance shall be adopted if it is approved by a majority of the legal votes cast thereon in that jurisdiction. When a zoning ordinance has been rejected, the governing body of the municipality or county commission may not submit that zoning ordinance to the voters again until the next primary or general election.

(b) If, within sixty days following adoption of the zoning ordinance by the governing body of the municipality or by the county commission in which the zoning ordinance was not submitted to the voters, a petition is filed with the recorder or the clerk of the county commission praying for submission of such zoning ordinance for approval or rejection to the qualified voters residing in the area within the jurisdiction of the municipal or county planning commission, the ordinance shall not take effect until the same is approved by a majority of the legal votes cast thereon at any regular primary or general election or special election called for that purpose. The petition may be in any number of counterparts but must be signed in their own handwriting by a number of qualified voters residing in the area affected by the proposed zoning equal, notwithstanding the provisions of subdivision (10), subsection (b), section two, article one of this chapter, to not less than fifteen percent of the total legal votes cast in the affected area for all candidates for governor at the last preceding general election at which a governor was elected. Only qualified voters residing in the area
affected by the proposed ordinance shall be eligible to vote with respect thereto.

(c) Upon the ballots, or ballot labels where voting machines are used, there shall be written or printed the following:

☐ For Zoning

☐ Against Zoning

(d) If a majority of the legal votes cast upon the question be for zoning, the provisions of said zoning ordinance shall, upon the date the results of an election are declared, be effective. If a majority of the legal votes cast upon the question be against zoning, the zoning ordinance shall not take effect but the question may again be submitted to a vote at any regular primary or general election in the manner herein provided.

(e) Subject to the provisions of subsection (d) of this section, voting upon the question of zoning may be conducted at any regular primary or general election or special election, as the governing body of the municipality or the county commission in its order submitting the same to a vote may designate.

(f) Notice of all elections at which the question of zoning is to be voted upon shall be given by publication of the order calling for a vote on the question as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the area in which voting on the question of zoning is to be conducted.

(g) Any election at which the question of zoning is voted upon is held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws of this state concerning primary, general or special elections, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable.
AN ACT to extend the time for the county commission of Wirt County to meet as a levying body for the purpose of presenting to the voters of the county an election to extend an additional county levy for personnel salaries, repairs and maintenance and regional jail fees from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand two.

Be it enacted by the Legislature of West Virginia:

WIRT COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§ 1. Extending time for Wirt County Commission to meet as levying body for election of additional levy for personnel salaries, repair and maintenance, and regional jail fees.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Wirt County is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand two, for the purpose of submitting to the voters of Wirt County an additional county levy for personnel salaries, repair and maintenance and regional jail fees.
AN ACT expiring funds to the balance of the West Virginia board of pharmacy, fund 8537, fiscal year 2002, organization 0913, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of one hundred thousand dollars from the West Virginia health care authority-health care cost review authority fund, fund 5375, fiscal year 2002, organization 0507.

WHEREAS, The Legislature finds that the account balance in the West Virginia health care authority-health care cost review authority fund, fund 5375, fiscal year 2002, organization 0507, 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:

That the balance of the West Virginia board of pharmacy, fund 8537, fiscal year 2002, organization 0913, be increased by expiring to that fund one hundred thousand dollars from the West Virginia health care authority-health care cost review authority fund, fund 5375, fiscal year 2002, organization 0507 to be available for expenditure during the fiscal year two thousand two.

The purpose of this bill is to expire one hundred thousand dollars from the West Virginia health care authority-health care cost review authority fund, fund 5375, fiscal year 2002, organization 0507 to the balance of the West Virginia board of pharmacy, fund 8537, fiscal year 2002, organization 0913, 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.

CHAPTER 2

(S. B. 1002 — By Senator Craigo)

[Passed March 17, 2002; in effect from passage. Approved by the Governor.]
treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the department of agriculture, fund 0131, fiscal year 2002, organization 1400; to the auditor’s office-general administration, fund 0116, fiscal year 2002, organization 1200; to the department of health and human resources-division of health-central office, fund 0407, fiscal year 2002, organization 0506; to the department of military affairs and public safety-office of emergency services, fund 0443, fiscal year 2002, organization 0606; to the department of military affairs and public safety-west virginia state police, fund 0453, fiscal year 2002, organization 0612; to the department of tax and revenue-tax division, fund 0470, fiscal year 2002, organization 0702; to the department of transportation-state rail authority, fund 0506, fiscal year 2002, organization 0804, all for expenditure during the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The Legislature finds that the balance in the treasurer’s office - banking service expense fund, fund 1322, organization 1300, exceeds that which is necessary for the purpose for which the fund was established; and

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

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the treasurer’s office - banking service expense fund, fund 1322, organization 1300, be decreased by expiring the amount of three million six hundred ten thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0131, fiscal year 2002, organization 1400, be supplemented and amended by increasing
the total appropriation by seventy thousand dollars through creating new line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 12—Department of Agriculture

5 (WV Code Chapter 19)

6 Fund 0131 FY 2002 Org 1400

7 General

8 Activity

9 Revenue

10 Fund

11 18a West Virginia State Fair (R) . . . . . . . . . $20,000

12 18b Weston Farmers’ Market (R) . . . . . . . . . 50,000

13 Any unexpended balances remaining in the appropriation for the West Virginia State Fair (fund 0131, activity) and the Weston Farmers’ Market (fund 0131, activity) at the close of the fiscal year two thousand two are hereby reappropriated for expenditure during the fiscal year two thousand three.

14 That an appropriation for expenditure during the fiscal year ending the thirtieth day of June, two thousand two, to fund 0116, fiscal year 2002, organization 1200, be supplemented and amended by increasing the total appropriation by six hundred twenty-five thousand five hundred eighteen dollars as follows:

22 TITLE II—APPROPRIATIONS.

23 Section 1. Appropriations from general revenue.
24 EXECUTIVE
25 9—Auditor’s Office—
26 General Administration
27 (WV Code Chapter 12)
28 Fund 0116 FY 2002 Org 1200
29
30 Activity 
31 General Revenue Fund
32 7 Social Security Repayment ........ 256 $ 625,518
33 That the total appropriation for fiscal year ending the
34 thirtieth day of June, two thousand two, to fund 0407, fiscal
35 year 2002, organization 0506, be supplemented and amended
36 by increasing the total appropriation by eighty-five thousand
37 dollars in a new line item as follows:
38
39 TITLE II—APPROPRIATIONS.
40 Section 1. Appropriations from general revenue.
41 DEPARTMENT OF HEALTH AND
42 HUMAN RESOURCES
43 51—Division of Health—
44 Central Office
45 (WV Code Chapter 16)
46 Fund 0407 FY 2002 Org 0506
47
48 Activity 
49 General Revenue Fund
50 46a Equipment (R) ................. 070 $ 85,000
Any unexpended balance remaining in the appropriation for Equipment (fund 0407, activity 070) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.

That the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0443, fiscal year 2002, organization 0606, be supplemented and amended by increasing the total appropriation by ten thousand six hundred sixty-six dollars in a new line item as follows:

**TITLE II—APPROPRIATIONS.**

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

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

59–Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2002 Org 0606

<table>
<thead>
<tr>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>$10,666</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Radiological Preparedness Program (R) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.
That the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0453, fiscal year 2002, organization 0612, be supplemented and amended by increasing the total appropriation by one million five hundred thirty-five thousand four hundred fifty-two dollars in a new line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

62—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2002 Org 0612

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>521</td>
<td>1,535,452</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Trooper Class (fund 0453, activity 521) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.

That the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0470, fiscal year 2002, organization 0702, be supplemented and amended by increasing the total appropriation by two hundred seventy-seven thousand dollars as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TAX AND REVENUE

70–Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2002 Org 0702

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
</tbody>
</table>

And, that the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0506, fiscal year 2002, organization 0804, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

72–State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2002 Org 0804

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
</tr>
</tbody>
</table>
127 Any unexpended balance remaining in the appropriation for
128 Unclassified (fund 0506, activity 099) at the close of the fiscal
129 year two thousand two is hereby reappropriated for expenditure
130 during the fiscal year two thousand three.

131 The purpose of this bill is to expire the sum of three million
132 six hundred ten thousand dollars from the treasurer’s office -
133 banking service expense fund, fund 1322, organization 1300; to
134 supplement the department of agriculture, fund 0131, fiscal year
135 2002, organization 1400, by adding seventy thousand dollars to
136 the existing appropriation; to supplement the auditor’s office-
137 general administration, fund 0116, fiscal year 2002, organiza-
138 tion 1200, by adding six hundred twenty-five thousand five
139 hundred eighteen dollars to the existing appropriation; to
140 supplement the department of health and human resources-
141 division of health-central office, fund 0407, fiscal year 2002,
142 organization 0506 by adding eighty-five thousand dollars to the
143 existing appropriation; to supplement the department of military
144 affairs and public safety-office of emergency services, fund
145 0443, fiscal year 2002, organization 0606, by adding ten
146 thousand six hundred sixty-six dollars to the existing appropria-
147 tion; to supplement the department of military affairs and public
148 safety-West Virginia state police, fund 0453, fiscal year 2002,
149 organization 0612, by adding one million five hundred thirty-
150 five thousand four hundred fifty-two dollars to the existing
151 appropriation; to supplement the department of tax and
152 revenue-tax division, fund 0470, fiscal year 2002, organization
153 0702, by adding two hundred seventy-seven thousand dollars to
154 the existing appropriation; and to supplement the department of
155 transportation-state rail authority, fund 0506, fiscal year 2002,
156 organization 0804, by adding one million dollars to the existing
157 appropriation, all for expenditure during fiscal year two
158 thousand two.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of agriculture-state soil conservation committee, fund 0132, fiscal year 2002, organization 1400; to the attorney general, fund 0150, fiscal year 2002, organization 1500; to the department of administration—office of the secretary, fund 0186, fiscal year 2002, organization 0201; to the department of health and human resources—office of the secretary, fund 0400, fiscal year 2002, organization 0501; and to the West Virginia development office, fund 0256, fiscal year 2002, organization 0307; all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the ninth day of January, two thousand two, which included a statement of the state fund, general revenue, setting forth therein the estimate of revenues for the fiscal year ending the thirtieth day of June, two thousand two; and

WHEREAS, The governor, by executive message dated the seventh day of March, two thousand two, has increased the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand two; and
WHEREAS, It appears from the governor's executive budget document and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand 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 0132, fiscal year 2002, organization 1400, be supplemented and amended by increasing the total appropriation by two million dollars as follows:

1. **TITLE II - APPROPRIATIONS.**

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

3. **EXECUTIVE**

4. 13--*Department of Agriculture--*

5. *State Soil Conservation Committee*

6. (WV Code Chapter 19)

7. Fund 0132 FY 2002 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General</th>
<th>Activity</th>
<th>Revenue</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soil Conservation</td>
<td></td>
<td>Projects (R)</td>
<td>120</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Soil Conservation Projects (fund 0132, activity 120) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 0150, fiscal year 2002, organization 1500, be supplemented and amended by increasing the total appropriation by one hundred twenty-five thousand dollars as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

16—Attorney General

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

Fund 0150 FY 2002 Org 1500

<table>
<thead>
<tr>
<th>General</th>
<th>Act-</th>
<th>Revenue</th>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>099</td>
<td>$125,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0150, activity 099) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 0186, fiscal year 2002, organization 0201, be supplemented and amended by increasing the total appropriation by four million six hundred eight thousand six hundred seventy-five dollars in a new line item as follows:

TITLE II - APPROPRIATIONS.
Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2002 Org 0201

<table>
<thead>
<tr>
<th>General Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>3a Lease Rental Payments</td>
</tr>
</tbody>
</table>

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 0400, fiscal year 2002, organization 0501, be supplemented and amended by increasing the total appropriation by one million dollars in a new line item as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2002 Org 0501
Any unexpended balance remaining in the appropriation for Rural Health Care Providers Revolving Loan Fund (fund 0400, activity 211) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 0256, fiscal year 2002, organization 0307, be supplemented and amended by increasing the total appropriation by three million seven hundred fifteen thousand three hundred twenty-five dollars as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF COMMERCE

78—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2002 Org 0307

12 Mid-Atlantic Aerospace Complex (R) . . . . . . . . . 231 $ 590,000
Any unexpended balances remaining in the appropriation for Mid-Atlantic Aerospace Complex (fund 0256, activity 231) and Local Economic Development Assistance (fund 0256, activity 819) at the close of the fiscal year two thousand two are hereby reappropriated for expenditure during the fiscal year two thousand three.

The purpose of this bill is to supplement the department of agriculture-state soil conservation committee, fund 0132, fiscal year 2002, organization 1400, by adding two million dollars to the existing appropriation; to supplement the attorney general, fund 0150, fiscal year 2002, organization 1500, by adding one hundred twenty-five thousand to the existing appropriation; to supplement the department of administration-office of the secretary, fund 0186, fiscal year 2002, organization 0201, by adding four million six hundred eighty thousand six hundred seventy-five dollars to the existing appropriation in a new line item for lease rental payments; to the department of health and human resources-office of the secretary, fund 0400, fiscal year 2002, organization 0501 by adding one million to the existing appropriation in a new line item for rural health care providers revolving loan fund; and to supplement the West Virginia development office, fund 0256, fiscal year 2002, organization 0307 by adding three million seven hundred fifteen thousand three hundred twenty-five dollars to the existing appropriation; all in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, all for expenditure during the fiscal year two thousand two.
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from lottery net profits, to the division of natural resources, fund 3267, fiscal year 2002, organization 0310, 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 lottery net profits, to the division of natural resources, fund 3267, fiscal year 2002, organization 0310, be amended and reduced in the existing line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 4. Appropriations from lottery net profits.

3 238—Division of Natural Resources

4 (WV Code Chapter 20)

5 Fund 3267 FY 2002 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Recreation</td>
<td></td>
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<tr>
<td>Area Improvements</td>
<td>307</td>
</tr>
</tbody>
</table>
And, that the items of the total appropriations from lottery net profits, to the division of natural resources, fund 3267, fiscal year 2002, organization 0310, be amended and increased in the line item as follows:

**TITLE II—APPROPRIATIONS.**

**Sec. 4. Appropriations from lottery net profits.**

**238—Division of Natural Resources**

(WV Code Chapter 20)

Fund 3267 FY 2002 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
<td>099 $ 1,213,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The item for state recreation area improvements is reduced by two hundred twenty-three thousand dollars and the item for state parks repairs, renovations, maintenance and life safety repairs is reduced by nine hundred ninety thousand dollars. The item for unclassified is increased by one million two hundred thirteen thousand dollars for expenditure during the fiscal year two thousand two with no new money being appropriated.
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 bureau of commerce—division of natural resources, fund 3200, fiscal year 2002, organization 0310, 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 bureau of commerce—division of natural resources, fund 3200, fiscal year 2002, organization 0310, 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 3200, fiscal year 2002, organization 0310, be supplemented and amended by increasing the total appropriation by two hundred seventy thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 BUREAU OF COMMERCE
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 by two hundred seventy thousand dollars for expenditure during the fiscal year two thousand two.

CHAPTER 6

(S. B. 1006 — By Senator Craigo)

[Passed March 17, 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 two hundred thirty-eight thousand eight hundred ninety-eight dollars from the department of military affairs and public safety - West Virginia state police - commercial drivers licensing program fund, fund 6509, fiscal year 2002, organization 0612, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the
thirtieth day of June, two thousand two, to the West Virginia state police, fund 0453, fiscal year 2002, organization 0612.

WHEREAS, The Legislature finds that the account balance in the department of military affairs and public safety - West Virginia state police - commercial drivers licensing program fund, fund 6509, fiscal year 2002, organization 0612, exceeds that which is necessary for the purposes for which the account was established; and

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

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the department of military affairs and public safety - West Virginia state police - commercial drivers licensing program fund, fund 6509, fiscal year 2002, organization 0612, be decreased by expiring the amount of two hundred thirty-eight thousand eight hundred ninety-eight dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to the West Virginia state police, fund 0453, fiscal year 2002, organization 0612, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 62—West Virginia State Police

4 (WV Code Chapter 15)

5 Fund 0453 FY 2002 Org 0612
6
7
8
9 6  Vehicle Purchase (R) ............... 451  $238,898

Any unexpended balance remaining in the appropriation for Vehicle Purchase (fund 0453, activity 451) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.

The purpose of this supplementary appropriation bill is to expire the sum of two hundred thirty-eight thousand eight hundred ninety-eight dollars from the department of military affairs and public safety - West Virginia state police - commercial drivers licensing program fund, fund 6509, fiscal year 2002, organization 0612, and to supplement the West Virginia state police, fund 0453, fiscal year 2002, organization 0612, in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by adding two hundred thirty-eight thousand eight hundred ninety-eight dollars to the existing appropriation for vehicle purchase for expenditure during fiscal year two thousand two.

CHAPTER 7

(S. B. 1008 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 17, 2002; in effect from passage. Approved by the Governor.]
hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand one, but prior to the fifteenth day of March, two thousand two, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the fifteenth day of March, two thousand two, shall be given any effect.

(b) Medical savings accounts. — The term "taxable trust" does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant
to said sections are not "wages" for purposes of withholding under section seventy-one of this article.

(c) *Surtax.* — The term "surtax" means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter which are collected by the tax commissioner as tax collected under this article.

(d) *Effective date.* — The amendments to this section enacted in the year two thousand two are retroactive to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the fifteenth day of March, two thousand two, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

**CHAPTER 8**

(S. B. 1009 — 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 to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand one, but prior to the fifteenth day of March, two thousand two, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the fifteenth day of March, two thousand two, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:
(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year two thousand two are retroactive to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the fifteenth day of March, two thousand two, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.
AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of health and human resources - division of human services, fund 0403, fiscal year 2003, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

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 three, to fund 0403, fiscal year 2003, organization 0511, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

51—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2003 Org 0511

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<tr>
<th>Activity</th>
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<td>001</td>
<td>$ 22,809,759</td>
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<tr>
<td>004</td>
<td>648,734</td>
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<td>010</td>
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<td>099</td>
<td>20,243,274</td>
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<td>144</td>
<td>1,454,206</td>
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<td>183</td>
<td>2,337,706</td>
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<td>189</td>
<td>182,255,995</td>
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<td>191</td>
<td>133,271</td>
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<td>195</td>
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<td>196</td>
<td>1,565,000</td>
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<td>384</td>
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<td>455</td>
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<td>512</td>
<td>5,000,000</td>
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<td>515</td>
<td>3,499,928</td>
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</table>

Personal Services
Annual Increment
Employee Benefits
Unclassified
Child Care Development
Medical Services Contracts and Office of Managed Care
Medical Services
Women's Commission
Social Services
Family Preservation Program
Domestic Violence Legal Services Fund
James "Tiger" Morton Catastrophic Illness Fund
Child Protective Services Case Workers
Medical Services Trust Fund Transfer
OSCAR and RAPIDS
<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>27</td>
<td>Child Welfare System</td>
<td>603</td>
<td>2,609,058</td>
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<tr>
<td>28</td>
<td>Commission for the Deaf and</td>
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<td>29</td>
<td>Hard of Hearing</td>
<td>704</td>
<td>269,046</td>
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<td>30</td>
<td>Child Support Enforcement</td>
<td>705</td>
<td>2,803,180</td>
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<td>31</td>
<td>Medicaid Auditing</td>
<td>706</td>
<td>604,485</td>
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<td>32</td>
<td>Temporary Assistance for Needy Families/Maintenance of</td>
<td>707</td>
<td>23,587,807</td>
</tr>
<tr>
<td>33</td>
<td>Effort and Match</td>
<td></td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>Child Care—Maintenance of Effort</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Grants for Licensed Domestic Violence</td>
<td></td>
<td></td>
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<tr>
<td>36</td>
<td>Programs and Statewide Prevention</td>
<td>750</td>
<td>1,000,000</td>
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<tr>
<td>37</td>
<td>Women’s Right to Know</td>
<td>546</td>
<td>275,000</td>
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<td>38</td>
<td>WV Teaching Hospitals</td>
<td></td>
<td></td>
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<tr>
<td>39</td>
<td>Tertiary/Safety Net</td>
<td>547</td>
<td>1,750,000</td>
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<td>40</td>
<td>Indigent Burials (R)</td>
<td>851</td>
<td>1,274,000</td>
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<td>41</td>
<td>BRIM Premium</td>
<td>913</td>
<td>667,631</td>
</tr>
<tr>
<td>42</td>
<td>Total</td>
<td></td>
<td>$357,916,221</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Indigent Burials (fund 0403, activity 851) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.

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 article five-q, chapter sixteen of the code.

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

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the department of health and human resources shall have the authority to transfer funds within the above account: *Provided*, That no more than five percent of the
funds appropriated to one line item may be transferred to other line items: *Provided, however,* That no funds from other line items shall be transferred to the personal services line item.

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

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand three, by amending language with no additional funds being appropriated.

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**CHAPTER 2**

*(S. B. 2008 — By Senators Tomblin, Mr. President, and Sprouse)*

*[By Request of the Executive]*

[Passed June 11, 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 seven million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the governor’s office - civil contingent fund, fund 0105, fiscal year 2002, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state
will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand two; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of seven million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0105, fiscal year 2002, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1. **TITLE II—APPROPRIATIONS.**

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

3. **8—Governor's Office—**

4. **Civil Contingent Fund**

5. *(WV Code Chapter 5)*

6. **Fund 0105 FY 2002 Org 0100**

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Contingent Fund - Total</td>
<td>$7,000,000</td>
</tr>
<tr>
<td>Surplus (R)</td>
<td>238</td>
</tr>
</tbody>
</table>

The purpose of this bill is to expire the sum of seven million dollars from the revenue shortfall reserve fund, fund
2542          APPROPRIATIONS          [Ch. 3

2038, organization 0201, and to supplement the governor's office - civil contingent fund, fund 0105, fiscal year 2002, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by adding seven million dollars to the appropriation for civil contingent fund - total - surplus for expenditure during the fiscal year two thousand two.

CHAPTER 3

(S. B. 2009 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of agriculture, fund 0131, fiscal year 2002, organization 1400, in the amount of ninety-four thousand seven hundred ten dollars, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of June, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand one; and further included the estimate of revenues for the fiscal year two thousand two, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand two; and
WHEREAS, It appears from the governor's statement there now remains an unappropriated surplus balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to the department of agriculture, fund 0131, fiscal year 2002, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

TITLE II—APPROPRIATIONS.

EXECUTIVE

12—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2002 Org 1400

General

Activity

Revenue

Funds

16 Moorefield Agriculture Center—Surplus ............. 648 $94,710

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand two.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of agriculture, fund 0131, fiscal year 2003, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of June, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand one; and further included the estimate of revenues for the fiscal year two thousand two, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand two; and further included the estimate of revenues for the fiscal year two thousand three, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand three; and

WHEREAS, It appears from the governor’s statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; 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 three, to fund 0131, fiscal year 2003, organization 1400, be amended and increased in the line items as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

II—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2003 Org 1400

General Activity Revenue Funds

18 Moorefield Agriculture Center (R) ............... 786 $161,514

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand three.

CHAPTER 5

(S. B. 2011 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the joint expenses, fund 0175, fiscal year 2003, organization 2300; to the governor's office - civil contingent fund, fund 0105, fiscal year 2003, organization 0100; from the state excess lottery revenue fund to the governor's office - civil contingent fund, fund 1038, fiscal year 2003, organization 0100; and amending chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

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 three, to joint expenses, fund 0175, fiscal year 2003, organization 2300, be supplemented and amended by decreasing the appropriation as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>Appropriation</th>
</tr>
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<tbody>
<tr>
<td>Tax Reduction and Federal Funding</td>
<td>$ 5,000,000</td>
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<tr>
<td>Increased Compliance</td>
<td>642</td>
</tr>
</tbody>
</table>

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to the governor's office - civil contingent fund, fund 0105, fiscal year 2003,
organization 0100, be supplemented and amended by increasing the appropriation and adding a new line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

8—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2003 Org 0100

1 Civil Contingent Fund .......... 614 $ 3,500,000
2 Business and Economic Development
3 Stimulus ..................... 586 1,500,000

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to the governor’s office - civil contingent fund, fund 1038, fiscal year 2003, organization 0100, be supplemented and amended by decreasing the appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations from state excess lottery revenue fund.

239—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)
36 Fund 1038 FY 2003 Org 0100

37  1 Civil Contingent Fund (R) ....... 114 $ 3,500,000
38  2 Business and Economic Development
39  3 Stimulus ........................... 586 1,500,000
40  4 Total ............................... $ 5,000,000

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

TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations from state excess lottery revenue fund.

240a—Joint Expenses

(WV Code Chapter 4)

Fund 1735 FY 2003 Org 2300

51  1 Tax Reduction and Federal Funding
52  2 Increased Compliance
53  3 (TRAFFIC) - Total ............ 620 $ 5,000,000

The above appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) - Total (fund 0175, activity 620) 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.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of appropriations in the aforesaid accounts for the designated spending units. The funds are for expenditure during the fiscal year two thousand three with no new money being appropriated.
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the bureau of commerce - board of coal mine health and safety, fund 0280, fiscal year 2003, organization 0319, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

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 commerce - board of coal mine health and safety, fund 0280, fiscal year 2003, organization 0319, be amended and reduced in the existing line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 BUREAU OF COMMERCE

4 77—Board of Coal Mine Health and Safety

5 (WV Code Chapter 22)

6 Fund 0280 FY 2003 Org 0319
And, that the items of the total appropriations from the state fund, general revenue, to the bureau of commerce - board of coal mine health and safety, fund 0280, fiscal year 2003, organization 0319, be amended and increased in the line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF COMMERCE

77—Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2003 Org 0319

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 units. The funds are for expenditure during the fiscal year two thousand three with no new money being appropriated.
CHAPTER 7

(S. B. 2013 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed June 11, 2002; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, 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 department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, be amended and reduced in the existing line item as follows:

1 TITLE II—appropriations.

2 Section 1. Appropriations from general revenue.

3 department of military affairs and public safety

4 and public safety

5 61—Division of Corrections—
And, that the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, be amended and increased in a new line item as follows:

**TITLE II—APPROPRIATIONS.**

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

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

**61—Division of Corrections—**

**Correctional Units**

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

Fund 0450 FY 2002 Org 0608
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year two thousand two with no new money being appropriated.
Section 1. Appropriations from general revenue.

DEPARTMENT OF TAX AND REVENUE

65—Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2003 Org 0702

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$11,250,978</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>259,060</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>3,541,769</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>7,690,365</td>
</tr>
<tr>
<td>Property Tax Valuation and Assessment System (R)</td>
<td>477</td>
<td>-0-</td>
</tr>
<tr>
<td>Remittance Processor</td>
<td>570</td>
<td>74,449</td>
</tr>
<tr>
<td>GIS Development Project</td>
<td>562</td>
<td>150,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>5,058</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$22,971,679</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0470, activity 099), Unclassified - Surplus (fund 0470, activity 097), 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 two thousand two are hereby reappropriated for expenditure during the fiscal year two thousand three.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand three, by amending language with no additional funds being appropriated.
AN ACT making a supplementary appropriation in the state fund, general revenue, to the higher education policy commission - system - control account, fund 0586, fiscal year 2003, organization 0442, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

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 three, to fund 0586, fiscal year 2003, organization 0442, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HIGHER EDUCATION POLICY COMMISSION

4 86—Higher Education Policy Commission—

5 System—Control Account

6 (WV Code Chapter 18B)

7 Fund 0586 FY 2003 Org 0442
<table>
<thead>
<tr>
<th></th>
<th>Institution</th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Bluefield State College</td>
<td>408</td>
<td>$2,002,368</td>
</tr>
<tr>
<td>9</td>
<td>Bluefield State Community and Technical College</td>
<td>409</td>
<td>5,456,232</td>
</tr>
<tr>
<td>10</td>
<td>Concord College</td>
<td>410</td>
<td>9,608,593</td>
</tr>
<tr>
<td>11</td>
<td>Eastern West Virginia Community and Technical College</td>
<td>412</td>
<td>2,034,966</td>
</tr>
<tr>
<td>14</td>
<td>Fairmont State College</td>
<td>414</td>
<td>13,128,072</td>
</tr>
<tr>
<td>15</td>
<td>Fairmont State Community and Technical College</td>
<td>421</td>
<td>7,064,695</td>
</tr>
<tr>
<td>17</td>
<td>Glenville State College</td>
<td>428</td>
<td>4,919,258</td>
</tr>
<tr>
<td>18</td>
<td>Glenville State Community and Technical College</td>
<td>430</td>
<td>2,908,427</td>
</tr>
<tr>
<td>20</td>
<td>Shepherd College</td>
<td>432</td>
<td>9,731,906</td>
</tr>
<tr>
<td>21</td>
<td>Shepherd Community and Technical College</td>
<td>434</td>
<td>2,131,072</td>
</tr>
<tr>
<td>23</td>
<td>West Liberty State College</td>
<td>439</td>
<td>10,016,745</td>
</tr>
<tr>
<td>24</td>
<td>West Virginia State College</td>
<td>441</td>
<td>11,178,647</td>
</tr>
<tr>
<td>25</td>
<td>West Virginia State Community and Technical College</td>
<td>445</td>
<td>2,738,868</td>
</tr>
<tr>
<td>27</td>
<td>Southern West Virginia Community and Technical College</td>
<td>446</td>
<td>7,403,952</td>
</tr>
<tr>
<td>29</td>
<td>West Virginia Northern Community and Technical College</td>
<td>447</td>
<td>5,822,498</td>
</tr>
<tr>
<td>31</td>
<td>Marshall University</td>
<td>448</td>
<td>46,349,693</td>
</tr>
<tr>
<td>32</td>
<td>Marshall Medical School</td>
<td>173</td>
<td>12,137,291</td>
</tr>
<tr>
<td>33</td>
<td>Marshall University Medical School</td>
<td>449</td>
<td>627,468</td>
</tr>
<tr>
<td>35</td>
<td>Marshall University Community and Technical College</td>
<td>487</td>
<td>5,278,380</td>
</tr>
<tr>
<td>37</td>
<td>West Virginia University</td>
<td>459</td>
<td>119,376,858</td>
</tr>
<tr>
<td>38</td>
<td>WVU - School of Health Sciences</td>
<td>174</td>
<td>43,745,897</td>
</tr>
<tr>
<td>39</td>
<td>WVU School of Health Sciences - Charleston Division</td>
<td>175</td>
<td>4,173,084</td>
</tr>
<tr>
<td>42</td>
<td>West Virginia University School of Medicine BRIM Subsidy</td>
<td>460</td>
<td>1,239,465</td>
</tr>
</tbody>
</table>
West Virginia University -

Parkersburg .................. 471 8,359,912

Potomac State College of

West Virginia University ........ 475 4,592,917

West Virginia University Institute

of Technology ................ 479 7,197,379

West Virginia University Institute

of Technology Community and

Technical College ............... 486 3,303,009

Primary Health Education Medical

School Program Support .......... 177 2,200,000

Total ................................ $354,727,652

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 two thousand two are hereby reappropriated for expenditure during the fiscal year two thousand three.

Included in the above appropriation for West Virginia University and Marshall University 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 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.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand three, by amending language with no additional funds being appropriated.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to a new item of appropriation designated to the department of tax and revenue - West Virginia office of tax appeals, fund 0593, fiscal year 2003, organization 0709, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of June, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand one; and further included the estimate of revenues for the fiscal year two thousand two, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand two; and further included the estimate of revenues for the fiscal year two thousand three, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand three; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; therefore
Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, be supplemented and amended by adding to Title II, section one thereof the following:

1 TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TAX AND REVENUE

65a—West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2003 Org 0709

<table>
<thead>
<tr>
<th>Activity Funds</th>
<th>General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$ 420,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the budget bill by adding a new item of appropriation for the designated spending unit for expenditure during the fiscal year two thousand three.

CHAPTER 11

(S. B. 2017 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 11, 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 three, to the department of agriculture - donated food fund, fund 1446, fiscal year 2003, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of agriculture - donated food fund, fund 1446, fiscal year 2003, organization 1400, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; 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 three, to fund 1446, fiscal year 2003, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 3. Appropriations from other funds.</td>
</tr>
<tr>
<td>EXECUTIVE</td>
</tr>
<tr>
<td>103—Department of Agriculture—</td>
</tr>
<tr>
<td>Donated Food Fund</td>
</tr>
<tr>
<td>(WV Code Chapter 19)</td>
</tr>
<tr>
<td>Fund 1446 FY 2003 Org 1400</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>Unclassified—Total</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand three.
CHAPTER 12

(S. B. 2018 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 11, 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 two hundred thousand dollars from the division of banking - assessment and examination fund, fund 3041, fiscal year 2002, organization 0303, and in the amount of one hundred fifty thousand dollars from the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2002, organization 0708, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the department of tax and revenue - tax division, fund 0470, fiscal year 2002, organization 0702.

WHEREAS, The Legislature finds that the account balances in the division of banking - assessment and examination fund, fund 3041, fiscal year 2002, organization 0303, and the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2002, organization 0708, exceeds that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the division of banking - assessment and examination fund, fund 3041, fiscal year 2002, organization 0303,
be decreased by expiring the amount of two hundred thousand dollars and the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2002, organization 0708, be decreased by expiring the amount of one hundred fifty thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0470, fiscal year 2002, organization 0702, be supplemented and amended by increasing the total appropriation by three hundred fifty thousand dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Surplus</td>
<td>$350,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforementioned account for the designated spending unit for expenditure during the fiscal year two thousand two.
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the lottery net profits to the West Virginia development office - division of tourism, fund 3067, fiscal year 2002, organization 0304, and division of natural resources, fund 3267, fiscal year 2002, organization 0310, 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 lottery net profits to the West Virginia development office - division of tourism, fund 3067, fiscal year 2002, organization 0304, be amended and reduced in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 4. Appropriations from lottery net profits.

3 237—West Virginia Development Office—

4 Division of Tourism

5 (WV Code Chapter 5B)

6 Fund 3067 FY 2002 Org 0304
And, that the items of the total appropriations from the lottery net profits to the division of natural resources, fund 3267, fiscal year 2002, organization 0310, be amended and increased in a new line item as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>General</th>
<th>Act-</th>
<th>Revenue</th>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>10a</td>
<td></td>
<td>Flood Reparations</td>
<td>400</td>
<td>$ 89,650</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance in the appropriation for flood reparations (fund 3267, activity 400) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid accounts for the designated spending units. The funds are for expenditure during the fiscal year two thousand two with no new money being appropriated.
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 bureau of commerce - division of natural resources, fund 3200, fiscal year 2002, organization 0310, 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 bureau of commerce - division of natural resources, fund 3200, fiscal year 2002, organization 0310, 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 3200, fiscal year 2002, organization 0310, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand two.

CHAPTER 15

(S. B. 2021 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed June 11, 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 three, to the bureau of commerce - division of natural resources, fund 3200, fiscal year 2003, organization 0310, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.
WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce—division of natural resources, fund 3200, fiscal year 2003, organization 0310, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; 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 three, to fund 3200, fiscal year 2003, organization 0310, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 222,360</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>46,388</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>232,161</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand three.
AN ACT making a supplementary appropriation to the department of tax and revenue - insurance commissioner, fund 7152, fiscal year 2003, organization 0704, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

*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 three, to fund 7152, fiscal year 2003, organization 0704, be supplemented and amended to read as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sec. 3. Appropriations from other funds.</strong></td>
</tr>
<tr>
<td><strong>DEPARTMENT OF TAX AND REVENUE</strong></td>
</tr>
<tr>
<td>155—Insurance Commissioner</td>
</tr>
<tr>
<td>(WV Code Chapter 33)</td>
</tr>
<tr>
<td>Fund 7152 FY 2003 Org 0704</td>
</tr>
<tr>
<td>1 Personal Services ............... 001</td>
</tr>
<tr>
<td>2 Annual Increment ............... 004</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Unclassified (fund 7152, activity 099) at the close of the fiscal year two thousand two is hereby reappropriated for expenditure during the fiscal year two thousand three.

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.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand three, by amending language with no additional funds being appropriated.

CHAPTER 17

(S. B. 2023 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed June 11, 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 three, to the department of tax and revenue - racing commission - administration and promotion, fund 7304, fiscal year 2003, organization 0707, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.
WHEREAS, The governor has established that there now remains an unappropriated balance in the department of tax and revenue - racing commission - administration and promotion, fund 7304, fiscal year 2003, organization 0707, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; 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 three, to fund 7304, fiscal year 2003, organization 0707, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF TAX AND REVENUE

4 157—Racing Commission—

5 Administration and Promotion

6 (WV Code Chapter 19)

7 Fund 7304 FY 2003 Org 0707

8 Activity Other

9 Funds

10 1 Personal Services ................ 001 $ 10,000

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforementioned account for the designated spending unit for expenditure during the fiscal year two thousand three.
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 three, to the department of tax and revenue - racing commission - general administration, fund 7305, fiscal year 2003, organization 0707, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of tax and revenue - racing commission - general administration, fund 7305, fiscal year 2003, organization 0707, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand three; 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 three, to fund 7305, fiscal year 2003, organization 0707, be supplemented and amended by increasing the total appropriation 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 and increase items of appropriations in the aforementioned account for the designated spending unit for expenditure during the fiscal year two thousand three.

CHAPTER 19

(S. B. 2025 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]

[Passed June 11, 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, in miscellaneous boards and commissions, West Virginia board of examiners for registered professional nurses, fund 8520, fiscal year 2002, organization 0907, 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 miscellaneous boards and commissions, West Virginia board of examiners for registered professional nurses, fund 8520, fiscal year 2002, organization 0907, 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, fund 8520, fiscal year 2002, organization 0907, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 225-WV Board of Examiners

5 for Registered Professional Nurses

6 (WV Code Chapter 30)

7 Fund 8520 FY 2002 Org 0907

8  Activity  Other

9 Unclassified—Total ............ 096  $ 65,000

10 The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the afore-
11 said account for the designated spending unit for expenditure during the 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 bureau of commerce - division of labor, fund 8706, fiscal year 2002, organization 0308, 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 8706, fiscal year 2002, organization 0308, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 BUREAU OF COMMERCE
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforementioned account for the designated spending unit for expenditure during fiscal year two thousand two.

CHAPTER 21

(S. B. 2028 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed July 17, 2002; in effect from passage. Approved by the Governor.]
WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand three; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of eight million three hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand three, to fund 0105, fiscal year 2003, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surplus (R)</td>
<td>238</td>
</tr>
</tbody>
</table>

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

8—Governor's Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2003 Org 0100

General Revenue Fund
The purpose of this bill is to expire the sum of eight million three hundred thousand dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and to supplement the governor's office - civil contingent fund, fund 0105, fiscal year 2003, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, two thousand three, by adding eight million three hundred thousand dollars to the appropriation for civil contingent fund - total - surplus for expenditure during the fiscal year two thousand three.

CHAPTER 22

(S. B. 2029 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

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

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the bureau of commerce - division of miners' health, safety and training, fund 0277, fiscal year 2003, organization 0314, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fourteenth day of July, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand one; and further included the estimate of revenues for the fiscal year two thousand two, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand two; and further included the estimate of revenues for the fiscal year two thousand three, less net appropriation balances
forwarded and regular appropriations for fiscal year two thousand three; and

WHEREAS, It appears from the governor’s statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; 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 three, to fund 0277, fiscal year 2003, organization 0314, be supplemented and amended by increasing the total appropriation in a new item of appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>5a</td>
<td>West Virginia Diesel</td>
</tr>
<tr>
<td>5b</td>
<td>Equipment Commission</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the budget bill by adding a new item of appropriation for the designated spending unit for expenditure during the fiscal year two thousand three.
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 three, to the bureau of employment programs, fund 8835, fiscal year 2003, organization 0323, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

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 three, 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 three, to fund 8835, fiscal year 2003, organization 0323, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 BUREAU OF EMPLOYMENT PROGRAMS
Ch. 23]  

APPROPRIATIONS 2581

285—Bureau of Employment Programs

(WV Code Chapter 21A)

Fund 8835 FY 2003 Org 0323

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$512,657</td>
</tr>
<tr>
<td>Reed Act 2002-Unemployment Compensation</td>
<td>2,374,000</td>
</tr>
<tr>
<td>Reed Act 2002-Employment Services</td>
<td>1,371,000</td>
</tr>
<tr>
<td>Total</td>
<td>$4,257,657</td>
</tr>
</tbody>
</table>

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.

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand three.
CHAPTER 24

(S. B. 2032 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

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

AN ACT supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill, be supplemented and amended by amending Title II, section nine to read as follows:

Sec. 9. Appropriations from surplus accrued.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year two thousand three 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.
In the event that surplus revenues available on the thirty-first day of July, two thousand two, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

<table>
<thead>
<tr>
<th>303—West Virginia Development Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>(WV Code Chapter 5B)</td>
</tr>
<tr>
<td>Fund 0256 FY 2003 Org 0307</td>
</tr>
<tr>
<td>1 Southern West Virginia</td>
</tr>
<tr>
<td>2 Career Center - Surplus</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>303a—Governor's Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>(WV Code Chapter 5)</td>
</tr>
<tr>
<td>Fund 0101 FY 2003 Org 0100</td>
</tr>
<tr>
<td>1 Publication of Papers and Transition</td>
</tr>
<tr>
<td>2 Expenses - Surplus</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>303b—Consolidated Medical Service Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>(WV Code Chapter 16)</td>
</tr>
<tr>
<td>Fund 0525 FY 2003 Org 0506</td>
</tr>
<tr>
<td>1 Behavioral Health Program -</td>
</tr>
<tr>
<td>2 Unclassified - Surplus</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand three.
AN ACT to repeal article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter thirty-one-d, relating to revising, arranging, consolidating and recodifying the laws of the state of West Virginia relating to business corporations generally; short title; reservation of powers; 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; shares and distributions; issuance of shares; liability of shareholders; dividends; certificates; shareholders’ preemptive rights; corporation’s acquisitions of its own shares; distributions; shareholders’ meetings; waiver of notice; record date; voting; voting trusts and agreements; 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 and share exchanges; disposition of assets; right to appraisal and payment for shares; procedure for exercise of appraisement rights; judicial appraisal of shares; dissolutions; deposit of assets with state treasurer; foreign corporations - certificate of authority; service of process on foreign corporations; withdrawal of foreign corporations; revocation of certificate of authority; records and reports; inspection of records; financial statements for shareholders; transitional provisions; and operative date.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter thirty-one-d, to read as follows:
CHAPTER 31D. WEST VIRGINIA
BUSINESS CORPORATION ACT.

Article
2. Incorporation.
4. Name.
5. Office and Agent.
6. Shares and Distributions.
7. Shareholders.
8. Directors and Officers.
9. [RESERVED]
10. Amendment of Articles of Incorporation and Bylaws.
11. Mergers and Share Exchanges.
15. Foreign Corporations.
16. Records and Reports.

ARTICLE 1. GENERAL PROVISIONS.

§31D-1-101a. Legislative acknowledgment.
§31D-1-102. Reservation of powers.
§31D-1-103. Construction of chapter.
§31D-1-120. Filing requirements.
§31D-1-121. Forms.
§31D-1-122. Filing, service and copying fees.
§31D-1-123. Effective time and date of document.
§31D-1-125. Filing duty of secretary of state.
§31D-1-126. Appeal from secretary of state’s refusal to file document.
§31D-1-128. Certificate of existence.
§31D-1-130. Powers.
§31D-1-140. Venue.
§31D-1-150. Definitions.
§31D-1-151. Notice.
§31D-1-152. Number of shareholders.

1 This chapter is and may be cited as the “West Virginia Business Corporation Act”.

§31D-1-101a. Legislative acknowledgment.

1 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.

§31D-1-102. Reservation of powers.

1 The 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.

§31D-1-103. Construction of chapter.

1 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 said chapters prevail to the extent of the inconsistency.

PART 2. FILING DOCUMENTS.

§31D-1-120. Filing requirements.

1 (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 five hundred nine, article fifteen 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 of this
chapter and subsections (d) and (e), section one thousand five
hundred ten, article fifteen 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.

§31D-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.

§31D-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 one, article twelve-c, chapter eleven of this code and
section two, article one, chapter fifty-nine of this code.
§31D-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 as 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.

§31D-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 five hundred nine, article fifteen 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 in 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.

§31D-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.

1 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.

§31D-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;

(2) If the corporation is a domestic corporation, that the corporation is duly incorporated under the laws 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
21 a foreign corporation is in existence or is authorized to transact business in this state.


1 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.

§31D-1-130. Powers.

1 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.

§31D-1-140. Venue.

1 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.

§31D-1-150. 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) "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 under-
lined.

(4) "Corporation" or "domestic corporation" means a
corporation for profit, which is not a foreign corporation,
incorporated under or subject to the provisions of this chapter.

(5) "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.

(6) "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 shareholders in respect of
any of its shares: Provided, That "distribution" does not include
a direct or indirect transfer of a corporation's own shares. A
distribution may be in the form of a declaration or payment of
a dividend; a purchase, redemption or other acquisition of
shares; or a distribution of indebtedness.

(7) "Effective date of notice" means the date as determined
pursuant to section one hundred fifty-one of this article.
(8) "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.

(9) "Employee" includes an officer and may include a director: Provided, That the director has accepted duties that make him or her also an employee.

(10) "Entity" includes corporations and foreign corporations; nonprofit 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.

(11) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.

(12) "Governmental subdivision" includes, but is not limited to, authorities, counties, districts and municipalities.

(13) "Individual" includes, but is not limited to, the estate of an incompetent or deceased individual.

(14) "Person" includes, but is not limited to, an individual and an entity.

(15) "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.

(16) "Proceeding" includes, but is not limited to, civil suits and criminal, administrative and investigatory actions.
(17) "Record date" means the date established under article six or seven of this chapter on which a corporation determines the identity of its shareholders and their shareholdings. 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.

(18) "Registered agent" means the agent identified by the corporation pursuant to section five hundred one, article five of this chapter.

(19) "Registered office" means the address of the registered agent for the corporation, as provided in section five hundred one, article five of this chapter.

(20) "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 shareholders and for authenticating records of the corporation.

(21) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(22) "Shares" means the units into which the proprietary interests in a corporation are divided.

(23) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature.

(24) "State", when referring to a part of the United States, includes a state and commonwealth and a territory and insular possession of the United States and their agencies and governmental subdivisions.
(25) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(26) "United States" includes, but is not limited to, districts, authorities, bureaus, commissions, departments and any other agency of the United States.

(27) "Voting group" means all shares of one or more classes or series that, pursuant to the articles of incorporation or this chapter, are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

(28) "Voting power" means the current power to vote in the election of directors.

§31D-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 shareholder, if in a comprehensible form, is effective: (1) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or (2) when
(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.

§31D-1-152. Number of shareholders.
(a) For purposes of this chapter, the following, identified as a shareholder in a corporation’s current record of shareholders, constitutes one shareholder:

(1) Three or fewer coowners;

(2) A corporation, partnership, trust, estate or other entity; or

(3) The trustees, guardians, custodians or other fiduciaries of a single trust, estate or account.

(b) For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

ARTICLE 2. INCORPORATION.

§31D-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) The number of shares the corporation is authorized to issue, the par value of each of the shares, or a statement that all shares are without par value;

(3) The street address of the corporation’s initial registered office, if any, and the name of its initial registered agent at that office, if any;

(4) The name and address of each incorporator; and

(5) The purpose or purposes for which the corporation is organized.

(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 the business and regulating the affairs of the corporation;

(B) Defining, limiting and regulating the powers of the corporation, its board of directors and shareholders; or

(C) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(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 stockholders for monetary damages for breach of fiduciary duty as a director: Provided, That a provision may not eliminate or limit the liability of a director: (A) For any breach of the director’s duty of loyalty to
the corporation or its stockholders; (B) for acts or omissions not
in good faith or which involve intentional misconduct or a
knowing violation of law; (C) under section eight hundred
thirty-three, article eight of this chapter for unlawful distribu-
tions; or (D) for any transaction from which the director derived
an improper personal benefit. No provision may eliminate or
limit the liability of a director for any act or omission occurring
prior to the date when that provision becomes effective; and

(5) A provision permitting or making obligatory indemnifi-
cation 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 shareholders; (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.

§31D-2-203. Incorporation.

(a) Unless a delayed effective date is specified, the corpo-
rate existence begins when the articles of incorporation are
filed.

(b) The secretary of state’s filing of the articles of incorpo-
ration 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.
§31D-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.

§31D-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

(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 shareholders, 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.
§31D-3-301. Purposes.

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

§31D-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 the business 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 business, 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; fix their compensation; and lend them money and credit;

(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 business that will aid governmental policy; and

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

§31D-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 business 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.

§31D-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 shareholder 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 under section one thousand four hundred thirty, article fourteen of this chapter.

(c) In a shareholder’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
ARTICLE 4. NAME.

§31D-4-401. Corporate name.

§31D-4-402. Use of the words "corporation", "incorporated" or "limited"; prohibitions; penalties.

§31D-4-403. Reserved name.

§31D-4-404. Registered name.

§31D-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 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 of this article;

(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 a nonprofit 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 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.
§31D-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-e 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, chapter thirty-one-b, thirty-one-e 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 non-profit corporation.

(d) Any person who unlawfully uses any one or more of the prescribed words or their abbreviations as set forth in subsection (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
 thirty 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.

§31D-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.

§31D-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 five hundred six, article fifteen 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 five hundred six, article fifteen 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 five hundred six, article fifteen 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 corporation authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-501. Registered office and registered agent.
§31D-5-502. Change of registered office or registered agent.
§31D-5-503. Resignation of registered agent.
§31D-5-504. Service on corporation.

§31D-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 nonprofit corporation whose business office is identical with the registered office; or

(C) A foreign corporation or foreign nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.

§31D-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, 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 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.

§31D-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.
§31D-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 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. Immedi-
ate 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. SHARES AND DISTRIBUTIONS.

§31D-6-601. Authorized shares.
§31D-6-602. Terms of class or series determined by board of directors.
§31D-6-603. Issued and outstanding shares.
§31D-6-604. Fractional shares.
§31D-6-620. Subscription for shares before incorporation.
§31D-6-621. Issuance of shares.
§31D-6-622. Liability of shareholders.
§31D-6-623. Share dividends.
§31D-6-624. Share options.
§31D-6-625. Form and content of certificates.
§31D-6-626. Shares without certificates.
§31D-6-627. Restriction on transfer of shares and other securities.
§31D-6-628. Expense of issue.
§31D-6-630. Shareholders' preemptive rights.
§31D-6-631. Corporation's acquisition of its own shares.
§31D-6-640. Distributions to shareholders.

PART 1. SHARES.

§31D-6-601. Authorized shares.

(a) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class and, prior to the issuance of shares of a class, the preferences, limitations and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section six hundred two of this article.

(b) The articles of incorporation must authorize: (1) One or more classes of shares that together have unlimited voting rights; and (2) one or more classes of shares which may be the same class or classes as those with voting rights that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes of shares that:
(1) Have special, conditional or limited voting rights, or no right to vote, except to the extent prohibited by this chapter;

(2) Are redeemable or convertible as specified in the articles of incorporation: (A) At the option of the corporation, the shareholder or another person or upon the occurrence of a designated event; (B) for cash, indebtedness, securities or other property; or (C) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative; or

(4) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(d) The description of the designations, preferences, limitations and relative rights of share classes in subsection (c) of this section is not exhaustive.

§31D-6-602. Terms of class or series determined by board of directors.

(a) If the articles of incorporation provide, the board of directors may determine, in whole or in part, the preferences, limitations and relative rights within the limits set forth in section six hundred one of this article of: (1) Any class of shares before the issuance of any shares of that class; or (2) one or more series within a class before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.
(c) All shares of a series must have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(d) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:

(1) The name of the corporation;

(2) The text of the amendment determining the terms of the class or series of shares;

(3) The date it was adopted; and

(4) A statement that the amendment was duly adopted by the board of directors.

§31D-6-603. Issued and outstanding shares.

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted or canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and section six hundred forty of this article.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.
§31D-6-604. Fractional shares.

1 (a) A corporation may:

2 (1) Issue fractions of a share or pay in money the value of fractions of a share;

3 (2) Arrange for disposition of fractional shares by the shareholders; or

4 (3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

5 (b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by subsection (b), section six hundred twenty-five of this article.

6 (c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

7 (d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

8 (1) That the scrip will become void if not exchanged for full shares before a specified date; and

9 (2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

PART 2. ISSUANCE OF SHARES.

§31D-6-620. Subscription for shares before incorporation.
(a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscription for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than twenty days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section six hundred twenty-one of this article.

§31D-6-621. Issuance of shares.

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid or the benefits received. If the services are not performed, the note is not paid or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

(f) An issuance of shares or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders at a meeting at which a quorum exists consisting of at least a majority of the votes entitled to be cast on the matter, if:

(1) The shares, other securities or rights are issued for consideration other than cash or cash equivalents; and
(2) The voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than twenty percent of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(g) As used in subsection (f) of this section:

(1) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares is the greater of: (A) The voting power of the shares to be issued; or (B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(2) A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

§31D-6-622. Liability of shareholders.

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued pursuant to section six hundred twenty-one of this article or specified in the subscription agreement entered pursuant to section six hundred twenty of this article.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he or she may become personally liable by reason of his or her own acts or conduct.

§31D-6-623. Share dividends.
(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation’s shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless: (1) The articles of incorporation authorize; (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

§31D-6-624. Share options.

A corporation may issue rights, options or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

§31D-6-625. Form and content of certificates.

(a) Shares may, but need not, be represented by certificates. Unless this chapter or another provision of this code expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:
(1) The name of the issuing corporation and that it is organized under the law of this state;

(2) The name of the person to whom issued; and

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series and the authority of the board of directors to determine variations for future series must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate: (1) Must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors; and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate remains valid.

§31D-6-626. Shares without certificates.

(a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.
(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by subsections (b) and (c), section six hundred twenty-five of this article and, if applicable, section six hundred twenty-seven of this article.

§31D-6-627. Restriction on transfer of shares and other securities.

(a) The articles of incorporation, bylaws, an agreement among shareholders or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by subsection (b), section six hundred twenty-six of this article. Unless a restriction is noted as required by this subsection, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) To maintain the corporation’s status when it is dependent on the number or identity of its shareholders;

(2) To preserve exemptions under federal or state securities law; or

(3) For any other reasonable purpose.
(d) A restriction on the transfer or registration of transfer of shares may:

(1) Obligate the shareholder first to offer the corporation or other persons an opportunity to acquire the restricted shares;

(2) Obligate the corporation or other persons to acquire the restricted shares;

(3) Require the corporation, the holders of any class of its shares or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

§31D-6-628. Expense of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

PART 3. SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION.

§31D-6-630. Shareholders' preemptive rights.

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation provide.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of
similar import, means that the following principles apply, except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation’s unissued shares upon the decision of the board of directors to issue them.

(2) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) There is no preemptive right with respect to:

(A) Shares issued as compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(B) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(C) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation; or

(D) Shares sold otherwise than for money.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no
preemptive rights with respect to shares of any class with
preferential rights to distributions or assets unless the shares
with preferential rights are convertible into or carry a right to
subscribe for or acquire shares without preferential rights.

(6) Shares subject to preemptive rights that are not acquired
by shareholders may be issued to any person for a period of one
year after being offered to shareholders at a consideration set by
the board of directors that is not lower than the consideration
set for the exercise of preemptive rights. An offer at a lower
consideration or after the expiration of one year is subject to the
shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security
convertible into or carrying a right to subscribe for or acquire
shares.

§31D-6-631. Corporation's acquisition of its own shares.

(a) Subject to the provisions of chapter thirty-one-a of this
code and unless otherwise prohibited by law, a corporation may
acquire its own shares and shares so acquired constitute
authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the
acquired shares, the number of authorized shares is reduced by
the number of shares acquired.

PART 4. DISTRIBUTIONS.

§31D-6-640. Distributions to shareholders.

(a) A board of directors may authorize and the corporation
may make distributions to its shareholders subject to restriction
by the articles of incorporation and the limitation in subsection
(c) of this section.
(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, it is the date the board of directors authorizes the distribution: Provided, That this subsection does not apply to a distribution involving a purchase, redemption or other acquisition of the corporation's shares.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution unless the articles of incorporation permit otherwise.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g) of this section, the effect of a distribution under subsection (c) of this section is measured:

(1) In the case of distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of:

(A) The date money or other property is transferred or debt incurred by the corporation; or

(B) the date the shareholder ceases to be a shareholder with respect to the acquired shares;
(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of: (A) The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization; or (B) the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(f) A corporation’s indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation’s indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

ARTICLE 7. SHAREHOLDERS.

§31D-7-701. Annual meeting.
§31D-7-702. Special meeting.
§31D-7-703. Court-ordered meeting.
§31D-7-704. Action without meeting.
§31D-7-705. Notice of meeting.
§31D-7-706. Waiver of notice.
§31D-7-707. Record date.
§31D-7-708. Conduct of the meeting.
§31D-7-720. Shareholders’ list for meeting.
§31D-7-721. Voting entitlement of shares.
§31D-7-722. Proxies.
§31D-7-723. Shares held by nominees.
§31D-7-724. Corporation's acceptance of votes.
§31D-7-725. Quorum and voting requirements for voting groups.
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§31D-7-727. Greater quorum or voting requirements.
§31D-7-728. Voting for directors; cumulative voting.
§31D-7-729. Inspectors of election.
§31D-7-730. Voting trusts.
§31D-7-731. Voting agreements.
§31D-7-732. Shareholder agreements.

PART 1. MEETINGS.

§31D-7-701. Annual meeting.

(a) A corporation must hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings 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) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

§31D-7-702. Special meeting.

(a) A corporation must hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized by the articles of incorporation or bylaws; or

(2) If the holders of at least ten percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date and deliver to the corpora-
tion one or more written demands for the meeting describing
the purpose or purposes for which it is to be held. Provided,
That the articles of incorporation may fix a lower percentage or
a higher percentage not exceeding twenty-five percent of all the
votes entitled to be cast on any issue proposed to be considered.
Unless otherwise provided in the articles of incorporation, a
written demand for a special meeting may be revoked by a
writing to that effect received by the corporation prior to the
receipt by the corporation of demands sufficient in number to
require the holding of a special meeting.

(b) If not otherwise fixed under section seven hundred three
or seven hundred seven of this article, the record date for
determining shareholders entitled to demand a special meeting
is the date the first shareholder signs the demand.

(c) Special shareholders’ meetings 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
shareholders’ meeting.

§31D-7-703. Court-ordered meeting.

(a) The circuit court may summarily order a meeting to be
held:

(i) On application of any shareholder of the corporation
entitled to participate in 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 shareholder 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 shares entitled to participate in the meeting; specify a record date for determining shareholders 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 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.

§31D-7-704. Action without meeting.

(a) Action required or permitted by this chapter to be taken at a shareholders’ meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a) of this section. No written consent may be
effective to take the corporate action referred to in the consent unless, within sixty days of the earliest date appearing on a consent delivered to the corporation in the manner required by this section, written consents signed by all shareholders entitled to vote on the action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

(c) A consent signed under this section has the effect of a meeting vote and may be described as a meeting vote in any document.

(d) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

§31D-7-705. Notice of meeting.

(a) A corporation is to notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter, the articles of incorporation or bylaws require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.
(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders’ meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders’ meeting 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 shareholders as of the new record date.

(f) Unless the articles of incorporation or bylaws provide otherwise, any shareholder may participate in a regular or special meeting by any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

§31D-7-706. Waiver of notice.

(a) A shareholder 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 shareholder entitled to the notice and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder’s attendance at a meeting:
(1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

§31D-7-707. Record date.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, 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 shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting 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.

§31D-7-708. Conduct of the meeting.
(a) At each meeting of shareholders, a chair shall 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 chair, 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 shareholders.

(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 shareholders’ meetings, any or all of the shareholders may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all shareholders may simultaneously hear each other during the meeting.

PART 2. VOTING.

§31D-7-720. Shareholders’ 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 shareholders who are entitled to notice of a shareholders’ meeting. The list must be arranged by voting group and, within each voting group, by class or series of shares and show the address of and number of shares held by each shareholder.
(b) The shareholders’ list must be available for inspection by any shareholder, 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 shareholder, his or her agent or attorney is entitled on written demand to inspect and, subject to the requirements of subsection (c), section one thousand six hundred two, article sixteen 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 shareholders’ list available at the meeting and any shareholder, 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 shareholder, his or her agent or attorney to inspect the shareholders’ list before or at the meeting, or to copy the list as permitted by subsection (b) of this section, the circuit court, on application of the shareholder, 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 shareholders’ list does not affect the validity of action taken at the meeting.

§31D-7-721. Voting entitlement of shares.

(a) Except as provided in subsections (b) and (d) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders’ meeting. Only shares are entitled to vote.
(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

§31D-7-722. Proxies.

(a) Unless the articles of incorporation or bylaws provide otherwise, a shareholder may vote his or her shares in person or by proxy.

(b) A shareholder or his or her agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder 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 shareholder, the shareholder’s agent or the shareholder’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. 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 unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A pledgee;
2. A person who purchased or agreed to purchase the shares;
3. A creditor of the corporation who extended it credit under terms requiring the appointment;
4. An employee of the corporation whose employment contract requires the appointment; or
5. A party to a voting agreement created under section seven hundred thirty-one of this article.

(e) The death or incapacity of the shareholder 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) An appointment made irrevocable under subsection (d) of this section is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he or she did not know of its existence when he or she acquired the shares and
the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to section seven hundred twenty-four of this article and to any express limitation on the proxy’s authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy’s vote or other action as that of the shareholder making the appointment.

§31D-7-723. Shares held by nominees.

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

(1) The types of nominees to which it applies;

(2) The rights or privileges that the corporation recognizes in a beneficial owner:

(3) The manner in which the procedure is selected by the nominee;

(4) The information that must be provided when the procedure is selected;

(5) The period for which selection of the procedure is effective; and

(6) Other aspects of the rights and duties created.

§31D-7-724. Corporation’s acceptance of votes.
(a) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a shareholder, 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 shareholder.

(b) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, 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 shareholder if:

(1) The shareholder 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 administrator, executor, guardian or conservator representing the shareholder 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 shareholder 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;

(4) The name signed purports to be that of a pledgee, beneficial owner or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver or proxy appointment; or

(5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of
at least one of the coowners and the person signing appears to be acting on behalf of all the coowners.

(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 shareholder.

(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 shareholder 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 is valid unless a court of competent jurisdiction determines otherwise.

§31D-7-725. Quorum and voting requirements for voting groups.

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it 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) If a quorum exists, action on a matter, other than the
election of directors, by a voting group is approved if the votes
cast within the voting group favoring the action exceed the
votes cast opposing the action unless the articles of incorpora-
tion or this chapter require a greater number of affirmative
votes.

(d) An amendment of articles of incorporation adding,
changing or deleting a quorum or voting requirement for a
voting group greater than specified in subsection (a) or (c) of
this section is governed by section seven hundred twenty-seven
of this article.

(e) The election of directors is governed by section seven
hundred twenty-eight of this article.

§31D-7-726. Action by single and multiple voting groups.

(a) If the articles of incorporation or this chapter provide for
voting by a single voting group on a matter, action on that
matter is taken when voted upon by that voting group as
provided in section seven hundred twenty-five of this article.

(b) If the articles of incorporation or this chapter provide
for voting by two or more voting groups on a matter, action on
that matter is taken only when voted upon by each of those
voting groups counted separately as provided in section seven
hundred twenty-five of this article. Action may be taken by one
voting group on a matter even though no action is taken by
another voting group entitled to vote on the matter.

§31D-7-727. Greater quorum or voting requirements.

(a) The articles of incorporation may provide for a greater
quorum or voting requirement for shareholders or voting groups
of shareholders than is provided for by this chapter.
(b) 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 voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

§31D-7-728. 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 shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Each shareholder or designated voting group of shareholders holding shares having the right to vote for directors has a right to cumulate his or her votes for directors.

(c) A statement included in the articles of incorporation that "all or a designated voting group of shareholders are entitled to cumulate their votes for directors", or words of similar import, means that the shareholders 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) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(1) The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(2) A shareholder 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
shareholder gives this notice all other shareholders in the same
voting group participating in the election are entitled to
cumulate their votes without giving further notice.

§31D-7-729. Inspectors of election.

(a) A corporation having any shares listed on a national
securities exchange or regularly traded in a market maintained
by one or more members of a national or affiliated securities
association must, and any other corporation may, appoint one
or more inspectors to act at a meeting of shareholders and make
a written report of the inspectors' determinations. Each inspec-
tor 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 shares outstanding and the
voting power of each;

(2) Determine the shares represented at a meeting;

(3) Determine the validity of proxies and ballots;

(4) Count all votes; and

(5) Determine the result.

(c) An inspector may be an officer or employee of the
corporation.

PART 3. VOTING TRUSTS AND AGREEMENTS.

§31D-7-730. Voting trusts.
(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, including, but not limited to, anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation’s principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee’s name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection (c) of this section.

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing written consent to the extension. An extension is valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation’s principal office. An extension agreement binds only those parties signing it.

§31D-7-731. Voting agreements.

(a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section seven hundred thirty of this article.

(b) A voting agreement created under this section is specifically enforceable.
§31D-7-732. Shareholder agreements.

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section six hundred forty, article six of this chapter;

(3) Establishes who are to be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;
(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section must be:

(1) Set forth:

(A) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(B) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(3) Valid for ten years, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection (b), section six hundred twenty-six, article six of this chapter. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation must recall the outstanding certificates and issue substitute certificates that comply with this subsection.
The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is to be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(d) An agreement authorized by this section ceases to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation’s articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of, and imposes upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section is not a ground for imposing personal
liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

ARTICLE 8. DIRECTORS AND OFFICERS.

§31D-8-801. Requirement for and duties of board of directors.
§31D-8-802. Qualifications of directors.
§31D-8-803. Number and election of directors.
§31D-8-804. Election of directors by certain classes of shareholders.
§31D-8-805. Terms of directors generally.
§31D-8-806. Staggered terms for directors.
§31D-8-807. Resignation of directors.
§31D-8-808. Removal of directors by shareholders.
§31D-8-809. Removal of directors by judicial proceeding.
§31D-8-810. Vacancy on board.
§31D-8-811. Compensation of directors.
§31D-8-820. Meetings.
§31D-8-821. Action without meeting.
§31D-8-822. Notice of meeting.
§31D-8-823. Waiver of notice.
§31D-8-824. Quorum and voting.
§31D-8-825. Committees.
§31D-8-830. Standards of conduct for directors.
§31D-8-831. Standards of liability for directors.
§31D-8-832. [RESERVED]
§31D-8-833. Directors’ liability for unlawful distributions.
§31D-8-840. Required officers.
§31D-8-841. Duties of officers.
§31D-8-842. Standards of conduct for officers.
§31D-8-843. Resignation and removal of officers.
§31D-8-850. Part definitions.
§31D-8-851. Permissible indemnification.
PART 1. BOARD OF DIRECTORS.

§31D-8-801. Requirement for and duties of board of directors.

(a) Except as provided in section seven hundred thirty-two, article seven of this chapter, each corporation must have a board of directors.

(b) All corporate powers are to be exercised by or under the authority of, and the business 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 or in an agreement authorized under section seven hundred thirty-two, article seven of this chapter.

§31D-8-802. Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws require he or she to be a shareholder.

§31D-8-803. Number and election of directors.

(a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
(b) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent the number of directors last approved by the shareholders.

(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed, from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed- to a variable-range size board or change from a variable- to a fixed-range size board.

(d) Directors are elected at the first annual shareholders’ meeting and at each annual meeting thereafter unless their terms are staggered under section eight hundred six of this article.

§31D-8-804. Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class or classes of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

§31D-8-805. Terms of directors generally.

(a) The terms of the initial directors of a corporation expire at the first shareholders’ meeting at which directors are elected.
(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section eight hundred six 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 shareholders' 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.

§31D-8-806. Staggered terms for directors.

If there are nine or more directors, the articles of incorporation may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group containing as close to one half or one third of the total number of directors as possible. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors are to be chosen for a term of two years or three years to succeed those whose terms expire.

§31D-8-807. 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 to the corporation.
(b) A resignation is effective when the notice is delivered unless the board of directors agree to a later effective date.

§31D-8-808. Removal of directors by shareholders.

(a) The shareholders may remove one or more directors with or without cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.

(c) 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 provided that 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.

(d) A director may be removed by the shareholders 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.

§31D-8-809. Removal of directors by judicial proceeding.

(a) The circuit court may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares 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 reelection for a period prescribed by the court.
§31D-8-810. 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 shareholders 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 voting group of shareholders and if the vacancy is to be filled by the shareholders as provided in subdivision (1), subsection (a) of this section, only the holders of shares of that voting group 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 seven of this article or otherwise may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

§31D-8-811. 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.

§31D-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.

§31D-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.

§31D-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.

§31D-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.

§31D-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. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

§31D-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 meet-
ings, 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) Authorize distributions;

(2) Approve or propose to shareholders action that this
chapter requires be approved by shareholders;

(3) Fill vacancies on the board of directors or on any of its
committees;

(4) Amend articles of incorporation pursuant to section one
thousand two, article ten of this chapter;

(5) Adopt, amend or repeal bylaws;

(6) Approve a plan of merger not requiring shareholder
approval;

(7) Authorize or approve reacquisition of shares, except
according to a formula or method prescribed by the board of
directors; or
(8) Authorize or approve the issuance or sale or contract for
sale of shares, or determine the designation and relative rights,
preferences and limitations of a class or series of shares, except
that the board of directors may authorize a committee or a
senior executive officer of the corporation to authorize or
approve the issuance or sale or contract for sale of shares, or
determine the designation and relative rights, preferences and
limitations of a class or series of shares within limits specifi-
cally prescribed by the board of directors.

(f) 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.

PART 3. DIRECTORS.

§31D-8-830. Standard of conduct for directors.

(a) Each member of the board of directors, when discharg-
ing 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 over-
sight 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 subdivision (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.

§31D-8-831. Standards of liability for directors.

(a) A director is not liable to the corporation or its shareholders 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 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 business and 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 for inquiry;

(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 shareholders 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 shareholders 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 circumstances; 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 shareholder may be entitled under another provision of this code or the United States code.
§31D-8-832. [RESERVED]

§31D-8-833. Directors' liability for unlawful distributions.

(a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to subsection (a), section six hundred forty, article six of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating subsection (a), section six hundred forty, article six of 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 shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of subsection (a), section six hundred forty, article six of this chapter.

(c) A proceeding to enforce:

(1) 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 effect of the distribution was measured under subsection (e) or (g), section six hundred forty, article six of this chapter or as of which the violation of subsection (a), section six hundred forty, article six of this chapter occurred as the consequence of disregard of a restriction in the articles of incorporation; or
(2) Contribution or recoupment under subsection (b) of this section is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a) of this section.

PART 4. OFFICERS.

§31D-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 shareholders’ meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

§31D-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.

§31D-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.

§31D-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.

§31D-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.

§31D-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.

(d) Unless ordered by a 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.

§31D-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.

§31D-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 section 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:
26 (1) By the board of directors:

27 (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

28 (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 disinter-
ested directors may participate; or

32 (2) By the shareholders, but shares owned by or voted under
the control of a director who at the time does not qualify as a
disinterested director may not be voted on the authorization; or

37 (3) By special legal counsel selected in a manner in
accordance with subdivision (2), subsection (b), section eight
hundred fifty-five of this article.

§31D-8-854. Circuit court-ordered indemnification and advance
for expenses.

1 (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:

7 (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 subdivision (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) of said subsection, 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) of said subsection, it may also order the corporation to pay the director’s reasonable expenses to obtain circuit court-ordered indemnification or advance for expenses.

§31D-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 shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

(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.

§31D-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 shareholders; 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 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.
§31D-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 corporation, 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.

§31D-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 shareholders, 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 of this article 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 does 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 indemnification or advance for expenses in the articles of incorporation, bylaws or a resolution of the board of directors or shareholders 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 subdivision (3), subsection (a), section one thousand one hundred six, 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.

§31D-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.

§31D-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.
§31D-10-1001. Authority to amend.

§31D-10-1002. Amendment before issuance of shares.

§31D-10-1003. Amendment by board of directors and shareholders.

§31D-10-1004. Voting on amendments by voting groups.

§31D-10-1005. Amendment by board of directors.

§31D-10-1006. Articles of amendment.

§31D-10-1007. Restated articles of incorporation.

§31D-10-1008. Amendment pursuant to reorganization.

§31D-10-1009. Effect of amendment.

§31D-10-1020. Amendment by board of directors or shareholders.

§31D-10-1021. Bylaw increasing quorum or voting requirement for directors.

PART 1. AMENDMENT OF ARTICLES OF INCORPORATION.

§31D-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 shareholder 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, capital structure, dividend entitlement or purpose or duration of the corporation.

§31D-10-1002. Amendment before issuance of shares.

If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

§31D-10-1003. Amendment by board of directors and shareholders.
If a corporation has issued shares, an amendment to the articles of incorporation must be adopted in the following manner:

(1) The proposed amendment must be adopted by the board of directors.

(2) Except as provided in sections one thousand five, one thousand seven and one thousand eight of this article, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make the recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of the amendment to the shareholders on any basis.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment 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 amendment and must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amend-
ment exists and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in subsection (c), section one thousand four of this article, the approval of each separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

§31D-10-1004. Voting on amendments by voting groups.

(a) If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment to the articles of incorporation if the amendment would:

(1) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(2) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(3) Change the rights, preferences or limitations of all or part of the shares of the class;

(4) Change the shares of all or part of the class into a different number of shares of the same class;

(5) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

(6) Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;
(7) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(8) Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a) of this section, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series affected by the proposed amendment must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

§31D-10-1005. Amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(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) If the corporation has only one class of shares outstanding:

(A) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(B) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word “corporation”, “incorporated”, “company”, “limited” or the abbreviation “corp.”, “inc.”, “co.” or “ltd.” for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of subsection (b), section six hundred thirty-one, article six of this chapter, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of subsection (b), section six hundred thirty-one, article six of this chapter, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or
(8) To make any change expressly permitted by subsection (d), section six hundred two, article six of this chapter to be made without shareholder approval.

§31D-10-1006. Articles of amendment.

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the corporation 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) If an amendment provides for an exchange, reclassification or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment’s adoption; and

(5) If an amendment:

(A) Was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors, as required, and that shareholder approval was not required;

(B) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.

§31D-10-1007. Restated articles of incorporation.
(a) A corporation’s board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document.

(b) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in section one thousand three of this article.

(c) A corporation that restates 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 certificate which states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, which also includes the statements required under section one thousand six of this article.

(d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to it.

(e) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the certificate information required by subsection (c) of this section.

§31D-10-1008. Amendment pursuant to reorganization.

(a) A corporation’s articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of federal law.
(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.

§31D-10-1009. 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 shareholders of the corporation. An amendment changing a corporation’s name does not abate a proceeding brought by or against the corporation in its former name.

PART 2. AMENDMENT OF BYLAWS.

§31D-10-1020. Amendment by board of directors or shareholders.

(a) A corporation’s shareholders may amend or repeal the corporation’s bylaws.
(b) A corporation’s board of directors may amend or repeal the corporation’s bylaws, unless:

(1) The articles of incorporation or section one thousand twenty-one of this article reserve that power exclusively to the shareholders, in whole or in part; or

(2) The shareholders in amending, repealing or adopting a bylaw expressly provide that the board of directors may not amend, repeal or reinstate that bylaw.

§31D-10-1021. Bylaw increasing quorum or voting requirement for directors.

(a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(1) If adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(2) If adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders 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 shareholders 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.
ARTICLE 11. MERGERS AND SHARE EXCHANGES.

§31D-11-1101. Definitions.

§31D-11-1102. Merger.

§31D-11-1103. Share exchange.

§31D-11-1104. Action on a plan of merger or share exchange.

§31D-11-1105. Merger between parent and subsidiary or between subsidiaries.

§31D-11-1106. Articles of merger or share exchange.

§31D-11-1107. Effect of merger or share exchange.

§31D-11-1108. Abandonment of a merger or share exchange.

§31D-11-1101. Definitions.

1 As used in this article:

2 (a) “Interests” means the proprietary interests in an other
3 entity.

4 (b) “Merger” means a business combination pursuant to
5 section one thousand one hundred two of this article.

6 (c) “Organizational documents” means the basic document
7 or documents that create, or determine the internal governance
8 of, an other entity.

9 (d) “Other entity” means any association or legal entity,
10 other than a domestic or foreign corporation, organized to
11 conduct business, including, but not limited to, limited partners-
12 ships, general partnerships, limited liability partnerships,
13 limited liability companies, joint ventures, joint stock compa-
14 nies and business trusts.

15 (e) “Party to a merger” or “party to a share exchange”
16 means any domestic or foreign corporation or other entity that
17 will either:

18 (1) Merge under a plan of merger;
(2) Acquire shares or interests of another corporation or an other entity in a share exchange; or

(3) Have all of its shares or interests or all of one or more classes or series of its shares or interests acquired in a share exchange.

(f) “Share exchange” means a business combination pursuant to section one thousand one hundred three of this article.

(g) “Survivor” in a merger means the corporation or other entity into which one or more other corporations or other entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

§31D-11-1102. 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 shares of each merging corporation and interests of each merging other entity into shares or other securities, interests, obligations, rights to acquire shares or other securities, 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 shareholders 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 shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan;

(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 shareholders in any material respect.

§31D-11-1103. Share exchange.

(a) Through a share exchange:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property or any combination of the foregoing, pursuant to a plan of share exchange; or

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for
shares or other securities, interests, obligations, rights to acquire
shares or other securities, cash, other property or any combina-
tion of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation, or a domestic or foreign other
entity, may be a party to the share exchange only if:

(1) The share exchange 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 share exchange, 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 share exchange must include:

(1) The name of each corporation or other entity whose
shares or interests will be acquired and the name of the corpora-
tion or other entity that will acquire those shares or interests;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of a
corporation or interests in an other entity whose shares or
interests will be acquired under the share exchange into shares
or other securities, interests, obligations, rights to acquire shares
or other securities, cash, other property or any combination of
the foregoing; and

(4) Any other provisions required by the laws under which
any party to the share exchange is organized or by the articles
of incorporation or organizational documents of any party to the
share exchange.
(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 share exchange, 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 share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the secretary of state: Provided, That if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property to be issued by the corporation or to be received by the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interests under the plan; or

(2) Change any of the terms or conditions of the plan if the change would adversely affect the shareholders in any material respect.

(f) This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

§31D-11-1104. Action on a plan of merger or share exchange.

In the case of a domestic corporation that is a party to a merger or share exchange:
(1) The plan of merger or share exchange must be adopted by the board of directors.

(2) Except as provided in subdivision (7) of this section and in section one thousand one hundred five of this article, after adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors determines that because of conflicts of interest or other special circumstances it should not make a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan 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 plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice is also to include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice is to include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.
(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(6) Separate voting by voting groups is required:

(A) On a plan of merger, by each class or series of shares that: (i) Are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property or any combination of the foregoing; or (ii) would have a right to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under section one thousand four, article ten of this chapter;

(B) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(C) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(7) Unless the articles of incorporation otherwise provide, approval by the corporation’s shareholders of a plan of merger or share exchange is not required if:
(A) The corporation will survive the merger or is the acquiring corporation in a share exchange;

(B) Except for amendments permitted by section one thousand five, article ten of this chapter, its articles of incorporation will not be changed;

(C) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations and relative rights, immediately after the effective date of change; and

(D) The issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under subsection (f), section six hundred twenty-one, article six of this chapter.

(8) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger requires the execution, by each shareholder subject to liability, of a separate written consent to become subject to personal liability.

§31D-11-1105. Merger between parent and subsidiary or between subsidiaries.

(a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, ap-
proval by the subsidiary’s board of directors or shareholders is
required by the laws under which the subsidiary is organized.

(b) If under subsection (a) of this section approval of a
merger by the subsidiary’s shareholders is not required, the
parent corporation shall, within ten days after the effective date
of the merger, notify each of the subsidiary’s shareholders that
the merger has become effective.

(c) Except as provided in subsections (a) and (b) of this
section, a merger between a parent and a subsidiary is to be
governed by the provisions of this article applicable to mergers
generally.

§31D-11-1106. Articles of merger or share exchange.

(a) After a plan of merger or share exchange has been
adopted and approved as required by this chapter, articles of
merger or share exchange are to be executed on behalf of each
party to the merger or share exchange by any officer or other
duly authorized representative. The articles are to set forth:

(1) The names of the parties to the merger or share ex-
change and the date on which the merger or share exchange
occurred or is to be effective;

(2) If the articles of incorporation of the survivor of a
merger are amended, or if a new corporation is created as a
result of a merger, the amendments to the survivor’s articles of
incorporation or the articles of incorporation of the new
corporation;

(3) If the plan of merger or share exchange required
approval by the shareholders of a domestic corporation that was
a party to the merger or share exchange, a statement that the
plan was duly approved by the shareholders and, if voting by
any separate voting group was required, by each separate voting
group in the manner required by this chapter and the articles of incorporation;

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) As to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the corporation or other entity is organized, or by which it is governed, and by its articles of incorporation or organizational documents.

(b) Articles of merger or share exchange are to be delivered to the secretary of state for filing by the survivor of the merger or the acquiring corporation in a share exchange and take 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, consumers 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.

§31D-11-1107. Effect of merger or share exchange.

(a) When a merger takes effect:

(1) The corporation or other entity that is designated in the
plan of merger as the survivor continues or comes into exist-
tence, as the case may be;

(2) The separate existence of every corporation or other
entity that is merged into the survivor ceases;

(3) 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;

(4) 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;

(5) All liabilities of each corporation or other entity that is
merged into the survivor are vested in the survivor;

(6) The name of the survivor may, but need not be, substi-
tuted in any pending proceeding for the name of any party to
the merger whose separate existence ceased in the merger;
(7) The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger;

(8) The articles of incorporation or organizational documents of a survivor that is created by the merger become effective; and

(9) The shares of each corporation that is a party to the merger, and the interests in an other entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property or any combination of the foregoing are converted and the former holders of the shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under article thirteen of this chapter.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property or any combination of the foregoing are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under article thirteen of this chapter.

(c) Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of the corporation, may not be released from the liabilities or obligations by reason of the merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign other entity, that is the survivor of the merger is deemed to:
(1) Appoint the secretary of state as its agent for service of
process in a proceeding to enforce the rights of shareholders of
each domestic corporation that is a party to the merger who
exercise appraisal rights; and

(2) Agree that it will promptly pay the amount, if any, to
which the shareholders are entitled under article thirteen of this
chapter.

§31D-11-1108. Abandonment of a merger or share exchange.

(a) Unless otherwise provided in a plan of merger or share
exchange or in the laws under which a foreign corporation or a
domestic or foreign other entity that is a party to a merger or a
share exchange is organized or by which it is governed, after
the plan has been adopted and approved as required by this
article, and at any time before the merger or share exchange has
become effective, it may be abandoned by any party thereto
without action by the party's shareholders or owners of inter-
est, in accordance with any procedures set forth in the plan of
merger or share exchange or, if no procedures are set forth in
the plan, in the manner determined by the board of directors of
a corporation, or the managers of an other entity, subject to any
contractual rights of other parties to the merger or share
exchange.

(b) If a merger or share exchange is abandoned under
subsection (a) of this section after articles of merger or share
exchange have been filed with the secretary of state but before
the merger or share exchange has become effective, a statement
that the merger or share exchange has been abandoned in
accordance with this section, executed on behalf of a party to
the merger or share exchange by an officer or other duly
authorized representative, is to be delivered to the secretary of
state for filing prior to the effective date of the merger or share
exchange. Upon filing, the statement is to take effect and the
merger or share exchange is to be deemed abandoned and may not become effective.

ARTICLE 12. DISPOSITION OF ASSETS.

§31D-12-1201. Disposition of assets not requiring shareholder approval.

§31D-12-1202. Shareholder approval of certain dispositions.

§31D-12-1201. Disposition of assets not requiring shareholder approval.

1 No approval of the shareholders of a corporation is required, unless the articles of incorporation otherwise provide:

2 (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;

3 (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;

4 (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; or

5 (4) To distribute assets pro rata to the holders of one or more classes or series of the corporation’s shares.

§31D-12-1202. Shareholder approval of certain dispositions.

1 (a) 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 shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business 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 business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) of this section must be initiated by a resolution by the board of directors authorizing the disposition. After adoption of the resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders 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 shareholders approve the disposition, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of a disposition to the shareholders under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a) of this section and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders 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 must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.
(e) Unless 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 shareholders requires the approval of the shareholders 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 shareholders 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 shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under article fourteen 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. APPRAISAL RIGHTS.

§31D-13-1302. Right to appraisal.
§31D-13-1321. Notice of intent to demand payment.
§31D-13-1322. Appraisal notice and form.
§31D-13-1323. Perfection of rights; right to withdraw.
§31D-13-1324. Payment.
§31D-13-1326. Procedure if shareholder dissatisfied with payment or offer.
§31D-13-1330. Court action.
§31D-13-1331. Court costs and counsel fees.

PART 1. RIGHT TO APPRAISAL AND PAYMENT FOR SHARES.

In this article:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person or is a senior executive. For purposes of subdivision (4), subsection (b), section one thousand three hundred two of this article, a person is deemed to be an affiliate of its senior executives.

(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections one thousand three hundred twenty-two, one thousand three hundred twenty-three, one thousand three hundred twenty-four, one thousand three hundred twenty-five, one thousand three hundred twenty-six, one thousand three hundred thirty and one thousand three hundred thirty-one of this article, includes the surviving entity in a merger.

(4) "Fair value" means the value of the corporation's shares determined:

(A) Immediately before the effectuation of the corporate action to which the shareholder objects;

(B) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(C) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to subdivision (5), subsection (a), section one thousand three hundred two of this article.
"Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

"Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

"Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

"Senior executive" means the chief executive officer, chief operating officer, chief financial officer and anyone in charge of a principal business unit or function.

"Shareholder" means both a record shareholder and a beneficial shareholder.

§31D-13-1302. Right to appraisal.

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

1. Consummation of a merger to which the corporation is a party: (A) If shareholder approval is required for the merger by section one thousand one hundred four, article eleven of this chapter and the shareholder is entitled to vote on the merger, except that appraisal rights may not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or (B) if the corporation is a subsidiary and the merger is governed by section one thousand one hundred five, article eleven of this chapter;
14. (2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights may not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

15. (3) Consummation of a disposition of assets pursuant to section one thousand two hundred two, article twelve of this chapter if the shareholder is entitled to vote on the disposition;

16. (4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or

17. (5) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors.

18. (b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under subdivisions (1), (2), (3) and (4), subsection (a) of this section are limited in accordance with the following provisions:

19. (1) Appraisal rights may not be available for the holders of shares of any class or series of shares which is:

20. (A) Listed on the New York stock exchange or the American stock exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, inc.; or

21. (B) Not so listed or designated, but has at least two thousand shareholders and the outstanding shares of a class or series
has a market value of at least twenty million dollars, exclusive of the value of the shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent of the shares.

(2) The applicability of subdivision (1), subsection (b) of this section is to be determined as of:

(A) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(B) The day before the effective date of the corporate action if there is no meeting of shareholders.

(3) Subdivision (1), subsection (b) of this section is not applicable and appraisal rights are to be available pursuant to subsection (a) of this section for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for the shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision (1), section (b) of this section at the time the corporate action becomes effective.

(4) Subdivision (1), subsection (b) of this section is not applicable and appraisal rights are to be available pursuant to subsection (a) of this section for the holders of any class or series of shares where any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who: (A) Is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of twenty percent or more of
the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or (B) for purpose of voting their shares of the corporation, each member of the group formed is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(c) Notwithstanding any other provision of section one thousand three hundred two of this article, the articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of preferred shares, but any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of the shares that are outstanding immediately prior to the effective date of the amendment or that the corporation is or may be required to issue or sell pursuant to any conversion, exchange or other right existing immediately before the effective date of the amendment does not apply to any corporate action that becomes effective within one year of that date if the action would otherwise afford appraisal rights.

(d) A shareholder entitled to appraisal rights under this article may not challenge a completed corporate action for which appraisal rights are available unless the corporate action:

1. Was not effectuated in accordance with the applicable provisions of article ten, eleven or twelve of this chapter or the corporation's articles of incorporation, bylaws or board of directors' resolution authorizing the corporate action; or

(a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection are to be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(1) Submits to the corporation the record shareholder's written consent to the assertion of the rights no later than the date referred to in paragraph (D), subdivision (2), subsection (b), section one thousand three hundred twenty-two of this article; and

(2) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

PART 2. PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS.

(a) If proposed corporate action described in subsection (a), section one thousand three hundred two of this article is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not or may be entitled to assert appraisal rights under this article. If the corporation concludes that appraisal rights are or may be available, a copy of this article must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to section one thousand one hundred five, article eleven of this chapter, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice must be sent within ten days after the corporate action became effective and include the materials described in section one thousand three hundred twenty-two of this article.

§31D-13-1321. Notice of intent to demand payment.

(a) If proposed corporate action requiring appraisal rights under section one thousand three hundred two of this article is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) Must deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any shares of the class or series in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) of this section is not entitled to payment under this article.
§31D-13-1322. Appraisal notice and form.

(a) If proposed corporate action requiring appraisal rights under subsection (a), section one thousand three hundred two of this article becomes effective, the corporation must deliver a written appraisal notice and form required by subdivision (1), subsection (b) of this section to all shareholders who satisfied the requirements of section one thousand three hundred twenty-one of this article. In the case of a merger under section one thousand one hundred five, article eleven of this chapter, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be sent no earlier than the date the corporate action became effective and no later than ten days after that date and must:

1. Supply a form that specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action and requires the shareholder asserting appraisal rights to certify: (A) Whether or not beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and (B) that the shareholder did not vote for the transaction;

2. State:

(A) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under this subdivision;

(B) A date by which the corporation must receive the form which date may not be fewer than forty nor more than sixty days after the date the appraisal notice and form required by
subsection (a) of this section are sent and state that the share-
holder is deemed to have waived the right to demand appraisal
with respect to the shares unless the form is received by the
corporation by the specified date;

(C) The corporation’s estimate of the fair value of the
shares;

(D) That, if requested in writing, the corporation will
provide, to the shareholder so requesting, within ten days after
the date specified in paragraph (B) of this subdivision the
number of shareholders who return the forms by the specified
date and the total number of shares owned by them; and

(E) The date by which the notice to withdraw under section
one thousand three hundred twenty-three of this article must be
received, which date must be within twenty days after the date
specified in paragraph (B) of this subdivision; and

(3) Be accompanied by a copy of this article.

§31D-13-1323. Perfection of rights; right to withdraw.

(a) A shareholder who receives notice pursuant to section
one thousand three hundred twenty-two of this article and who
wishes to exercise appraisal rights must certify on the form sent
by the corporation whether the beneficial owner of the shares
acquired beneficial ownership of the shares before the date
required to be set forth in the notice pursuant to subdivision (1),
subsection (b), section one thousand three hundred twenty-two
of this article. If a shareholder fails to make this certification,
the corporation may elect to treat the shareholder’s shares as
after-acquired shares under section one thousand three hundred
twenty-five of this article. In addition, a shareholder who
wishes to exercise appraisal rights must execute and return the
form and, in the case of certificated shares, deposit the share-
holder’s certificates in accordance with the terms of the notice
by the date referred to in the notice pursuant to paragraph (B), subdivision (2), subsection (b), section one thousand three hundred twenty-two of this article. Once a shareholder deposits the shareholder’s certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (b) of this section.

(b) A shareholder who has complied with subsection (a) of this section may decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to paragraph (E), subdivision (2), subsection (b), section one thousand three hundred twenty-two of this article. A shareholder who fails to withdraw from the appraisal process by that date may not withdraw without the corporation’s written consent.

(c) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit the shareholder’s share certificates where required, each by the date set forth in the notice described in subsection (b), section one thousand three hundred twenty-two of this article, is not entitled to payment under this article.

§31D-13-1324. Payment.

(a) Except as provided in section one thousand three hundred twenty-five of this article, within thirty days after the form required by paragraph (B), subdivision (2), subsection (b), section one thousand three hundred twenty-two of this article is due, the corporation shall pay in cash to those shareholders who complied with subsection (a), section one thousand three hundred twenty-three of this article the amount the corporation estimates to be the fair value of their shares, plus interest.
(b) The payment to each shareholder pursuant to subsection (a) of this article must be accompanied by:

(1) Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year and the latest available interim financial statements, if any;

(2) A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to paragraph (C), subdivision (2), subsection (b), section one thousand three hundred twenty-two of this article; and

(3) A statement that shareholders described in subsection (a) of this section have the right to demand further payment under section one thousand three hundred twenty-six of this article and that if any shareholder does not make a demand for further payment within the time period specified, shareholder is deemed to have accepted the payment in full satisfaction of the corporation's obligations under this article.


(a) A corporation may elect to withhold payment required by section one thousand three hundred twenty-four of this article from any shareholder who did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subdivision (1), subsection (b), section one thousand three hundred twenty-two of this article.

(b) If the corporation elected to withhold payment under subsection (a) of this section, it must, within thirty days after the form required by paragraph (B), subdivision (2), subsection
(b), section one thousand three hundred twenty-two of this article is due, notify all shareholders who are described in subsection (a) of this section:

(1) Of the information required by subdivision (1), subsection (b), section one thousand three hundred twenty-four of this article;

(2) Of the corporation’s estimate of fair value pursuant to subdivision (2), subsection (b), section one thousand three hundred twenty-four of this article;

(3) That they may accept the corporation’s estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section one thousand three hundred twenty-six of this article;

(4) That those shareholders who wish to accept the offer must notify the corporation of their acceptance of the corporation’s offer within thirty days after receiving the offer; and

(5) That those shareholders who do not satisfy the requirements for demanding appraisal under section one thousand three hundred twenty-six of this article are deemed to have accepted the corporation’s offer.

(c) Within ten days after receiving the shareholder’s acceptance pursuant to subsection (b) of this section, the corporation must pay in cash the amount it offered under subdivision (2), subsection (b) of this section to each shareholder who agreed to accept the corporation’s offer in full satisfaction of the shareholder’s demand.

(d) Within forty days after sending the notice described in subsection (b) of this section, the corporation must pay in cash the amount it offered to pay under subdivision (2), subsection
§31D-13-1326. Procedure if shareholder dissatisfied with payment or offer.

(a) A shareholder paid pursuant to section one thousand three hundred twenty-four of this article who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder’s estimate of the fair value of the shares and demand payment of that estimate plus interest and less any payment due under section one thousand three hundred twenty-four of this article. A shareholder offered payment under section one thousand three hundred twenty-five of this article who is dissatisfied with that offer must reject the offer and demand payment of the shareholder’s stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder’s demand to be paid the shareholder’s stated estimate of the fair value plus interest under subsection (a) of this section within thirty days after receiving the corporation’s payment or offer of payment under sections one thousand three hundred twenty-four or one thousand three hundred twenty-five of this article, respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

PART 3. JUDICIAL APPRAISAL OF SHARES.

§31D-13-1330. Court action.

(a) If a shareholder makes demand for payment under section one thousand three hundred twenty-six of this article which remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment
demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section one thousand three hundred twenty-six of this article plus interest.

(b) The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(c) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(d) Each shareholder made a party to the proceeding is entitled to judgment: (1) For the amount, if any, by which the court finds the fair value of the shareholder’s shares, plus interest, exceeds the amount paid by the corporation to the shareholder for the shares; or (2) for the fair value, plus interest, of the shareholder’s shares for which the corporation elected to withhold payment under section one thousand three hundred twenty-five of this article.

§31D-13-1331. Court costs and counsel fees.

(a) The court in an appraisal proceeding commenced under section one thousand three hundred thirty of this article shall
determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(b) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of section one thousand three hundred twenty, one thousand three hundred twenty-two, one thousand three hundred twenty-four or one thousand three hundred twenty-five of this article; or

(2) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this article.

(c) If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefitted.

(d) To the extent the corporation fails to make a required payment pursuant to section one thousand three hundred twenty-four, one thousand three hundred twenty-five, or one
thousand three hundred twenty-six of this article, the share-
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may sue
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the amount owed and, to the extent
successful, are to be entitled to recover from the corporation all
costs and expenses of the suit, including counsel fees.

ARTICLE 14. DISSOLUTION.

§31D-14-1401. Dissolution by incorporators or initial directors.
§31D-14-1402. Dissolution by board of directors and shareholders.
§31D-14-1403. Articles of dissolution.
§31D-14-1404. Revocation of dissolution.
§31D-14-1405. Effect of dissolution.
§31D-14-1406. Known claims against dissolved corporation.
§31D-14-1407. Unknown claims against dissolved corporation.
§31D-14-1420. Grounds for administrative dissolution.
§31D-14-1421. Procedure for and effect of administrative dissolution.
§31D-14-1422. Reinstatement following administrative dissolution.
§31D-14-1423. Appeal from denial of reinstatement.
§31D-14-1430. Grounds for judicial dissolution.
§31D-14-1431. Procedure for judicial dissolution.
§31D-14-1432. Receivership or custodianship.
§31D-14-1433. Decree of dissolution.
§31D-14-1434. Election to purchase in lieu of dissolution.
§31D-14-1440. Deposit with state treasurer.

PART 1. VOLUNTARY DISSOLUTION.

§31D-14-1401. Dissolution by incorporators or initial directors.

A majority of the incorporators, or initial directors of a
corporation, that has not issued shares or has not commenced
business may dissolve the corporation by delivering to the
secretary of state for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;
(3) Either: (A) That none of the corporation’s shares has been issued; or (B) that the corporation has not commenced business;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(6) That a majority of the incorporators or initial directors authorized the dissolution.

§31D-14-1402. Dissolution by board of directors and shareholders.

(a) A corporation’s board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the shareholders 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 shareholders; and

(2) The shareholders 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 shareholder, whether or not entitled to vote, of the proposed shareholders’ 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, a greater number of shares to be present or a vote by voting groups, adoption of the proposal to dissolve requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

§31D-14-1403. 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 shareholders, a statement that the proposal to dissolve was duly approved by the shareholders 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 chapter eleven of this code, all business and occupation taxes, motor carrier and transportation privilege taxes, gasoline taxes, consumers 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.

§31D-14-1404. 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 shareholder 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 autho-
    rized;

(4) 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 shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If shareholder action was required to revoke the dissolution, the information required by subdivision (3), subsection (a), section one thousand four 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 business as if dissolution had never occurred.

§31D-14-1405. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except those appropriate to wind up and liquidate its business and affairs, including:

(1) Collecting its assets;

(2) Disposing of its properties that will not be distributed in kind to its shareholders;

(3) Discharging or making provision for discharging its liabilities;

(4) Distributing its remaining property among its shareholders according to their interests; and

(5) Doing every other act necessary to wind up and liquidate its business and affairs.
(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation’s property;

(2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation’s share transfer 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 shareholders; 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; or

(7) Terminate the authority of the registered agent of the corporation, if any.

§31D-14-1406. 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.

§31D-14-1407. 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 transacts its business;
(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 four 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 shareholder 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 shareholder’s total liability for all claims under this section may not exceed the total amount of assets distributed to him or her.

PART 2. ADMINISTRATIVE DISSOLUTION.
§31D-14-1420. Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section one thousand four hundred twenty-one of this article to administratively dissolve a corporation if:

1. The corporation does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other law;

2. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued; or

3. The corporation's period of duration stated in its articles of incorporation expires.

§31D-14-1421. Procedure for and effect of administrative dissolution.

(a) If the secretary of state determines that one or more grounds exist under section one thousand four hundred twenty 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
16 certificate and serve a copy on the corporation pursuant to
17 section five hundred four, article five of this chapter.

18 (c) A corporation administratively dissolved continues its
19 corporate existence but may not carry on any business except
20 that necessary to wind up and liquidate its business and affairs
21 under section one thousand four hundred five of this article and
22 notify claimants pursuant to sections one thousand four hundred
23 six and one thousand four hundred seven of this article.

24 (d) The administrative dissolution of a corporation does not
25 terminate the authority of its registered agent.

§31D-14-1422. Reinstatement following administrative dissolu-
1 (a) A corporation administratively dissolved under section
2 one thousand four hundred twenty-one of this article may apply
3 to the secretary of state for reinstatement within two years after
4 the effective date of dissolution. The application must:

5 (1) Recite the name of the corporation and the effective
6 date of its administrative dissolution;

7 (2) State that the ground or grounds for dissolution either
8 did not exist or have been eliminated;

9 (3) State that the corporation’s name satisfies the require-
10 ments of section four hundred one, article four of this chapter;
11 and

12 (4) Contain a certificate from the tax commissioner reciting
13 that all taxes owed by the corporation have been paid.

14 (b) If the secretary of state determines that the application
15 contains the information required by subsection (a) of this
16 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 business
as if the administrative dissolution had never occurred.

§31D-14-1423. Appeal from denial of reinstatement.

(a) If the secretary of state denies a corporation’s applica-
tion 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 dissolu-
tion, 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.

§31D-14-1430. Grounds for judicial dissolution.
The circuit court may dissolve a corporation:

(1) In a proceeding by the attorney general pursuant to section one, article two, chapter fifty-three of this code 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 shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, 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, oppressive or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) 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.

§31D-14-1431. Procedure for judicial dissolution.

(a) It is not necessary to make shareholders 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 corporate assets wherever located and carry on the business of the corporation until a full hearing can be held.

(c) Within ten days of the commencement of a proceeding under subdivision (2), section one thousand four hundred thirty of this article to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner’s shares under section one thousand four hundred thirty-four of this article and accompanied by a copy of section one thousand four hundred thirty-four of this article.

§31D-14-1432. 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
business 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 shareholders 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 shareholders and creditors.

(e) The court, from time to time, during the receivership or
custodianship may order compensation paid and expense
disbursements or reimbursements made to the receiver or
§31D-14-1433. 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 four 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 business and affairs in accordance with section one thousand four hundred five of this article and the notification of claimants in accordance with sections one thousand four hundred six and one thousand four hundred seven of this article.

§31D-14-1434. Election to purchase in lieu of dissolution.

(a) In a proceeding under subdivision (2), section one thousand four hundred thirty of this article to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect, or if it fails to elect, one or more shareholders may elect, to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under subdivision (2), section one thousand
four hundred thirty of this article or at a later time as the court
in its discretion may allow. If the election to purchase is filed
by one or more shareholders, the corporation shall, within ten
days after the filing, give written notice to all shareholders other
than the petitioner. The notice must state the name and number
of shares owned by the petitioner and the name and number of
shares owned by each electing shareholder and must advise the
recipients of their right to join in the election to purchase shares
in accordance with this section. Shareholders who wish to
participate must file notice of their intention to join in the
purchase no later than thirty days after the effective date of the
notice to them. All shareholders who have filed an election or
notice of their intention to participate in the election to purchase
become parties to the proceeding and shall participate in the
purchase in proportion to their ownership of shares as of the
date the first election was filed, unless they otherwise agree or
the court otherwise directs. After an election has been filed by
the corporation or one or more shareholders, the proceeding
under subdivision (2), section one thousand four hundred thirty
of this article may not be discontinued or settled, nor may the
petitioning shareholder sell or otherwise dispose of his or her
shares, unless the court determines that it would be equitable to
the corporation and the shareholders, other than the petitioner,
to permit the discontinuance, settlement, sale or other disposi-

(c) If, within sixty days of the filing of the first election, the
parties reach agreement as to the fair value and terms of
purchase of the petitioner’s shares, the court shall enter an order
directing the purchase of petitioner’s shares upon the terms and
conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as
provided for in subsection (c) of this section, the court, upon
application of any party, shall stay the proceedings entered
pursuant to subdivision (2), section one thousand four hundred
thirty of this article and determine the fair value of the peti-
tioner's shares as of the day before the date on which the
petition under subdivision (2), section one thousand four
hundred thirty of this article was filed or as of another date as
the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court
shall enter an order directing the purchase upon terms and
conditions as the court deems appropriate, which may include
payment of the purchase price in installments, where necessary
in the interests of equity; provision for security to assure
payment of the purchase price and any additional costs, fees
and expenses as may have been awarded; and, if the shares are
to be purchased by shareholders, the allocation of shares among
them. In allocating petitioner's shares among holders of
different classes of shares, the court should attempt to preserve
the existing distribution of voting rights among holders of
different classes insofar as practicable and may direct that
holders of a specific class or classes may not participate in the
purchase. Interest may be allowed at the rate and from the date
determined by the court to be equitable, but if the court finds
that the refusal of the petitioning shareholder to accept an offer
of payment was arbitrary or otherwise not in good faith, no
interest may be allowed. If the court finds that the petitioning
shareholder had probable grounds for relief under paragraph (B)
or (D), subdivision (2), section one thousand four hundred
thirty of this article, it may award to the petitioning shareholder
reasonable fees and expenses of counsel and of any experts
employed by him or her.

(f) Upon entry of an order under subsection (c) or (e) of this
section, the court shall dismiss the petition to dissolve the
corporation under section one thousand four hundred thirty of
this article and the petitioning shareholder no longer has any
rights or status as a shareholder of the corporation, except the
right to receive the amounts awarded to him or her by the order
of the court which is enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) of this section must be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections one thousand four hundred two and one thousand four hundred three of this article, which articles must then be adopted and filed within fifty days. Upon filing of articles of dissolution, the corporation is to be dissolved in accordance with the provisions of sections one thousand four hundred five, one thousand four hundred six and one thousand four hundred seven of this article and the order entered pursuant to subsection (e) of this section no longer has any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of subsection (e) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of fees and expenses pursuant to subsection (e) of this section, is subject to the provisions of section six hundred forty, article six of this chapter.

PART 4. MISCELLANEOUS.

§31D-14-1440. Deposit with state treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder 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 shareholder 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 15. FOREIGN CORPORATIONS.

§31D-15-1508. Change of registered office or registered agent of foreign corporation.

PART 1. CERTIFICATE OF AUTHORITY.


(a) A foreign corporation may not transact business 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 shareholders 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 deemed to be transacting business 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 corporation in this state.

(a) A foreign corporation transacting business 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 transacted business 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.


(a) A foreign corporation may apply for a certificate of authority to transact business 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 five 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 business addresses of its current directors and officers; and

7. Purpose or purposes for transaction of business in West Virginia.

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of section one thousand five hundred three of this article for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.


(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject to the right of the state to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same rights and has the same privileges as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties and liabilities as, a domestic corporation of like character.

(c) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.


(a) If the corporate name of a foreign corporation does not satisfy the requirements of section four hundred one, article
of this chapter, the foreign corporation to obtain or maintain a certificate of authority to transact business 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 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 of another foreign corporation authorized to transact business in this state;

(4) The corporate name of a nonprofit 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 transact business 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 transact business 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 transact business 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 five hundred four of this article.

Each foreign corporation authorized to transact business in this state may continuously maintain in this state:

1 (1) A registered office that may be the same as any of its places of business; and

2 (2) A registered agent who may be:

3 (A) An individual who resides in this state and whose business office is identical with the registered office;

4 (B) A domestic corporation or domestic nonprofit corporation whose business office is identical with the registered office; or

5 (C) A foreign corporation or foreign nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.

§31D-15-1508. Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation authorized to transact business 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 (1) Its name;

2 (2) The mailing address of its current registered office;

3 (3) If the current registered office is to be changed, the mailing address of its new registered office;

4 (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.


(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 registered office discontinued if provided in the statement of registration, on the thirty-first day after the date on which the statement was filed.


(a) The registered agent of a foreign corporation authorized to transact business 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 transacting business in this state under section one thousand five hundred twenty of this article; or

3. Has had its certificate of authority revoked under section one thousand five 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 do or transact business 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 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 doing or transacting business 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 five 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 of the process or notice, with a note endorsed of the time of service or acceptance, and transmit one copy of the process or notice by registered or certified mail, return receipt requested, to the corporation at the address of its principal office, which address shall be stated in the process or notice. The service or acceptance of process or notice is sufficient if the 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
thereon the stamp of the United States postal service that
delivery thereof has been refused and the return receipt or
registered or certified mail is appended to the original process
or notice and filed therewith 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 date thereof. The
court may order continuances as may be reasonable to afford
each defendant opportunity to defend the action or proceedings.

(f) This section does not prescribe the only means, or
necessarily the required means, of serving a foreign corpora-
tion.

PART 2. WITHDRAWAL.


(a) A foreign corporation authorized to transact business in
this state may not withdraw from this state until it obtains a
certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in
this state may apply for a certificate of withdrawal by deliver-
ing an application to the secretary of state for filing. The
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 transacting business in this state and that
it surrenders its authority to transact business 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
transact business 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 subdivi-
sion (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 provi-
sions 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 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 payment, security payments or assessments.

PART 3. REVOCATION OF CERTIFICATE OF AUTHORITY.

1 The secretary of state may commence a proceeding under
2 section one thousand five hundred thirty-one of this article to
3 revoke the certificate of authority of a foreign corporation
4 authorized to transact business 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 of
9 state under section one thousand five hundred eight or one
10 thousand five hundred nine of this article that its registered
11 agent or registered office has changed, that its registered agent
12 has resigned or that its registered office has been discontinued
13 within sixty days of the change, resignation or discontinuance;

14 (3) An incorporator, director, officer or agent of the foreign
15 corporation signed a document he or she knew was false in any
16 material respect with intent that the document be delivered to
17 the secretary of state for filing; or

18 (4) The secretary of state receives a duly authenticated
19 certificate from the secretary of state or other official having
20 custody of corporate records in the state or country under whose
21 law the foreign corporation is incorporated stating that it has
22 been dissolved or disappeared as the result of a merger.


1 (a) If the secretary of state determines that one or more
2 grounds exist under section one thousand five hundred thirty of
3 this article for revocation of a certificate of authority, he or she
4 shall serve the foreign corporation with written notice of his or
5 her determination pursuant to section one thousand five
6 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 five 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 five 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 process to the secretary of the foreign corporation 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 any subsequent communication received from the corporation stating the current mailing address of its principal office or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

(a) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the circuit court within thirty days after service of the certificate of revocation is perfected pursuant to section one thousand five hundred ten of this article. The foreign corporation appeals by petitioning the circuit court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(b) The circuit court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the circuit court considers appropriate.

(c) The circuit court's final decision may be appealed as in other civil proceedings.

ARTICLE 16. RECORDS AND REPORTS.

§31D-16-1601. Corporate records.
§31D-16-1602. Inspection of records by shareholders.
§31D-16-1603. Scope of inspection right.
§31D-16-1604. Court-ordered inspection.
§31D-16-1605. Inspection of records by directors.
§31D-16-1606. Exception to notice requirement.
§31D-16-1620. Financial statements for shareholders.

PART 1. RECORDS.

§31D-16-1601. Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders 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 shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(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 creating one or more classes or series of shares and fixing their relative rights, preferences and limitations if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders’ meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(5) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section one thousand six hundred twenty of this article; and
§31D-16-1602. Inspection of records by shareholders.

(a) A shareholder 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 six 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 shareholder 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 shareholder 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 shareholders and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a), section one thousand six hundred two of this article;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records described in 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) The right of inspection granted by this section may not be abolished or limited by a corporation’s articles of incorporation or bylaws.

(e) This section does not affect:

(1) The right of a shareholder to inspect records under section seven hundred twenty, article seven of this chapter or, if the shareholder 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.

(f) For purposes of this section, “shareholder” includes a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

§31D-16-1603. Scope of inspection right.

(a) A shareholder’s agent or attorney has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under section one thousand six 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 shareholder.
(c) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under subdivision (3), subsection (b), section one thousand six hundred two of this article by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder'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 shareholder. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

§31D-16-1604. Court-ordered inspection.

(a) If a corporation does not allow a shareholder who complies with subsection (a), section one thousand six 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 shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (b) and (c), section one thousand six 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 shareholder'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 shareholder 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 shareholder.

§31D-16-1605. Inspection of records by directors.

(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.
§31D-16-1606. Exception to notice requirement.

(a) Whenever notice is required to be given under any provision of this chapter to any shareholder, notice may not be required to be given if:

(1) Notice of two consecutive annual meetings and all notices of meetings during the period between two consecutive annual meetings have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable; or

(2) All, but not less than two, payments of dividends on securities during a twelve-month period, or two consecutive payments of dividends on securities during a period of more than twelve months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If any shareholder delivers to the corporation a written notice setting forth the shareholder's then-current address, the requirement that notice be given to the shareholder is to be reinstated.

PART 2. REPORTS.

§31D-16-1620. Financial statements for shareholders.

(a) Unless unanimously waived by the shareholders, a corporation shall furnish its shareholders 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, an income statement for that year and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the
10 basis of generally accepted accounting principles, the annual
11 financial statements must also be prepared on that basis.

12 (b) If the annual financial statements are reported upon by
13 a public accountant, his or her report must accompany them. If
14 not, the statements must be accompanied by a statement of the
15 president or the person responsible for the corporation's
16 accounting records:

17 (1) Stating his or her reasonable belief whether the state-
18 ments were prepared on the basis of generally accepted ac-
19 counting principles and, if not, describing the basis of prepara-
20 tion; and

21 (2) Describing any respects in which the statements were
22 not prepared on a basis of accounting consistent with the
23 statements prepared for the preceding year.

24 (c) A corporation shall mail the annual financial statements
25 to each shareholder within one hundred twenty days after the
26 close of each fiscal year. On written request from a shareholder
27 who was not mailed the statements, the corporation shall mail
28 him or her the latest financial statements.

ARTICLE 17. TRANSITION PROVISIONS.

§31D-17-1701. Application to existing domestic corporations.
§31D-17-1702. Application to qualified foreign corporations.
§31D-17-1703. Effective date.

§31D-17-1701. 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 corporations for profit.
§31D-17-1702. Application to qualified foreign corporations.

1. 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.

§31D-17-1703. Effective date.

1. This chapter takes effect the first day of October, two thousand two.

CHAPTER 26

(H.B. 203 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 11, 2002; in effect August 1, 2002. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting from consumers sales and service tax sales of food and tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under section 501(c)(3) or (4) of the United States Internal Revenue Code of 1986, as amended, during fund raising activities conducted after specified date, when the purpose of the fund raising activity is to obtain revenue for functions and activities of the department or squad and revenue so raised is exempt from federal income tax and actually expended for that purpose.

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

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**


(a) *Exemptions for which exemption certificate may be issued.* — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the tax commissioner, and deliver it to the vendor of the property or service, in the manner required by the tax commissioner. However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemptions certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

1. Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

2. Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education and the arts, the board of trustees of the university system of West Virginia or the board of directors for colleges located in this state;

3. Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: *Provided,* That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies...
26 of federal, state or local governments for distribution in public
27 welfare or relief work;

28 (4) Sales of vehicles which are titled by the division of
29 motor vehicles and which are subject to the tax imposed by
30 section four, article three, chapter seventeen-a of this code or
31 like tax;

32 (5) Sales of property or services to churches which make no
33 charge whatsoever for the services they render: Provided, That
34 the exemption granted in this subdivision applies only to
35 services, equipment, supplies, food for meals and materials
36 directly used or consumed by these organizations and does not
37 apply to purchases of gasoline or special fuel;

38 (6) Sales of tangible personal property or services to a
39 corporation or organization which has a current registration
40 certificate issued under article twelve of this chapter, which is
41 exempt from federal income taxes under Section 501(c)(3) or
42 (c)(4) of the Internal Revenue Code of 1986, as amended, and
43 which is:

44 (A) A church or a convention or association of churches as
45 defined in Section 170 of the Internal Revenue Code of 1986,
46 as amended;

47 (B) An elementary or secondary school which maintains a
48 regular faculty and curriculum and has a regularly enrolled
49 body of pupils or students in attendance at the place in this state
50 where its educational activities are regularly carried on;

51 (C) A corporation or organization which annually receives
52 more than one half of its support from any combination of gifts,
53 grants, direct or indirect charitable contributions or membership
54 fees;
(D) An organization which has no paid employees and its gross income from fund raisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the girl scouts of the United States of America, the boy scouts of America or the YMCA Indian guide/princess program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term “support” includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;

(II) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;
(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of an exemption from any federal, state or local tax or any similar benefit;

(ii) The term “charitable contribution” means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term “membership fee” does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine:

Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel;
(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: Provided, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The tax commissioner may propose a legislative rule for promulgation pursuant to article three, chapter twenty-nine-a of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: Provided, however, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that
person or his or her agent into any real property, building or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(12) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services:

(A) For purposes of this subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fund raisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection on its purchases, from payment of the tax imposed by this article on its purchases, when the fund raisers are of limited duration and are held no more than six times during any twelve-month period and “limited duration” means no more than eighty-four consecutive hours; and

(B) The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;
(15) Sales of property or services to a school which has approval from the board of trustees of the university system of West Virginia or the board of directors of the state college system to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel are taxable;

(16) Sales of mobile homes to be used by purchasers as their principal year-round residence and dwelling: Provided, That these mobile homes are subject to tax at the three-percent rate;

(17) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(18) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. This exemption applies to leases executed on or after the first day of July, one thousand nine hundred eighty-seven, and to payments under long-term leases executed before that date for months of the lease beginning on or after that date;

(19) Notwithstanding the provisions of section eighteen of this article or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the tax commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accor-
dance with chapter twenty-nine-a of this code by the tax commissioner;

(20) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U.S.C. §2011 et seq., as amended, or with drafts issued through the West Virginia special supplement food program for women, infants and children codified in 42 U.S.C. §1786;

(21) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(22) Sales of electronic data processing services and related software: Provided, That, for the purposes of this subdivision, “electronic data processing services” means: (A) The processing of another’s data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (B) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(23) Tuition charged for attending educational summer camps;

(24) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty
percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

(25) Food for the following are exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;
(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying on those functions and activities: Provided, That purchases made by the organizations are not exempt as a purchase for resale;

(G) Food sold after the thirty-first day of July, two thousand two, by volunteer fire departments and rescue squads that are exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(26) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters or other school or athletic booster organizations supporting activities for grades kindergarten through twelve and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That the purchases made by the organizations are not exempt as a purchase for resale;
(27) Charges for room and meals by fraternities and sororities to their members: Provided, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(28) Sales of or charges for the transportation of passengers in interstate commerce;

(29) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state;

(30) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of any other chapter of this code;

(31) Charges for the services of opening and closing a burial lot;

(32) Sales of livestock, poultry or other farm products in their original state by the producer of the livestock, poultry or other farm products or a member of the producer’s immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: Provided, That the exemptions allowed by this subdivision apply to sales made on or after the first day of July, one thousand nine hundred ninety, and may be claimed without presenting or obtaining exemption certificates: Provided, however, That the farmer shall maintain adequate records;

(33) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the
business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the tax commissioner: Provided, That the exemption provided in this subdivision applies to sales made on or after the first day of July, one thousand nine hundred ninety, and may be claimed by presenting to the seller a properly executed exemption certificate;

(34) Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools or equipment, directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity;

(35) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(36) Sales of services by individuals who baby-sit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed five thousand dollars in a taxable year;

(37) Sales of services after the thirtieth day of June, one thousand nine hundred ninety-seven, by public libraries or by
(38) Commissions received after the thirtieth day of June, one thousand nine hundred ninety-seven, by a manufacturer's representative;

(39) Sales of primary opinion research services after the thirtieth day of June, one thousand nine hundred ninety-seven, when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term "primary opinion research" means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly used for quantitative and qualitative opinion research studies;

(40) Sales of property or services after the thirtieth day of June, one thousand nine hundred ninety-seven, to persons within the state when those sales are for the purposes of the production of value-added products: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be
claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use: For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked or frozen product;

(41) After the thirtieth day of June, one thousand nine hundred ninety-seven, sales of music instructional services by a music teacher and artistic services or artistic performances of
an entertainer or performing artist pursuant to a contract with
the owner or operator of a retail establishment, restaurant, inn,
bar, tavern, sports or other entertainment facility or any other
business location in this state in which the public or a limited
portion of the public may assemble to hear or see musical
works or other artistic works be performed for the enjoyment of
the members of the public there assembled when the amount
paid by the owner or operator for the artistic service or artistic
performance does not exceed three thousand dollars: Provided,
That nothing contained herein may be construed to deprive
private social gatherings, weddings or other private parties from
asserting the exemption set forth in this subdivision. For the
purposes of this exemption, artistic performance or artistic
service means and is limited to the conscious use of creative
power, imagination and skill in the creation of aesthetic
experience for an audience present and in attendance and
includes, and is limited to, stage plays, musical performances,
poetry recitations and other readings, dance presentation,
circuses and similar presentations and does not include the
showing of any film or moving picture, gallery presentations of
sculptural or pictorial art, nude or strip show presentations,
video games, video arcades, carnival rides, radio or television
shows or any video or audio taped presentations or the sale or
leasing of video or audio tapes, airshows, or any other public
meeting, display or show other than those specified herein:
Provided, however, That nothing contained herein may be
construed to exempt the sales of tickets from the tax imposed in
this article. The state tax commissioner shall propose a legisla-
tive rule pursuant to article three, chapter twenty-nine-a of this
code establishing definitions and eligibility criteria for asserting
this exemption which is not inconsistent with the provisions set
forth herein: Provided further, That nude dancers or strippers
may not be considered as entertainers for the purposes of this exemption;
(42) After the thirtieth day of June, one thousand nine hundred ninety-seven, charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(43) Sales of governmental services or governmental materials after the thirtieth day of June, one thousand nine hundred ninety-seven, by county assessors, county sheriffs,
491 county clerks or circuit clerks in the normal course of local
government operations;

493 (44) Direct or subscription sales by the division of natural
resources of the magazine currently entitled “Wonderful West
Virginia” and by the division of culture and history of the
magazine currently entitled “Goldenseal” and the journal
currently entitled “West Virginia History”;

498 (45) Sales of soap to be used at car wash facilities;

499 (46) Commissions received by a travel agency from an
out-of-state vendor;

501 (47) 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. 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 such services that
are separately billed to the purchaser of such services, and on
which the tax imposed by this article has previously been paid
by the service provider; and

513 (48) Sales of tangible personal property and services by
volunteer fire departments and rescue squads that are exempt
from federal income taxes under Section 501(c)(3) or (c)(4) of
the Internal Revenue Code of 1986, as amended, during fund
raising activities held after the thirty-first day of July, two
thousand two, if the sole purpose of the sale is to obtain revenue
for the functions and activities of the organization and the
revenue obtained is exempt from federal income tax and
actually expended for that purpose.
(b) *Refundable exemptions.* — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: *Provided,* That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: *Provided,* That sales of gasoline and special fuel are taxable;

(4) Sales and services, firefighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the
laws of the state of West Virginia: *Provided*, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.

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CHAPTER 27

(S. B. 2001 — By Senators Tomblin, Mr. President, and Sprouse)

[By Request of the Executive]

[Passed June 10, 2002; in effect from passage. Approved by the Governor.]
mended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing board of accountancy to promulgate legislative rule relating to board and rules of professional conduct; authorizing commissioner of agriculture to promulgate legislative rule relating to animal disease control; authorizing commissioner of agriculture to promulgate legislative rule relating to state aid for fairs and festivals; authorizing commissioner of agriculture to promulgate legislative rule relating to schedule of charges for inspection services—fruit; authorizing commissioner of agriculture to promulgate legislative rule relating to controlled atmosphere for storage of apples; authorizing athletic commission to promulgate legislative rule relating to commission; authorizing auditor to promulgate legislative rule relating to transaction fee and rate structure; authorizing contractor licensing board to promulgate legislative rule relating to complaints; authorizing board of licensed dietitians to promulgate legislative rule relating to licensure and renewal requirements; authorizing board of licensed dietitians to promulgate legislative rule relating to code of professional ethics; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rule relating to protocol for law-enforcement response to domestic violence; authorizing human rights commission to promulgate legislative rule relating to waiver of rights under West Virginia human rights act; authorizing human rights commission to promulgate legislative rule relating to definition of employee under West Virginia human rights act; authorizing board of examiners of land surveyors to promulgate legislative rule relating to rules and minimum standards for practice of land surveying in West Virginia; authorizing board of examiners of land surveyors to promulgate legislative rule relating to manda-
tory continuing education for land surveyors; authorizing board of optometry to promulgate legislative rule relating to board; authorizing board of optometry to promulgate legislative rule relating to expanded prescriptive authority; authorizing board of optometry to promulgate legislative rule relating to schedule of fees; authorizing board of pharmacy to promulgate legislative rule relating to board; authorizing board of pharmacy to promulgate legislative rule relating to continuing education for licensure of pharmacists; authorizing radiologic technology board of examiners to promulgate legislative rule relating to board; authorizing real estate appraiser licensing and certification board to promulgate legislative rule relating to requirements for licensure and certification; authorizing real estate appraiser licensing and certification board to promulgate legislative rule relating to renewal of licensure or certification; authorizing board of examiners for registered professional nurses to promulgate legislative rule relating to requirements for registration and licensure; authorizing board of examiners for registered professional nurses to promulgate legislative rule relating to fees; authorizing secretary of state to promulgate legislative rule relating to use of electronic signatures by state agencies; authorizing secretary of state to promulgate legislative rule relating to registry requirements; authorizing secretary of state to promulgate legislative rule relating to uniform commercial code, revised article nine; repealing a secretary of state legislative rule relating to use of digital signatures, state certification authority and state repository; authorizing board of social work examiners to promulgate legislative rule relating to qualifications for licensure as social worker; authorizing board of social work examiners to promulgate legislative rule relating to fee schedule; authorizing board of examiners for speech-language pathology and audiology to promulgate legislative rule relating to licensure of speech-language pathology and audiology; and authorizing board of veterinary medicine to promulgate legislative rule relating to registration of veterinary technicians.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of accountancy.
§64-9-5. Contractor licensing board.
§64-9-6. Board of licensed dietitians.
§64-9-7. Governor’s committee on crime, delinquency and correction.
§64-9-10. Board of optometry.
§64-9-12. Radiologic technology board of examiners.
§64-9-14. Board of examiners of registered professional nurses.
§64-9-15. Secretary of state.
§64-9-16. Board of social work examiners.
§64-9-17. Board of examiners for speech-language pathology and audiology.

§64-9-1. Board of accountancy.

The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section five, article nine, chapter thirty of this code, modified by the board of accountancy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of November, two thousand one, relating to the board of accountancy (board rules and rules of professional conduct, 1 CSR 1), is authorized.

(a) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand one, authorized under the authority of section four, article one, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of August, two thousand one, relating to the commissioner of agriculture (animal disease control, 61 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand one, authorized under the authority of section eleven, article seven, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of September, two thousand one, relating to the commissioner of agriculture (state aid for fairs and festivals, 61 CSR 3), is authorized.

(c) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of section ten, article two, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of August, two thousand one, relating to the commissioner of agriculture (schedule of charges for inspection services: fruit, 61 CSR 8B), is authorized.

(d) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of section three, article five-a, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of August, two thousand one, relating to the commissioner of agriculture

1 The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section twenty-four, article five-a, chapter twenty-nine of this code, modified by the athletic commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, two thousand two, relating to the athletic commission (administrative rule of the commission, 177 CSR 1), is authorized.


1 The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, authorized under the authority of section ten-c, article three, chapter twelve of this code, modified by the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of September, two thousand one, relating to the auditor (transaction fee and rate structure, 155 CSR 4), is authorized.

§64-9-5. Contractor licensing board.

1 The legislative rule filed in the state register on the sixth day of June, two thousand one, under the authority of section fourteen, article eleven, chapter twenty-one of this code, modified by the contractor licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of August, two thousand one, relating to the contractor licensing board (West Virginia contractor licensing board - complaints, 28 CSR 3), is authorized with the amendments set forth below:
On page 5, after subsection 6.7 by adding a new section 7, to read as follows:

"§28-3-7. Alternate dispute resolution.

7.1 The board may on its own motion or by stipulation of the parties refer any complaint to mediation: Provided, That complaints demonstrating probable cause of the existence of imminent safety and/or health hazards may not be referred to mediation.

7.2 The board may maintain a list of mediators with expertise in professional and occupational licensing matters or may obtain a list of qualified mediators from the West Virginia center for dispute resolution or the West Virginia state bar mediator referral service. Division staff may be utilized to prepare any mediation agreement.

7.3 A notice of the mediation must be provided to the parties by certified mail at least twenty days in advance of the mediation date. The notice must contain the time, date and location of the mediation and the issues to be mediated.

7.4 The mediation is not considered a proceeding open to the public and any reports and records introduced at the mediation are not part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the complaint matter mediated: Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of the mediation may be used in any proceeding subsequently instituted to enforce the written agreement. The agreement may be used in other proceedings if the parties agree to the use in writing.
30 7.5 The written agreement made and signed by the parties as a result of the mediation is binding and must list the issues resolved, the corrective actions, if any, agreed to, with time frames and any issues not resolved at the mediation.

34 7.6 A mediated agreement under the provisions of this section does not waive a contractor's potential liability for board disciplinary action if the board determines that the contractor has violated any provision of West Virginia code §21-11-1, *et seq.*, or legislative rules promulgated pursuant to that article.

40 7.7 Any issues not resolved at mediation are returned to the board for formal hearing pursuant to the provisions of section 6 of this rule.”;

43 And,

44 By renumbering the remaining section of the rule.

§64-9-6. Board of licensed dietitians.

1 (a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section four, article thirty-five, chapter thirty of this code, modified by the board of licensed dietitians to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, two thousand one, relating to the board of licensed dietitians (licensure and renewal requirements, 31 CSR 1), is authorized with the following amendments:

10 On page three, section nine, section 9.1.6, after the words “confidential communication” by inserting the words “with a client or patient”; and,
On page three, beginning with section 9.1.7., by striking out the remainder of the rule and inserting in lieu thereof the following:

9.1.7. Demonstrated a lack of professional competence to practice medical nutrition therapy or other nutrition or dietetic-related services with a reasonable degree of skill and safety for patients;

9.1.8. Been convicted of or found guilty of a crime in any jurisdiction which directly relates to the practice of medical nutrition therapy or other nutrition or dietetic-related services. A plea of nolo contendere may be considered conviction for the purposes of this rule;

9.1.9. Failed to report to the Board any person whom the licensee knows is in violation of this rule or of provisions of article thirty-five of chapter thirty of the West Virginia code;

9.1.10. Aided, assisted, procured or advised any unlicensed person to practice as a licensed dietitian contrary to this rule or provisions of article thirty-five of chapter thirty of the West Virginia code;

9.1.11. Failed to perform any statutory or legal obligation placed upon a licensed dietitian;

9.1.12. Made or filed a report which the licensee knows to be false, or intentionally or negligently failed to file a report or record required by state or federal law;

9.1.13. Paid or received any commission, bonus, rebate or other financial incentive, or engaged in any split-fee arrangement with any organization, agency or person, for referring patients to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, renal dialysis facilities or pharmacies;
9.1.14. Exercised influence on a patient or client for purposes of exploiting for financial gain or engaging in sexual activity;

9.1.15. Failed to keep written records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and treatment;

9.1.16. Engaged in false or deceptive advertising; advertised, practiced or attempted to practice under a name other than his or her own; charged or collected any fee for any type of services rendered within forty-eight (48) hours of the initial visit, if the licensee advertised free consultation or treatment;

9.1.17. Charged an excessive or unconscionable fee. If the Board finds that an excessive or unconscionable fee has been charged and collected, the Board may require the licensee to reduce or reimburse the fee. Factors to be considered in determining the reasonableness of a fee include the following:

9.1.17.1. The time and effort required;

9.1.17.2. The novelty and difficulty of the procedure or treatment;

9.1.17.3. The skill required to perform the procedure or treatment properly;

9.1.17.4. Any requirements or conditions imposed by the patient or circumstances;

9.1.17.5. The nature and length of the professional relationship with the patient;

9.1.17.6. The experience, reputation and ability of the licensee; and
9.1.17.7. The nature of the circumstances under which the services are provided."

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section four, article thirty-five, chapter thirty of this code, modified by the board of licensed dietitians to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, two thousand one, relating to the board of licensed dietitians (code of professional ethics, 31 CSR 2), is authorized with the following amendment:

On page one, section two, by striking out subsection 2.5 in its entirety.

§64-9-7. Governor’s committee on crime, delinquency and correction.

The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of section nine, article two-a, chapter forty-eight of this code, modified by governor’s committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, two thousand one, relating to the governor’s committee on crime, delinquency and correction (protocol for law-enforcement response to domestic violence, 149 CSR 3), is authorized.


(a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section eight, article eleven, chapter five of this code, modified by the human rights commission to meet the objections of the legislative rule-making review committee and
refiled in the state register on the fifteenth day of January, two thousand two, relating to the human rights commission (waiver of rights under the West Virginia human rights act, 77 CSR 6), is authorized.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section eight, article eleven, chapter five of this code, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, two thousand two, relating to the human rights commission (definition of employee under the West Virginia human rights act, 77 CSR 7), is authorized.


(a) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section four, article thirteen-a, chapter thirty of this code, modified by the board of examiners of land surveyors to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of November, two thousand one, relating to the board of examiners of land surveyors (rules and minimum standards for the practice of land surveying in West Virginia, 23 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, under the authority of section four, article thirteen-a, chapter thirty of this code, modified by the board of examiners of land surveyors to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of November, two thousand one, relating to the board of
§64-9-10. Board of optometry.

(a) The legislative rule filed in the state register on the eighteenth day of July, two thousand one, under the authority of section three, article eight, chapter thirty of this code, modified by the board of optometry to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of November, two thousand one, relating to the board of optometry (rules of the board, 14 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand one, authorized under the authority of sections two-a and two-b, article eight, chapter thirty of this code, modified by the board of optometry to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, two thousand two, relating to the board of optometry (expanded prescriptive authority, 14 CSR 2), is authorized.

(c) The legislative rule filed in the state register on the eighteenth day of July, two thousand one, authorized under the authority of section three, article eight, chapter thirty of this code, modified by the board of optometry to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of September, two thousand one, relating to the board of optometry (schedule of fees, 14 CSR 5), is authorized.


(a) The legislative rule filed in the state register on the tenth day of October, two thousand one, authorized under the authority of section nine-a, article five, chapter thirty of this
code, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, two thousand two, relating to the board of pharmacy (rules of the board of pharmacy, 15 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the tenth day of October, two thousand one, authorized under the authority of section nine, article five, chapter thirty of this code, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, two thousand two, relating to the board of pharmacy (continuing education for the licensure of pharmacists, 15 CSR 3), is authorized.

§64-9-12. Radiologic technology board of examiners.

The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, under the authority of section five, article twenty-three, chapter thirty of this code, modified by the board of examiners of radiologic technology to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of August, two thousand one, relating to the board of examiners of radiologic technology (rules of the board, 18 CSR 1), is authorized.


(a) The legislative rule filed in the state register on the second day of July, two thousand one, under the authority of section nine, article thirty-eight, chapter thirty of this code, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of August, two thousand one, relating to the real estate appraiser licensing and certification board (requirements
§64-9-14. Board of examiners of registered professional nurses.

(a) The legislative rule filed in the state register on the thirtieth day of July, two thousand one, authorized under the authority of section four, article seven, chapter thirty of this code, modified by the board of examiners for registered professional nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of November, two thousand one, relating to the board of examiners for registered professional nurses (requirements for registration and licensure, 19 CSR 3), is authorized with the following amendment:

On page twenty-one, section 14.1.ii, following the words "failed to disclose", by striking out the words "to the board"
and inserting in lieu thereof the words "information when
required by the board concerning".

(b) The legislative rule filed in the state register on the
twenty-seventh day of July, two thousand one, authorized under
the authority of section four, article seven, chapter thirty of this
code, relating to the board of examiners for registered profes-
sional nurses (fees, 19 CSR 12), is authorized.

§64-9-15. Secretary of state.

(a) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand one, authorized under
the authority of section three, article three, chapter thirty-nine-a
of this code, modified by the secretary of state to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the tenth day of October, two
thousand one, relating to the secretary of state (use of digital
signatures, state certification authority and state repository, 153
CSR 30), is authorized.

(b) The legislative rule filed in the state register on the
twenty-seventh day of July, two thousand one, authorized under
the authority of section four hundred two, article two, chapter
forty-eight of this code, modified by the secretary of state to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the second day of
November, two thousand one, relating to the secretary of state
(registry requirements, 153 CSR 32), is authorized.

(c) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand one, authorized under
the authority of section five hundred twenty-six, article nine,
chapter forty-six of this code, modified by the secretary of state
to meet the objections of the legislative rule-making review
committee and refiled in the state register on the fifteenth day of January, two thousand two, relating to the secretary of state (uniform commercial code, revised article nine, 153 CSR 35), is authorized.

(d) The legislative rule effective the first day of April, one thousand nine hundred ninety-nine, authorized under the authority of section four, article five, chapter thirty-nine of this code (use of digital signatures, state certification authority and state repository, 153 CSR 31), is repealed.

§64-9-16. Board of social work examiners.

(a) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, under the authority of section three, article thirty, chapter thirty of this code, modified by the board of social work examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of October, two thousand one, relating to the board of social work examiners (qualifications for licensure as a social worker, 25 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand one, under the authority of section three, article thirty, chapter thirty of this code, relating to the board of social work examiners (fee schedule, 25 CSR 3), is authorized.

§64-9-17. Board of examiners for speech-language pathology and audiology.

The legislative rule filed in the state register on the thirtieth day of July, two thousand one, under the authority of section ten, article thirty-two, chapter thirty of this code, modified by the board of examiners for speech-language pathology and
audiology to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of December, two thousand one, relating to the board of examiners for speech-language pathology and audiology (licensure of speech-language pathology and audiology, 29 CSR 1), is authorized.


The legislative rule filed in the state register on the thirty-first day of August, two thousand one, authorized under the authority of section four, article ten, chapter thirty of this code, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of December, two thousand one, relating to the board of veterinary medicine (registration of veterinary technicians, 26 CSR 3), is authorized with the amendments set forth below:

On page two, section three, subsection 3.4, subdivision b., following the words "convicted of a felony", by striking out the words "or other crime involving moral turpitude" and inserting in lieu thereof the words "offense relating to controlled substances";

On page two, section three, subsection 3.7, following the words "office of the veterinary facility", by striking out the words "of the person to whom it is issued" and inserting in lieu thereof the words "where the veterinary technician is employed";

On page three, section three, subsection 3.10, subdivision h., following the words "has an adjudication of", by striking out the word "insanity" and inserting in lieu thereof the words "mental incompetency;";
24 On page five, section 3.14.1, line three, after the words "such registration" by inserting the words "without examination";

27 On page five, section 3.14.1, line four, after the words "registration ended" by deleting the period and inserting the words "by providing to the Board:

30 a. Proof of employment under the direct supervision of a licensed veterinarian during each of the years not renewed.

32 b. Proof of having met the continuing education requirement of a minimum of six hours of classroom continuing education in an approved program during each of the years not renewed. Each year's continuing education is to renew for the subsequent year.

37 c. Payment of all delinquent fees from the last renewal date to the current renewal period."

39 And,

40 On page 6, section 14.2, after the words "the registration examinations." by striking out the remainder of the subdivision.

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CHAPTER 28

(S. B. 2002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 10, 2002; in effect from passage. Approved by the Governor.]
AN ACT to amend article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to legislative rules of the department of environmental protection; authorizing promulgation of a legislative rule relating to surface mining and reclamation; and making a technical correction to a legislative rule relating to water quality standards and implementation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1a. Supplemental rule authorization.

(a) The legislative rule filed in the state register on the nineteenth day of April, two thousand two, authorized under the authority of section four, article three, chapter twenty-two of this code, relating to the department of environmental protection (surface mining and reclamation, 38 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the second day of July, two thousand one, authorized under the authority of section seven-b, article eleven, chapter twenty-two of this code, relating to the department of environmental protection (antidegradation implementation procedures, 60 CSR 5), is reauthorized with the following amendment:
On page two, subsection 2.6 after the words "46 CSR 1-2" by adding the following words: "effective May 17, 2001".

CHAPTER 29

(S. B. 2003 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]

(Passed June 11, 2002; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section four, article seven, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of the public service commission concerning property acquisitions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. HEADQUARTERS.

§24-7-4. Legislative findings; authority to acquire further properties.

(a) The Legislature hereby finds that the public service commission should be authorized to acquire and manage further properties contiguous with its existing property at 201 Brooks street in Charleston, West Virginia, and to make improvements on the property necessary to ensure the efficient operations of the commission's business. Furthermore, the Legislature finds that the public service commission should be given the neces-
sary authority to enter into agreements with other entities concerning financing and use of the acquisitions. The Legislature further finds that the commission should be allowed to pay for the acquisitions using excess funds from the special revenues received by the commission pursuant to section six, article three of this chapter and from funds received by the use of the properties.

(b) The public service commission may contract to acquire, lease, rent, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights of any property, real or personal, contiguous with its existing property at 201 Brooks street in Charleston, West Virginia, consistent with the objectives of the commission as set forth in this chapter.

(c) The public service commission may enter into contracts, agreements or other undertakings with other appropriate entities concerning the financing and use of property acquisitions.

(d) The public service commission may pay for property acquisitions and related activities from excess funds obtained from the commission’s assessments upon utility gross revenue and property as provided for in section six, article three of this chapter. Furthermore, the commission may receive funds from other entities through the use and management of its properties and use those funds for the payment of the property acquisitions. Any contracts, agreements or other undertakings relating to property acquisitions pursuant to provisions of this section shall be entered into prior to the thirty-first day of December, two thousand four.

(e) Expenditures for any purpose set forth in this section may be made only pursuant to legislative appropriation expressly authorizing by line item expenditure for the specific purpose. Notwithstanding any provision of section eighteen,
article two, chapter five-a of this code to the contrary, no
increase in the amount of the appropriation may be authorized.

CHAPTER 30

(H. B. 204 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 10, 2002; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reestablishing the board of licensed dietitians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 35. BOARD OF DIETITIANS.

§30-35-15. Continuation of board.

1 The board of licensed dietitians is reestablished pursuant to the provisions of section six, article ten, chapter four of this code, and shall terminate on the first day of July, two thousand six, unless sooner terminated, continued or reestablished pursuant to that article.
AN ACT to amend and reenact section sixteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections nine, eighteen and twenty-one, article thirteen-q of said chapter; to amend and reenact sections six, nine and eleven, article thirteen-r of said chapter; and to amend and reenact sections four, eight and ten, article thirteen-s of said chapter, all relating generally to tax credits for particular business activity; providing five percentage point increase over allowable new jobs percentage under economic opportunity credit when new business facility or expansion of existing facility is constructed under specified circumstances; requiring persons who claim economic opportunity credit, strategic research and development credit or manufacturing investment credit to report additional information pertaining to new jobs created, including types of jobs created, duration of jobs created, average wages and benefits paid to person filling new jobs; specifying transition rules for certain multiple-year business investment and jobs expansion tax credit projects; specifying notice requirements relating to claim of transition rule status; requiring that application for economic opportunity tax credit be filed with tax commissioner by prescribed date and specifying records’ maintenance and retention requirements; requiring that application for strategic research and development tax credit be filed with tax commissioner by prescribed date and specifying records’ maintenance and retention requirements;
requiring that application for manufacturing investment tax credit be filed with tax commissioner by prescribed date; and specifying records' maintenance and retention requirements.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended and reenacted; that sections nine, eighteen and twenty-one, article thirteen-q of said chapter be amended and reenacted; that sections six, nine and eleven, article thirteen-r of said chapter be amended and reenacted; and that sections four, eight and ten, article thirteen-s of said chapter be amended and reenacted, all to read as follows:

Article
13C. Business Investment and Jobs Expansion Tax Credit.
13Q. Economic Opportunity Tax Credit.
13R. Strategic Research and Development Tax Credit.
13S. Manufacturing Investment Tax Credit.

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, inclusive, 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 is part of a project described in subdivision (1), subsection (a), section four-b of this article, for which the multiple year project investment period had commenced, but had not yet closed on or before the first day of January, two thousand three, and the new or expanded business facility constitutes or includes property placed in service or use prior to closure of the multiple year project investment period allowed for the project that is:

(i) Property constructed for a multiple year project certified before the first day of January, two thousand three, in accordance with section four-b of this article: Provided, That only that portion of the contract price attributable to that percentage of the construction contract completed prior to the last day of the multiple year project investment period (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 last day of the multiple year project investment period allowed
pursuant to subdivision (1), subsection (a), section four-b of this article, may be treated as property purchased for business expansion under section six of this article;

(ii) A new or expanded business facility purchased or leased for a multiple year project certified before the first day of January, two thousand three, in accordance with section four-b of this article; or

(iii) Machinery or equipment or other tangible personal property purchased or leased for a multiple year project certified before the first day of January, two thousand three, in accordance with section four-b of this article.

For purposes of this paragraph, the multiple year project investment period will be treated as having commenced if the taxpayer has placed the qualified investment into service or use in accordance with section four of this article. A multiple year project period will not be treated as having commenced merely as a result of the issuance of certification of a project under section four-b of this article. No entitlement to any tax credit under this paragraph may result from, and no credit is available to any taxpayer for, investment placed in service or use after closure of the multiple year project investment period for which certification has been issued.

(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 manag-
ing project participant on behalf of all participants in the
project. Notice is to be in a form prescribed by the tax commis-
sioner and all information required by the form is to be pro-
vided.

(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 article thirteen-c 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. For purposes of this section, notice,
in proper and complete form, timely filed under section twenty-
one, article thirteen-q of this chapter, fulfills the filing require-
ment of this section if that filing addresses the same qualified
investment for which notice would be required under this
section.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-18. Burden of proof; application required; failure to make timely applica-
tion.
§11-13Q-21. Effective date; election; notice of claim or election under transition
rules.

(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>If number of new jobs is at least:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>20%</td>
</tr>
<tr>
<td>280</td>
<td>25%</td>
</tr>
<tr>
<td>520</td>
<td>30%</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) of this section 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 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.
(g) Additional new jobs percentage. — When the qualified investment is twenty million dollars or more and the new or expanded business facility is constructed using construction laborers and mechanics who are paid an average wage equal to or greater than the prevailing wage for their respective classes of work determined under chapter twenty-one of this code, then, if the number of full-time construction laborers and mechanics working at the job site of the new or expanded business facility is seventy-five or more, or if the number of hours of all construction laborers and mechanics working at the job site is equal to or greater than the number of hours seventy-five full-time construction laborers and mechanics would have worked at the job site during a twelve consecutive month period, a taxpayer that is allowed a new jobs percentage determined under subsection (a) of this section shall be allowed a new jobs percentage that is five percentage points higher than the new jobs percentage allowed under subsection (a) of this section. In no event may construction laborers and mechanics be used to attain or retain a subsection (a) new jobs percentage. The number of full-time construction laborers and mechanics working at the job site shall be determined by dividing the total number of hours worked by all construction laborers and mechanics on a new or expanded business facility during a twelve consecutive month period by two thousand eighty hours per year. A taxpayer may not claim the additional new jobs percentage allowed by this section unless the taxpayer includes with the certification filed under subsection (d) of this section a certification signed by the general contractor or the construction manager certifying that construction laborers employed at the job site during a consecutive twelve month period aggregated the equivalent of at least seventy-five full-time employees and the taxpayer has received from the general contractor or construction manager records substantiating the certification, which records shall be retained by the taxpayer for thirteen years after the day the expansion to an existing business facility, or the new business facility, is first placed in service or
use by the taxpayer. For purposes of subsection (g) of this section:

(1) The term “construction laborers and mechanics” means those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature, including those workers who use tools or are performing the work of a trade, as distinguished from mental or managerial and working foremen who devote more than twenty percent of their time during a workweek performing the duties of a laborer or mechanic; and

(2) The term “job site” is limited to the physical place or places where the construction called for in the contract will remain when the work on it is completed and nearby property, as described in subdivision (3) of this subsection, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the “site”.

(3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters and tool yards are part of the “job site” provided they are dedicated exclusively, or nearly so, to performance of the contract or project and are located in proximity to the actual construction location so that it would be reasonable to include them.

(4) The term “job site” does not include permanent home offices, branch offices, branch plant establishments, fabrication yards or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined without regard to the contract or subcontract for construction of a new or expanded business facility.

§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 may be 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, in the form prescribed by the tax commissioner, no later than the last day for filing the tax returns, determined by including any authorized extension of time for filing the return, 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 shall be 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.

§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 the property
qualifies for credit under the transition rules set forth in
subdivision (2), subsection (c), section sixteen, article thirteen-c
of this chapter.

(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 comis-
sioner 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. For purposes of this section, notice, in proper
and complete form, timely filed under section sixteen, article
thirteen-c of this chapter fulfills the filing requirement of this
section if that filing addresses the same qualified investment for
which notice would be required under this section.

ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX
CREDIT.

§11-13R-6. Application of credit.
§11-13R-11. Tax credit review and accountability.

§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 application 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 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.

(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. This application shall be filed, in the form prescribed by the tax commissioner, no later than the last day for filing the tax returns, determined by including any authorized extension of time for filing the return, 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, or the qualified research and development expenses to which the credit relates are incurred by the taxpayer, and all information required by the form shall be provided by the taxpayer.

(1) In the case of owners of eligible taxpayers described in subsection (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 number and types of
jobs, if any, created by the applicant as a direct result of the
research and development program and the average wages and
benefits paid to those employees, 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 commissioner 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.


(a) 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.

(b) Every taxpayer who claims credit under this article shall also maintain sufficient records to establish the number and
§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, type and duration of new jobs created by all taxpayers claiming the credit and wages and benefits paid;

(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.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-8. Identification of investment credit property.
§11-13S-10. Tax credit review and accountability.

(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, 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, 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. — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under this article for any qualified investment property placed in service or use until the person claiming the credit makes written application to the tax commissioner for allowance of credit as provided in this section. This application shall be in the form prescribed by the tax commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment, the average wage rates and benefits paid to employees filling the new jobs and any other information the tax commissioner may require. This application shall be filed with the tax commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, 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.

(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-8. Identification of investment credit property.

(a) 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.

(b) Every taxpayer who claims credit under this article shall also maintain sufficient records to establish the number and types of new jobs, if any, created, the wages and benefits paid to employees filling the new jobs and the duration of each job.

§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, type and duration of new jobs created by all taxpayers claiming the credit and the wages and benefits paid;

(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.
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 a new item of appropriation designated to the department of transportation - state rail authority, fund 8733, fiscal year 2002, organization 0804, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, two thousand one, known as the budget bill.
WHEREAS, The governor has established the availability of federal funds for an existing program 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 chapter one, acts of the Legislature, first extraordinary session, two thousand one, known as the "Budget Bill," be supplemented and amended by adding to Title II, section six thereof the following:

TITLE II — APPROPRIATIONS.

Section 6. Appropriations of federal funds.

DEPARTMENT OF TRANSPORTATION

284a-State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 2002 Org 0804

<table>
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<tr>
<th>Activity</th>
<th>Federal Funds</th>
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</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
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The purpose of this supplementary appropriation bill is to establish this account in the budget act for fiscal year ending the thirtieth day of June, two thousand two, by providing a new item of appropriation to appropriate federal funds in the amount of two hundred eighty-seven thousand forty-seven dollars to unclassified - total for expenditure during fiscal year two thousand two.
CHAPTER 2

(H. B. 502 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of agriculture, fund 0131, fiscal year 2002, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated September 10, 2001, setting forth therein the cash balance as of July 1, 2001; and further included the estimate of revenues for the fiscal year 2002, less net appropriation balances forwarded and regular appropriations for fiscal year 2002; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 0131, fiscal year 2002, organization 1400, be amended and increased in the line items as follows:
TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

12—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2002 Org 1400

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<th>Activity</th>
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The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing item of appropriation for personal services by thirty thousand dollars; and by increasing the existing item of appropriation for employee benefits by fifteen thousand dollars, for expenditure during the fiscal year two thousand two.

CHAPTER 3

(H. B. 512 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[By Request of the Executive]

[Passed September 19, 2001; in effect from passage. Approved by the Governor.]
AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of one million five hundred thousand dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the governor's office, civil contingent fund, fund 0105, fiscal year 2002, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand two; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of one million five hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0105, fiscal year 2002, organization 0100, be supplemented and amended by increasing the total appropriation by one million five hundred thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor's Office—
Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2002 Org 0100

General Activity Revenue Fund

Civil Contingent Fund -Total

Surplus (R) ................. 238 $ 1,500,000

The purpose of this bill is to expire the sum of one million five hundred thousand dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and to supplement the governor's office, civil contingent fund, fund 0105, fiscal year 2002, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by adding one million five hundred thousand dollars to the appropriation for civil contingent fund - total - surplus for expenditure during the fiscal year two thousand two.

CHAPTER 4

(H. B. 506 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed September 13, 2001; in effect from passage. Approved by the Governor.]
requiring that one member appointed from each house represent health.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY: A VISION SHARED.

§5B-3-2. Creation of the joint commission on economic development.

(a) The joint commission on economic development is hereby established. The commission shall be composed of not more than twenty-four members as follows:

(1) The chairs of the Senate and House of Delegates finance committees;

(2) The chairs of the Senate and House of Delegates judiciary committees;

(3) The chairs of the Senate and House of Delegates education committees;

(4) Not more than nine additional members of the Senate appointed by the president of the Senate, with at least one member representing health; and

(5) Not more than nine additional members of the House of Delegates appointed by the speaker of the House of Delegates, with at least one member representing health.

(b) Any vacancies occurring in the membership of the commission shall be filled in the same manner as the original
appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to perform the duties of the commission.

c) The commission may explore how West Virginia can:

(1) Invest in systems that build workforce skills and promote lifelong learning to ensure a competitive workforce;

(2) Enhance the infrastructure, communications and transportation needed to support the knowledge-based industries and electronic commerce;

(3) Reorganize government to deliver services more efficiently, using technology, privatization and partnerships with the private sector;

(4) Align state tax systems to meet the demands of the twenty-first century economy;

(5) Develop more uniform regulatory and tax systems to reduce complexity, eliminate market distortions and better protect consumers;

(6) Support entrepreneurs by streamlining business regulations, providing timely decisions and assisting firms in their search for venture capital;

(7) Promote university policies that encourage research and development and build intellectual infrastructure;

(8) Address quality-of-life concerns to attract new businesses and workers; and

(9) Accomplish the goals set forth in this article and any other goal related to economic development or workforce investment that the commission considers important.
(d) The commission may propose legislation necessary to accomplish its goals.

CHAPTER 5

(S. B. 5007 — By Senators Wooton, Burnette, Caldwell, Hunter, Kessler, Minard, Oliverio, Redd, Ross, Rowe, Snyder, Deem and Facemyer)

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

AN ACT to repeal article thirty, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article five, chapter three of said code; to amend and reenact section three, article ten of said chapter; to amend and reenact section twelve, article five, chapter sixteen of said code; to amend and reenact section ten, article two, chapter seventeen-b of said code; to amend and reenact section five, article one, chapter forty-two of said code; to amend and reenact sections two hundred two, two hundred five, two hundred sixteen, two hundred seventeen, two hundred twenty-one, two hundred twenty-five, two hundred twenty-six, three hundred three, three hundred four and three hundred five, article one, chapter forty-eight of said code; to amend and reenact sections four hundred one and four hundred four, article two of said chapter; to amend and reenact section one hundred one, article four of said chapter; to amend and reenact sections one hundred two, one hundred three, one hundred seven, two hundred one, four hundred two, four hundred three, six hundred four, six hundred five, six hundred eleven and seven hundred two, article five of said chapter; to amend and reenact section two hundred three, article seven of said chapter; to amend and reenact sections
Be it enacted by the Legislature of West Virginia:

That article thirty, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eight, article five, chapter three of said code be
amended and reenacted; that section three, article ten of said chapter be amended and reenacted; that section twelve, article five, chapter sixteen of said code be amended and reenacted; that section ten, article two, chapter seventeen-b of said code be amended and reenacted; that section five, article one, chapter forty-two of said code be amended and reenacted; that sections two hundred two, two hundred five, two hundred sixteen, two hundred seventeen, two hundred twenty-one, two hundred twenty-five, two hundred twenty-six, three hundred three, three hundred four and three hundred five, article one, chapter forty-eight of said code be amended and reenacted; that sections four hundred one and four hundred four, article two of said chapter be amended and reenacted; that section one hundred one, article four of said chapter be amended and reenacted; that sections one hundred two, one hundred three, one hundred seven, two hundred one, four hundred two, four hundred three, six hundred four, six hundred five, six hundred eleven and seven hundred two, article five of said chapter be amended and reenacted; that section two hundred three, article seven of said chapter be amended and reenacted; that sections one hundred two and one hundred five, article eight of said chapter be amended and reenacted; that sections one hundred four, two hundred two, four hundred three and six hundred three, article nine of said chapter be amended and reenacted; that sections one hundred five and one hundred six, article eleven of said chapter be amended and reenacted; that sections one hundred one, two hundred two, two hundred four, two hundred five, seven hundred one, nine hundred one and nine hundred two, article thirteen of said chapter be amended and reenacted; that sections one hundred one, one hundred six, two hundred four, four hundred two, four hundred five, five hundred one and eight hundred two, article fourteen of said chapter be amended and reenacted; that sections two hundred five, two hundred seven and two hundred eight, article fifteen of said chapter be amended and reenacted; that sections one hundred one, one hundred two and three hundred five, article sixteen of said chapter be amended and reenacted; that sections one hundred eight, one hundred eleven, one hundred fourteen, one hundred twenty-three and one
hundred twenty-six, article eighteen of said chapter be amended and reenacted; that section one hundred two, article twenty of said chapter be amended and reenacted; that sections one hundred one and one hundred three, article twenty-four of said chapter be amended and reenacted; that sections two hundred four, two hundred five, two hundred nine, three hundred four, four hundred two, four hundred three, five hundred one, five hundred five, five hundred eight and five hundred ten, article twenty-seven of said chapter be amended and reenacted; that article two-a, chapter fifty-one of said code be amended and reenacted; that section one-a, article nine of said chapter be amended and reenacted; and that section twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter
  3. Elections.
  17B. Motor Vehicle Driver's Licenses.
  42. Descent and Distribution.
  48. Domestic Relations.
  51. Courts and Their Officers.
  59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 3. ELECTIONS.

Article
  5. Primary Elections and Nominating Procedures.
  10. Filling Vacancies.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. Filing fees and their disposition.

1 Every person who becomes a candidate for nomination for
2 or election to office in any primary election shall, at the time of
3 filing the certificate of announcement as required in this article,
4 pay a filing fee as follows:

5 (a) A candidate for president of the United States, for vice
6 president of the United States, for United States senator, for
member of the United States House of Representatives, for
governor and for all other state elective offices shall pay a fee
equivalent to one percent of the annual salary of the office for
which the candidate announces;

(b) A candidate for the office of judge of a circuit court and
judge of a family court shall pay a fee equivalent to one percent
of the total annual salary of the office for which the candidate
announces;

(c) A candidate for member of the House of Delegates shall
pay a fee of one-half percent of the total annual salary of the
office and a candidate for state senator shall pay a fee of one
percent of the total annual salary of the office;

(d) A candidate for sheriff, prosecuting attorney, circuit
clerk, county clerk, assessor, member of the county commission
and magistrate shall pay a fee equivalent to one percent of the
annual salary of the office for which the candidate announces.
A candidate for county board of education shall pay a fee of
twenty-five dollars. A candidate for any other county office
shall pay a fee of ten dollars;

(e) Delegates to the national convention of any political
party shall pay the following filing fees:

A candidate for delegate-at-large shall pay a fee of twenty
dollars; and a candidate for delegate from a congressional
district shall pay a fee of ten dollars;

(f) Candidates for members of political executive commit-
tees and other political committees shall pay the following
filing fees:

A candidate for member of a state executive committee of
any political party shall pay a fee of twenty dollars; a candidate
for member of a county executive committee of any political
party shall pay a fee of ten dollars; and a candidate for member
Candidates filing for an office to be filled by the voters of one county shall pay the filing fee to the clerk of the circuit court and candidates filing for an office to be filled by the voters of more than one county shall pay the filing fee to the secretary of state at the time of filing their certificates of announcement and no certificate of announcement shall be received until the filing fee is paid.

All moneys received by such clerk from such fees shall be credited to the general county fund. Moneys received by the secretary of state from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him to the several counties on the basis of population and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs, it shall be credited to the general county fund.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States senators and judges.

Any vacancy occurring in the office of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, United States senator, judge of the supreme court of appeals or in any office created or made elective to be filled by the voters of the entire state, judge of a circuit court or judge of a family court is filled by the governor of the state by appointment. If the unexpired term of a judge of the supreme court of appeals, a judge of the circuit court or judge of a family court is for less than two years or if the unexpired term of any other office named in this section is for a period of less than two
years and six months, the appointment to fill the vacancy is for
the unexpired term. If the unexpired term of any office is for a
longer period than above specified, the appointment is until a
successor to the office has timely filed a certificate of candi-
dacy, has been nominated at the primary election next following
such timely filing and has thereafter been elected and qualified
to fill the unexpired term. Proclamation of any election to fill an
unexpired term is made by the governor of the state and, in the
case of an office to be filled by the voters of the entire state,
must be published prior to the election as a Class II-0 legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code and the publication area for
the publication is each county of the state. If the election is to
fill a vacancy in the office of judge of a circuit court or judge of
a family court, the proclamation must be published prior to the
election as a Class II-0 legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this code
and the publication area for such publication is each county in
the judicial or family court circuit.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally; acknowledgment of patern-
ity.

(a) A certificate of birth for each live birth which occurs in
this state shall be filed with the local registrar of the district in
which the birth occurs within seven days after the birth and
shall be registered by the registrar if it has been completed and
filed in accordance with this section. When a birth occurs in a
moving conveyance, a birth certificate shall be filed in the
district in which the child is first removed from the conveyance.
When a birth occurs in a district other than where the mother
resides, a birth certificate shall be filed in the district in which
the child is born and in the district in which the mother resides.
(b) When a birth occurs in an institution, the person in charge of the institution or his or her designated representative shall obtain the personal data, prepare the certificate, secure the signatures required for the certificate and file it with the local registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required for the certificate within five days after the birth.

(c) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth or in the absence of such a person;

(2) Any other person in attendance at or immediately after the birth or in the absence of such a person; or

(3) The father, the mother or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(d) Either of the parents of the child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit its filing within the seven days prescribed above.

(e) In order that each county may have a complete record of the births occurring in said county, the local registrar shall transmit each month to the county clerk of his or her county the copies of the certificates of all births occurring in said county, from which copies the clerk shall compile a record of such births and shall enter the same in a systematic and orderly way in a well-bound register of births, which said register shall be a public record: Provided, That such copies and register shall not state that any child was either legitimate or illegitimate. The form of said register of births shall be prescribed by the state registrar of vital statistics.
(f) In addition to the personal data furnished for the certificate of birth issued for a live birth in accordance with the provisions of this section, a person whose name is to appear on such certificate of birth as a parent shall contemporaneously furnish to the person preparing and filing the certificate of birth the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be filed with the local registrar of the district in which the birth occurs within seven days after such birth and the local registrar shall transmit such number or numbers to the state registrar of vital statistics in the same manner as other personal data is transmitted to the state registrar.

(g) If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction pursuant to the provisions of article twenty-four, chapter forty-eight of this code or other applicable law, in which case the name of the father as determined by the court shall be entered.

(h) If the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and of the person to be named as the father unless a determination of paternity has been made by a court of competent jurisdiction pursuant to the provisions of article twenty-four, chapter forty-eight of this code or other applicable law, in which case the name of the father as determined by the court shall be entered.

(i) A written, notarized acknowledgment of both the man and the woman that the man is the father of a named child legally establishes the man as the father of the child for all purposes and child support may be established pursuant to the provisions of chapter forty-eight of this code.
(1) The written acknowledgment shall include filing instructions, the parties' social security numbers and addresses and a statement, given orally and in writing, of the alternatives to, the legal consequences of and the rights and obligations of acknowledging paternity, including, but not limited to, the duty to support a child. If either of the parents is a minor, the statement shall include an explanation of any rights that may be afforded due to the minority status.

(2) The failure or refusal to include all information required by subdivision (1) of this subsection shall not affect the validity of the written acknowledgment, in the absence of a finding by a court of competent jurisdiction that the acknowledgment was obtained by fraud, duress or material mistake of fact, as provided in subdivision (4) of this subsection.

(3) The original written acknowledgment should be filed with the state registrar of vital statistics. Upon receipt of any acknowledgment executed pursuant to this section, the registrar shall forward the copy of the acknowledgment to the bureau for child support enforcement and the parents, if the address of the parents is known to the registrar. If a birth certificate for the child has been previously issued which is incorrect or incomplete, a new birth certificate shall be issued.

(4) An acknowledgment executed under the provisions of this subsection may be rescinded as follows:

(A) The parent wishing to rescind the acknowledgment shall file with the clerk of the circuit court of the county in which the child resides a verified complaint stating the name of the child, the name of the other parent, the date of the birth of the child, the date of the signing of the affidavit and a statement that he or she wishes to rescind the acknowledgment of the paternity. If the complaint is filed more than sixty days from the date of execution or the date of an administrative or judicial proceeding relating to the child in which the signatory is a
party, the complaint shall include specific allegations concerning the elements of fraud, duress or material mistake of fact.

(B) The complaint shall be served upon the other parent as provided in rule 4 of the West Virginia rules of civil procedure.

(C) The family court judge shall hold a hearing within sixty days of the service of process upon the other parent. If the complaint was filed within sixty days of the date the acknowledgment of paternity was executed, the court shall order the acknowledgment to be rescinded without any requirement of a showing of fraud, duress or material mistake of fact. If the complaint was filed more than sixty days from the date of execution or the date of an administrative or judicial proceeding relating to the child in which the signatory is a party, the court may only set aside the acknowledgment upon a finding, by clear and convincing evidence, that the acknowledgment was executed under circumstances of fraud, duress or material mistake of fact. The circuit clerk shall forward a copy of any order entered pursuant to this proceeding to the state registrar of vital statistics by certified mail.

CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10. Restricted licenses.

(a) The division upon issuing a driver’s license shall have authority whenever good cause appears to impose restrictions suitable to the licensee’s driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the division may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The division shall issue a restricted license to a person who has failed to pay overdue child support or comply with
subpoenas or warrants relating to paternity or child support proceedings if a court orders restrictions of the person’s license as provided in article fifteen, chapter forty-eight of this code.

(c) The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(d) The division may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this chapter.

(e) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to such person.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.

§42-1-5. From whom children born out of wedlock inherit.

(a) Children born out of wedlock shall be capable of inheriting and transmitting inheritance on the part of their mother and father.

(b) Prior to the death of the father, paternity shall be established by:

(1) Acknowledgment that he is the child’s father;

(2) Adjudication on the merits pursuant to the provisions of article twenty-four, chapter forty-eight of this code; or

(3) By order of a court of competent jurisdiction issued in another state.

(c) After the death of the father, paternity shall be established if, after a hearing on the merits, the court shall find, by clear and convincing evidence, that the man is the father of the child. The civil action shall be filed in the family court of the
county where the administration of the decedent’s estate has been filed or could be filed:

(1) Within six months of the date of the final order of the county commission admitting the decedent’s will to probate or commencing intestate administration of the estate; or

(2) If none of the above apply, within six months from the date of decedent’s death.

(d) Any putative child who at the time of the decedent’s death is under the age of eighteen years, a convict or a mentally incapacitated person may file such civil action within six months after he or she becomes of age or the disability ceases.

(e) The provisions of this section do not apply where the putative child has been lawfully adopted by another man and stands to inherit property or assets through his adopted father.

(f) The provisions of this section do not apply where the father or putative father has expressly disinherited the child in a provision of his will.

CHAPTER 48. DOMESTIC RELATIONS.

Article
1. General Provisions; Definitions.
4. Separate Maintenance.
5. Divorce.
7. Equitable Distribution of Property.
8. Spousal Support.
15. Enforcement of Support Order Through Action Against License.
ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-205. Attributed income defined.
§48-1-216. Court defined.
§48-1-217. Court of competent jurisdiction defined.
§48-1-221. Divorce defined.
§48-1-225. Extraordinary medical expenses defined.
§48-1-226. Family court judge defined.
§48-1-303. Confidentiality of domestic relations court files.
§48-1-305. Suit money, counsel fees and costs.

PART 2. DEFINITIONS.


(a) "Adjusted gross income" means gross income less the payment of previously ordered child support, spousal support or separate maintenance.

(b) A further deduction from gross income for additional dependents may be allowed by the court if the parent has legal dependents other than those for whom support is being determined. An adjustment may be used in the establishment of a child support order or in a review of a child support order. However, in cases where a modification is sought, the adjustment should not be used to the extent that it results in a support amount lower than the previously existing order for the children who are the subject of the modification. The court may elect to use the following adjustment because it allots equitable shares of support to all of the support obligor's legal dependents. Using the income of the support obligor only, determine the basic child support obligation (from the table of basic child support obligations in section 13-301 of this chapter) for the number of additional legal dependents living with the support obligor. Multiply this figure by 0.75 and subtract this amount from the support obligor's gross income.
(c) As used in this section, the term “legal dependents” means:

(1) Minor natural or adopted children who live with the parent; and

(2) Natural or adopted adult children who are totally incapacitated because of physical or emotional disabilities and for whom the parent owes a duty of support.

§48-1-205. Attributed income defined.

(a) “Attributed income” means income not actually earned by a parent but which may be attributed to the parent because he or she is unemployed, is not working full time or is working below full-earning capacity or has nonperforming or underperforming assets. Income may be attributed to a parent if the court evaluates the parent’s earning capacity in the local economy (giving consideration to relevant evidence that pertains to the parent’s work history, qualifications, education and physical or mental condition) and determines that the parent is unemployed, is not working full time or is working below full-earning capacity. Income may also be attributed to a parent if the court finds that the obligor has nonperforming or underperforming assets.

(b) If an obligor: (1) Voluntarily leaves employment or voluntarily alters his or her pattern of employment so as to be unemployed, underemployed or employed below full-earning capacity; (2) is able to work and is available for full-time work for which he or she is fitted by prior training or experience; and (3) is not seeking employment in the manner that a reasonably prudent person in his or her circumstances would do, then an alternative method for the court to determine gross income is to attribute to the person an earning capacity based on his or her previous income. If the obligor’s work history, qualifications, education or physical or mental condition cannot be deter-
mined, or if there is an inadequate record of the obligor's previous income, the court may, as a minimum, base attributed income on full-time employment (at forty hours per week) at the federal minimum wage in effect at the time the support obligation is established.

(c) Income shall not be attributed to an obligor who is unemployed or underemployed or is otherwise working below full-earning capacity if any of the following conditions exist:

1. The parent is providing care required by the children to whom the parties owe a joint legal responsibility for support and such children are of preschool age or are handicapped or otherwise in a situation requiring particular care by the parent;

2. The parent is pursuing a plan of economic self-improvement which will result, within a reasonable time, in an economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education: Provided, That if the parent is involved in an educational program, the court shall ascertain that the person is making substantial progress toward completion of the program;

3. The parent is, for valid medical reasons, earning an income in an amount less than previously earned; or

4. The court makes a written finding that other circumstances exist which would make the attribution of income inequitable: Provided, That in such case, the court may decrease the amount of attributed income to an extent required to remove such inequity.

(d) The court may attribute income to a parent's nonperforming or under-performing assets, other than the parent's primary residence. Assets may be considered to be nonperforming or under-performing to the extent that they do
§48-1-216. Court defined.

"Court" means a family court of this state unless the context in which such term is used clearly indicates that reference to some other court is intended.

§48-1-217. Court of competent jurisdiction defined.

"Court of competent jurisdiction" means a circuit court or family court within this state or a court or administrative agency of another state having jurisdiction and due legal authority to deal with the subject matter of the establishment and enforcement of support obligations. Whenever in this chapter reference is made to an order of a court of competent jurisdiction, or similar wording, such language shall be interpreted so as to include orders of an administrative agency entered in a state where enforceable orders may by law be properly made and entered by such administrative agency.

§48-1-221. Divorce defined.

"Divorce" means the judicial termination of a marriage contract. The termination of a marriage contract must be based on misconduct or other statutory cause arising after the marriage. A divorce is established by the order of a family court or circuit court that changes the status of a husband and wife from a state of marriage to that of single persons.

§48-1-225. Extraordinary medical expenses defined.

"Extraordinary medical expenses" means uninsured medical expenses in excess of two hundred fifty dollars per year per child which are recurring and can reasonably be predicted by
the court at the time of establishment or modification of a child
support order. Such expenses shall include, but not be limited
to, insurance copayments and deductibles, reasonable costs for
necessary orthodontia, dental treatment, asthma treatments,
physical therapy, vision therapy and eye care and any uninsured
chronic health problem.

§48-1-226. Family court judge defined.

"Family court judge" means a family court judge appointed
or elected and authorized to hear certain domestic relations
actions as provided in article two-a, chapter fifty-one of this
code.

PART 3. MISCELLANEOUS PROVISIONS
RELATING TO DOMESTIC RELATIONS.

§48-1-303. Confidentiality of domestic relations court files.

(a) All orders in domestic relations actions entered in the
civil order books by circuit clerks are public records.

(b) Upon the filing of a domestic relations action, all
pleadings, exhibits or other documents, other than orders, that
are contained in the court file are confidential and not open for
public inspection either during the pendency of the case or after
the case is closed.

(c) When sensitive information has been disclosed during
a hearing or in pleadings, evidence or documents filed in the
record, the court may, sua sponte or upon motion of a party,
order such information sealed in the court file. Sealed docu-
ments or court files can only be opened by order of a circuit or
family court judge.

(d) The parties, their designees, their attorneys, a duly
appointed guardian ad litem or any other person who has
standing to seek modification or enforcement of a support order
has the right to examine and copy any document in a confiden-
tial court file that has not been sealed by court order. Upon
motion and for good cause shown, the court may permit a
person who is not a party to the action to examine and copy any
documents that are necessary to further the interests of justice.

(e) The clerk of the circuit court shall keep a written log of
all persons who examine confidential documents as provided
for in this section. Every person who examines confidential
documents shall first sign the clerk’s written log, except for a
circuit judge or family court judge before whom the case is
pending, or court personnel acting within the scope of their
duties. The clerk shall record the time and date of every
examination of confidential documents. The log must be
retained by the clerk and must be available upon request for
inspection by the circuit judge or the family court judge.


(a) Upon a verified petition for contempt, notice of hearing
and hearing, if the petition alleges criminal contempt or the
court informs the parties that the matter will be treated and tried
as a criminal contempt, the matter shall be tried in the circuit
court before a jury, unless the party charged with contempt
shall knowingly and intelligently waive the right to a jury trial
with the consent of the court and the other party. If the jury, or
the circuit court sitting without a jury, shall find the defendant
in contempt for willfully failing to comply with an order of the
court made pursuant to the provisions of article three, four, five,
eight, nine, eleven, twelve, fourteen or fifteen of this chapter, as
charged in the petition, the court may find the person to be in
criminal contempt and may commit such person to the county
jail for a determinate period not to exceed six months.
(b) If trial is had under the provisions of subsection (a) of this section and the court elects to treat a finding of criminal contempt as a civil contempt and the matter is not tried before a jury and the court finds the defendant in contempt for willfully failing to comply with an order of the court made pursuant to the provisions of article three, four, five, eight, nine, eleven, twelve, fourteen or fifteen of this chapter, and if the court further finds the person has the ability to purge himself of contempt, the court shall afford the contemnor a reasonable time and method whereby he may purge himself of contempt. If the contemnor fails or refuses to purge himself of contempt, the court may confine the contemnor to the county jail for an indeterminate period not to exceed six months or until such time as the contemnor has purged himself, whichever shall first occur. If the petition alleges civil contempt, the matter shall be heard by the family court. The family court has the same power and authority as the circuit court under the provisions of this section for criminal contempt proceedings which the circuit court elects to treat as civil contempt.

(c) In the case of a charge of contempt based upon the failure of the defendant to pay alimony, child support or separate maintenance, if the court or jury finds that the defendant did not pay because he was financially unable to pay, the defendant may not be imprisoned on charges of contempt of court.

(d) Regardless of whether the court or jury finds the defendant to be in contempt, if the court shall find that a party is in arrears in the payment of alimony, child support or separate maintenance ordered to be paid under the provisions of this chapter, the court shall enter judgment for such arrearage and award interest on such arrearage from the due date of each unpaid installment. Following any hearing wherein the court finds that a party is in arrears in the payment of alimony, child support or separate maintenance, the court may, if sufficient
assets exist, require security to ensure the timely payment of future installments.

(e) At any time during a contempt proceeding the court may enter an order to attach forthwith the body of, and take into custody, any person who refuses or fails to respond to the lawful process of the court or to comply with an order of the court. Such order of attachment shall require the person to be brought forthwith before the court or the judge thereof in any county in which the court may then be sitting.

§48-1-305. Suit money, counsel fees and costs.

(a) Costs may be awarded to either party as justice requires and in all cases the court, in its discretion, may require payment of costs at any time and may suspend or withhold any order until the costs are paid.

(b) The court may compel either party to pay attorney’s fees and court costs reasonably necessary to enable the other party to prosecute or defend the action. An order for temporary relief awarding attorney’s fees and court costs may be modified at any time during the pendency of the action, as the exigencies of the case or equity and justice may require, including, but not limited to, a modification which would require full or partial repayment of fees and costs by a party to the action to whom or on whose behalf payment of such fees and costs was previously ordered. If an appeal is taken or an intention to appeal is stated, the court may further order either party to pay attorney’s fees and costs on appeal.

(c) When it appears to the court that a party has incurred attorney fees and costs unnecessarily because the opposing party has asserted unfounded claims or defenses for vexatious, wanton or oppressive purposes, thereby delaying or diverting attention from valid claims or defenses asserted in good faith, the court may order the offending party, or his or her attorney,
or both, to pay reasonable attorney fees and costs to the other
party.

ARTICLE 2. MARRIAGE.

§48-2-401. Persons authorized to perform marriages.
§48-2-404. Ritual for ceremony of marriage by a judge or justice.


§48-2-401. Persons authorized to perform marriages.

A religious representative who has complied with the
provisions of section 2-402, a family court judge, a circuit judge
or a justice of the supreme court of appeals, is authorized to
celebrate the rites of marriage in any county of this state.
Celebration or solemnization of a marriage means the perfor-
mance of the formal act or ceremony by which a man and
woman contract marriage and assume the status of husband and
wife.

For purposes of this chapter, the term “religious representa-
tive” means a minister, priest or rabbi and includes, without
being limited to, a leader or representative of a generally
recognized spiritual assembly, church or religious organization
which does not formally designate or recognize persons as
ministers, priests or rabbis.

§48-2-404. Ritual for ceremony of marriage by a judge or justice.

The ritual for the ceremony of marriages by a family court
judge, a circuit judge or a justice of the supreme court of
appeals may be as follows: At the time appointed, the persons
to be married, being qualified according to the law of the state
of West Virginia, standing together facing the judge, the man
at the judge’s left hand and the woman at the right, the judge
shall say:
"We are gathered here, in the presence of these witnesses, to join together this man and this woman in matrimony. It is not to be entered into unadvisedly but discreetly, sincerely and in dedication of life."

(Then shall the judge say to the man, using his christian name:)

"N., wilt thou have this woman to be thy wedded wife, to live together in the bonds of matrimony? Wilt thou love her, comfort her, honor and keep her in sickness and in health?"

(Then the man shall answer:)

"I will."

(Then the judge shall say to the woman, using her christian name:)

"N., wilt thou have this man to be thy wedded husband, to live together in the bonds of matrimony? Wilt thou love him, comfort him, honor and keep him in sickness and health?"

(The woman shall answer:)

"I will."

(Then may the judge say:)

"Who giveth this woman to be married to this man?"

(The father of the woman, or whoever giveth her in marriage, shall answer:)

"I do."

(Then the judge shall ask the man to say after him:)
"I, N., take thee, N., to be my wedded wife, to have and to
hold, from this day forward, for better, for worse, for richer, for
poorer, in sickness and in health, to love and to cherish, as long
as life shall last, and thereto I pledge thee my faith."

(Then the judge shall ask the woman to repeat after him:)

"I, N., take thee, N., to be my wedded husband, to have and
to hold, from this day forward, for better, for worse, for richer,
for poorer, in sickness and in health, to love and to cherish, as
long as life shall last, and thereto I pledge thee my faith."

(Then, if there be a ring, the judge shall say:)

"The wedding ring is an outward and visible
sign—signifying unto all, the uniting of this man and this
woman in matrimony."

(The judge then shall deliver the ring to the man to put on
the third finger of the woman's left hand. The man shall say
after the judge:)

"In token and pledge of the vow between us made, with this
ring, I thee wed."

(Then, if there be a second ring, the judge shall deliver it to
the woman to put upon the third finger of the man's left hand;
and the woman shall say after the judge:)

"In token and pledge of the vow between us made, with this
ring, I thee wed."

(Then shall the judge say:)

"Forasmuch as N. and N. have consented together in
wedlock, and have witnessed the same each to the other and
before these witnesses and thereto have pledged their faith each
to the other, and have declared the same by giving (and
receiving) a ring, by virtue of the authority vested in me as judge of this court, I pronounce that they are husband and wife together."

ARTICLE 4. SEPARATE MAINTENANCE.

§48-4-101. Where an action for separate maintenance may be brought.

An action for separate maintenance may be brought in the family court of any county where an action for divorce between the parties could be brought. An action for separate maintenance may be brought whether or not a divorce is prayed for.

ARTICLE 5. DIVORCE.

§48-5-102. Subject matter jurisdiction.
§48-5-103. Jurisdiction of parties; service of process.
§48-5-107. Parties to a divorce action.
§48-5-201. Grounds for divorce; irreconcilable differences.
§48-5-402. Petition for divorce.
§48-5-403. Answer to petition.
§48-5-604. Use and occupancy of marital home.
§48-5-605. Use and possession of motor vehicles.
§48-5-611. Suit money, counsel fees and costs.
§48-5-702. Revision of order enjoining abuse.

PART 1. GENERAL PROVISIONS.

§48-5-102. Subject matter jurisdiction.

(a) The Legislature hereby finds and declares that it has the authority to establish, by general law, the jurisdiction of circuit courts and family courts over domestic relations matters.

(b) The circuit courts and family courts of this state, by act of the Legislature, are vested with concurrent jurisdiction over the subject matter of divorce. Generally, a family court has the right and authority to adjudicate actions for divorce and the power to carry its judgment and order into execution. Circuit
courts have limited jurisdiction in divorce actions, as provided in section two, article two-a, chapter fifty-one of this code and as otherwise specifically provided in this chapter. Jurisdiction of the subject matter of divorce embraces the power to determine every issue or controverted question in an action for divorce, according to the court's view of the law and the evidence.

§48-5-103. Jurisdiction of parties; service of process.

(a) In an action for divorce, it is immaterial where the marriage was celebrated, where the parties were domiciled at the time the grounds for divorce arose or where the marital offense was committed. If one or both of the parties is domiciled in this state at the time the action is commenced, the circuit courts and family courts of this state have jurisdiction to grant a divorce for any grounds fixed by law in this state, without any reference to the law of the place where the marriage occurred or where the marital offense was committed.

(b) A judgment order may be entered upon service of process in the manner specified in the rules of civil procedure for the service of process upon individuals.

§48-5-107. Parties to a divorce action.

(a) Either or both of the parties to a marriage may initiate an action for divorce.

(b) A spouse who is under the age of majority has standing in a divorce action to sue, answer or plead by a next friend.

(c) An incompetent or insane person shall sue, answer or plead by his or her committee. If a person has not been adjudicated incompetent or insane and has not been divested of the power to act on his or her own behalf, it is presumed that the person has the capacity to bring the action or be made a party
respondent. This presumption may be rebutted by evidence which shows that the person cannot reasonably understand the nature and purpose of the action and the effect of his or her acts with reference to the action.

(d) The appointment of a guardian ad litem for a minor, an incompetent or an insane party is not required unless specifically ordered by the judge hearing the action.

(e) Anyone charged as a particeps criminis shall be made a party to a divorce action, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

(f) In a divorce action where the interests of the minor children of the parties are or may be substantially different from those of either or both of the parents and the best interests of the children may be in conflict with the desires of either or both parents, the court may make the children parties respondent and appoint a guardian ad litem to advocate and protect their rights and welfare.

PART 2. GROUNDS FOR DIVORCE.

§48-5-201. Grounds for divorce; irreconcilable differences.

The court may order a divorce if the complaint alleges that irreconcilable differences exist between the parties and an answer is filed admitting that allegation. A complaint alleging irreconcilable differences shall set forth the names of any dependent children of either or both of the parties. A divorce on this ground does not require corroboration of the irreconcilable differences or of the issues of jurisdiction or venue. The court may approve, modify or reject any agreement of the parties and make orders concerning spousal support, custodial responsibility, child support, visitation rights or property interests.
§48-5-402. Petition for divorce.

(a) An action for divorce is instituted by a verified petition and the formal style and the caption for all pleadings is "In Re the marriage of ________ and ________". The parties shall be identified in all pleadings as "petitioner" and "respondent".

(b) The petition must set forth the ground or grounds for divorce. It is not necessary to allege the facts constituting a ground relied on and a petition or counter-petition is sufficient if a ground for divorce is alleged in the language of the statute as set forth in this article. The court has the discretionary authority to grant a motion to require a more definite and certain statement, set forth in ordinary and concise language, alleging facts and not conclusions of law.

(c) If the jurisdiction of the court to grant a divorce depends upon the existence of certain facts, including, but not limited to, facts showing domicil or domicil for a certain length of time, the petition must allege those facts. It is not necessary that allegations showing requisite domicil be in the language of the statute, but they should conform substantially thereto so that everything material to the fact of requisite domicil can be ascertained therefrom.

(d) A petition shall not be taken for confessed and whether the respondent answers or not, the case shall be tried and heard independently of the admissions of either party in the pleadings or otherwise. No judgment order shall be granted on the uncorroborated testimony of the parties or either of them, except for a proceeding in which the grounds for divorce are irreconcilable differences.

(e) The supreme court of appeals shall develop and provide forms for petitions filed pursuant to this section and for answers
filed pursuant to section 5-403. The forms shall be made available for distribution in the offices of the clerks of the circuit courts and in the offices of the secretary-clerks to the family court judges.

§48-5-403. Answer to petition.

(a) The responsive pleading to a petition for divorce is denominated an answer. The form and requisites for an answer to a petition for divorce are governed by the rules of civil procedure.

(b) Except as provided in subsection (c) of this section, an allegedly guilty party who relies upon an affirmative defense must assert such defense by both pleadings and proof. Affirmative defenses include, but are not limited to, condonation, connivance, collusion, recrimination, insanity and lapse of time.

(c) In an action in which a party seeks a divorce based on an allegation that the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year, the affirmative defenses, including, but not limited to, condonation, connivance, collusion, recrimination, insanity and lapse of time, shall not be raised.

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-604. Use and occupancy of marital home.

(a) The court may award the exclusive use and occupancy of the marital home to a party. An order granting use and occupancy of the marital home shall include the use of any necessary household goods, furniture and furnishings. The order shall establish a definite period for the use and occupancy, ending at a specific time set forth in the order, subject to modification upon the petition of either party.
(b) Generally, an award of the exclusive use and occupancy of the marital home is appropriate when necessary to accommodate rearing minor children of the parties. Otherwise, the court may award exclusive use and occupancy only in extraordinary cases supported by specific findings set forth in the order that grants relief.

(c) An order awarding the exclusive use and occupancy of the marital home may also require payments to third parties for home loan installments, land contract payments, rent, property taxes and insurance coverage. When requiring third-party payments, the court shall reduce them to a fixed monetary amount set forth in the order. The court shall specify whether third-party payments or portions of payments are spousal support, child support, a partial distribution of marital property or an allocation of marital debt. Unless the court identifies third-party payments as child support payments or as installment payments for the distribution of marital property, then such payments are spousal support. If the court does not identify the payments and the parties have waived any right to receive spousal support, the court may identify the payments upon motion by any party.

(d) This section is not intended to abrogate a contract between either party and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

§48-5-605. Use and possession of motor vehicles.

(a) The court may award the exclusive use and possession of a motor vehicle or vehicles to either of the parties.

(b) The court may require payments to third parties in the form of automobile loan installments or insurance coverage, if coverage is available at reasonable rates. When requiring third-party payments, the court shall reduce them to a fixed
monetary amount set forth in the order. The court shall specify
whether third-party payments or portions of payments are
spousal support or installment payments for the distribution of
marital property.

(c) This section is not intended to abrogate a contract
between either party and a third party or affect the rights and
liabilities of either party or a third party under the terms of a
contract.

§48-5-611. Suit money, counsel fees and costs.

(a) Costs may be awarded to either party as justice requires,
and in all cases the court, in its discretion, may require payment
of costs at any time and may suspend or withhold any order
until the costs are paid.

(b) The court may compel either party to pay attorney’s
fees and court costs reasonably necessary to enable the other
party to prosecute or defend the action. An order for temporary
relief awarding attorney’s fees and court costs may be modified
at any time during the pendency of the action, as the exigencies
of the case or equity and justice may require, including, but not
limited to, a modification which would require full or partial
repayment of fees and costs by a party to the action to whom or
on whose behalf payment of such fees and costs was previously
ordered. If an appeal be taken or an intention to appeal be
stated, the court may further order either party to pay attorney
fees and costs on appeal.

(c) When it appears to the court that a party has incurred
attorney’s fees and costs unnecessarily because the opposing
party has asserted unfounded claims or defenses for vexatious,
wanton or oppressive purposes, thereby delaying or diverting
attention from valid claims or defenses asserted in good faith,
the court may order the offending party, or his or her attorney,
or both, to pay reasonable attorney's fees and costs to the other party.

§48-5-702. Revision of order enjoining abuse.

After entering an order enjoining abuse in accordance with the provisions of section 5-509, the court may, from time to time afterward, upon motion of either of the parties and upon proper service, revise the order and enter a new order concerning the same as the circumstances of the parties and the benefit of children may require.

ARTICLE 7. EQUITABLE DISTRIBUTION OF PROPERTY.

PART 2. DISCLOSURE OF ASSETS REQUIRED.

§48-7-203. Forms for disclosure of assets.

The supreme court of appeals shall prepare and make available a standard form for the disclosure of assets and liabilities required by this part. The clerk of the circuit court and the secretary-clerk of the family court shall make these forms available to all parties in any divorce action or other action involving child support. All disclosure required by this part shall be on a form that substantially complies with the form promulgated by the supreme court of appeals. The form used shall contain a statement in conspicuous print that complete disclosure of assets and liabilities is required by law and deliberate failure to provide complete disclosure as ordered by the court constitutes false swearing.

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-102. Jurisdiction to award spousal support.

§48-8-105. Rehabilitative spousal support.

§48-8-102. Jurisdiction to award spousal support.
The family courts and circuit courts, as provided in this chapter, have jurisdiction to award spousal support. A court may provide for the maintenance of a spouse during the pendency of an appeal to the circuit court or to the supreme court of appeals.

§48-8-105. Rehabilitative spousal support.

(a) The court may award rehabilitative spousal support for a limited period of time to allow the recipient spouse, through reasonable efforts, to become gainfully employed. When awarding rehabilitative spousal support, the court shall make specific findings of fact to explain the basis for the award, giving due consideration to the factors set forth in section 8-103 of this article. An award of rehabilitative spousal support is appropriate when the dependent spouse evidences a potential for self-support that could be developed through rehabilitation, training or academic study.

(b) The court may modify an award of rehabilitative spousal support if a substantial change in the circumstances under which rehabilitative spousal support was granted warrants terminating, extending or modifying the award or replacing it with an award of permanent spousal support. In determining whether a substantial change of circumstances exists which would warrant a modification of a rehabilitative spousal support award, the court may consider a reassessment of the dependent spouse's potential work skills and the availability of a relevant job market, the dependent spouse's age, health and skills, the dependent spouse's ability or inability to meet the terms of the rehabilitative plan and other relevant factors as provided for in section 8-103 of this article.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

§48-9-104. Parent education classes.
§48-9-202. Court-ordered services.
§48-9-403. Relocation of a parent.
§48-9-603. Effect of enactment; operative dates.

PART 1. SCOPE; OBJECTIVES; PARTIES AND PARENT EDUCATION CLASSES.

§48-9-104. Parent education classes.

(a) The family court shall, by order, and with the approval of the supreme court of appeals, designate an organization or agency to establish and operate education programs designed for parents who have filed an action for divorce, paternity, support, separate maintenance or other custody proceeding and who have minor children. The education programs shall be designed to instruct and educate parents about the effects of divorce and custody disputes on their children and to teach parents ways to help their children and minimize their trauma.

(b) The family court shall issue an order requiring parties to an action for divorce involving a minor child or children to attend parent education classes established pursuant to subsection (a) of this section unless the court determines that attendance is not appropriate or necessary based on the conduct or circumstances of the parties. The court may, by order, establish sanctions for failure to attend. The court may also order parties to an action involving paternity, separate maintenance or modification of a divorce decree to attend such classes.

(c) The family court may require that each person attending a parent education class pay a fee, not to exceed twenty-five dollars, to the clerk of the circuit court to defray the cost of materials and of hiring teachers: Provided, That where it is determined that a party is indigent and unable to pay for such classes, the court shall waive the payment of the fee for such party. The clerk of the circuit court shall, on or before the tenth day of each month, transmit all fees collected under this
subsection to the state treasurer for deposit in the state treasury
to the credit of special revenue fund to be known as the "parent
education fund" which is hereby created. All moneys collected
and received under this subsection and paid into the state
treasury and credited to the parent education fund shall be used
by the administrative office of the supreme court of appeals
solely for reimbursing the provider of parent education classes
for the costs of materials and of providing such classes. Such
moneys shall not be treated by the auditor and treasurer as part
of the general revenue of the state.

(d) The administrative office of the supreme court of
appeals shall submit a report to the joint committee on govern-
ment and finance summarizing the effectiveness of any program
of parent education no later than two years from the initiation
of the program.

PART 2. PARENTING PLANS.

§48-9-202. Court-ordered services.

(a)(1) The court shall inform the parents, or require them to
be informed, about:

(A) How to prepare a parenting plan;

(B) The impact of family dissolution on children and how
the needs of children facing family dissolution can best be
addressed;

(C) The impact of domestic abuse on children and resources
for addressing domestic abuse; and

(D) Mediation or other nonjudicial procedures designed to
help them achieve an agreement.
(2) The court shall require the parents to attend parent education classes.

(3) If parents are unable to resolve issues and agree to a parenting plan, the court shall require mediation unless application of the procedural rules promulgated pursuant to the provisions of subsection (b) of this section indicates that mediation is inappropriate in the particular case.

(b) The supreme court of appeals shall make and promulgate rules that will provide for premediation screening procedures to determine whether domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements would adversely affect the safety of a party, the ability of a party to meaningfully participate in the mediation or the capacity of a party to freely and voluntarily consent to any proposed agreement reached as a result of the mediation. Such rules shall authorize a family court judge to consider alternatives to mediation which may aid the parties in establishing a parenting plan. Such rules shall not establish a per se bar to mediation if domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements exist, but may be the basis for the court, in its discretion, not to order services under subsection (a) of this section or not to require a parent to have face-to-face meetings with the other parent.

(c) A mediator shall not make a recommendation to the court and may not reveal information that either parent has disclosed during mediation under a reasonable expectation of confidentiality, except that a mediator may reveal to the court credible information that he or she has received concerning domestic violence or child abuse.

(d) Mediation services authorized under subsection (a) of this section shall be ordered at an hourly cost that is reasonable
in light of the financial circumstances of each parent, assessed 
on a uniform sliding scale. Where one parent's ability to pay for 
such services is significantly greater than the other, the court 
may order that parent to pay some or all of the expenses of the 
other. State revenues shall not be used to defray the costs for 
the services of a mediator: Provided, That the supreme court of 
appeals may use a portion of its budget to pay administrative 
costs associated with establishing and operating mediation 
programs: Provided, however, That grants and gifts to the state 
that may be used to fund mediation are not to be considered as 
state revenues for purposes of this subsection.

(e) The supreme court of appeals shall establish standards 
for the qualification and training of mediators.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-9-403. Relocation of a parent.

(a) The relocation of a parent constitutes a substantial 
change in the circumstances under subsection 9-401(a) of the 
child only when it significantly impairs either parent's ability 
to exercise responsibilities that the parent has been exercising.

(b) Unless otherwise ordered by the court, a parent who has 
responsibility under a parenting plan who changes, or intends 
to change, residences for more than ninety days must give a 
minimum of sixty days' advance notice, or the most notice 
practicable under the circumstances, to any other parent with 
responsibility under the same parenting plan. Notice shall 
include:

(1) The relocation date;

(2) The address of the intended new residence;

(3) The specific reasons for the proposed relocation;
(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and

(5) Information for the other parent as to how he or she may respond to the proposed relocation or modification of custodial responsibility.

Failure to comply with the notice requirements of this section without good cause may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section and is a basis for an award of reasonable expenses and reasonable attorney’s fees to another parent that are attributable to such failure.

The supreme court of appeals shall make available through the offices of the circuit clerks and the secretary-clerks of the family courts a form notice that complies with the provisions of this subsection. The supreme court of appeals shall promulgate procedural rules that provide for an expedited hearing process to resolve issues arising from a relocation or proposed relocation.

(c) When changed circumstances are shown under subsection (a) of this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties.

(d) When the relocation constituting changed circumstances under subsection (a) of this section renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent, the court shall modify the
parenting plan in accordance with the child's best interests and in accordance with the following principles:

(1) A parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family or other support networks, for significant health reasons, to protect the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity or to be with one's spouse who is established, or who is pursuing a significant employment or educational opportunity, in another location. The relocating parent has the burden of proving of the legitimacy of any other purpose. A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially achievable without moving or by moving to a location that is substantially less disruptive of the other parent's relationship to the child.

(2) If a relocation of the parent is in good faith for legitimate purpose and to a location that is reasonable in light of the purpose and if neither has been exercising a significant majority of custodial responsibility for the child, the court shall reallocate custodial responsibility based on the best interest of the child, taking into account all relevant factors including the effects of the relocation on the child.

(3) If a parent does not establish that the purpose for that parent's relocation is in good faith for a legitimate purpose into a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child's
best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, effective if and when the relocation occurs, but such a reallocation shall not be ordered if the relocating parent demonstrates that the child’s best interests would be served by the relocation.

(4) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent’s relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents’ resources and circumstances and the developmental level of the child.

(e) In determining the proportion of caretaking functions each parent previously performed for the child under the parenting plan before relocation, the court may not consider a division of functions arising from any arrangements made after a relocation but before a modification hearing on the issues related to relocation.

(f) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of rule 17 of the rules of practice and procedure for family law as promulgated by the supreme court of appeals.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-603. Effect of enactment; operative dates.

(a) The enactment of this article, formerly enacted as article eleven of this chapter during the second extraordinary session of the Legislature, one thousand nine hundred ninety-nine, is prospective in operation unless otherwise expressly indicated.

(b) The provisions of section 9-202, insofar as they provide for parent education and mediation, became operative on the
first day of January, two thousand. Until that date, parent education and mediation with regard to custody issues were discretionary unless made mandatory under a particular program or pilot project by rule or direction of the supreme court of appeals or a circuit court.

(c) The provisions of this article that authorize the court, in the absence of an agreement of the parents, to order an allocation of custodial responsibility and an allocation of significant decision-making responsibility became operative on the first day of January, two thousand, at which time the primary caretaker doctrine was replaced with a system that allocates custodial and decision-making responsibility to the parents in accordance with this article. Any order entered prior to the first day of January, two thousand, based on the primary caretaker doctrine remains in full force and effect until modified by a court of competent jurisdiction.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-105. Modification of child support order.


§48-11-105. Modification of child support order.

(a) The court may modify a child support order, for the benefit of the child, when a motion is made that alleges a change in the circumstances of a parent or another proper person or persons. A motion for modification of a child support order may be brought by a custodial parent or any other lawful custodian or guardian of the child, by a parent or other person obligated to pay child support for the child or by the bureau for child support enforcement of the department of health and human resources of this state.

(b) The provisions of the order may be modified if there is a substantial change in circumstances. If application of the
guideline would result in a new order that is more than fifteen percent different, then the circumstances are considered a substantial change.

(c) An order that modifies the amount of child support to be paid shall conform to the support guidelines set forth in article 13-101, et seq., of this chapter unless the court disregards the guidelines or adjusts the award as provided for in section 13-702.

(d) The supreme court of appeals shall make available to the courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income or that the amount of support required to be paid is not within fifteen percent of the child support guidelines. The clerk of the circuit court and the secretary-clerk of the family court shall make the forms available to persons desiring to represent themselves in filing a motion for modification of the support award.


(a) An expedited process for modification of a child support order may be utilized if:

(1) Either parent experiences a substantial change of circumstances resulting in a decrease in income due to loss of employment or other involuntary cause;

(2) An increase in income due to promotion, change in employment or reemployment; or

(3) Other such change in employment status.
(b) The party seeking the recalculation of support and modification of the support order shall file a description of the decrease or increase in income and an explanation of the cause of the decrease or increase on a standardized form to be provided by the secretary-clerk or other employee of the family court. The standardized form shall be verified by the filing party. Any available documentary evidence shall be filed with the standardized form. Based upon the filing and information available in the case record, the amount of support shall be tentatively recalculated.

(c) The secretary-clerk shall serve a notice of the filing, a copy of the standardized form and the support calculations upon the other party by certified mail, return receipt requested, with delivery restricted to the addressee, in accordance with rule 4(d)(1)(D) of the West Virginia rules of civil procedure. The secretary-clerk shall also mail a copy, by first-class mail, to the local office of the bureau for child support enforcement for the county in which the family court is located in the same manner as original process under rule 4(d) of the rules of civil procedure.

(d) The notice shall fix a date fourteen days from the date of mailing and inform the party that unless the recalculation is contested and a hearing request is made on or before the date fixed, the proposed modification will be made effective. If the filing is contested, the proposed modification shall be set for hearing; otherwise, the court shall enter an order for a judgment by default. Either party may move to set aside a judgment by default, pursuant to the provisions of rule 55 or rule 60(b) of the rules of civil procedure.

(e) If an obligor uses the provisions of this section to expeditiously reduce his or her child support obligation, the order that effected the reduction shall also require the obligor to notify the obligee of reemployment, new employment or
other such change in employment status that results in an increase in income. If an obligee uses the provisions of this section to expeditiously increase his or her child support obligation, the order that effected the increase shall also require the obligee to notify the obligor of reemployment, new employment or other such change in employment status that results in an increase in income of the obligee.

(f) The supreme court of appeals shall develop the standardized form required by this section.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.


§48-13-204. Use of worksheets.

§48-13-205. Present income as monthly amounts.

§48-13-701. Rebuttable presumption that child support award is correct.

§48-13-901. Tax exemption for child due support.

§48-13-902. Investment of child support.

PART 1. GENERAL PROVISIONS.

§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.

This article establishes guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders and to increase predictability for parents, children and other persons who are directly affected by child support orders. There is a rebuttable presumption, in any proceeding before a court for the award of child support, that the amount of the award which would result from the application of these guidelines is the correct amount of child support to be awarded.
PART 2. CALCULATION OF CHILD SUPPORT ORDER.


1 In determining the total child support obligation, the court shall:

3 (1) Add to the basic child support obligation any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court; and

7 (2) Subtract any extraordinary credits agreed to by the parents or ordered by the court.

§48-13-204. Use of worksheets.

1 The calculation of the amount awarded by the support order requires the use of one of two worksheets which must be completed for each case. Worksheet A is used for a basic shared parenting arrangement. Worksheet B is used for an extended shared parenting arrangement.

§48-13-205. Present income as monthly amounts.

1 To the extent practicable, all information relating to income shall be presented to the court based on monthly amounts. For example, when a party is paid wages weekly, the pay should be multiplied by fifty-two and divided by twelve to arrive at a correct monthly amount. If the court deems appropriate, such information may be presented in such other forms as the court directs.

PART 7. APPLICATION OF CHILD SUPPORT GUIDELINES.

§48-13-701. Rebuttable presumption that child support award is correct.
The guidelines in child support awards apply as a rebuttable presumption to all child support orders established or modified in West Virginia. The guidelines must be applied to all actions in which child support is being determined including temporary orders, interstate (URES A and UIFSA), domestic violence, foster care, divorce, nondissolution, public assistance, nonpublic assistance and support decrees arising despite nonmarriage of the parties. The guidelines must be used by the court as the basis for reviewing adequacy of child support levels in uncontested cases as well as contested hearings.

PART 9. MISCELLANEOUS PROVISIONS RELATING TO CHILD SUPPORT ORDERS.

§48-13-901. Tax exemption for child due support.

Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the payee parent except in cases of extended shared parenting. In extended shared parenting cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the payor parent only if the total of the payee parent’s income and child support is greater when the exemption is awarded to the payor parent.

§48-13-902. Investment of child support.

(a) The court has the discretion, in appropriate cases, to direct that a portion of child support be placed in trust and invested for future educational or other needs of the child. The court may order such investment when all of the child’s day-to-day needs are being met such that, with due consider-
ation of the age of the child, the child is living as well as his or her parents.

(b) If the amount of child support ordered per child exceeds the sum of two thousand dollars per month, the court is required to make a finding, in writing, as to whether investments shall be made as provided for in subsection (a) of this section.

(c) A trustee named by the court shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. A trustee shall be governed by the provisions of the uniform prudent investor act as set forth in article six-c, chapter forty-four of this code. The court may prescribe the powers of the trustee and provide for the management and control of the trust. Upon petition of a party or the child's guardian or next friend and upon a showing of good cause, the court may order the release of funds in the trust from time to time.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-14-101. When action may be brought for child support order.
§48-14-106. Modification of support order.
§48-14-204. Execution and notice.
§48-14-402. Commencement of withholding from income without further court action.
§48-14-405. Information required in notice to obligor.
§48-14-501. Commencement of contempt action.
§48-14-802. Notice of increase in monthly payments to satisfy overdue support.

PART 1. ACTION TO OBTAIN AN ORDER FOR SUPPORT OF MINOR CHILD.

§48-14-101. When action may be brought for child support order.
An action may be brought in family court to obtain an order for the support of a minor child when:

1. The child has a parent and child relationship with an obligor;
2. The obligor is not meeting an obligation to support the child;
3. An enforceable order for the support of the child by the obligor has not been entered by a court of competent jurisdiction; and
4. There is no pending action for divorce, separate maintenance or annulment in which the obligation of support owing from the obligor to the child is at issue.

§48-14-106. Modification of support order.

(a) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee or the obligor, revise or alter such order and make a new order as the altered circumstances or needs of a child, an obligee or the obligor may render necessary to meet the ends of justice.

(b) The supreme court of appeals shall make available to the family courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income, or that the amount of support required to be paid is not within fifteen percent of the child support guidelines. The clerk of the circuit court and the secretary-clerk of the family court shall make such forms available to persons desiring to petition the court pro se for a modification of the support award.
§48-14-204. Execution and notice.

(a) Upon receipt of the affidavit, the clerk shall issue a writ of execution, suggestion or suggestee execution and shall mail a copy of the affidavit and a notice of the filing of the affidavit to the obligor at his or her last known address. If the bureau for child support enforcement is not acting on behalf of the obligee in filing the affidavit, the clerk shall forward a copy of the affidavit and the notice of the filing to the bureau for child support enforcement.

(b) The notice provided for in subsection (a) of this section must inform the obligor that if he or she desires to contest the affidavit on the grounds that the amount claimed to be in arrears is incorrect or that a writ of execution, suggestion or suggestee execution is not proper because of mistakes of fact, he or she must, within fourteen days of the date of the notice: (1) Inform the bureau for child support enforcement in writing of the reasons why the affidavit is contested and request a meeting with the bureau for child support enforcement; or (2) where a court of this state has jurisdiction over the parties, obtain a date for a hearing before the court and mail written notice of such hearing to the obligee and to the bureau for child support enforcement on a form prescribed by the administrative office of the supreme court of appeals and made available through the office of the clerk of the circuit court.

(c) Upon being informed by an obligor that he or she desires to contest the affidavit, the bureau for child support enforcement shall inform the court of such fact, and the court shall require the obligor to give security, post a bond or give some other guarantee to secure payment of overdue support.
§48-14-402. Commencement of withholding from income without further court action.

(a) Except as otherwise provided in section 14-403, a support order as described in section 14-401 must contain or must be deemed to contain language requiring automatic income withholding for both current support and for any arrearages to commence without further court action on the date the support order is entered.

(b) The supreme court of appeals shall make available to the family courts standard language to be included in all such orders, so as to conform such orders to the applicable requirements of state and federal law regarding the withholding from income of amounts payable as support.

§48-14-405. Information required in notice to obligor.

When income withholding is required, the bureau for child support enforcement shall send by first-class mail or electronic means to the obligor notice that withholding has commenced. The notice shall inform the obligor of the following:

1. The amount owed;
2. That a withholding from the obligor's income of amounts payable as support has commenced;
3. That the amount withheld will be equal to the amount required under the terms of the current support order, plus amounts for any outstanding arrearage;
4. The definition of "gross income" as defined in section 1-228 of this chapter;
(5) That the withholding will apply to the obligor’s present source of income and to any future source of income and, therefore, no other notice of withholding will be sent to the obligor. A copy of any new or modified withholding notice will be sent to the obligor at approximately the same time the original is sent to the source of income;

(6) That any action by the obligor to purposefully minimize his or her income will result in the enforcement of support being based upon potential and not just actual earnings;

(7) That payment of the arrearage after the date of the notice is not a bar to such withholding;

(8) That the obligor may request a review of the withholding by written request to the bureau for child support enforcement when the obligor has information showing an error in the current or overdue support amount or a mistake as to the identity of the obligor;

(9) That a mistake of fact exists only when there is an error in the amount of current or overdue support claimed in the notice or there is a mistake as to the identity of the obligor;

(10) That matters such as lack of visitation, inappropriateness of the support award or changed financial circumstances of the obligee or the obligor will not be considered at any hearing held pursuant to the withholding, but may be raised by the filing of a separate petition in family court;

(11) That if the obligor desires to contest the withholding, the obligor may petition the family court for a resolution; and

(12) That while the withholding is being contested through the court, the income withholding may not be stayed but may be modified.
PART 5. ENFORCEMENT OF SUPPORT ORDERS
BY CONTEMPT PROCEEDINGS.

§48-14-501. Commencement of contempt action.

In addition to or in lieu of the other remedies provided by this article for the enforcement of support orders, the bureau for child support enforcement may commence a civil or criminal contempt proceeding in accordance with the provisions of section 1-304 against an obligor who is alleged to have willfully failed or refused to comply with the order of a court of competent jurisdiction requiring the payment of support. Such proceeding shall be instituted by filing a petition for an order to show cause why the obligor should not be held in contempt.

PART 8. INCREASE IN PAYMENTS TO SATISFY ARREARAGE.

§48-14-802. Notice of increase in monthly payments to satisfy overdue support.

Notice of the increase shall be sent to the obligor at the time such increase is implemented. If the obligor disagrees with the increase in payments, he or she may file, within thirty days of the date of the notice, a motion with the court for a determination of whether there should be an increase in monthly payments and the amount of that increase, if any.

ARTICLE 15. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION AGAINST LICENSE.

§48-15-205. Form of notice of action against a license.
§48-15-207. Failure to act in response to notice; entry of order.

PART 2. ACTION AGAINST LICENSE.

§48-15-205. Form of notice of action against a license.

The notice shall be substantially in the following form:
## NOTICE OF ACTION AGAINST LICENSE

<table>
<thead>
<tr>
<th>Name and address:</th>
<th>Date:</th>
<th>Case No:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Security No:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Court of</td>
<td></td>
<td>County, West Virginia</td>
</tr>
</tbody>
</table>

### Section 1.

- The Bureau for Child Support Enforcement has determined that you have failed to comply with an order to pay child support and that the amount you owe equals six months' child support or more. The amount you owe is calculated to be $\_\_\_\_\_\_\_ as of the _____ day of _____________, ________.

- The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be $\_\_\_\_\_\_ as of the _____ day of _____________, ________.

- The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.

- The Bureau for Child Support Enforcement has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.
Section 2.

Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver's license, a recreational license such as a hunting and fishing license and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.

The Bureau for Child Support Enforcement has determined that you are a current license holder, have applied for or are likely to apply for the following license or licenses:

To avoid an action against your licenses, check which of the following actions you will take:

☐ I want to pay in full the overdue amount I owe as child support. I am enclosing a check or money order in the amount of $__________

☐ I want to pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of $__________

☐ I am requesting a meeting with a representative of the Bureau for Child Support Enforcement to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with current support orders.

☐ I am requesting a hearing before the family court judge to contest an action against my licenses. Please serve me with any petition filed and provide me with notice of the time and place of the hearing.

Signed ✘ ___________________________ Date: ________________
Section 3.

You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Bureau for Child Support Enforcement before the ___ day of __________, ____. Otherwise, the Bureau for Child Support Enforcement may begin an action against your licenses in the Family Court without further notice to you. Mail this form to the following address:

§48-15-207. Failure to act in response to notice; entry of order.

1 If the person fails to take one of the actions described in section 15-206 within thirty days of the date of the notice and there is proof that service on the person was effective, the bureau for child support enforcement shall file a certification with the court setting forth the person’s noncompliance with the support order or failure to comply with a subpoena or warrant and the person’s failure to respond to the written notice of the potential action against his or her license. If the court is satisfied that service of the notice on the person was effective as set forth in this section, it shall, without need for further due process or hearing, enter an order suspending or restricting any licenses held by the person. Upon the entry of the order, the bureau for child support enforcement shall forward a copy to the person and to any appropriate agencies responsible for the issuance of a license.


1 If the person requests a hearing, the bureau for child support enforcement shall file a petition for a hearing before the family court. The hearing shall occur within forty-two days of the receipt of the person’s request. If, prior to the hearing, the person pays the full amount of the child support arrearage or medical support arrearage or provides health insurance as ordered, the action against a license shall be terminated. No
action against a license shall be initiated if the bureau for child
support enforcement has received notice that the person has
pending a motion to modify the child support order if that
motion was filed prior to the date that the notice of the action
against the license was sent by the bureau for child support
enforcement. The court shall consider the bureau for child
support enforcement’s petition to deny, refuse to renew,
suspend or restrict a license in accordance with section 15-209.

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.


§48-16-102. Tribunals of state.

§48-16-305. Duties and powers of responding tribunal.

PART 1. GENERAL PROVISIONS.


As used in this article:

(1) "Child" means an individual, whether over or under the
age of majority, who is or is alleged to be owed a duty of
support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or
comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's source of income as defined by section 1-240 of this chapter to withhold support from the income of the obligor.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this article or a law or procedure substantially similar to this article, the uniform reciprocal enforcement of support act or the revised uniform reciprocal enforcement of support act.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules having the force of law.

(12) "Obligee" means: (i) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered; (ii) a state or political subdivision to which the
rights under a duty of support or support order have been
assigned or which has independent claims based on financial
assistance provided to an individual obligee; or (iii) an individ-
ual seeking a judgment determining parentage of the individ-
ual’s child.

(13) "Obligor" means an individual or the estate of a
decedent: (i) Who owes or is alleged to owe a duty of support;
(ii) who is alleged but has not been adjudicated to be a parent
of a child; or (iii) who is liable under a support order.

(14) "Register" means to record a support order or judg-
ment determining parentage in the registry of foreign support
orders.

(15) "Registering tribunal" means a tribunal in which a
support order is registered.

(16) "Responding state" means a state in which a proceed-
ing is filed or to which a proceeding is forwarded for filing
from an initiating state under this article or a law or procedure
substantially similar to this article, the uniform reciprocal
enforcement of support act or the revised uniform reciprocal
enforcement of support act.

(17) "Responding tribunal" means the authorized tribunal
in a responding state.

(18) "Spousal support order" means a support order for a
spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District
of Columbia, Puerto Rico, the United States Virgin Islands or
any territory or insular possession subject to the jurisdiction of
the United States. The term includes: (i) An Indian tribe; or (ii)
a foreign jurisdiction that has enacted a law or established
procedures for issuance and enforcement of support orders
which are substantially similar to the procedures under this article, the uniform reciprocal enforcement of support act or the revised uniform reciprocal enforcement of support act.

(20) "Support enforcement agency" means a public official or agency authorized to seek: (i) Enforcement of support orders or laws relating to the duty of support; (ii) establishment or modification of child support; (iii) determination of parentage; or (iv) to locate obligors or their assets.

(21) "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse which provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest, income withholding, attorney's fees and other relief.

(22) "Tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

§48-16-102. Tribunals of state.

The family court is the tribunal of this state.

PART 3. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (c), section 16-301 (proceedings under this article), the clerk of the court shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.
(b) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following: (1) Issue or enforce a support order, modify a child support order or render a judgment to determine parentage; (2) order an obligor to comply with a support order, specifying the amount and the manner of compliance; (3) order income withholding; (4) determine the amount of any arrearages and specify a method of payment; (5) enforce orders by civil contempt; (6) set aside property for satisfaction of the support order; (7) place liens and order execution on the obligor's property; (8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment and telephone number at the place of employment; (9) issue a capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the capias in any local and state computer systems for criminal warrants; (10) order the obligor to seek appropriate employment by specified methods; (11) award reasonable attorney's fees and other fees and costs; and (12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this article, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this article upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this article, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.
ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.


(a) When the bureau for child support enforcement provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the bureau for child support enforcement shall, upon written notice to the obligor, charge a monthly collection fee equivalent to the full monthly cost of the services, in addition to the amount of child support which was ordered by the court. The fee shall be deposited in the child support enforcement fund. The service fee assessed may not exceed ten percent of the monthly court-ordered child support and may not be assessed against any obligor who is current in payment of the monthly court-ordered child support payments: Provided, That this fee may not be assessed when the obligor is also a recipient of public assistance.

(b) Except for those persons applying for services provided by the bureau for child support enforcement who are applying for or receiving public assistance from the division of human services or persons for whom fees are waived pursuant to a legislative rule promulgated pursuant to this section, all applicants shall pay an application fee of twenty-five dollars.

(c) Fees imposed by state and federal tax agencies for collection of overdue support shall be imposed on the person for whom these services are provided. Upon written notice to
the obligee, the bureau for child support enforcement shall assess a fee of twenty-five dollars to any person not receiving public assistance for each successful federal tax interception. The fee shall be withheld prior to the assistance for each successful federal tax interception. The fee shall be withheld prior to the release of the funds received from each interception and deposited in the child support enforcement fund established pursuant to section 18-107.

(d) In any action brought by the bureau for child support enforcement, the court shall order that the obligor shall pay attorney fees for the services of the attorney representing the bureau for child support enforcement in an amount calculated at a rate similar to the rate paid to court-appointed attorneys paid pursuant to section thirteen-a, article twenty-one, chapter twenty-nine of this code and all court costs associated with the action: Provided, That no such award shall be made when the court finds that the award of attorney's fees would create a substantial financial hardship on the obligor or when the obligor is a recipient of public assistance. Further, the bureau for child support enforcement may not collect such fees until the obligor is current in the payment of child support. No court may order the bureau for child support enforcement to pay attorney's fees to any party in any action brought pursuant to this chapter.

(e) This section shall not apply to the extent it is inconsistent with the requirements of federal law for receiving funds for the program under Title IV-A and Title IV-D of the Social Security Act, United States Code, article three, Title 42, Sections 601 to 613 and United States Code, Title 42, Sections 651 to 662.

(f) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, describe the circumstances under which fees charged by the bureau for child support enforcement may be modified or waived and such rule
shall provide for the waiver of any fee, in whole or in part, when such fee would otherwise be required to be paid under the provisions of this chapter. Further, such rule shall initially be promulgated as an emergency rule pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

§48-18-111. Establishment of parent locator service.

(a) The bureau for child support enforcement shall establish a parent locator service to locate individuals for the purposes of establishing parentage and of establishing, modifying or enforcing child support obligations utilizing all sources of information and available records and the parent locator service in the federal department of health and human services. For purposes of obtaining information from the parent locator service, any person, agency or entity providing services to the bureau for child support enforcement pursuant to a contract that includes a provision to ensure that the confidentiality of information is maintained shall be deemed to be an agent of the bureau for child support enforcement.

(b) Upon entering into an agreement with the secretary of the federal department of health and human services for the use of that department’s parent locator service, the bureau for child support enforcement shall accept and transmit to the secretary of the federal department of health and human services requests from authorized persons for information with regard to the whereabouts of a noncustodial obligor to be furnished by such federal parent locator service. For purposes of this subsection, "authorized persons" means: (1) An attorney or agent of the bureau for child support enforcement; (2) a family or circuit court judge or any agent thereof; or (3) a resident parent, legal guardian, attorney or agent for a child. The bureau for child support enforcement shall charge a reasonable fee sufficient to cover the costs to the state and to the federal department of health and human services incurred by reason of such requests
and shall transfer to that department, from time to time, so
much of the fees collected as are attributable to the costs
incurred by that department.

(c) The information obtained by the bureau for child
support enforcement from the federal parent locator service
shall be used for, but not limited to, the following purposes:

(1) Establishing parentage and establishing, setting the
amount of, modifying or enforcing child support obligations;

(2) Obtaining and transmitting information to any family or
circuit court or agent thereof or to an attorney or employee of
the United States or of any state responsible for enforcing any
federal or state law with respect to the unlawful taking or
restraint of a child or making or enforcing a child custody or
visitation determination.

(d) The bureau for child support enforcement may request
from the federal parent locator service information:

(1) About, or which will facilitate the discovery of informa-
tion about, the location of any individual: (A) Who is under an
obligation to pay child support; (B) against whom such an
obligation is sought; or (C) to whom such an obligation is
owed, including the individual's social security number, or
numbers, most recent address and the name, address and
employer identification number of the individual's employer;

(2) Concerning the individual's wages or other income
from, and benefits of, employment, including rights to or
enrollment in group health care coverage; and

(3) Concerning the type, status, location and amount of any
assets of, or debts owed by or to, any such individual.
(e) The family court shall have jurisdiction to hear and determine, upon a petition by an authorized person as defined in subsection (b) of this section, whether the release of information from the federal parent locator service to that person could be harmful to the custodial parent or the child.

§48-18-114. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.

(a) Where physical custody of the child has been transferred from the custodial parent to another person, the bureau for child support enforcement may redirect disbursement of support payments to such other person, on behalf of the child, in the following circumstances:

1. Where the noncustodial parent has physical custody of the child, excluding visitation, upon filing with the bureau for child support enforcement:

   A. An affidavit attesting that the noncustodial parent has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

   B. Documentary proof that the noncustodial parent has instituted proceedings in court for a modification of legal custody or a certified copy of the custodial parent’s death certificate.

2. Where a person other than the custodial or noncustodial parent has physical custody of the child, excluding visitation, filing with the bureau for child support enforcement:
(A) An affidavit attesting that the person has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

(B) Documentary proof that the person claiming physical custody is currently the person responsible for the child by producing at least one of the following:

(i) School records demonstrating that school authorities consider the person claiming physical custody the adult responsible for the child;

(ii) Medical records demonstrating that the person claiming physical custody is empowered to make medical decisions on behalf of the child;

(iii) Documents from another public assistance agency showing that the person claiming physical custody is currently receiving other public assistance on behalf of the child;

(iv) A notarized statement from the custodial parent attesting to the fact that he or she has transferred physical custody to the person;

(v) A verifiable order of a court of competent jurisdiction transferring physical or legal custody to the person;

(vi) Documentation that the person claiming physical custody has filed a petition in court to be appointed the child's guardian;

(vii) Documentation that the child, if over the age of fourteen, has instituted proceedings in court to have the person claiming physical custody nominated as his or her guardian; or
(viii) Any other official documents of a federal, state or local agency or governing body demonstrating that the person currently has physical custody of the child and has taken action indicating that he or she anticipates such physical custody to continue in the foreseeable future.

(b) The bureau for child support enforcement shall mail, by first-class mail, a copy of the affidavit and supporting documentary evidence required under subsection (a) of this section to the circuit court which issued the support order being enforced by and to the parties to the order, at their last known addresses, together with a written notice stating that any party has ten days to object to the redirection of support payments by filing an affidavit and evidence showing that the person seeking redirection of the payments does not have physical custody of the child. If no objection is received by the bureau for child support enforcement by the end of the ten-day period, the bureau may order payments redirected to the person claiming physical custody for the benefit of the child. If a responsive affidavit and supporting evidence is filed within the ten-day period and, in the opinion of the bureau for child support enforcement, either disproves the claim of the person seeking redirection of support payments or raises a genuine issue of fact as to whether the person has actual physical custody of the child, the bureau for child support enforcement shall continue to forward support payments to the custodial parent. Any person who disagrees with the determination of the bureau for child support enforcement may petition the court for modification of the child support order.

(c) Any person who files a false affidavit pursuant to this section shall be guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

§48-18-123. Subpoenas.
In order to obtain financial and medical insurance or other information pursuant to the establishment, enforcement and modification provisions set forth in this chapter, the bureau for child support enforcement or any out-of-state agency administering a program under Title IV-D of the Social Security Act may serve, by certified mail or personal service, an administrative subpoena on any person, corporation, partnership, financial institution, labor organization or state agency for an appearance or for production of financial or medical insurance or other information. In case of disobedience to the subpoena, the bureau for child support enforcement may invoke the aid of any family court in requiring the appearance or production of records and financial documents. The bureau for child support enforcement may assess a civil penalty of no more than one hundred dollars for the failure of any person, corporation, financial institution, labor organization or state agency to comply with requirements of this section.

§48-18-126. Review and adjustment of child support orders.

(a) Either parent or, if there has been an assignment of support to the department of health and human resources, the bureau for child support enforcement shall have the right to request an administrative review of the child support award in the following circumstances:

(1) Where the request for review is received thirty-six months or more after the date of the entry of the order or from the completion of the previous administrative review, whichever is later, the bureau for child support enforcement shall conduct a review to determine whether the amount of the child support award in such order varies from the amount of child support that would be awarded at the time of the review pursuant to the guidelines for child support awards contained in article 13-101, et seq. If the amount of the child support award under the existing order differs by ten percent or more from the
amount that would be awarded in accordance with the child support guidelines, the bureau for child support enforcement shall file with the family court a motion for modification of the child support order. If the amount of the child support award under the existing order differs by less than ten percent from the amount that would be awarded in accordance with the child support guidelines, the bureau for child support enforcement may, if it determines that such action is in the best interest of the child or otherwise appropriate, file with the family court a motion for modification of the child support order.

(2) Where the request for review of a child support award is received less than thirty-six months after the date of the entry of the order or from the completion of the previous administrative review, the bureau for child support enforcement shall undertake a review of the case only where it is alleged that there has been a substantial change in circumstances. If the bureau for child support enforcement determines that there has been a substantial change in circumstances and if it is in the best interests of the child, the bureau shall file with the family court a motion for modification of the child support order in accordance with the guidelines for child support awards contained in article 13-101, et seq., of this chapter.

(b) The bureau for child support enforcement shall notify both parents at least once every three years of their right to request a review of a child support order. The notice may be included in any order granting or modifying a child support award. The bureau for child support enforcement shall give each parent at least thirty days' notice before commencing any review and shall further notify each parent, upon completion of a review, of the results of the review, whether of a proposal to move for modification or of a proposal that there should be no change.
(c) When the result of the review is a proposal to move for modification of the child support order, each parent shall be given thirty days' notice of the hearing on the motion, the notice to be directed to the last known address of each party by first-class mail. When the result of the review is a proposal that there be no change, any parent disagreeing with that proposal may, within thirty days of the notice of the results of the review, file with the court a motion for modification setting forth in full the grounds therefor.

(d) For the purposes of this section, a "substantial change in circumstances" includes, but is not limited to, a changed financial condition, a temporary or permanent change in physical custody of the child which the court has not ordered, increased need of the child or other financial conditions. "Changed financial conditions" means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance payments, unemployment compensation and workers' compensation or a fifteen percent or more variance from the amount of the existing order and the amount of child support that would be awarded according to the child support guidelines.

ARTICLE 20. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

PART 1. GENERAL PROVISIONS.


(a) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(b) "Child" means an individual who has not attained eighteen years of age.
(c) "Child custody determination" means a judgment, decree or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(d) "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under part 20-301, et seq.

(e) "Commencement" means the filing of the first pleading in a proceeding.

(f) "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination. Reference to a court of West Virginia means the family court.

(g) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(h) "Initial determination" means the first child custody determination concerning a particular child.
(i) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(j) "Issuing state" means the state in which a child custody determination is made.

(k) "Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(l) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government, governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(m) "Person acting as a parent" means a person, other than a parent, who:

(1) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(2) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(n) "Physical custody" means the physical care and supervision of a child.

(o) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.
64 (p) "Tribe" means an Indian tribe or band or Alaskan Native village which is recognized by federal law or formally acknowledged by a state.

67 (q) "Warrant" means an order issued by a court authorizing law-enforcement officers to take physical custody of a child.

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 allegations in the complaint set forth as grounds for relief and the grant or denial of the relief prayed for in a particular case shall rest in the sound discretion of the court, to be exercised by the court according to the circumstances and exigencies of the case, having due regard for precedent and the provisions of the statutory law of this state.
(d) A decree or order made and entered by a court in a paternity proceeding shall include a determination of the filial relationship, if any, which exists between a child and his or her putative father, and, if such relationship is established, shall resolve dependent claims arising from family rights and obligations attendant to such filial relationship.

(e) A paternity proceeding may be brought by any of the following persons:

1. An unmarried woman with physical or legal custody of a child to whom she gave birth;

2. A married woman with physical or legal custody of a child to whom she gave birth, if the complaint alleges that:
   
   (A) The married woman lived separate and apart from her husband preceding the birth of the child;

   (B) The married woman did not cohabit with her husband at any time during such separation and that such separation has continued without interruption; and

   (C) The 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;
48. (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

49. (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.

50. (f) Blood or tissue samples taken pursuant to the provisions of this article may be ordered to be taken in such locations as may be convenient for the parties so long as the integrity of the chain of custody of the samples can be preserved.

51. (g) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article with respect to a child who may have been conceived by that act of intercourse. Service of process may be perfected according to the rules of civil procedure.

52. (h) When the person against whom the proceeding is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default shall be issued by the court as provided by the rules of civil procedure.

§48-24-103. Medical testing procedures to aid in the determination of paternity.

1. (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 possibil-
ity 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 test is ordered pursuant to this section, the moving party shall initially bear all costs associated with the blood test unless that party is determined by the court to be financially unable to pay those costs. This determination shall be made following the filing of an affidavit pursuant to section one, article two, chapter fifty-nine of this code. When the court finds that the moving party is unable to bear that cost, the cost
shall be borne by the state of West Virginia. Following the finding that a person is the father based on the results of a blood test ordered pursuant to this section, the court shall order that the father be ordered to reimburse the moving party for the costs of the blood tests unless the court determines, based upon the factors set forth in this section, that the father is financially unable to pay those costs.

(d) When a blood test is ordered by the bureau for child support enforcement, the bureau shall initially bear all costs subject to recoupment from the alleged father if paternity is established.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-204. Family or household members defined.
§48-27-205. Final hearing defined.
§48-27-209. Protective order defined.
§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.
§48-27-403. Emergency protective orders of court; hearings; persons present.
§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.
§48-27-508. Costs to be paid to family court fund.

PART 2. DEFINITIONS.

§48-27-204. Family or household members defined.

“Family or household members” means persons who:

1 (1) Are or were married to each other;

2 (2) Are or were living together as spouses;

3 (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) Stepfather-in-law or stepmother-in-law;

(G) Child or stepchild;

(H) Daughter-in-law or son-in-law;

(I) Stepdaughter-in-law or stepson-in-law;

(J) Grandparent;

(K) Stepgrandparent;

(L) Aunt, aunt-in-law or stepaunt;

(M) Uncle, uncle-in-law or stepuncle;

(N) Niece or nephew;
(O) First or second cousin; or

(8) Have the relationships set forth in paragraphs (A) through (O), inclusive, subdivision (7) of this section to a family or household member, as defined in subdivisions (1) through (6), inclusive, of this section.

§48-27-205. Final hearing defined.

"Final hearing" means the hearing before a family court judge following the entry of an order by a magistrate as a result of the emergency hearing.

§48-27-209. Protective order defined.

"Protective order" means an emergency protective order entered by a magistrate as a result of the emergency hearing or a protective order entered by a family court judge upon final hearing.

PART 3. PROCEDURE.


(a) An action under this article is commenced by the filing of a verified petition in the magistrate court.

(b) No person shall be refused the right to file a petition under the provisions of this article. No person shall be denied relief under the provisions of this article if she or he presents facts sufficient under the provisions of this article for the relief sought.

(c) Husband and wife are competent witnesses in domestic violence proceedings and cannot refuse to testify on the grounds of the privileged nature of their communications.

PART 4. COORDINATION WITH PENDING COURT ACTIONS.
§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.

(a) The provisions of this section apply where a temporary order has been entered by a family court in an action for divorce, annulment or separate maintenance, notwithstanding the provisions of subsection 27-401(c) of this article.

(b) A person who is a party to an action for divorce, annulment or separate maintenance in which a temporary order has been entered pursuant to section 5-501 of this chapter may petition the magistrate court for a temporary emergency protective order pursuant to this section for any violation of the provisions of this article occurring after the date of entry of the temporary order pursuant to section 5-501 of this chapter.

(c) The only relief that a magistrate may award pursuant to this section is a temporary emergency protective order:

1. Directing the respondent to refrain from abusing the petitioner or minor children, or both;

2. Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order; and

3. Ordering the respondent to refrain from contacting, telephoning, communicating with, harassing or verbally abusing the petitioner.

(d) A temporary emergency protective order may modify an award of custody or visitation only upon a showing, by clear and convincing evidence, of the respondent’s abuse of a child, as abuse is defined in section 27-202 of this article. An order of
modification shall clearly state which party has custody and
describe why custody or visitation arrangements were modified.

(e) (1) The magistrate shall forthwith transmit a copy of any
temporary emergency protective order, together with a copy of
the petition, by mail or by facsimile machine to the family court
in which the action is pending and to law-enforcement agencies.
The family court shall set a hearing on the matter to be held no
later than ten days following the entry of the order by magis-
trate. The family court shall give notice of the hearing date,
time and place to the parties and shall advise them of their
opportunity to appear and participate in a hearing to determine
whether the order entered by the magistrate should be extended
by the family court to a date certain or should be vacated. The
notice shall also provide that a party’s failure to appear may
result in the entry of an order extending the order entered by the
magistrate to a date certain or vacating the order of the magis-
trate. Subsequent to the hearing, the family court shall forthwith
enter an order and cause the same to be served on the parties
and transmitted by mail or by facsimile machine to the issuing
magistrate. The magistrate court clerk shall forward a copy of
the family court order to law-enforcement agencies.

(2) If no temporary order has been entered in the pending
action for divorce, annulment or separate maintenance, the
family court shall forthwith return the order with such explana-
tion to the issuing magistrate. The magistrate who issued the
order shall vacate the order, noting thereon the reason for
termination. The magistrate court clerk shall transmit a copy of
the vacated order to the parties and law-enforcement agencies.

(f) Notwithstanding any other provision of this code, if the
family court extends the temporary emergency protective order
entered by the magistrate or if, pursuant to the provisions of
section 5-509, the family court enters a protective order as
temporary relief in an action for divorce, the family court order
shall be treated and enforced as a protective order issued under the provisions of this article.

§48-27-403. Emergency protective orders of court; hearings; persons present.

(a) Upon the filing of a verified petition under this article, the magistrate court may enter an emergency protective order as it may deem necessary to protect the petitioner or minor children from domestic violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children shall constitute good cause for the issuance of an emergency protective order pursuant to this section. If the respondent is not present at the proceeding, the petitioner or the petitioner’s legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be admitted into evidence to the same extent as though the original thereof. The custodian of such records shall not be required to be present to authenticate such records for any proceeding held pursuant to this subsection. If the magistrate court determines to enter an emergency protective order, the order shall prohibit the respondent from possessing firearms.

(b) Following the proceeding, the magistrate court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any emergency protective order entered pursuant to the proceedings, a notice of the final hearing before the family court and a statement of the right of the respondent to appear and participate in the final hearing, as provided in subsection (d) of this section. Copies of any order entered under the provisions of this section, a notice of the final hearing before the family court and a statement of the right of
the petitioner to appear and participate in the final hearing, as
provided in subsection (d) of this section, shall also be deliv-
ered to the petitioner. Copies of any order entered shall also be
delivered to any law-enforcement agency having jurisdiction to
enforce the order, including municipal police, the county
sheriff’s office and local office of the state police, within
twenty-four hours of the entry of the order. An emergency
protective order is effective until modified by order of the
family court upon hearing as provided in subsection (d) of this
section. The order is in full force and effect in every county in
this state.

(c) Subsequent to the entry of the emergency protective
order, service on the respondent and the delivery to the peti-
tioner and law-enforcement officers, the court file shall be
transferred to the office of the clerk of the circuit court for use
by the family court.

(d) The family court shall schedule a final hearing on each
petition in which an emergency protective order has been
entered by a magistrate. The hearing shall be scheduled not
later than ten days following the entry of the order by the
magistrate. The notice of the final hearing shall be served on the
respondent and delivered to the petitioner, as provided in
subsection (b) of this section, and must set forth the hearing
date, time and place and include a statement of the right of the
parties to appear and participate in the final hearing. The notice
must also provide that the petitioner’s failure to appear will
result in a dismissal of the petition and that the respondent’s
failure to appear may result in the entry of a protective order
against him or her for a period of ninety or one hundred eighty
days, as determined by the court. The notice must also include
the name, mailing address, physical location and telephone
number of the family court having jurisdiction over the pro-
ceedings. To facilitate the preparation of the notice of final
hearing required by the provisions of this subsection, the family
court must provide the magistrate court with a day and time in which final hearings may be scheduled before the family court within the time required by law.

(e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the allegation of domestic violence or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, or such petition shall be dismissed by the family court. If the respondent has not been served with notice of the emergency protective order, the hearing may be continued to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of such records.

(f) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(g) Upon hearing, the family court may dismiss the petition or enter a protective order for a period of ninety days or, in the discretion of the court, for a period of one hundred eighty days. The hearing may be continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing may be continued by the court no more than seven days. If a hearing is continued, the family court may modify the emergency protective order as it deems necessary.
PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.


(a) Upon final hearing, the court shall enter a protective order if it finds, after hearing the evidence, that the petitioner has proved the allegations of domestic violence by a preponderance of the evidence. If the respondent is present at the hearing and elects not to contest the allegations of domestic violence or does not contest the relief sought, the petitioner is not required to produce evidence and prove the allegations of domestic violence and the court may directly address the issues of the relief requested.

(b) The court may modify the terms of a protective order at any time upon subsequent petition filed by any party.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

(a) Except as otherwise provided in subsection 27-401(d) of this article, a protective order, entered by the family court pursuant to this article, is effective for either ninety days or one hundred eighty days, in the discretion of the court. If the court enters an order for a period of ninety days, upon receipt of a written request from the petitioner prior to the expiration of the ninety-day period, the family court shall extend its order for an additional ninety-day period.

(b) To be effective, a written request to extend an order from ninety days to one hundred eighty days must be submitted to the court prior to the expiration of the original ninety-day period. A notice of the extension shall be sent by the clerk of the court to the respondent by first-class mail, addressed to the last known address of the respondent as indicated by the court file. The extension of time is effective upon mailing of the notice.
(c) Certified copies of any order entered or extension notice made under the provisions of this section shall be served upon the respondent by first class mail, addressed to the last known address of the respondent as indicated by the court file, and delivered to the petitioner and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office or local office of the West Virginia state police within twenty-four hours of the entry of the order. The protective order shall be in full force and effect in every county of this state.

(d) The family court may modify the terms of a protective order upon motion of either party.

(e) The clerk of the circuit court shall cause a copy of any protective order entered by the family court pursuant to the provisions of this article or pursuant to the provisions of chapter forty-eight of this code to be forwarded to the appropriate federal agency for registration of domestic violence offenders as required by federal law.

§48-27-508. Costs to be paid to family court fund.

Any person against whom a protective order is issued shall be assessed costs of twenty-five dollars. Such costs shall be paid to the family court fund established pursuant to section twenty-two, article two-a, chapter fifty-one of this code.


(a) A petitioner who has been denied an emergency protective order may file a petition for appeal of the denial, within five days of the denial, to the family court.

(b) Any party to a protective order entered upon final hearing may file a petition for appeal, within ten days of the entry of the order in family court, to the circuit court. The order
shall remain in effect pending an appeal unless stayed by order of the family court sua sponte or upon motion of a party, or by order of the circuit court upon motion of a party. No bond shall be required for any appeal under this section.

(c) A petition for appeal filed pursuant to this section shall be heard by the court within ten days from the filing of the petition.

(d) The standard of review of findings of fact made by the family court is clearly erroneous and the standard of review of application of the law to the facts is an abuse of discretion standard.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article
2A. Family Courts.

ARTICLE 2A. FAMILY COURTS.

§51-2A-1. Family courts established.
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§51-2A-1. Family courts established.

There is hereby created in each county in this state a family court to be designated as "The Family Court of __________ County, West Virginia".

§51-2A-2. Family court jurisdiction; exceptions; limitations.

(a) The family court shall exercise jurisdiction over the following matters:

(1) All actions for divorce, annulment or separate maintenance brought under the provisions of article three, four or five, chapter forty-eight of this code, except as provided in subsections (b) and (c) of this section;

(2) All actions to obtain orders of support brought under the provisions of part one, article fourteen, chapter forty-eight of this code;

(3) All actions to establish paternity brought under the provisions of article twenty-four, chapter forty-eight of this code, and any dependent claims related to such actions regarding child support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child;

(4) All actions for grandparent visitation brought under the provisions of article ten, chapter forty-eight of this code;
(5) All actions for the interstate enforcement of family
support brought under article sixteen, chapter forty-eight of this
code and for the interstate enforcement of child custody brought
under the provisions of article twenty, chapter forty-eight of this code;

(6) All actions for the establishment of a parenting plan or
other allocation of custodial responsibility or decision-making
responsibility for a child, including actions brought under the
uniform child custody jurisdiction and enforcement act, as
provided in article twenty, chapter forty-eight of this code;

(7) All petitions for writs of habeas corpus wherein the
issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting
plans or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support
or domestic violence;

(9) All motions for modification of an order providing for
a parenting plan or other allocation of custodial responsibility
or decision-making responsibility for a child or for child
support or spousal support;

(10) All actions brought, including civil contempt proceed-
ings, to enforce an order of spousal or child support or to
enforce an order for a parenting plan or other allocation of
custodial responsibility or decision-making responsibility for a
child;

(11) All actions brought by an obligor to contest the
enforcement of an order of support through the withholding
from income of amounts payable as support or to contest an
affidavit of accrued support, filed with the circuit clerk, which
seeks to collect an arrearage; and
(12) All final hearings in domestic violence proceedings.

(b) If an action for divorce, annulment or separate maintenance does not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and does not require an award or any payment of child support, the circuit court has concurrent jurisdiction with the family court over the action if, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties.

(c) If an action for divorce, annulment or separate maintenance is pending and a petition is filed pursuant to the provisions of article six, chapter forty-nine of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment or separate maintenance action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the parents has been entered by the family court in the pending action for divorce, annulment or separate maintenance, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility for the child between the parents and defer to the orders of the circuit court in the abuse or neglect proceedings.

(d) A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court is specifically authorized in this section and in chapter forty-eight of this code. A family court may not exercise the powers given courts of record in section one, article five, chapter fifty-one of this code or exercise any other powers provided for courts of record in this code unless
specifically authorized by the Legislature. A family court judge is not a "judge of any court of record" or a "judge of a court of record" as the terms are defined and used in article nine of this chapter.

§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.

(a) A total of thirty-five family court judges shall serve throughout the state.

(b) The state is divided into twenty-six family court circuits with the family court judges allocated as follows:

(1) The counties of Brooke, Hancock and Ohio constitute the first family court circuit and have two family court judges;

(2) The counties of Marshall, Wetzel and Tyler constitute the second family court circuit and have one family court judge;

(3) The counties of Pleasants, Ritchie, Wood and Wirt constitute the third family court circuit and have two family court judges;

(4) The counties of Doddridge, Roane, Calhoun and Gilmer constitute the fourth family court circuit and have one family court judge;

(5) The counties of Mason and Jackson constitute the fifth family court circuit and have one family court judge;

(6) The county of Cabell constitutes the sixth family court circuit and has two family court judges;

(7) The county of Wayne constitutes the seventh family court circuit and has one family court judge;
The county of Mingo constitutes the eighth family court circuit and has one family court judge;

The county of Logan constitutes the ninth family court circuit and has one family court judge;

The counties of Lincoln and Boone constitute the tenth family court circuit and have one family court judge;

The county of Kanawha constitutes the eleventh family court circuit and has four family court judges;

The counties of McDowell and Mercer constitute the twelfth family court circuit and have two family court judges;

The counties of Raleigh and Wyoming constitute the thirteenth family court circuit and have two family court judges;

The counties of Fayette and Summers constitute the fourteenth family court circuit and have one family court judge;

The counties of Greenbrier and Monroe constitute the fifteenth family court circuit and have one family court judge;

The counties of Clay, Nicholas and Webster constitute the sixteenth family court circuit and have one family court judge;

The counties of Braxton, Lewis and Upshur constitute the seventeenth family court circuit and have one family court judge;

The county of Harrison constitutes the eighteenth family court circuit and has one family court judge;

The county of Marion constitutes the nineteenth family court circuit and has one family court judge;
(20) The county of Monongalia constitutes the twentieth family court circuit and has one family court judge;

(21) The counties of Barbour, Preston and Taylor constitute the twenty-first family court circuit and have one family court judge;

(22) The counties of Grant, Tucker and Randolph constitute the twenty-second family court circuit and have one family court judge;

(23) The counties of Mineral, Hampshire and Morgan constitute the twenty-third family court circuit and have one family court judge;

(24) The counties of Berkeley and Jefferson constitute the twenty-fourth family court circuit and have two family court judges;

(25) The counties of Hardy, Pendleton and Pocahontas constitute the twenty-fifth family court circuit and have one family court judge; and

(26) The county of Putnam constitutes the twenty-sixth family court circuit and has one family court judge.

(c) The Legislature has the authority and may determine to realign the family court circuits and has the authority and may determine to increase or decrease the number of family court judges within a family court circuit, from time to time. Any person appointed or elected to the office of family court judge acknowledges the authority of the Legislature to realign family court circuits and the authority of the Legislature to increase or decrease the number of family court judges within a family court circuit.

(a) A family court judge must be a resident of this state, a member in good standing of the West Virginia state bar, admitted to practice law in this state for at least five years prior to election, and must, at the time he or she takes office, and thereafter during his or her continuance in office, reside in the family court circuit for which he or she is a judge.

(b) A family court judge may not engage in any other business, occupation or employment inconsistent with the expeditious, proper and impartial performance of his or her duties as a judicial officer. A family court judge is not permitted to engage in the outside practice of law and shall devote full time to his or her duties as a judicial officer.

(c) The supreme court of appeals may establish requirements for family court judges to attend and complete courses of instruction and continuing educational instruction in principles of family law and procedure.

(d) A person’s acceptance of the office of family court judge pursuant to appointment or election constitutes the person’s consent, agreement and election during the term of office not to become a member of the judges retirement system solely by reason of or based upon service as a family court judge and an acknowledgment by the person of the sole authority of the Legislature to determine the eligibility of family court judges to participate in a retirement system. Notwithstanding any other provision of law to the contrary, upon final judicial determination that a person, individually or as a member of a class, is eligible for participation in the judges retirement system solely by reason of or based upon service as a family court judge, no additional persons except as may be provided for in this subsection may be admitted to the judges retirement system existing upon the effective date of the final judicial determination. A circuit judge or justice of the supreme court of appeals who is a member of the existing judges
retirement system whose employment continues beyond the final judicial determination shall continue to contribute to and participate in the existing judges retirement system without a change in plan provisions or benefits. Any person who was previously a member of the judges retirement system and who later returns to participating employment as a circuit judge or justice of the supreme court of appeals after the final judicial determination has the right to elect to return to the existing judges retirement system and participate during the judge’s or justice’s term or terms of office.

§51-2A-5. Term of office of family court judge; initial appointment; elections.

(a) Before the first day of December, two thousand one, family court judges shall be appointed by the governor to serve in the family court circuits as provided for in section three of this article. The initial term of office for the family court judges first appointed shall commence on the first day of January, two thousand two, and end on the thirty-first day of December, two thousand two.

(b) Beginning with the primary and general elections to be conducted in the year two thousand two, family court judges shall be elected. In family court circuits having two or more family court judges there shall be, for election purposes, numbered divisions corresponding to the number of family court judges in each area. Each family court judge shall be elected at large by the entire family court circuit. In each numbered division of a family court circuit, the candidates for nomination or election shall be voted upon and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the family court circuit. The candidate or candidates receiving the highest number of the votes cast within a num-
bered division shall be nominated or elected, as the case may be.

(c) The term of office for all family court judges elected in two thousand two shall be for six years, commencing on the first day of January, two thousand three, and ending on the thirty-first day of December, two thousand eight. Subsequent terms of office for family court judges elected thereafter shall be for eight years.


(a) Until the thirty-first day of December, two thousand two, a family court judge is entitled to receive as compensation for his or her services an annual salary of sixty thousand dollars. Beginning the first day of January, two thousand three, a family court judge is entitled to receive as compensation for his or her services an annual salary of sixty-two thousand five hundred dollars.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court judge is entitled to receive an annual salary of twenty-two thousand three hundred eight dollars. In addition, beginning the first day of October, one thousand nine hundred ninety-nine, any secretary-clerk who was employed by a family law master on the twentieth day of May, one thousand nine hundred ninety-nine, and who was so employed for at least two years prior to such date, is entitled to receive an additional five hundred dollars per year up to ten years of such prior employment, as provided in the prior enactment of section eight of this article during the second extraordinary session of the Legislature in the year one thousand nine hundred ninety-nine. Further, the secretary-clerk will receive such percentage or proportional
salary increases as may be provided for by general law for other public employees and is entitled to receive the annual incremental salary increase as provided for in article five, chapter five of this code.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure. The annual salary of the family case coordinator of the family court judge shall be established by the administrative director of the supreme court of appeals but may not exceed thirty-five thousand dollars. The family case coordinator will receive such percentage or proportional salary increases as may be provided for by general law for other public employees and is entitled to receive the annual incremental salary increase as provided for in article five, chapter five of this code.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the director of the administrative office of the supreme court of appeals.

(f) Family court judges and members of their staffs are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the director of the administrative office of the supreme court of appeals under such guidelines as he or she may prescribe, as approved by the supreme court of appeals.
(g) Notwithstanding any other provision of law, family court judges are not eligible to participate in the retirement system for judges under the provisions of article nine of this chapter.


(a) The family court judge will exercise any power or authority provided for in this article, in chapter forty-eight of this code or as otherwise provided by general law. Additionally, the family court judge has the authority to:

1. Manage the business before them;
2. Summon witnesses and compel their attendance in court;
3. Exercise reasonable control over discovery;
4. Compel and supervise the production of evidence;
5. Discipline attorneys;
6. Prevent abuse of process; and
7. Correct errors in a record.

(b) The family court judge has responsibility for the supervision and administration of the family court. A family court judge may promulgate local administrative rules governing the conduct and administration of the family court. In family court circuits with more than one family court judge, all family court judges must agree to the rules. If all of the family court judges in a family court circuit cannot agree, the chief judge of each circuit court in the counties in which the family court circuit is located shall promulgate the local administrative rules. If the chief judges of the circuit courts cannot agree, the
supreme court of appeals may promulgate the local administra-
tive rules. Local administrative rules are subordinate and
subject to the rules of the supreme court of appeals or the orders
of the chief justice. Rules promulgated by the family or circuit
court are made by order entered upon the order book of the
circuit court and are effective when filed with the clerk of the
supreme court of appeals.

(c) Prior to the two thousand three regular session of the
Legislature and annually thereafter, the supreme court of
appeals shall report to the Legislature on the caseload in each
family court circuit and shall recommend changes to the
management of the family court as the supreme court of appeals
deems warranted or necessary to improve the family court.

(d) The supreme court of appeals shall promulgate a
procedural rule to establish time-keeping requirements for
family court judges, family case coordinators and secretary-
clers of family court judges so as to assure the maximum
funding of incentive payments, grants and other funding
sources available to the state for the processing of cases filed
for the location of absent parents, the establishment of paternity
and the establishment, modification and enforcement of child
support orders.

§51-2A-8. Rules of practice and procedure; applicability of rules
of evidence; record of hearings; duties of clerk of
circuit court.

(a) Pleading, practice and procedure in matters before a
family court judge are governed by rules of practice and
procedure for family law promulgated by the supreme court of
appeals.

(b) The West Virginia rules of evidence apply to proceed-
ings before a family court judge.
(c) Hearings before a family court shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family court judge and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family court judge, the magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a family court judge shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. For evidentiary purposes, a duplicate of such electronic recording prepared by the secretary-clerk shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia rules of evidence and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule. The party requesting the copy shall pay an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater. Unless otherwise ordered by the court, the preparation of a transcript and the payment of the cost thereof shall be the responsibility of the party requesting the transcript.

(d) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all documents filed in the proceeding, constitute the exclusive record and, on payment of lawfully prescribed costs, shall be made available to the parties.

(e) In any proceeding in which a party has filed an affidavit that he or she is financially unable to pay the fees and costs, the family court judge shall determine whether either party is financially able to pay the fees and costs based on the information set forth in the affidavit or on any evidence submitted at the hearing. If a family court judge determines that either party
is financially able to pay the fees and costs, the family court judge shall assess the payment of such fees and costs accordingly as part of an order. The provisions of this subsection do not alter or diminish the provisions of section one, article two, chapter fifty-nine of this code.

(f) The clerks of the circuit court shall have, within the scope of the jurisdiction of family courts, all the duties and powers prescribed by law that clerks exercise on behalf of circuit courts: Provided, That a family court judge may not require the presence or attendance of a circuit clerk or deputy circuit clerk at any hearing before the family court.


(a) In addition to the powers of contempt established in chapter forty-eight of this code, a family court judge may:

(1) Sanction persons through civil contempt proceedings when necessary to preserve and enforce the rights of private parties or to administer remedies granted by the court;

(2) Regulate all proceedings in a hearing before the family court judge; and

(3) Punish direct contempts that are committed in the presence of the court or that obstruct, disrupt or corrupt the proceedings of the court.

(b) A family court judge may enforce compliance with his or her lawful orders with remedial or coercive sanctions designed to compensate a complainant for losses sustained and to coerce obedience for the benefit of the complainant. Sanctions must give the contemnor an opportunity to purge himself or herself. In selecting sanctions, the court must use the least possible power adequate to the end proposed. A person who lacks the present ability to comply with the order of the court
may not be confined for a civil contempt. Sanctions may include, but are not limited to, seizure or impoundment of property to secure compliance with a prior order. Ancillary relief may provide for an award of attorney’s fees.

§51-2A-10. Motion for reconsideration of family court order.

(a) Any party may file a motion for reconsideration of a temporary or final order of the family court for the following reasons: (1) Mistake, inadvertence, surprise, excusable neglect or unavoidable cause; (2) newly discovered evidence which by due diligence could not have been available at the time the matter was submitted to the court for decision; (3) fraud, misrepresentation or other misconduct of an adverse party; (4) clerical or other technical deficiencies contained in the order; or (5) any other reason justifying relief from the operation of the order.

(b) A motion for reconsideration must be filed with the clerk of the circuit court within a reasonable time and for reasons set forth in subdivisions (1), (2) or (3), subsection (a) of this section, not more than one year after the order was entered and served on the other party in accordance with rule 5 of the rules of civil procedure. The family court must enter an order ruling on the motion within thirty days of the date of the filing of the motion.


(a) Within thirty days following the entry of a final order of a family court judge or the entry of a final order of any senior status circuit judge, circuit judge or other judicial officer appointed to serve pursuant to the provisions of section nineteen of this article, any party may file a petition for appeal with the circuit court. No appeal may be had under the provisions of this article from any order of a family court judge or
from any order of another judicial officer temporarily serving
as a family court judge other than a final order.

(b) A petition for appeal of a final order of the family court
shall be filed in the office of the clerk of the circuit court. At the
time of filing the petition, a copy of the petition for appeal must
be served on all parties to the proceeding in the same manner as
pleadings subsequent to an original complaint are served under
rule 5 of the rules of civil procedure.

(c) The circuit judge may require, or a party may choose to
submit with the petition for appeal, a brief in support of the
petition.

(d) A respondent shall have fifteen days after the filing of
a petition to file a reply to the petition for appeal. The reply
must be served on all parties to the proceeding in the same
manner required for service of the petition. The circuit judge
may require, or a party may choose to submit with the reply, a
brief in opposition to the petition.

(e) In addition to the reply, the respondent may file a cross-
petition to the petition for appeal within fifteen days after the
filing of the petition. The respondent to the cross-petition shall
have fifteen days after the filing of the cross-petition to file a
reply. The cross-petition and any reply must be served in the
same manner required for service of the original petition. The
circuit judge may require or either party may choose to submit
a brief on the cross-petition.

(f) The supreme court of appeals shall develop and provide
forms for appeals filed pursuant to this section. The forms shall
be made available for distribution in the offices of the clerks of
the circuit courts and in the offices of the secretary-clerks to the
family court judges.
(g) The supreme court of appeals shall promulgate a supervisory rule setting forth educational requirements in domestic relations matters for circuit court judges.

(h) An appeal from the final order of any judicial officer assigned or appointed pursuant to the provisions of section nineteen of this article shall be perfected and treated in all respects as an appeal from an order of the family court. The terms "family court" or "family court judge" as provided in this section and in sections twelve, thirteen, fourteen and fifteen of this article mean the judicial officer who entered the final order which is the subject of an appeal.


(a) Any person desiring to file a petition for appeal from a final order of the family court may file a motion for a stay of proceedings to the family court in which the order was entered. The motion for a stay shall be filed with the clerk of the circuit court and served on the respondent in accordance with rule 5 of the rules of civil procedure. The family court may, sua sponte, order a stay of all or part of a final order pending appeal. Subject to the provisions of subsection (c) of this section, the family court may order a stay for the period of time allowed for the filing of a petition for appeal to the circuit court or for any additional period of time pending disposition of the appeal. If the circuit court refuses to consider the petition for appeal, the stay is vacated.

(b) If the family court judge denies a motion for a stay of the proceedings pending appeal, or if the relief afforded is not acceptable, the person desiring to file the petition for appeal may file a motion for a stay of the proceedings to the circuit court. The motion for stay shall be filed with the clerk of the circuit court and served upon the other party in accordance with rule five of the rules of civil procedure. Subject to the provi-
sions of subsection (c) of this section, the circuit court may order a stay for the period of time allowed for the filing of a petition for appeal to the circuit court or for any additional period of time pending disposition of the appeal. If the circuit court refuses to consider the petition for appeal, the stay is vacated.

(c) An order granting a motion for a stay under the provisions of this section may not include a stay of an award for the payment of spousal support or child support pending the appeal, except that an award of past-due child support may be stayed pending an appeal.


At any time following the filing of a petition for appeal of a final order of a family court, either party may move the circuit court to dismiss the appeal on any of the following grounds: (1) A joint agreement of the parties to the dismissal; (2) failure to properly perfect the appeal; (3) failure to obey an order of the family court or circuit court; (4) lack of an appealable order; or (5) lack of jurisdiction. Such motion shall be filed with the clerk of the circuit court and served on the respondent in accordance with rule 5 of the rules of civil procedure. No oral argument shall be held on such motion unless requested by the court.

§51-2A-14. Review by circuit court; record; standard of review; temporary order upon remand.

(a) The circuit court may refuse to consider the petition for appeal, may affirm or reverse the order, may affirm or reverse the order in part or may remand the case with instructions for further hearing before the family court judge.

(b) In considering a petition for appeal, the circuit court may only consider the record as provided in subsection (d),
section eight of this article. The circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard.

(c) If the circuit court agrees to consider a petition for appeal, the court shall provide the parties an opportunity to appear for oral argument, upon the request of either party or in the discretion of the court. The provisions of this subsection are effective until the adoption of rules by the supreme court of appeals governing the appellate procedures of family courts.

(d) If the proceeding is remanded to the family court, the circuit court must enter appropriate temporary orders for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or such other temporary relief as the circumstances of the parties may require.

(e) The circuit court must enter an order ruling on a petition for appeal within sixty days from the last day a reply to the petition for appeal could have been filed. If the circuit court does not enter the order within the sixty-day period or does not, within the sixty-day period, enter an order stating just cause why the order has not been timely entered, the circuit clerk shall send a written notice to the parties that unless the parties both file an objection within fourteen days of the date of the notice, the appeal will be transferred to the supreme court of appeals as provided in section fifteen of this article due to the failure of the circuit court to timely enter an order. The appeal shall be transferred without the necessity of the filing of any petition or further document by the petitioner.

(a) If both of the parties file, either jointly or separately, within fourteen days following the entry of the final order of a family court judge, a notice of intent to file an appeal from the final order of the family court directly to the supreme court of appeals and to waive their right to file a petition for appeal with the circuit court, the petition for appeal of the final order of the family court may be filed with the supreme court of appeals in accordance with the provisions of article five, chapter fifty-eight of this code and the rules of appellate procedure, except that the standard of review for any such appeal is the same as set forth in subsection (b), section fourteen of this article.

(b) If a circuit court judge refuses to consider a petition for appeal or if a party is adversely affected by the order entered by the circuit court upon review of the final order of the family court, the party may seek review of the order of the circuit court by the supreme court of appeals. If a petition for appeal to the circuit court is transferred to the supreme court of appeals pursuant to the provisions of subsection (d), section fourteen of this article, the petition for appeal filed in the circuit court will be considered as a petition for appeal to the supreme court of appeals. The supreme court of appeals has jurisdiction to hear and entertain an appeal from an order of a circuit court or the transfer of an appeal to the supreme court of appeals as provided in this article in the same manner provided for civil appeals in article five, chapter fifty-eight of this code and in the rules of appellate procedure, except that the standard of review for any such appeal is the same as set forth in subsection (b), section fourteen of this article.

(c) The supreme court of appeals shall promulgate rules to assist pro se litigants in the filing and processing of family court appeals to the circuit court and to the supreme court. Such rules may address, but are not limited to, expedited means of transcribing family court records, use of asynchronous data communication network or other alternate forms of transmis-
sion for conducting appellate hearings, alternate requirements
for the number of copies to be provided to the supreme court of
appeals and other appropriate measures which will provide
meaningful appellate access to the courts pursuant to section
seventeen, article III of the West Virginia constitution.

§51-2A-16. Expiration of appellate procedures; exceptions;
report requirements.

(a) The provisions of sections eleven, twelve, thirteen,
fourteen and fifteen of this article shall expire and be of no
force and effect after the thirtieth day of June, two thousand
five, except as otherwise provided by subsection (b) of this
section.

(b) Appeals that are pending before a circuit court or the
supreme court of appeals on the thirtieth day of June, two
thousand five, but not decided before the first day of July, two
thousand five, shall proceed to resolution in accordance with
the provisions of sections eleven, twelve, thirteen, fourteen and
fifteen of this article, notwithstanding the provisions of subsec-
tion (a) of this section that provide for the expiration of those
sections. The supreme court of appeals shall, by rule, provide
procedures for those appeals that are remanded but not con-
cluded prior to the first day of July, two thousand five, in the
event that the appeals process set forth in sections eleven,
twelve, thirteen, fourteen and fifteen of this article is substan-
tially altered as of the first day of July, two thousand five.

(c) Prior to the two thousand three regular session of the
Legislature and annually thereafter, the supreme court of
appeals shall report to the joint committee on government and
finance the number of appeals from final orders of the family
court filed in the various circuit courts and in the supreme court
of appeals, the number of pro se appeals filed, the subject
matter of the appeals, the time periods in which appeals are
concluded, the number of cases remanded upon appeal and such
other detailed information so as to enable the Legislature to
study the appellate procedures for family court matters and to
consider the possible necessity and feasibility of creating an
intermediate appellate court or other system of appellate
procedure.

§51-2A-17. Disciplinary proceedings for family court judges.

A family court judge may be censured, temporarily
suspended or retired as provided for in section eight, article
VIII of the West Virginia constitution. A family court judge
may be removed from office only by impeachment in accor-
dance with the provisions of section nine, article IV of the West
Virginia constitution.


If a vacancy occurs in the office of family court judge, the
governor shall fill the vacancy by appointment as provided in
section three, article ten, chapter three of this code.


(a) Upon the occurrence of a vacancy in the office of family
court judge, the disqualification of a family court judge or the
inability of a family court judge to attend to his or her duties
because of illness, temporary absence or any other reason, the
chief justice of the supreme court of appeals may assign the
family court judge of any other family court circuit, or any
senior status circuit judge or circuit judge of any judicial circuit,
to hear and determine any and all matters then or thereafter
pending in the family court to which the family court judge is
assigned. While so assigned, the family court judge, senior
status circuit judge or circuit judge has all of the powers of the
regularly elected family court judge of the family court circuit.
(b) When, in the discretion of the chief justice of the supreme court of appeals, the urgency or volume of cases in a family court circuit so requires, the chief justice may assign a senior status circuit judge, a circuit judge of any judicial circuit or a family court judge of any family court division to serve temporarily in a family court circuit. When a senior status circuit judge or other circuit judge is so assigned, he or she has all of the powers of a regularly elected family court judge.

(c) The chief justice of the supreme court of appeals may appoint a person who has previously served as a family law master or family court judge to serve as a temporary family court judge as disqualification, recusal, vacation, illness or the ends of justice may dictate.

(d) The supreme court of appeals shall promulgate a supervisory rule setting forth educational requirements for persons assigned to serve temporarily as family court judges pursuant to the provision of this section.

§51-2A-20. County commissions required to furnish offices for the family court judges.

Each county commission of this state has a duty to provide premises for the family court which are adequate for the conduct of the duties required of the court under the provisions of this article and of chapter forty-eight of this code and which conform to standards established by rules promulgated by the supreme court of appeals. The administrative office of the supreme court of appeals shall pay to the county commission a reasonable amount as rent for the premises furnished by the county commission to the family court and his or her staff pursuant to the provisions of this section.

The budget for the payment of the salaries and benefits of the family court judges and clerical and secretarial assistants shall be included in the appropriation for the supreme court of appeals. The family court administration fund, heretofore created as the family law master administration fund, is continued as a special account in the state treasury. The fund shall operate as a special fund administered by the state auditor which shall be appropriated by line item by the Legislature for payment of administrative expenses of family courts. All agencies or entities receiving federal matching funds for the services of family court judges and their staff, including, but not limited to, the commissioner of the bureau for child support enforcement and the secretary of the department of health and human resources, shall enter into an agreement with the administrative office of the supreme court of appeals whereby all federal matching funds paid to and received by said agencies or entities for the activities by family court judges and the program staff shall be paid into the family court administration fund. Said agreement shall provide for advance payments into the fund by such agencies, from available federal funds pursuant to Title IV-D of the Social Security Act and in accordance with federal regulations.


The office and the clerks of the circuit courts shall, on or before the tenth day of each month, transmit all amounts directed to be paid to the family court fund under any provision of this code to the state treasurer for deposit in the state treasury to the credit of a special revenue fund known as the “family court fund” and created by prior enactment of former section twenty-three, article four, chapter forty-eight-a of this code. All moneys paid into the state treasury and credited to the “family court fund” shall be used by the administrative office of the supreme court of appeals solely for paying the costs associated with the duties imposed upon the family courts under the
provisions of this article or under chapter forty-eight of this
code which require activities by the family court judges or
members of their staff which are not subject to being matched
with federal funds or subject to reimbursement by the federal
government. Such moneys shall not be treated by the auditor
and treasurer as part of the general revenue of the state.
Expenditures from the fund shall be for the purposes set forth
in this section and are not authorized from collections but are to
be made only in accordance with appropriation by the Legisla-
ture 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.

§51-2A-23. Operative dates; terminology.

(a) Except as provided in subsection (b) of this section, the
provisions of Enrolled Senate Bill No. 5007, passed during the
fifth extraordinary session of the Legislature, two thousand one,
become operable on the first day of January, two thousand two.
It is intended that the family law master system in existence on
the first day of July, two thousand one, will continue to function
under the prior enactment of this article, notwithstanding the
passage of Enrolled Senate Bill No. 5007, until the first day of
January, two thousand two, when the existing family law master
system is replaced with the system of family court judges
provided for in this article.

(b) Notwithstanding the provisions of subsection (a) of this
section, the provisions of section five of this article providing
for the initial appointment of family judges by the governor
become operable on the first day of October, two thousand one.
(c) After the effective date of this article, whenever the terms "master", "law master" or "family law master" appear in this code, the terms shall have the same meaning as "family court judge".

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

(a) As used in this article, the term "judge", "judge of any court of record" or "judge of any court of record of this state" shall mean, refer to and include judges of the several circuit courts and justices of the supreme court of appeals. For purposes of this article, such terms do not mean, refer to or include family court judges.

(b) "Beneficiary" means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(c) "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

(d) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(e) "Member" means a judge participating in this system.

(f) "Plan year" means the twelve-month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(g) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half; or (b) the calendar year in which the member retires or otherwise separates from covered employment.
(h) "Retirement system" or "system" means the judges retirement system created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to circuit judges and justices of the supreme court of appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the judges retirement system or used in any manner as credit toward eligibility for retirement benefits under the judges retirement system.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for services in criminal cases.

(a) Except for those payments to be made from amounts equaling filing fees received for the institution of actions for divorce, separate maintenance and annulment as prescribed in subsection (b) of this section, for each civil action instituted under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts described in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the action as follows:

(1) Into the regional jail and correctional facility authority fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of sixty dollars; and
(2) Into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(b) For each action for divorce, separate maintenance or annulment instituted in the circuit court, the clerk of the court shall, at the end of each month, report to the supreme court of appeals the number of actions filed by persons unable to pay and pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the divorce action as follows:

(1) Into the regional jail and correctional facility authority fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of ten dollars;

(2) Into the special revenue account of the state treasury, established pursuant to section six hundred four, article two, chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section twenty-two, article two-a, chapter fifty-one of this code, an amount of seventy dollars; and

(4) Into the court security fund in the state treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the family court fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as
determined by subdivision (3), subsection (a), section eleven of this article and for petitioning for an expedited modification of a child support order as provided in subdivision (4), subsection (a), section eleven of this article.

(d) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the family court fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to every fee received pursuant to the provisions of section five hundred eight, article twenty-seven, chapter forty-eight of this code.

(e) The clerk of each circuit court shall, at the end of each month, pay into the regional jail and correctional facility authority fund in the state treasury an amount equal to forty dollars of every fee for service received in any criminal case against any respondent convicted in such court and shall pay an amount equal to five dollars of every such fee into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code.

CHAPTER 6

(S. B. 5002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 15, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections five hundred four and one thousand nine hundred one,
article twenty-two-b of said chapter, all relating to state lotteries; restoring language which allows coin or token payouts from racetrack video lottery terminals and which was inadvertently and unintentionally deleted when section six, article twenty-two-a, chapter twenty-nine of said code of the racetrack video lottery act was amended and reenacted earlier this year; eliminating prohibition that limited video lottery retailers may not also be licensed under the state lottery act; and eliminating effective date references in section one thousand nine hundred one, article twenty-two-b, chapter twenty-nine of said code of the limited video lottery act.

Be it enacted by the Legislature of West Virginia:

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

Article
22A. Racetrack Video Lottery.
22B. Limited Video Lottery.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

(a) The commission may approve video lottery terminals and in doing so shall take into account advancements in computer technology, competition from nearby states and the preservation of jobs in the West Virginia pari-mutuel racing
industry. In approving video lottery terminals licensed for placement in this state, the commission shall ensure that the terminals meet the following hardware specifications:

(1) Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

(2) A surge protector shall be installed on the electrical power supply line to each video lottery terminal. A battery or equivalent power back-up for the electronic meters shall be capable of maintaining accuracy of all accounting records and terminal status reports for a period of one hundred eighty days after power is disconnected from the terminal. The power back-up device shall be located within the locked logic board compartment of the video lottery terminal.

(3) An on/off switch which controls the electrical current used in the operation of the terminal shall be located in an accessible place within the interior of the video lottery terminal.

(4) The operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference.

(5) A minimum of one electronic or mechanical coin acceptor or other means accurately and efficiently to establish credits shall be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for one or more of the following: One dollar bills, five dollar bills, ten dollar bills and twenty dollar bills. All coin and bill acceptors shall be approved by the commission prior to use on any video lottery terminal in this state.

(6) Access to the interior of a video lottery terminal shall be controlled through a series of locks and seals.
(7) The main logic boards and all erasable programmable read-only memory chips (EPROMS) are considered to be owned by the commission and shall be located in a separate locked and sealed area within the video lottery terminal.

(8) The cash compartment shall be located in a separate locked area within or attached to the video lottery terminal.

(9) No hardware switches, jumpers, wire posts or any other means of manipulation may be installed which alter the pay tables or payout percentages in the operation of a game. Hardware switches on a video lottery terminal to control the terminal's graphic routines, speed of play, sound and other purely cosmetic features may be approved by the commission.

(10) Each video lottery terminal shall contain a single printing mechanism capable of printing an original ticket and retaining an exact legible copy within the video lottery terminal or other means of capturing and retaining an electronic copy of the ticket data as approved by the commission: Provided, That such printing mechanism is optional on any video lottery terminal which is designed and equipped exclusively for coin or token payouts. The following information shall be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash:

(i) The number of credits accrued;

(ii) Value of the credits in dollars and cents displayed in both numeric and written form;

(iii) Time of day and date;

(iv) Validation number; and

(v) Any other information required by the commission.
(11) A permanently installed and affixed identification plate shall appear on the exterior of each video lottery terminal and the following information shall be on the plate:

(i) Manufacturer of the video lottery terminal;

(ii) Serial number of the terminal; and

(iii) Model number of the terminal.

(12) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play which are incomplete, confusing, misleading or inconsistent with game rules approved by the commission. For each video lottery game there shall be a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols. A video lottery terminal may allow up to five dollars to be wagered on a single game. All information required by this subdivision shall be displayed under glass or another transparent substance. No stickers or other removable devices shall be placed on the video lottery terminal screen or face without the prior approval of the commission.

(13) Communication equipment and devices shall be installed to enable each video lottery terminal to communicate with the commission's central computer system by use of a communications protocol provided by the commission to each permitted manufacturer, which protocol shall include information retrieval and terminal activation and disable programs, and the commission may require each licensed racetrack to pay the cost of a central site computer as a part of the licensing requirement.

(14) All video lottery terminals shall have a security system which temporarily disables the gaming function of the terminal while opened.
(b) Each video lottery terminal shall have a random number generator to determine randomly the occurrence of each specific symbol or number used in video lottery games. A selection process is random if it meets the following statistical criteria:

(1) *Chi-square test.* — Each symbol or number shall satisfy the ninety-nine percent confidence level using the standard chi-square statistical analysis of the difference between the expected result and the observed result.

(2) *Runs test.* — Each symbol or number may not produce a significant statistic with regard to producing patterns of occurrences. Each symbol or number is random if it meets the ninety-nine percent confidence level with regard to the "runs test" for the existence of recurring patterns within a set of data.

(3) *Correlation test.* — Each pair of symbols or numbers is random if it meets the ninety-nine percent confidence level using standard correlation analysis to determine whether each symbol or number is independently chosen without regard to another symbol or number within a single game play.

(4) *Serial correlation test.* — Each symbol or number is random if it meets the ninety-nine percent confidence level using standard serial correlation analysis to determine whether each symbol or number is independently chosen without reference to the same symbol or number in a previous game.

(c) Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of the terminal:

(1) Video lottery games shall pay out no less than eighty percent and no more than ninety-five percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.
(2) Manufacturers must file a request and receive approval from the commission prior to manufacturing for placement in this state video lottery terminals programmed for a payout greater than ninety-two percent of the amount wagered. Commission approval shall be obtained prior to applying for testing of the high payout terminals.

(3) Each terminal shall have a probability greater than one in seventeen million of obtaining the maximum payout for each play.

(d) Each video lottery terminal shall be capable of continuing the current game with all current game features after a video lottery terminal malfunction is cleared. If a video lottery terminal is rendered totally inoperable during game play, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction shall be returned to the player.

(e) Each video lottery terminal shall at all times maintain electronic accounting regardless of whether the terminal is being supplied with electrical power. Each meter shall be capable of maintaining a total of no less than eight digits in length for each type of data required. The electronic meters shall record the following information:

(1) Number of coins inserted by players or the coin equivalent if a bill acceptor is being used or tokens or vouchers are used;

(2) Number of credits wagered;

(3) Number of total credits, coins and tokens won;

(4) Number of credits paid out by a printed ticket;

(5) Number of coins or tokens won, if applicable;
(6) Number of times the logic area was accessed;

(7) Number of times the cash door was accessed;

(8) Number of credits wagered in the current game;

(9) Number of credits won in the last complete video lottery game; and

(10) Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(f) No video lottery terminal may have any mechanism which allows the electronic accounting meters to clear automatically. Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared, all meter readings shall be recorded in the presence of a commission employee.

(g) The primary responsibility for the control and regulation of any video lottery games and video lottery terminals operated pursuant to this article rests with the commission.

(h) The commission shall, directly or through a contract with a third-party vendor other than the video lottery licensee, maintain a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry. The central site system shall be capable of monitoring the operation of each video lottery game or video lottery terminal operating pursuant to this article and, at the direction of the director, immediately disable and cause not to operate any video lottery game and video lottery terminal. As provided in this section, the commission may require the licensed racetrack to pay the cost of a central site computer as part of the licensing requirement.
ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer’s license.

§29-22B-1901. Effect of this article on certain taxes.

§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer’s license.

No limited video lottery retailer’s license or license renewal may be granted unless the lottery commission has determined that, in addition to the general requirements set forth in section 22B-502, the applicant satisfies all of the following qualifications:

1. (A) If the applicant is an individual, the applicant has been a citizen of the United States and a resident of this state for the four-year period immediately preceding the application;

2. (B) If the applicant is a corporation, partnership or other business entity, the chief executive officer and the majority of the officers, directors, members and partners (to the extent each of these groups exists with respect to a particular business organization), both in number and percentage of ownership interest, have been citizens of the United States and residents of this state for the four-year period immediately preceding the application;

3. (2) The applicant has disclosed to the lottery commission the identity of each person who has control of the applicant, as control is described in section 22B-507;

4. (3) The applicant holds either: (A) A valid license issued under article 60-7-1, *et seq.*, of this code to operate a private club; (B) a valid Class A license issued under article 11-16-1, *et seq.*, of this code to operate a business where nonintoxicating beer is sold for consumption on the premises; or (C) both licenses;
(4) The applicant has demonstrated the training, education, business ability and experience necessary to establish, operate and maintain the business for which the license application is made;

(5) The applicant has secured any necessary financing for the business for which the license application is made and the financing: (A) Is from a source that meets the qualifications of this section; and (B) is adequate to support the successful performance of the duties and responsibilities of the licensee;

(6) The applicant has disclosed all financing or refinancing arrangements for placement on the applicant's premises of video lottery terminals and associated equipment in the degree of detail requested by the lottery commission;

(7) The applicant has filed with the lottery commission a copy of any current or proposed agreement between the applicant and a licensed operator for the placement on the applicant's premises of video lottery terminals;

(8) The applicant has filed with the lottery commission a copy of any current or proposed agreement between the applicant and a licensed operator or other person for the servicing and maintenance of video lottery terminals by licensed service technicians; and

(9) The applicant does not hold any other license under this article, article 19-23-1, et seq., of this code or articles 22A or 25 of this chapter except that an applicant may also be licensed as a service technician.

PART XIX. MISCELLANEOUS PROVISIONS.

§29-22B-1901. Effect of this article on certain taxes.
(a) Notwithstanding any provision of this code to the contrary, persons who hold a current operator's license or a current limited video lottery retailer's license issued under this article shall be exempt from paying the taxes imposed by articles 11-15-1, *et seq.*, and 11-15A-1, *et seq.*, of this code on their purchases of video lottery terminals and video lottery games.

(b) Notwithstanding any provision of this code to the contrary, the consideration paid by a patron of a restricted access adult-only facility to play video lottery games shall be exempt from the tax imposed by article 11-15-1, *et seq.*, of this code.

(c) Notwithstanding the provisions of section 8-13-4 of this code to the contrary, municipalities may not impose the license fees imposed by this article on manufacturers, operators, limited video lottery retailers and service technicians. Municipalities may continue to impose any other license fees they are allowed to impose under this code.

(d) Notwithstanding any provision of this code to the contrary, municipalities may not impose the municipal business and occupation taxes imposed pursuant to section 8-13-5 of this code or an amusement tax imposed pursuant to section 8-13-6 of this code on the income of a permittee of video lottery terminals from income derived directly from activities conducted pursuant to the provisions of this article.

(e) Notwithstanding any provision of this code to the contrary, municipalities may not impose the municipal business and occupation taxes imposed pursuant to section 8-13-5 of this code on payments a limited video lottery retailer receives from an operator of video lottery terminals for activities conducted pursuant to the provisions of this article.
CHAPTER 7

(S. B. 5001 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed September 15, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the property tax year for which the refundable personal income tax credit is first allowable for certain property taxes paid on a homestead by low-income senior citizens and permanently and totally disabled persons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-21. Senior citizens' tax credit for property tax paid on first ten thousand dollars of taxable assessed value of a homestead in this state.

(a) Allowance of credit. -- A low-income person who is allowed a twenty thousand dollar homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem
property taxes paid on up to the first ten thousand dollars of taxable assessed value of the homestead for property tax years that begin on or after the first day of January, two thousand three.

(b) Terms defined. -- For purposes of this section:

(1) "Low income" means federal adjusted gross income for the taxable year that is one hundred fifty percent or less of the federal poverty guideline for the year in which property tax was paid, based upon the number of individuals in the family unit residing in the homestead, as determined annually by the United States secretary of health and human services.

(2) "Taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against not more than ten thousand dollars of the taxable assessed value of a homestead that are paid during the calendar year determined after application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after the first day of January, two thousand three.

(c) Legislative rule. -- The tax commissioner shall propose a legislative rule for promulgation as provided in article three, chapter twenty-nine-a of this code to explain and implement this section.

(d) Confidentiality. -- The tax commissioner shall utilize property tax information in the statewide electronic data processing system network to the extent necessary for the purpose of administering this section, notwithstanding any provision of this code to the contrary.
CHAPTER 8

(S. B. 5003 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 15, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen; and to amend and reenact sections eleven and twelve, article three of said chapter, all relating to surface coal mining and reclamation; creating a special reclamation fund advisory council; providing for eight members of the council; authorizing the governor to appoint five members with the advice and consent of the Senate; providing for six-year terms for the appointed members; providing that the secretary of the department of environmental protection will serve as an ex officio, nonvoting member; establishing the requirements of appointed members; authorizing payment of compensation and expenses of members; requiring the council to meet a minimum of twice a year; establishing the study requirements and responsibilities of the council; requiring the council to report to the governor and the Legislature annually; establishing issues the reports must address; correcting nomenclature; removing the twenty-five percent limitation on funds available for water treatment; clarifying applicable minimum and maximum bond requirements; clarifying that abandoned mining sites that qualify for federal reclamation funds do not qualify for certain state funds; increasing the per ton of coal mined special reclamation tax from three cents per ton to fourteen cents per ton beginning the first day of January, two thousand two; providing that the fourteen cents per ton will be reduced to seven cents per ton after thirty-nine months; providing
that the tax may be adjusted by the Legislature based on recommendation of the council; prohibiting reduction of tax if the special reclamation fund does not have sufficient capital to meet the reclamation needs; removing requirement that reclamation-related liabilities must exceed accrued amount in reclamation fund before reclamation fund tax is collected; recognizing the need for federal approval of certain modifications to the reclamation program; and removing rule-making and reporting provisions which are no longer applicable.

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

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

**Article**

1. Division of Environmental Protection.
2. Surface Coal Mining and Reclamation Act.

**ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.**

§22-1-17. Special reclamation fund advisory council.

(a) There is hereby created within the department of environmental protection a special reclamation fund advisory council. The council's purpose is to ensure the effective, efficient and financially stable operation of the special reclamation fund. The special reclamation advisory council shall consist of eight members, including the secretary of the department of environmental protection or his or her designee, the treasurer of the state of West Virginia or his or her designee, the director of the national mine land reclamation center at West Virginia university and five members to be appointed by the governor with the advice and consent of the Senate.
(b) Each appointed member of the council shall be selected based on his or her ability to serve on the council and effectuate its purposes. The governor shall appoint, from a list of three names submitted by the major trade association representing the coal industry regulated under article three of this chapter, a member to represent the interests of the industry. The governor shall appoint, from a list of three names submitted by organizations advocating environmental protection, one member to represent the interest of environmental protection organizations. The governor shall appoint, from a list of four names submitted by the coal mining industry and the organizations advocating environmental protection, one member who, by training and profession, is an actuary or an economist. The governor shall appoint, from a list of three names submitted by the united mine workers of America, one member to represent the interests of coal miners. The governor shall appoint a member to represent the interests of the general public.

(c) The terms of all members shall begin on the first day of July, two thousand two. The secretary shall be an ex officio, nonvoting member and serve as chairperson of the council. The terms of the governor's appointees shall be for six years. Appointees may be reappointed to serve on the council. The terms of the appointed members first taking office are to be expired as designated by the governor at the time of the nomination, two at the end of the second year, two at the end of the fourth year and one at the end of the sixth year. As the original appointments expire, each subsequent appointment will be for a full six-year term. Any appointed member whose term has expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy is to serve only for the unexpired term.

(d) Appointed members of the council shall be paid the same compensation and expense reimbursement as is provided for members of the Legislature pursuant to sections six and
eight, article two-a, chapter four of this code. Council members who are state employees or officials shall be reimbursed for expenses in accordance with the applicable agency's policy.

(e) The council shall meet at the call of the chairperson or his or her designee, but not less than once every six months. The secretary shall provide funds for necessary administrative and technical services for the council from the special reclamation fund.

(f) The council shall, at a minimum:

(1) Study the effectiveness, efficiency and financial stability of the special reclamation fund with an emphasis on development of a financial process that ensures long-term stability of the special reclamation program;

(2) Identify and define problems associated with the special reclamation fund, including, but not limited to, the enforcement of federal and state law, regulation and rules pertaining to contemporaneous reclamation;

(3) Evaluate bond forfeiture collection, reclamation efforts at bond forfeiture sites and compliance with approved reclamation plans as well as any modifications;

(4) Provide a forum for a full and fair discussion of issues relating to the special reclamation fund;

(5) Contract with a qualified actuary who shall make a determination as to the special reclamation fund's fiscal soundness. This determination shall be completed on the thirty-first day of December, two thousand four, and every four years thereafter. The review is to include an evaluation of the present and prospective assets and liabilities of the special reclamation fund; and
(6) Study and recommend to the Legislature alternative approaches to the current funding scheme of the special reclamation fund, considering revisions which will assure future proper reclamation of all mine sites and continued financial viability of the state’s coal industry.

(g) On or before the first day of January, two thousand three, and every year thereafter, the council shall submit to the Legislature and the governor a report on the adequacy of the special reclamation tax and the fiscal condition of the special reclamation fund. The report shall, at a minimum, contain:

(1) A recommendation as to whether or not any adjustments to the special reclamation tax should be made considering the cost, timeliness and adequacy of bond forfeiture reclamation, including water treatment;

(2) A discussion of the council’s required study issues as set forth in subsection (f) of this section; and

(3) The availability of federal abandoned mine lands funds for West Virginia reclamation projects.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

§22-3-12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

(a) After a surface mining permit application has been approved pursuant to this article but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the state of West Virginia and conditioned upon the operator faithfully
performing all of the requirements of this article and of the
permit. The penal amount of the bond shall be not less than one
thousand dollars nor more than five thousand dollars for each
acre or fraction thereof: Provided, That the minimum amount
of bond furnished for any type of reclamation bonding shall be
ten thousand dollars. The bond shall cover: (1) The entire
permit area; or (2) that increment of land within the permit area
upon which the operator will initiate and conduct surface
mining and reclamation operations within the initial term of the
permit. If the operator chooses to use incremental bonding, as
succeeding increments of surface mining and reclamation
operations are to be initiated and conducted within the permit
area, the operator shall file with the secretary an additional
bond or bonds to cover the increments in accordance with this
section: Provided, however, That once the operator has chosen
to proceed with bonding either the entire permit area or with
incremental bonding, the operator shall continue bonding in that
manner for the term of the permit.

(b) The period of liability for bond coverage begins with
issuance of a permit and continues for the full term of the
permit plus any additional period necessary to achieve compli-
ance with the requirements in the reclamation plan of the
permit.

(c) (1) The form of the bond shall be approved by the
secretary and may include, at the option of the operator, surety
bonding, collateral bonding (including cash and securities),
establishment of an escrow account, self-bonding or a combina-
tion of these methods. If collateral bonding is used, the operator
may elect to deposit cash or collateral securities or certificates
as follows: Bonds of the United States or its possessions, of the
federal land bank or of the homeowners’ loan corporation; full
faith and credit general obligation bonds of the state of West
Virginia or other states, and of any county, district or munici-
pality of the state of West Virginia or other states; or certifi-
cates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of such securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the state treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (1) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (2) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.
(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) The special reclamation fund previously created is continued. The moneys accrued in the fund, including interest, are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The fund shall be administered by the secretary who is authorized to expend the moneys in the fund for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter. The secretary shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in the fund of such magnitude that the solvency of the fund is jeopardized. The secretary may use the special reclamation fund for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection. The secretary may also expend an amount not to exceed ten percent of the total annual assets in the fund to implement and administer the provisions of this article and, as they apply to the surface mine board, articles one and four, chapter twenty-two-b of this code.

(h) Prior to the first day of January, two thousand two, every person conducting coal surface mining operations shall contribute into the fund a sum equal to three cents per ton of clean coal mined. For tax periods commencing on and after the first day of January, two thousand two, every person conducting coal surface mining shall contribute into the fund as follows:

(1) For a period not to exceed thirty-nine months, seven cents
per ton of clean coal mined; and (2) an additional seven cents per ton of clean coal mined. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply on or after the first day of January, two thousand two. The additional seven-cent tax shall be reviewed and, if necessary, adjusted annually by the Legislature upon recommendation of the council pursuant to the provisions of section seventeen, article one of this chapter: Provided, That the tax may not be reduced until the special reclamation fund has sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(i) This special reclamation tax shall be collected by the state tax commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

(j) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(k) The tax commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(l) The tax commissioner shall deposit the fees collected with the treasurer of the state of West Virginia to the credit of the special reclamation fund. The moneys in the fund shall be
placed by the treasurer in an interest-bearing account with the
interest being returned to the fund on an annual basis.

(m) At the beginning of each quarter, the secretary shall
advise the state tax commissioner and the governor of the
assets, excluding payments, expenditures and liabilities, in the
fund.

(n) To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.

§22-3-12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent.

(a) Notwithstanding the provisions of section eleven of this article, the secretary may establish and implement a site-specific bonding system in accordance with the provisions of this section.

(b) A legislative rule proposed or promulgated pursuant to this section must provide, at a minimum, for the following:

(1) The penal amount of a bond shall be not less than one thousand dollars nor more than five thousand dollars per acre or fraction thereof.

(2) Every bond, subject to the limitations of subdivision (1) of this subsection, shall reflect the relative potential cost of reclamation associated with the activities proposed to be permitted, which would not otherwise be reflected by bonds calculated by merely applying a specific dollar amount per acre for the permit.
(3) Every bond, subject to the provisions of subdivision (1) of this subsection, shall also reflect an analysis under the legislative rule of various factors, as applicable, which affect the cost of reclamation, including, but not limited to: (A) The general category of mining, whether surface or underground; (B) mining techniques and methods proposed to be utilized; (C) support facilities, fixtures, improvements and equipment; (D) topography and geology; and (E) the potential for degrading or improving water quality.

(c) A legislative rule proposed or promulgated pursuant to the provisions of this section may, in addition to the requirements of subsection (b) of this section, provide for a consideration of other factors determined to be relevant by the secretary. For example, the rule may provide for the following:

(1) A consideration as to whether the bond relates to a new permit application, a renewal of an existing permit, an application for an incidental boundary revision or the reactivation of an inactive permit;

(2) A consideration of factors which may result in environmental enhancement, as in a case where remining may improve water quality or reduce or eliminate existing highwalls, or a permitted operation may create or improve wetlands; or

(3) An analysis of various factors related to the specific permit applicant, including, but not limited to: (A) The prior mining experience of the applicant with the activities sought to be permitted; and (B) the history of the applicant as it relates to prior compliance with statutory and regulatory requirements designed to protect, maintain or enhance the environment in this or any other state.

(d) It is the intent of the Legislature that a legislative rule proposed or promulgated pursuant to the provisions of this section shall be constructed so that when the findings of fact by
the division of environmental protection with respect to the proposed mining activity and the particular permit applicant coincide with the particular factors or criteria to be considered and analyzed under the rule, the rule will direct a conclusion as to the amount of the bond to be required, subject to rebuttal and refutation of the findings by the applicant. To the extent practicable, the rule shall limit subjectivity and discretion by the secretary and the division in fixing the amount of the bond.

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CHAPTER 9

(H. B. 510 — By Delegates Staton, Givens, Mezzatesta, Pino, Warner, Trump and Smirl)

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

AN ACT to amend and reenact section three, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the composition of congressional districts.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

§1-2-3. Congressional districts.

The number of members to which the state is entitled in the House of Representatives of the Congress of the United States are apportioned among the counties of the state, arranged into three congressional districts, numbered as follows:
First District: Barbour, Brooke, Doddridge, Gilmer, Grant, Hancock, Harrison, Marion, Marshall, Mineral, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel and Wood.


AN ACT to amend and reenact sections one, two and two-b, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to apportionment of membership of the Senate; apportionment of membership of the House of Delegates; requiring all actions necessary and related to such apportionment; and defining terms.

Be it enacted by the Legislature of West Virginia:

That sections one, two and two-b, article two, chapter 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 2. APPORTIONMENT OF REPRESENTATION.

§1-2-1. Senatorial districts.
§1-2-2b. Precinct boundary changes.

§1-2-1. Senatorial districts.

1 (a) This section shall be known and may be cited as the “Senate Redistricting Act of 2001”.

3 (b) As used in this section:

4 (1) “County” means the territory comprising a county of this state as such county existed on the first day of January, two
thousand, notwithstanding any boundary changes thereof made subsequent thereto;

(2) "Block" and "voting district" mean those geographic areas as defined by the bureau of the census of the United States department of commerce for the taking of the two thousand census of population and described on census maps prepared by the bureau of the census. Such maps are, at the time of this enactment, maintained by the bureau of the census and filed in the office of legislative services;

(3) "Incumbent senator" means a senator elected at the general election held in the year two thousand or at any general election thereafter, with an unexpired term of at least two years in duration.

(c) The Legislature recognizes that in dividing the state into senatorial districts, the Legislature is bound not only by the United States constitution but also by the West Virginia constitution; that in any instance where the West Virginia constitution conflicts with the United States constitution, the United States constitution must govern and control, as recognized in section one, article one of the West Virginia constitution; that the United States constitution, as interpreted by the United States supreme court and other federal courts, requires state legislatures to be apportioned so as to achieve equality of population as near as is practicable, population disparities being permissible where justified by rational state policies; and that the West Virginia constitution requires two senators to be elected from each senatorial district for terms of four years each, one such senator being elected every two years, with one half of the senators being elected biennially, and requires senatorial districts to be compact, formed of contiguous territory and bounded by county lines. The Legislature finds and declares that it is not possible to divide the state into senatorial districts so as to achieve equality of population as
near as is practicable as required by the United States supreme court and other federal courts and at the same time adhere to all of these provisions of the West Virginia constitution; but that, in an effort to adhere as closely as possible to all of these provisions of the West Virginia constitution, the Legislature, in dividing the state into senatorial districts, as described and constituted in subsection (d) of this section, has:

(1) Adhered to the equality of population concept, while at the same time recognizing that from the formation of this state in the year one thousand eight hundred sixty-three, each constitution of West Virginia and the statutes enacted by the Legislature have recognized political subdivision lines and many functions, policies and programs of government have been implemented along political subdivision lines;

(2) Made the senatorial districts as compact as possible, consistent with the equality of population concept;

(3) Formed the senatorial districts of "contiguous territory" as that term has been construed and applied by the West Virginia supreme court of appeals;

(4) Deviated from the long-established state policy, recognized in subdivision (1) above, by crossing county lines only when necessary to ensure that all senatorial districts were formed of contiguous territory or when adherence to county lines produced unacceptable population inequalities and only to the extent necessary in order to maintain contiguity of territory and to achieve acceptable equality of population; and

(5) Also taken into account in crossing county lines, to the extent feasible, the community of interests of the people involved.

(d) The Senate shall be composed of thirty-four senators, one senator to be elected at the general election to be held in the
year two thousand two, and biennially thereafter for a four-year term from each of the senatorial districts hereinafter in this subsection described and constituted as follows:

(1) The counties of Brooke, Hancock and voting districts 1, 4, 5, 10, 11, 12, 13, 14, 16, 20, 23, 24, 28, 29, 31, 36, 49, 77, 103, 104, 107, 108, 113, 115, 116, 119, 120, 122, 124, 125, 127, 128, 129, 130, 131, 135, 137, 141, 143, 146, 148, 158, 161 of Ohio shall constitute the first senatorial district;

(2) The counties of Calhoun, Doddridge, Marshall, Ritchie, Tyler, Wetzel and voting districts 59, 66, 67, 68, 69, 70, 72, 74, 78 of Marion and voting districts 40, 41, 42, 44, 47, 51, 52, 53, 54, 55, 58, 67, block: 0113001033, 68, block: 0113002014 of Monongalia and voting districts 60, 64, 69, 100, 102 of Ohio shall constitute the second senatorial district;

(3) The counties of Pleasants, Wirt, Wood and voting districts 4, 5, 7, 10, 15, 16, 22, blocks: 9629003000, 9629003002, 9629003003, 9629003005, 9629003006, 9629003014, 9629003015, 9629003016, 9629003017, 9629003018, 9629003019, 9629003020, 9629003022, 9629003025, 9629003029, 9629003030, 9629003031, 9629003032, 9629003033, 9629003034, 9629003035, 9629003036, 9629003037, 9629003038, 9629003039, 9629003040, 9629003999, 9629004000, 9629004001, 9629004002, 9629004003, 9629004004, 9629004005, 9629004006, 9629004007, 9629004008, 9629004009, 9629004010, 9629004014, 9629004015, 9629004016, 9631001012, 25, 28, 29, 30, 32 of Roane shall constitute the third senatorial district;

(4) The counties of Jackson, Mason, Putnam and voting districts 1, 11, 12, 18, 19, 20, 21, 22, blocks: 9629001071, 9629003007, 9629003008, 9629003009, 9629003010, 9629003011, 9629003012, 9629003023, 9629003024,
(5) The county of Cabell and voting districts 11, 12, blocks:
0203001000, 0203001011, 0203002001, 0203002041,
0203006000, 0203006002, 0203006003, 0203006004,
0203006005, 0203006006, 0203006007, 0203006008,
0203006009, 0203006010, 0203006011, 0203006012,
0203006013, 0203006021, 0203006024, 0203006033,
0203006034, 0203006040, 0203006041, 0203006042,
0203006043, 0203006044, 0203006045, 0203006046,
0203006048, 0203006049, 0203006050, 0203006051,
0203006052, 0203006053, 0203006054, 0203006055,
0203006056, 0203006057, 0203006058, 0203006059,
0203006060, 0203006061, 0203006062, 0203006063,
0203006998, 0203006999, 16, blocks: 0204001009,
0204001013, 56, 59, 60, 61, 62, blocks: 0052002000,
0052002001, 0052002002, 0052002003, 0052002004,
0052002005, 0052002006, 0052002007, 0052002008,
0052002009, 0052002010, 0052002011, 0052002012,
0201002011 and 63 of Wayne shall constitute the fifth senato-
rial district;

(6) The counties of McDowell and voting districts 2, 3, 4, 5, 42, 46, 49, 51, 52, 53, 54, 55, 57, blocks: 9509001025,
9509001026, 9511002003, 9511002004, 9511002005,
9511002024, 9511002025, 58, 60, 61, 62, 66, 67, 68, 69, 71, 72,
79, 96 of Mercer, Mingo and voting districts 1, 3, 5, 6, 12, blocks:
0203001001, 0203006001, 0203006097, 0203002026, 0203002027, 0203002028,
0203002029, 0203002030, 0203002031, 0203002032,
0203002040, 0203002996, 0203003006, 0204001010,
0204001011, 0204001012, 0204001014, 0204001015,
0204001016, 0204001017, 0204001034, 0204001054,
0204001055, 0204001056, 0204001057, 0204001058,
0204001059, 0204001060, 0204001061, 0204001062,
(7) The counties of Boone, Lincoln, Logan and voting districts 19, 22, 30, 41, 42, 45, 48, 49, 50, 51, 52, 53, 54 and 57 of Wayne shall constitute the seventh senatorial district;

(8) The county of Kanawha shall constitute the eighth senatorial district;

(9) The county of Raleigh and voting districts 1, 2, 4, 6, 7, 8, 9, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 42, 43, 44, 45, 47, 48 and 99 of Wyoming shall constitute the ninth senatorial district;

(10) The counties of Monroe, Summers, Greenbrier, voting districts 68 and 72 of Fayette, voting districts 1, 14, 15, 20, 27, 28, 30, 31, 32, 33, 34, 36, 37, 38, 44, 47, 48, 56, 57, blocks: 9511002006, 9511002007, 9511002008, 9511002009, 9511002010, 9511002011, 9511002012, 9511002013, 9511002014, 9511002015, 9511002016, 9511002017, 9511002018, 9511002019, 9511002020, 9511002021, 9511002022, 9511002023, 9511002025, 9511002026, 9511002027, 9511002028, 9511003003, 9511003004, 9511003005, 9511003007, 9511003008, 9511003009, 9511003010, 9511003011, 9511003012, 9511003013, 9511003014, 9511003015, 9511003016, 9511003017, 9511003018, 9511003019, 9511003020, 9511003021, 59, 64, 65, 73, 74, 77,
168    78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95 and 98 of Mercer
169      shall constitute the tenth senatorial district;

170    (11) The counties of Clay, Nicholas, Webster, voting
171      districts 1, 4, 5, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 23, 24,
172      26, 28, 29, 31, 32, 37, 38, 41, 42, 45, 46, 47, 51, 52, 53, 55, 56,
173      58, 59, 60, 65, 67, 74 of Fayette and voting districts 4, 6, 7, 8,
174      9, 12, 13, 14, 15, 16, 18, 19, 20, 25, 27, 35, 38, 42, 44 and 47 of
175      Upshur shall constitute the eleventh senatorial district;

176    (12) The counties of Braxton, Gilmer, Harrison and Lewis
177      shall constitute the twelfth senatorial district;

178    (13) The voting districts 1, 2, 5, 6, 7, 13, 16, 18, 20, 27, 28,
179      29, 30, 31, 32, 33, 34, 35, 36, 40, 41, 42, 43, 44, 45, 47, 48, 50,
180      51, 52, 53, 55, 56, 57, 58, 61, 62, 82, 83, 86, 87, 88, 89, 90, 92,
181      96, 98, 100, 101, 102, 104, 112, 113, 114, 115, 116, 117, 118,
182      120, 121, 122, 123, 124 and 125 of Marion and voting district
183      1, blocks: 0110001008, 0110001019, 0110001020,
184      0110001021, 0110001022, 0110001023, 0110001024,
185      0110001025, 0110001027, 0110001029, 0110001030,
186      0110001031, 0110001032, 0110001033, 0110001034,
187      0110001999, 0110002005, 0110002007, 0110002008,
188      0110002009, 0110002041, 0110002048, 0110002049,
189      0110002050, 0110002051, 0110002052, 0110002053,
190      0110002054, 0110002999, 0110003003, 0110003004,
191      0110003009, 0110003011, 0110003012, 0110003018,
192      0110003019, 0110003999, voting districts 2, 3, 4, 5, 6, 7, 8, 9,
193      10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28,
194      29, 30, 31, 32, 35, 36A, 36B, 39, 46, 48, 49, 56, 64, 67, blocks:
195      0113001008, 0113001009, 0113001010, 0113001011,
196      0113001012, 0113001013, 0113001014, 0113001015,
197      0113001016, 0113001017, 0113001018, 0113001019,
198      0113001020, 0113001021, 0113001022, 0113001023,
199      0113001024, 0113001025, 0113001026, 0113001027,
200      0113001028, 0113001029, 0113001030, 0113001032,
201 0113001034, 0113001035, 0113001036, 0113001999, 202 0113003013, 0113003014, 0113003015, 0113003016, 203 0113003017, 0113003018, 0113003019, 0113003020, 204 0113003021, 0113003022, 0113003024, 0113003025, 205 0113003026, 0113003027, 0113003028, 0113003029, 206 68, blocks: 0113001000, 0113001001, 0113001002, 207 0113001003, 0113001004, 0113001005, 0113001031, 208 0113002002, 0113002003, 0113002004, 0113002005, 209 0113002006, 0113002007, 0113002008, 0113002009, 210 0113002010, 0113002011, 0113002012, 0113002013, 211 0113002015, 0113002016, 0113002017, 0113002018, 212 0113002019, 0113002020, 0113002021, 0113002022, 213 0113002023, 0113002024, 0113002025, 69, 70, 71, 72, 214 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, blocks: 215 0109022036, 0109022048, 0110002040, 0110002044, 216 0110003000, 0110003005, 86, 87, 88, 90, 91 and 92 of 217 Monongalia shall constitute the thirteenth senatorial district;

233 (15) The counties of Hampshire, Hardy, Morgan, 234 Pendleton, Pocahontas, Randolph and voting district 22, blocks:
(16) The counties of Jefferson and voting districts 1, 2, 5, 6, 7, 8, 9, 10, 11, 14, 15, 15A, 16, 17, 18, 19, 20, 21, 22, blocks: 9712006076, 9712006077, 9716003005, 9716003006, 9717004012, 9719001010, 9719001011, 9719001012, 9719001013, 9719001014, 9719001015, 9719001016, 9719001017, 9719001018, 9719001019, 9719001020, 9719002000, 9719002001, 9719002003, 9719002007, 9719002008, 9719003024, 9719003025, 23, 24, 25, 25A, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, blocks: 9718003000, 9718003006, 9718003007, 9718003008, 9718003009, 9718003018, 9718003019, 9718003020, 44, 46, blocks: 9718001044, 9718001045, 9718001046, 9718001047, 9718001048, 9718001049, 9718001052, 9718001053, 9718001054, 9718001055, 9718003001, 9718003002, 9718003003, 48, 49, 50, 51, blocks: 9721003013, 9721003015, 9721003016, 9721004015, 9721004016, 9721004018, 9721004019, 9721004020, 9721004021, 9721004022, 9721004023, 9721004024, 9721004025, 9721004026, 9721005009, 9718006072, 9718006073, 9718006074, 9718006075
(17) The county of Kanawha shall constitute the seventeenth senatorial district.

(e) The West Virginia constitution further provides, in section four, article VI thereof, that where a senatorial district is composed of more than one county, both senators for such district shall not be chosen from the same county, a residency dispersal provision which is clear with respect to senatorial districts which follow county lines, as required by such constitution, but which is not clear in application with respect to senatorial districts which cross county lines. However, in an effort to adhere as closely as possible to the West Virginia constitution in this regard, the following additional provisions, in furtherance of the rationale of such residency dispersal provision and to give meaning and effect thereto, are hereby established:

(1) With respect to a senatorial district which is composed of one or more whole counties and one or more parts of another county or counties, no more than one senator shall be chosen from the same county or part of a county to represent such senatorial district;

(2) With respect to a senatorial district which does not contain any whole county but only parts of two or more counties, no more than one senator shall be chosen from the same part to represent such senatorial district; and

(3) With respect to superimposed senatorial districts which contain only one whole county, all senators shall be chosen from such county to represent such senatorial districts.

(f) Candidates for the Senate shall be nominated as provided in section four, article five, chapter three of this code,
except that such candidates shall be nominated in accordance
with the residency dispersal provisions specified in section four,
article VI of the West Virginia constitution and the additional
residency dispersal provisions specified in subsection (e) of this
section. Candidates for the Senate shall also be elected in
accordance with the residency dispersal provisions specified in
said section and the additional residency dispersal provisions
specified in subsection (e) of this section. In furtherance of the
foregoing provisions of this subsection, no person may file a
certificate of candidacy for election from a senatorial district
described and constituted in subsection (d) of this section if he
or she resides in the same county and the same such senatorial
district wherein also resides an incumbent senator, whether the
senatorial district wherein such incumbent senator resides was
described and constituted by chapter eighty-five, acts of the
Legislature, one thousand nine hundred ninety-three, or was
described and constituted in subsection (d) of this section or its
immediately prior enactment. Any vacancy in a nomination
shall be filled, any appointment to fill a vacancy in the Senate
shall be made and any candidates in an election to fill a vacancy
in the Senate shall be chosen so as to be consistent with the
residency dispersal provisions specified in section four, article
VI of the West Virginia constitution and the additional resi-
dency dispersal provisions specified in subsection (e) of this
section.

(g) Regardless of the changes in senatorial district bound-
aries made by the provisions of subsection (d) of this section,
all senators elected at the general election held in the year one
thousand nine hundred ninety-eight and at the general election
held in the year two thousand shall continue to hold their seats
as members of the Senate for the term, and as representatives of
the senatorial district, for which each thereof, respectively, was
elected. Any appointment made or election held to fill a
vacancy in the Senate shall be for the remainder of the term and
as a representative of the senatorial district, for which the
vacating senator was elected or appointed, and any such
election shall be held in the district as the same was described
and constituted at the time the vacating senator was elected or
appointed.

(h) The secretary of state may promulgate rules and
regulations to implement the provisions of this section, includ-
ing emergency rules and regulations promulgated pursuant to
the provisions of section five, article three, chapter twenty-nine-
a of this code.

(a) As used in this section:

(1) "County" means the territory comprising a county of this state as it existed on the first day of January, two thousand, notwithstanding any boundary changes made subsequent thereto;

(2) "Block" and "voting district" mean those geographic areas as defined by the bureau of the census of the United States department of commerce for the taking of the two thousand census of population and described on census maps prepared by the bureau of the census. The maps are, at the time of the reenactment of this section in the year two thousand one, maintained by the bureau of the census and filed with the joint committee on government and finance.

(b) The House of Delegates is composed of one hundred members elected from the delegate districts described in this subsection:

(1) The first delegate district is entitled to two delegates and consists of:

(A) Voting districts 26 and 34 of Brooke County; and

(B) All of Hancock County.

(2) The second delegate district is entitled to two delegates and consists of:

(A) Voting districts 1, 4, 5, 6, 11, 13, 14, 15, 16, 17, 20A, 20B, 21A, 21B, 23A, 23B, 23C, 23D, 24, 25, 28, 31, 32A, 32B, 33, 35A, 35B and 36 of Brooke County; and

(B) The following areas of Ohio County:
27 (i) Voting districts 12, 13, 135, 137, 141, 146, 158, 161;

28 (ii) Blocks 0021001054, 0021001056, 0021001057, 0021001058, 0021001059, 0021001060, 0021001061, 0021001062, 0021001063, 0021001064, 0021001065, 0021001066, 0021001067, 0021001068, 0021001069, 0021001070, 0021001071 and 0021001073 of voting district 143; and

29 (iii) Blocks 0020001000, 0020001001, 0020001006, 0020001007, 0020001008, 0020001010, 0020001015, 0020001047, 0020001048 and 0020001049 of voting district 16.

30 (3) The third delegate district is entitled to two delegates and consists of the following areas of Ohio County:

31 (A) Voting districts 1, 4, 5, 10, 11, 14, 20, 23, 24, 28, 29, 31, 36, 49, 60, 64, 69, 77, 100, 103, 104, 107, 108, 113, 115, 116, 119, 120, 122, 124, 125, 127, 128, 129, 130, 131 and 148;

32 (B) Blocks 0020001002, 0020001003, 0020001004, 0020001005, 0020001009, 0020001011, 0020001012, 0020001013, 0020001014, 0020001016, 0020001019, 0020001020, 0020001021, 0020001022, 0020001023, 0020001024, 0020001025, 0020001026, 0020001027, 0020001028, 0020001029, 0020001030, 0020001031, 0020001032, 0020001033, 0020001035, 0020003020, 0020003021, 0020003022, 0020003023, 0020003025 and 0020004013 of voting district 16; and

33 (C) Blocks 0018001005, 0018001006, 0020001017, 0020001037, 0020001038, 0020001041, 0020001043, 0020001017, 0021001050, 0021001051, 0021001052, 0021001053, 0021001055, 0021001072, 0021001074, 0021001075, 0021001076 and 0021001077 of voting district 143.
(4) The fourth delegate district is entitled to two delegates and consists of:

(A) All of Marshall County; and

(B) Voting district 102 of Ohio County.

(5) The fifth delegate district is entitled to one delegate and consists of:

(A) Voting districts 40 and 42 of Monongalia County; and

(B) Voting districts 4, 5, 10, 15, 16, 18, 21, 24, 27, 29, 33, 36, 39, 40, 42, 43, 44, 45, 46, 48 and 50 of Wetzel County.

(6) The sixth delegate district is entitled to one delegate and consists of:

(A) All of Doddridge County;

(B) All of Tyler County; and

(C) Voting district 38 of Wetzel County.

(7) The seventh delegate district is entitled to one delegate and consists of:

(A) All of Pleasants County; and

(B) All of Ritchie County.

(8) The eighth delegate district is entitled to one delegate and consists of the following areas of Wood County:

(B) Blocks 0001001000, 0001001003, 0101022022, 0101022023, 0101022025, 0101022026 and 0106013029 of voting district 40; and

(C) Block 0104001030 of voting district 40A.

(9) The ninth delegate district is entitled to one delegate and consists of:

(A) All of Wirt County; and

(B) The following areas of Wood County:

(i) Voting districts 27, 38, 57, 57A, 58, 81, 82, 84, 85, 86, and 87; and

(ii) Block 0108003029 of voting district 67.

(10) The tenth delegate district is entitled to three delegates and consists of the following areas of Wood County:


(B) Blocks 0101021014, 0101021015, 0101021016, 0101021017, 0101021018, 0101021019, 0101022005, 0101022006, 0101022007 and 0101022024 of voting district 40;

(C) Blocks 0001002000, 0001002003, 0001002005, 0001002006, 0001002009, 0001002010, 0001002011, 0001002012, 0001002013, 0001002014, 0001002015, 0001002016, 0002002001, 0002002002, 0002002003, 0002002015, 0002002099, 0101021012, 0101022011, 0101022012, 0101022013, 0101022014, 0101022015,
(D) Blocks 0107023004, 0107023005, 0107023006, 0107023016, 0107023017, 0107023018, 0107023019, 0107023020, 0107023021, 0107023022, 0109011002, 0109011003, 0109011004, 0109011005, 0109011006, 0109011007, 0109011008, 0109011009, 0109011010, 0109011011, 0109011012, 0109011013, 0109011014, 0109011015 and 0109011016 of voting district 67.

(11) The eleventh delegate district is entitled to one delegate and consists of:

(A) Voting districts 37, 38, 39, 40 and 43 of Jackson County; and

(B) All of Roane County.

(12) The twelfth delegate district is entitled to one delegate and consists of the following areas of Jackson County:

(A) Voting districts 1, 4, 5, 6, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33 and 42.
The thirteenth delegate district is entitled to two delegates and consists of:

(A) Voting districts 7, 8, 13, 14, 15, 30 and 32 of Jackson County;

(B) Voting districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18 and 39 of Mason County; and

(C) The following areas of Putnam County:

(i) Voting districts 1, 2, 4, 15, 16, 17, 18, 19, 21, 22, 23, 34, 35, 36, 37, 38 and 40; and

(ii) Blocks 0204001017, 0204001018, 0204001019, 0204001020, 0204001023, 0204001024, 0204001025, 0204001030, 0204001031, 0204001032, 0204001033, 0204001034, 0204001035, 0204001036, 0204002000, 0204002001, 0204002002, 0204002052, 0204002053, 0204002054, 0204002055, 0204002999, 0204003000, 0204003001, 0204003002, 0204003003, 0204003004, 0204003005, 0204004000, 0204004001, 0204004002, 0204004003, 0204004004, 0204004005, 0204004006, 0204004007, 0204004008, 0204004009, 0204004010, 0204004011, 0204004012, 0204004013, 0204004014, 0204004015, 0204004016, 0204004017, 0204004018, 0204004019, 0204004020, 0204004021, 0204004022, 0204004023, 0204004024, 0204004025, 0204004026, 0204004027, 0204004028, 0204004029, 0204004997, 0204004998, 0204004999, 0206011998, 0206031000, 0206031001, 0206031003, 0206031004, 0206031005, 0206031050, 0206031051, 0206031052, 0206031053, 0206031054, 0206031995, 0206031996, 0206031997, 0206031998, 0206031999 of voting district 28.
(14) The fourteenth delegate district is entitled to two delegates and consists of:

(A) Voting districts 13, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of Mason County; and

(B) The following areas of Putnam County:

(i) Voting district 25, 26, 27, 29, 30, 31, 32, 33, 41 and 42; and

(ii) Blocks 0206011000, 0206011001, 0206011002, 0206011003, 0206011004, 0206011005, 0206011006, 0206011007, 0206011008, 0206011009, 0206011010, 0206011011, 0206011012, 0206011019, 0206011020, 0206011021, 0206011022, 0206011023 and 0206011999 of voting district 28.

(15) The fifteenth delegate district is entitled to three delegates and consists of:

(A) The following areas of Cabell County:

(i) Voting districts 7, 10, 11, 12, 13, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 54, 55, 56, 57, 58, 59, 62, 63, 64, 65 and 66;

(ii) Blocks 0012001005, 0012001006, 0012001007, 0012001010, 0012001011, 0012002003, 0012002004, 0012002005, 0012002006 and 0013002002 of voting district 8;

(iii) Blocks 0015001024, 0015001025, 0015001026, 0015002003, 0015002004, 0015002005, 0015002026, 0015002027, 0015002028, 0020001006, 0020001007, 0020001008 and 0020001018 of voting district 18;
(iv) Block 0106004017 of voting district 52;

(v) Blocks 0103003001, 0103003002, 0103003003, 0103003004, 0103003005, 0103003006, 0103003007, 0103003008, 0103003009, 0103003010, 0103003013, 0103003014, 0103003015, 0103003016, 0103003017, 0103003018, 0103003019, 0103003993, 0103003994, 0103003996, 0103003997, 0103003998, 0103003999, 0104004016, 0104004048, 0104004049, 0104004054, 0104004994, 0104004995, 0104004997, 0106004018, 0106004019, 0106004036, 0107001031, 0107001032, 0107001033, 0107001034, 0107001035, 0107001036 and 0107001037 of voting district 53; and

(vi) Blocks 0106004016, 0107001021, 0107001022, 0107001023, 0107001024, 0107001025, 0107001026, 0107001027, 0107001028, 0107001029, 0107001030, 0107001038, 0107001039, 0107001040, 0107001041, 0107001042 and 0107001043 of voting district 60; and

(B) Voting districts 1, 2, 3, 4 and 5 of Lincoln County.

(16) The sixteenth delegate district is entitled to three delegates and consists of:

(A) The following areas of Cabell County:

(i) Voting districts 1, 1A, 2, 3, 4, 5, 6, 9, 14, 29, 31, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 61;

(ii) Blocks 0008002007, 0008002008, 0008002009, 0008002010, 0008002011, 0008002012, 0008002013, 0008002016, 0008002017, 0012001002, 0012001003, 0012001004 and 0012002000 of voting district 8;

(iii) Blocks 0020002014 and 0020002017 of voting district 18;
(iv) Blocks 0104003000, 0104003001, 0104003002, 0104003016, 0104003017, 0104003019, 0104003020, 0104004007, 0104004008, 0104004009, 0104004010, 0104004011, 0104004012, 0104004013, 0104004014, 0104004996, 0104004999, 0104005000, 0104005001, 0104005002, 0104005003, 0104005006, 0104005007, 0104005008, 0104005009, 0104005010, 0104005011, 0104005012, 0106003015, 0106003016, 0106003017, 0106003018, 0106004022, 0106004023, 0106004031, 0106004032, 0106004033 and 0106004034 of voting district 52;

(v) Blocks 0103003011, 0103003012, 0103003016, 0103003017, 0103003019, 0103003020, 0104004000, 0104004001, 0104004002, 0104004003, 0104004006, 0104004017, 0104004021, 0104004022, 0104004023, 0104004024, 0104004025, 0104004026, 0104004027, 0104004038, 0104004050, 0104004051, 0104004052, 0104004053, 0104004055, 0104004056, 0104004990, 0104004991, 0104004992, 0104004993, 0104004998, 0104005004, 0104005005, 0104005021, 0106003018, 0106004022, 0106004023, 0106004031, 0106004032, 0106004033 and 0106004034 of voting district 52; and

(vi) Blocks 0105003000, 0105003001, 0105003002, 0105003003, 0105003004, 0105003005, 0105003006, 0105003007, 0105003008, 0105003009, 0105003010, 0105003011, 0105003013, 0105003014, 0105003015, 0105003016, 0105003017, 0106003002, 0106003003, 0106003004, 0106003005, 0106003006, 0106003007, 0106003008, 0106003009, 0106003010, 0106003011, 0106003012, 0106003013, 0106003014, 0106003015, 0106003016, 0106004001, 0106004002, 0106004003, 0106004004, 0106004005, 0106004006, 0106004007, 0106004008,
(B) The following areas of Wayne County:

(i) Voting districts 59, 60, 61 and 63;

(ii) Blocks 0051001021, 0052002034, 0052002035, 0052002037, 0052002038, 0052002040, 0201001000, 0201001001, 0201001002, 0201001003, 0201001004, 0201001005, 0201001006, 0201001007, 0201001008, 0201001009, 0201001010, 0201001011, 0201002017, 0201002019 and 0201002025 of voting district 56; and

(iii) Blocks 0052002000, 0052002001, 0052002002, 0052002010, 0052002011, 0052002012, 0052002032, 0201002002, 0201002003 and 0201002011 of voting district 62.

(17) The seventeenth delegate district is entitled to two delegates and consists of the following areas of Wayne County:

(A) Voting districts 1, 3, 5, 6, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 30, 31, 36, 41, 42, 45, 48, 49, 50, 51, 52, 53, 54 and 57; and

(B) Blocks 0052002045, 0201002020, 0201002024, 0201002026, 0201002027, 0201002028, 0201002029, 0201002030 and 0204001998 of voting district 56.

(C) Blocks 0201002000, 0201002001, 0201002004, 0201002005, 0201002006, 0201002007, 0201002008, 0201002009, 0201002010, 0201002012, 0201002013,
The eighteenth delegate district is entitled to one delegate and consists of the following areas of Boone County:

(A) Voting districts 12, 13, 14, 15, 16, 19, 22, 23, 25, 30, 31, 32, 33, 35, 36, 38, 40, 41, 45, 46, 48, 49, 50, 52 and 53;

(B) Blocks 9583001074 and 9583001076 of voting district 1;

(C) Block 9583001073 of voting district 11; and

(D) Blocks 9584001026, 9584001027, 9584001028, 9584001030, 9584001031, 9584001032, 9584001033, 9584001034, 9584001035 and 9584001036 of voting district 7.

The nineteenth delegate district is entitled to four delegates. Not more than three delegates may be nominated, elected or appointed who are residents of any single county within the district. The district consists of:

(A) The following areas of Boone County:

(i) Voting districts 2, 3, 4, 5, 9, 17 and 18;

(ii) Blocks 9583001054, 9583001055, 9583001056, 9583001057, 9583001058, 9583001061, 9583001062, 9583001075, 9583001077, 9583001078, 9583001079, 9583001080, 9583001081, 9583001083, 9583002000, 9583002001, 9583002002, 9583002003, 9583002004, 9583002005, 9583002020, 9583002021, 9583002022.
315 9583002023, 9583002024, 9583002025, 9583002026 and 9583002027 of voting district 1;

317 (iii) Blocks 9583001063 and 9583001064 of voting district 11; and

319 (iv) Blocks 9584001037, 9584001038, 9584001078, 9584001079, 9584001080, 9584001081, 9584001082, 9588001000, 9588001001, 9588001002, 9588001003, 9588001004, 9588001005, 9588001006, 9588001007, 9588001008, 9588001009, 9588001023, 9588001024, 9588001025, 9588001026, 9588001027, 9588001028, 9588001029, 9588001030, 9588001031, 9588002020, 9588002021, 9588002024, 9588002036, 9588002037, 9588002038 and 9588002039 of voting district 7;

329 (B) Voting districts 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 28, 29, 31, 32 and 33 of Lincoln County;

331 (C) All of Logan County; and

332 (D) Voting districts 6, 7, 8, 9, 10 and 13 of Putnam County.

333 (20) The twentieth delegate district is entitled to one delegate and consists of:

335 (A) Voting districts 1, 3, 5, 6, 7, 9, 22, 23, 26, 27, 28, 41, 43, 44, 45, 46, 47 and 48 of Mingo County; and

337 (B) Voting districts 34, 37 and 38 of Wayne County.

338 (21) The twenty-first delegate district is entitled to one delegate and consists of:

340 (A) The following areas of McDowell County:

341 (i) Voting districts 104, 111, 112, 113 and 114;
(ii) Blocks 9538004031, 9538004032, 9538004033, 
9538004034, 9538004038, 9538004039, 9538004049, 
9538004050, 9538004055, 9538004056, 9538004071, 
9539001000, 9539001001, 9539001016, 9539001017, 
9539001018, 9539001019, 9539001020, 9539001026, 
9539001027, 9539001028, 9539001029, 9539001030, 
9539001031, 9539001032, 9539001033, 9539001034, 
9539001035, 9539001036, 9539001037, 9539001038, 
9539001039 and 9539001042 of voting district 107;

(iii) Block 9540004006 of voting district 116; and

(B) Voting districts 30, 50, 51, 54, 55, 56, 57, 59, 72, 73, 
74, 75, 76 and 77 of Mingo County.

(22) The twenty-second delegate district is entitled to two 
delegates and consists of:

(A) The following areas of McDowell County:

(i) Voting districts 21, 102, 103, 105 and 109;

(ii) Blocks 9538004035, 9538004036, 9538004037, 
9538004046, 9538004047, 9538004048, 9538004067 and 
9538004068 of voting district 107; and

(iii) Blocks 9540004005, 9541003002, 9541003003, 
9541004002, 9541004006, 9541004007, 9541004008, 
9541004009, 9541004010, 9541004011, 9541004012, 
9541004013, 9541004029, 9541004030, 9541006034, 
9541006035, 9541006036, 9541006037, 9541006038, 
9541006039 and 9541006040 of voting district 116;

(B) Voting districts 3, 42, 46, 49, 51, 55, 60, 69 and 96 of 
Mercer County; and

(C) All of Wyoming County.
(23) The twenty-third delegate district is entitled to one delegate and consists of the following areas of McDowell County:

(A) Voting districts 1, 6, 11, 14, 17, 20, 23, 26, 28, 32, 34, 40, 50, 58, 60, 63, 66, 72, 73, 76, 78, 81, 84, 85, 86, 87, 91, 93, 98 and 100.

(24) The twenty-fourth delegate district is entitled to one delegate and consists of the following areas of Mercer County:

(A) Voting districts 2, 4, 5, 14, 15, 20, 27, 28, 30, 31, 32, 33, 34, 36, 37, 38, 61, 66, 67, 68 and 79; and

(B) Block 9522001006 of voting district 1.

(25) The twenty-fifth delegate district is entitled to two delegates and consists of the following areas of Mercer County:

(A) Voting districts 44, 47, 48, 52, 53, 54, 56, 57, 58, 59, 62, 64, 65, 71, 72, 73, 74, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95 and 98; and

(B) Blocks 9519001039, 9519001040, 9519001041, 9522001000, 9522001002, 9522001008, 9522003000, 9522003001, 9522004001, 9522004002, 9522004003, 9522004005, 9522004006, 9522004007, 9522004008, 9522004009, 9522004010, 9522004011, 9522004012, 9522004013, 9522004014, 9522004015, 9522004016, 9522004021, 9522004026, 9522004027, 9522004028, 9522004029, 9522004030, 9522004031, 9522004032, 9522004033, 9522004034, 9522004035, 9522004036, 9522004037, 9522004038, 9522004039, 9522004049, 9522004050, 9522004051, 9522004052, 9522004053, 9523001003, 9523001004, 9523001005, 9523001006, 9523001007, 9523001008, 9523001009, 9523001010, 9523001011, 9523001012, 9523001013, 9523001014,
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<td>of voting district 1.</td>
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(26) The twenty-six delegate district is entitled to one delegate and consists of:

(A) All of Monroe County; and

(B) The following areas of Summers County:

(i) Voting district 32;

(ii) Blocks 9506002072, 9506002073, 9506002074,

9506002076, 9506002077, 9506002078, 9506002079,

9506002080, 9506002081, 9506002082, 9506002083,

9506002084, 9506002085, 9506002086, 9506002087,

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9506004057, 9506004058, 9506004059, 9506004060,

9506004061, 9506004995, 9506004996 and 9507002028 of voting district 1; and
(iii) Blocks 9505002082, 9506001024, 9506001025, 9506001026, 9506001027, 9506001028, 9506001029, 9506001038, 9506001039, 9506001040, 9506001041, 9506001042, 9506001043, 9506002017, 9506002018, 9506002019, 9506002020, 9506002022, 9506002023, 9506002024, 9506002029, 9506002030, 9506002042, 9506002043, 9506002044, 9506002052, 9506002053, 9506002054, 9506002055, 9506002056, 9506002057, 9506002058, 9506002059, 9506002060, 9506002061, 9506002062, 9506002063, 9506002064, 9506002065, 9506002066, 9506002067, 9506002068, 9506002069, 9506002070, 9506002071, 9506002075, 9506002090, 9506002091, 9506002096, 9506002106, 9506002107, 9506002108, 9506002109, 9506002110, 9506002994, 9506002997, 9506002998, 9506003000, 9506003039, 9506003040, 9506003041, 9506003042, 9506003043, 9506004000, 9506004001, 9506004002, 9506004003, 9506004027, 9506004028, 9506004029, 9506004030, 9506004031, 9506004032, 9506004038, 9506004999 of voting district 30.

(27) The twenty-seventh delegate district is entitled to five delegates. Not more than four delegates may be nominated, elected or appointed who are residents of any single county within the district. The district consists of:

(A) All of Raleigh County; and

(B) The following areas of Summers County:

(i) Voting districts 4, 7, 9, 10, 11, 12, 13, 15, 17, 22, 23, 26 and 27;

(ii) Blocks 9506004010, 9506004012, 9506004013, 9506004997, 9507002027, 9507002029 and 9507002997 of voting district 1; and
(iii) Block 9506003004 of voting district 30.

(28) The twenty-eighth delegate district is entitled to two delegates and consists of all of Greenbrier County.

(29) The twenty-ninth delegate district is entitled to three delegates and consists of:

(A) Voting districts 12, 29, 30, 33 and 36 of Clay County;

(B) All of Fayette County; and

(C) Voting district 25 of Nicholas County.

(30) The thirtieth delegate district is entitled to seven delegates and consists of the following areas of Kanawha County:


(B) Blocks 0011005001, 0011005002, 0011005011, 0114011018, 0114011019, 0114011020, 0114011021, 0114011022, 0114011024, 0114011025, 0114011026, 0114011027, 0114011028, 0114011030, 0114011031, 0114011032, 0114011033, 0114011034, 0114012007, 0114012009, 0114012011, 0114012012, 0114012013, 0114012023, 0114012025, 0114012026, 0114012027,
(C) Blocks 0113011027, 0113011028, 0113011029, 0113012027, 0113012028, 0113012029 and 0113012030 of voting district 436.

(31) The thirty-first delegate district is entitled to one delegate and consists of the following areas of Kanawha County:

(A) Voting districts 167, 168, 169, 170, 171, 172, 174, 178, 179, 297, 298, 299, 402, 405, 406, 407, 411, 412 and 413; and

(B) Blocks 0011005007, 0011005008, 0011005009, 0011005010 and 0114011023 of voting district 123.

(32) The thirty-second delegate district is entitled to three delegates and consists of the following areas of Kanawha County:


(B) Blocks 0011002000, 0011003000, 0011003001, 0011003002, 0011003003, 0011003999, 0113011001, 0113011002, 0113011003, 0113011004, 0113011005, 0113011006, 0113011007, 0113011008, 0113011009, 0113011010, 0113011011, 0113011012, 0113011013, 0113011014, 0113011015, 0113011016, 0113011017, 0113011018, 0113011019, 0113011020, 0113011021, 0113011022, 0113011023, 0113011024, 0113011025,
(33) The thirty-third delegate district is entitled to one delegate and consists of:

(A) All of Calhoun County;

(B) Voting districts 1, 4, 15, 16, 17, 24, 25, and 37 of Clay County; and

(C) The following areas of Gilmer County:

(i) Voting districts 1, 6, 12, 13, 27 and 31;

(ii) Blocks 9677003011 and 9677003012 of voting district 17; and

(iii) Blocks 9677002095, 9677002096, 9677002097, 9677002099, 9677002100, 9677002101, 9677002102, 9677002103, 9677002104, 9677002105, 9677002106, 9677002107, 9677002108, 9677002109, 9677002110, 9677002111, 9677003038, 9678001002, 9678001003, 9678001004, 9678001005, 9678001006, 9678001023, 9678002002, 9678002003, 9678002004, 9678002005.
The thirty-fourth delegate district is entitled to one delegate and consists of:

(A) All of Braxton County; and

(B) The following areas of Gilmer County:

(i) Voting districts 5, 16, 18 and 20;

(ii) Blocks 9677003013, 9677003014, 9677003015, 9677003016, 9677003017, 9677003018, 9677003019, 9677003020, 9677003021, 9677003022, 9677003023, 9677003024, 9677003025, 9677003026, 9677003027, 9677003028, 9677003029, 9677003030, 9677003031, 9677003032, 9677003033, 9677003034, 9677003035, 9677003036, 9677003037, 9677003038, 9677003039, 9677003040, 9677003041, 9677003042, 9677003043, 9677003044, 9677003045, 9677003046, 9677003047, 9677003048, 9677003049, 9677003050, 9677003051, 9677003052, 9677003053, 9677003054, 9677003055, 9677003056, 9677003057, 9677003058, 9677003059, 9677004000, 9677004001, 9677004002, 9677004003, 9677004004, 9677004005, 9677004006, 9677004007, 9677004008, 9678002041, 9678002042, 9678002043 and 9678002044 of voting district 17; and

(iii) Blocks 9678002017, 9678002022 and 9678003000 of voting district 24.
The thirty-fifth delegate district is entitled to one delegate and consists of voting districts 13, 14, 15, 16, 18, 19, 20, 21, 23, 27, 28, 29, 30, 31, 32, 33 and 35 of Nicholas County.

The thirty-sixth delegate district is entitled to one delegate and consists of:

(A) Voting districts 1, 2, 3, 5, 7, 8, 9 and 17 of Nicholas County; and

(B) All of Webster County.

The thirty-seventh delegate district is entitled to two delegates and consists of:

(A) All of Pocahontas County; and

(B) All of Randolph County.

The thirty-eighth delegate district is entitled to one delegate and consists of:

(A) All of Lewis County; and

(B) Voting districts 4 and 7 of Upshur County.

The thirty-ninth delegate district is entitled to one delegate and consists of voting districts 6, 8, 9, 12, 13, 14, 15, 16, 18, 19, 20, 25, 27, 35, 42, 44 and 47 of Upshur County.

The fortieth delegate district is entitled to one delegate and consists of:

(A) All of Barbour County; and

(B) Voting districts 33, 38 and 39 of Upshur County.
(41) The forty-first delegate district is entitled to four delegates and consists of:

(A) All of Harrison County; and

(B) The following areas of Marion County:

(i) Voting district 41;

(ii) Blocks 0212003009, 0212003010, 0212003011, 0212003019, 0212003020, 0212003021 and 0212003022 of voting district 40; and

(iii) Blocks 0212001051, 0212001052 and 0212001055 of voting district 42.

(42) The forty-second delegate district is entitled to one delegate and consists of:

(A) Voting district 125 of Marion County;

(B) Voting district 62 of Monongalia County; and

(C) All of Taylor County.

(43) The forty-third delegate district is entitled to three delegates and consists of:

(A) The following areas of Marion County:

(i) Voting districts 1, 2, 5, 6, 7, 13, 16, 18, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 43, 44, 45, 47, 48, 50, 51, 52, 53, 55, 56, 57, 58, 59, 61, 62, 66, 67, 68, 69, 70, 72, 74, 78, 82, 83, 86, 87, 88, 89, 90, 92, 96, 98, 100, 101, 102, 104, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123 and 124;

(ii) Blocks 0212002000, 0212002001, 0212002002, 0212002003, 0212002004, 0212002005, 0212002006,
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629 0212002007, 0212002008, 0212002026, 0212002027, 0212002028, 0212002029, 0212002030, 0212002999, 0212003000, 0212003001, 0212003002, 0212003003, 0212003004, 0212003005, 0212003006, 0212003007, 0212003008, 0212003012, 0212003013, 0212003014, 0212003015, 0212003016, 0212003017, 0212003018, 0212003997, 0212003998 and 0212003999 of voting district 40; and

630 (iii) Blocks 0211001009, 0211001010, 0211001011, 0211001012, 0211001015, 0211001016, 0211001019, 0211001020, 0211001021, 0211002001, 0211002006, 0211002007, 0211002012, 0211003016, 0211003995, 0212001002, 0212001003, 0212001004, 0212001010, 0212001011, 0212001012, 0212001038, 0212001039, 0212001040, 0212001041, 0212001046, 0212001050, 0212001053, 0212001054, 0212001058, 0212001085 and 0212001997 of voting district 42; and

631 (B) Voting districts 59, 64 and 67 of Monongalia County.

632 (44) The forty-fourth delegate district is entitled to four delegates and consists of voting districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36A, 36B, 37, 38, 39, 41, 44, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 58, 60, 61, 63, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90, 91 and 92 of Monongalia County.

633 (45) The forty-fifth delegate district is entitled to one delegate and consists of the following areas of Preston County:

634 (A) Voting districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 25;

635 (B) Blocks 9643001067, 9643001068, 9643001069, 9644001022, 9644001023, 9644001024, 9644001025,
660 9644002000, 9644002001, 9644002002, 9644002003,
661 9644002004, 9644002005, 9644002006, 9644002007,
662 9644002008, 9644002009, 9644002024, 9644002025,
663 9644002026, 9644002027, 9644002028, 9644002029,
664 9644002030, 9644002031, 9644002032, 9644002033,
665 9644002092, 9644002093, 9644002094, 9644002095,
666 9644002096, 9644002097, 9644002098, 9644002099,
667 9644002100, 9644002101, 9644002102, 9644002103,
668 9644002104, 9644002105, 9644002106 and 9644002107
669 of voting district 22; and

670 (C) Block 9645002014 of voting district 26.

671 (46) The forty-sixth delegate district is entitled to one
672 delegate and consists of:

673 (A) The following areas of Preston County:

674 (i) Voting districts 11A, 18, 19, 20, 21, 23, 24, 27, 28, 29,
675 30, 31, 32 and 33;

676 (ii) Blocks 9643001060, 9643001063, 9643001064,
677 9643001065, 9643001066, 9644002010, 9644002011,
678 9644002012, 9644002013, 9644002014, 9644002015,
679 9644002016, 9644002017, 9644002018, 9644002019,
680 9644002020, 9644002021, 9644002022, 9644002023,
681 9644002033, 9644002034, 9644002035, 9644002036,
682 9644002037, 9644002038, 9644002045, 9644002053,
683 9644002054, 9644002055, 9644002082, 9644002083,
684 9644002084, 9644002085, 9644002086, 9644002088,
685 9644002089, 9644002090, 9644003011, 9644003012,
686 9644003013, 9644003014, 9644003015, 9644003016,
687 9644003017, 9644003018, 9644003019, 9644003020,
688 9644003021, 9644003022, 9644003023, 9644003036,
689 9644003040, 9644003041, 9644003042, 9644003043,
690 9644003044, 9644003045, 9644003049, 9644003050,
(iii) Blocks 9644003000, 9644003001, 9644003002, 9644003003, 9644003004, 9644003005, 9644003006, 9645002000, 9645002002, 9645002003, 9645002004, 9645002006, 9645002012, 9645002013, 9645002018, 9645002019, 9645002020, 9645002021, 9645002022, 9645002023, 9645002025, 9645002026, 9645002027, 9645002028, 9645002029, 9645002030, 9645002031, 9645002032, 9645002033, 9645002034, 9645002035, 9645002036, 9645002039, 9645002040, 9645002041, 9645002042, 9645002043, 9645002044, 9645002045, 9645002046, 9645002047, 9645002048, 9645002049, 9645002050, 9645002051, 9645002052 and 9645002053 of voting district 26; and

(B) All of Tucker County.

(47) The forty-seventh delegate district is entitled to one delegate and consists of:

(A) All of Hardy County; and

(B) Voting districts 1, 2, 5, 6, 7, 8, 9, 11 and 12 of Pendleton County.

(48) The forty-eighth delegate district is entitled to one delegate and consists of:

(A) All of Grant County;

(B) Voting districts 3, 6, 8, 27, 28, 29, 30, 33, 34 and 35 of Mineral County; and

(C) Voting districts 3, 13, 14 and 15 of Pendleton County.

(49) The forty-ninth delegate district is entitled to one delegate and consists of voting districts 1, 2, 4, 5, 10, 11, 12, 13,
(50) The fiftieth delegate district is entitled to one delegate and consists of:

(A) Voting districts 9, 11, 12, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26 and 28 of Hampshire County; and

(B) Voting districts 7, 9 and 32 of Mineral County.

(51) The fifty-first delegate district is entitled to one delegate and consists of:

(A) Voting districts 2, 4, 6, 7 and 21 of Hampshire County; and

(B) Voting districts 1, 2, 4, 5, 6, 7, 8, 13, 18 and 23 of Morgan County.

(52) The fifty-second delegate district is entitled to one delegate and consists of:

(A) The following areas of Berkeley County:

(i) Voting districts 39, 40, 41, 42, 46 and 48;

(ii) Blocks 9711002000, 9711002001, 9711002002, 9711002003, 9711002004, 9711002005, 9711002006, 9711002007, 9711002008, 9711002009, 9711002010, 9711002011, 9711002012, 9711002013, 9711002037, 9711002038, 9711002039, 9711002040 and 9711002041 of voting district 19; and

(iii) Blocks 9711003003, 9711003004, 9711003005, 9711003006, 9711003007, 9711003008, 9711003009, 9711003010, 9711003011, 9711003012, 9711003013, 9711003014, 9711003015, 9711003016, 9711003017,
(iv) Blocks 9712006066, 9718001015, 9718001016, 9718001017, 9718001028, 9718001029, 9718001031, 9718001033, 9718001034, 9718001035, 9718001056, 9718001057, 9718002004, 9718002005 and 9718002006 of voting district 45; and

(B) Voting districts 21, 24 and 25 of Morgan County.

(53) The fifty-third delegate district is entitled to one delegate and consists of the following areas of Berkeley County:

(A) Voting districts 29, 32, 33, 34, 36, 37, 43, 47 and 51; and

(B) Blocks 9718002000, 9718002001, 9718002002, 9718002003, 9718002004, 9718002005, 9718002006, 9718002007, 9718002008, 9718002009, 9718002010, 9718002011, 9718002012, 9718002013, 9718002014, 9718002015, 9718002016, 9718002017, 9718002018, 9718002019, 9718002020, 9718002021, 9718002022, 9718002023, 9718002024, 9718002025, 9718002026, 9718002027, 9718002028, 9718002029, 9718002030, 9718002031, 9718002032, 9718002033, 9718002034, 9718002035, 9718002036, 9718002037, 9718002038, 9718002039, 9718002040, 9718002041, 9718002042, 9718002043, 9718002044, 9718002045, 9718002046, 9718002047, 9718002048, 9718002049, 9718002050, 9718002051, 9718002052, 9718002053, 9718002054, 9718002055, 9718002056, 9718002057, 9718002058, 9718002059, 9718002060, 9718002061, 9718002062, 9718002063, 9718002064, 9718002065, 9718002066, 9718002067, 9718002068, 9718002069, 9718002070 and 9718003005 of voting district 45.

(54) The fifty-fourth delegate district is entitled to one delegate and consists of the following areas of Berkeley County:

(A) Voting districts 1, 2, 5, 6, 7, 8, 9, 10, 11, 14, 15, 15A, 17, 38 and 44;
(B) Blocks 9714002011 and 9714002019 of voting district 16;

(C) Blocks 9712006076, 9712006077, 9716003005 and 9716003006 of voting district 22;

(D) Blocks 9715004037, 9717007001, 9717007002, 9717007011, 9717007016, 9720002016, 9720002018, 9720002030, 9720002031, 9720002033 and 9720002040 of voting district 24; and

(E) Blocks 9714003013, 9714003016 and 9715002001 of voting district 28.

(55) The fifty-fifth delegate district is entitled to one delegate and consists of the following areas of Berkeley County:

(A) Voting districts 18, 20, 23, 26, 27 and 49;

(B) Blocks 9713002053, 9713002054, 9713002055, 9713002056, 9713002065, 9714002000, 9714002001, 9714002002, 9714002003, 9714002004, 9714002005, 9714002006, 9714002007, 9714002008, 9714002009, 9714002010, 9714002012, 9714002013, 9714002014, 9714002015, 9714002016, 9714002017, 9714002018, 9714002020, 9714002021, 9714002035 and 9714002036 of voting district 16;

(C) Blocks 9711001000, 9711001001, 9711001002, 9711001003, 9711001004, 9711001005, 9711001006, 9711001007, 9711001008, 9711001009, 9711001010, 9711001011, 9711001012, 9711001017, 9711001018, 9711001019, 9711001020, 9711001021, 9711001022, 9711001023, 9711001024, 9711001025, 9711001026 and 9711002042 of voting district 19;
3021

(D) Blocks 9711003000, 9711003001, 9711003002, 9711003020, 9711003021, 9711003023, 9711003024, 9711003025, 9711003026, 9711003027, 9711003028, 9713002000, 9713002001 and 9713002004 of voting district 21;

(E) Blocks 9720001000, 9720001001, 9720001002, 9720001003, 9720001004, 9720001005, 9720001006, 9720001007, 9720001008, 9720001009, 9720001010, 9720001011, 9720001012, 9720001013, 9720001014, 9720001049, 9720001050, 9720002000, 9720002001, 9720002002, 9720002003, 9720002004, 9720002005, 9720002006, 9720002009, 9720002010, 9720002011 and 9720002012 of voting district 24; and

(F) Blocks 9713001031, 9713001032, 9713001033, 9713001034, 9713001035, 9713001036, 9713001037, 9713001038, 9713001039, 9713001040, 9713001041, 9713001042, 9713001043, 9713001044, 9713001051, 9713001052, 9713001053, 9713001054, 9713001055, 9714003000, 9714003001, 9714003002, 9714003003, 9714003004, 9714003005, 9714003006, 9714003007, 9714003008, 9714003009, 9714003010, 9714003011, 9714003012, 9714003014, 9714003015, 9714003017, 9714003018, 9714003019, 9714003020, 9714003021, 9714003022, 9714003023, 9714003024, 97150002000, 9715002032, 9715002033, 9715002034, 9715002035, 9715003028, 9720002054 and 9720002055 of voting district 28.

(56) The fifty-sixth delegate district is entitled to one delegate and consists of:

(A) The following areas of Berkeley County:

(i) Voting districts 25, 25A, 31, 35 and 50;
(ii) Blocks 9712006072, 9712006073, 9712006074, 9712006075, 9719001010, 9719001011, 9719001012, 9719001013, 9719001014, 9719001015, 9719001016, 9719001017, 9719001018, 9719001019, 9719001020, 9719002000, 9719002001, 9719002002, 9719002003, 9719002004, 9719002006, 9719002007, 9719002008, 9719003024 and 9719003025 of voting district 22; and

(iii) Blocks 9715004027, 9715004028, 9715004030, 9715004031, 9715004032, 9715004033, 9715004034, 9717007007, 9717007018, 9717007023, 9717007024, 9717007025, 9717007026, 9717007027, 9719001000, 9719001001, 9719001002, 9719001003, 9719001004, 9719001005, 9719001006, 9719001007, 9719001008, 9719001009, 9719001021, 9719001022, 9720001015, 9720001016, 9720001017, 9720001018, 9720001019, 9720001020, 9720001021, 9720001022, 9720002007, 9720002008, 9720002017, 9720002019, 9720002024, 9720002025, 9720002026, 9720002027, 9720002028, 9720002034, 9720002035, 9720002036, 9720002037, 9720002038, 9720002039, 9720002041, 9720002042, 9720002043, 9720002044, 9720002045, 9720002046, 9720002047, 9720002048, 9720002049, 9720002050, 9720002051 and 9720002052 of voting district 24; and

(B) Voting districts 22, 25, 26 and 28 of Jefferson County.

The fifty-seventh delegate district is entitled to one delegate and consists of the following areas of Jefferson County:

(A) Voting districts 13, 14, 15, 27, 31, 32, 33, 34 and 35;

(B) Blocks 9722002035, 9722002036, 9722002037, 9722002038, 9722002039, 9722002040, 9722002041, 9722002042, 9722002043, 9722002044, 9722002045,
866 9722002046, 9722002049, 9722002050, 9722002051,
867 9722002052, 9722002053, 9722002054, 9722002055,
868 9722002056, 9722002057, 9722002058, 9722002059,
869 9722002060, 9722002061, 9722002062, 9722002063,
870 9722002064, 9722004042, 9722004043, 9722004044,
871 9722004045, 9722004046, 9722004047, 9722004048,
872 9724001000, 9724001001, 9724001002, 9724001003,
873 9724001004, 9724001006, 9724001007, 9724001013,
874 9724001014, 9724001015, 9724001016, 9724001019,
875 9724001037, 9724001039, 9724001040, 9724001041,
876 9724001042, 9724001043, 9724001044, 9724001045,
877 9724001046, 9724001047, 9726002014, 9726002015,
878 9726002016, 9726002017, 9726002018, 9726002019,
879 9726002020, 9726002021 and 9726002022 of voting district
880 12; and
881 (C) Blocks 9727001000, 9727001001, 9727001002,
882 9727001003, 9727001004, 9727001005, 9727001006,
883 9727001007, 9727001008, 9727001009, 9727001010,
884 9727001011, 9727001012, 9727001013, 9727001014,
885 9727001015, 9727001016, 9727001017, 9727001018,
886 9727001019, 9727001020, 9727001021, 9727001022,
887 9727001023, 9727001024, 9727001025, 9727001026,
888 9727001027, 9727001028, 9727001029, 9727001030,
889 9727001031, 9727001032, 9727001033, 9727001034,
890 9727001035, 9727001036, 9727001037, 9727001038,
891 9727001039, 9727001040, 9727001041, 9727001042,
892 9727001043, 9727001044, 9727001045, 9727001046,
893 9727001047, 9727001048, 9727002000, 9727002001,
894 9727002002, 9727002003, 9727002004, 9727002005,
895 9727002006, 9727002007, 9727002008, 9727002009,
896 9727002010, 9727002011, 9727002012, 9727002013,
897 9727002014, 9727002015, 9727002016, 9727002017,
898 9727002018, 9727002019, 9727002020, 9727002021,
899 9727002022, 9727002023, 9727002024, 9727002025,
(58) The fifty-eighth delegate district is entitled to one delegate and consists of the following areas of Jefferson County:

(A) Voting districts 2, 3, 4, 6, 7, 16, 20, 21 and 23;

(B) Block 9724001020 of voting district 12; and

(C) Blocks 9727001048, 9727002046, 9727002051, 9727002052, 9727002054, 9727002055, 9727002056, 9727003000, 9727003001, 9727003002, 9727003003, 9727003004, 9727003005, 9727003006, 9727003007, 9727003008, 9727003009, 9727003010, 9727003011, 9727003012 and 9727003999 of voting district 17.

(c) Regardless of the changes in delegate district boundaries made by the provisions of subsection (b) of this section, the delegates elected at the general election held in the year two thousand continue to hold their offices as members of the House of Delegates for the term, and as representatives of the county or delegate district, for which each was elected. Any appointment made prior to the first day of December, two thousand one, to fill a vacancy in the office of a member of the House of Delegates shall be made for the remainder of the term, and as representative of the county or delegate district, for which the vacating delegate was elected or appointed.
§1-2-2b. Precinct boundary changes.

1 (a) 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, it is the duty of the county commission of the county in which the precinct is located, prior to the fifteenth day of March, two thousand two, to alter the boundary lines of its
election precincts so that no precinct contains territory included
in more than one senatorial or delegate district.

(b) Every county commission shall, prior to the fifteenth
day of March, two thousand two, alter the boundary lines of its
election precincts so that the geographical boundaries of the
precincts are consistent with the voting districts geographically
defined by the bureau of the census of the United States
department of commerce for the taking of the two thousand
census of population and described on census maps prepared by
the bureau of the census. The maps are, at the time of the
reenactment of this section in the year two thousand one,
maintained by the bureau of the census and filed with the joint
committee on government and finance. A voting district may
contain more than one election precinct if:

(1) The geographical boundaries of the election precincts
when combined are identical to the geographical boundaries of
the voting district; and

(2) The election precinct lines are established so that no
precinct contains territory included in more than one senatorial
district or in more than one delegate district, consistent with
subsection (a) of this section.

(c) The joint committee on government and finance may
provide assistance to county commissions in altering the
boundary lines in compliance with this section. The joint
committee may further assist county commissions in drawing
other county boundaries and magisterial districts, if requested
by the county commission.

(d) The provisions of this section govern and control
notwithstanding any conflicting provision of section seven,
article one, chapter three of this code.
AN ACT to amend and reenact section two-f, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three-e, article thirteen-a of said chapter, all relating to privilege taxes imposed on production of coal from waste and residue of prior mining activity and coal-based synthetic fuel; making technical corrections in act passed the thirteenth day of April, two thousand one, and providing for certain changes to be retroactive; imposing annual privilege tax on activity of manufacturing synthetic fuel from coal and expiring tax as of specified date; creating funds for deposit of taxes collected; dedicating portion of tax collected for deposit in mining and reclamation operations fund, the synthetic fuel-producing counties grant fund and the synthetic fuel-nonproducing counties fund, with any additional collections to be deposited in general revenue fund; creating synthetic fuel-producing counties grant program; providing method for distributing certain synthetic fuel tax collections to counties in which synthetic fuel-manufacturing facilities are located and requiring county commissions to use distributions for economic development and infrastructure improvements; setting forth definitions; providing for distribution of certain synthetic fuel tax collections to counties other than counties in which synthetic fuel-manufacturing facilities are located and requiring these county commissions to use distributions for payment of regional jail and correctional authority and county jail expenses and then for any
lawful purpose; providing for development office to administer synthetic fuel-producing counties grant program and specifying authority of director; providing methodology for distribution of moneys or encumbrance of funds out of synthetic fuel-producing counties grant fund; authorizing promulgation of emergency regulations by tax commissioner; authorizing promulgation of emergency rules and legislative, interpretive and procedural rules by director of development office; dedicating and providing for distribution of sixty thousand dollars per fiscal year to development office for administration of synthetic fuel-producing counties grant program; specifying requirements and criteria for reallocation and repooling of funds in synthetic fuel-producing counties grant fund; specifying treatment of encumbered funds in synthetic fuel-producing counties grant fund; clarifying imposition of privilege tax on activity of extracting and processing material from waste and residue of prior coal mining activity to produce coal for sale, profit or commercial use; exempting producers who are electrical cogeneration plants from the tax; providing that waste coal tax is in lieu of annual privilege tax imposed on severance of coal under section three of the severance and business privilege tax act, the additional tax on severance, extraction and production of coal imposed by section six of said act and the minimum severance tax imposed by section three of the minimum severance tax act; dedicating waste coal tax collections to waste coal-producing counties for use in economic development and infrastructure improvements; providing for distribution of net tax collected to waste coal-producing counties by state treasurer by separate check based on production tonnage in county for the preceding year; and requiring office of chief inspector to annually determine that county commission expenditures of moneys distributed from synthetic fuel-producing counties grant fund, synthetic fuel-nonproducing counties fund and waste coal-producing counties fund are in compliance with requirements specified by Legislature in general law.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2f. Manufacturing or producing synthetic fuel from coal; rate and measure of tax; definitions; dedication, deposit and distribution of tax; expenditure of distributions received by synthetic fuel-producing counties for economic development and infrastructure improvement pursuant to plan approved by West Virginia development office; priority for expenditure of distributions received by other county commissions; date for expiration of tax.

(a) Rate and measure of tax. — There is hereby imposed an annual tax, in accordance with section two of this article, upon every person engaging or continuing within this state in the business of manufacturing or producing synthetic fuel from coal for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, and the amount of the tax shall be equal to fifty cents per ton of synthetic fuel manufactured or produced for sale, profit or commercial use during the taxable year. When a fraction of a ton is included in the measure of tax, the rate of tax as to that fraction of a ton shall be proportional. The measure of tax is the total number of tons of synthetic fuel product manufactured or produced in this state during the taxable year for sale, profit or commercial use regardless of the place of sale or the fact that deliveries may be
made to points outside this state. Liability for payment of this

tax shall accrue when the synthetic fuel product is sold by the

manufacturer or producer, determined by when the producer or

manufacturer recognizes gross receipts for federal income tax

purposes. When there is no sale of the synthetic fuel product,

liability for tax shall accrue when the synthetic fuel product is

shipped from the manufacturing facility for commercial use,

whether by the taxpayer or by a related party, except as

otherwise provided in legislative rules promulgated by the tax

commissioner as provided in article three, chapter twenty-nine-

a of this code.

(b) Definitions. — For purposes of this section:

(1) “Fiscal year” means the fiscal year of this state.

(2) “Fuel” means material that produces usable heat or

power upon combustion.

(3) “Fuel manufactured or produced from coal” means

liquid, gaseous or solid fuels produced from coal, including, but

not limited to, such fuels when used as feedstocks.

(4) “Office of chief inspector” means the state auditor as ex

officio chief inspector and supervisor of local government

offices in accordance with section eleven, article nine, chapter

six of this code.

(5) “Provisional share” means the portion of the synthetic

fuel-producing counties grant fund that is available for possible
distribution to each synthetic fuel-producing county. The

amount of each county’s provisional share is derived by

dividing the share computation base by the number of synthetic

fuel-producing counties in this state during the fiscal year. The

share computation base is the sum of: (A) Net revenues

deposited in the synthetic fuel-producing counties grant fund

for the fiscal year; and (B) any amounts repooled for the fiscal
year into the synthetic fuel-producing counties grant fund under this section; less (C) the amount dedicated and allotted to the director of the development office under this section for administration of the synthetic fuel-producing counties grant program. A county shall be counted as a synthetic fuel-producing county only if a synthetic fuel-manufacturing plant actively produced synthetic fuel in the county for at least one hundred eighty days during the fiscal year.

(6) "Synthetic fuel manufactured or produced from coal" or "synthetic fuel" means and includes, but is not limited to, any fuel that is made or formed into a briquette, fragment, sheet, flake or other solid form by combining a binder or binding substance with coal dust, coal fines, crushed coal, pulverized coal, stoker fines, waste coal, coal or material derived from slurry ponds, coal or material derived from gob piles or any combination of the aforementioned materials without regard to whether any federal tax credit is, or would have been, available for or with relation to the production of such fuel. The term "synthetic fuel manufactured or produced from coal" or "synthetic fuel" also means, but is not limited to, fuel manufactured or produced from coal for which credit is allowable for federal income tax purposes under section twenty-nine of the United States Internal Revenue Code, as in effect on the first day of January, two thousand one, or for which credit would have been allowable if the synthetic fuel was produced from a facility, or expansion of a facility, that meets the requirement of section twenty-nine of the Internal Revenue Code or would have met the requirements on the first day of January, two thousand one, notwithstanding that such facility or expansion of a facility may have been placed in service either prior to or subsequent to the first day of January, two thousand one. "Synthetic fuel" does not include coke or coke gas.

(7) "Synthetic fuel-producing county" means a county of this state in which a synthetic fuel-manufacturing plant is
physically located that actively produces synthetic fuel for at least one hundred eighty days during the fiscal year. For purposes of determining whether a county is a synthetic fuel-producing county, the location of the synthetic fuel-manufacturing company headquarters, the state of incorporation or organization of the company or the location of any managerial office or facility or other office or facility of the company, other than the synthetic fuel-manufacturing plant, and the physical location where the coal or other material used in synthetic fuel manufacturing is extracted from the earth shall not be determinative of the designation of a county as a synthetic fuel-producing county.

(8) "Synthetic fuel-nonproducing county" means any county of this state other than a synthetic fuel-producing county.

(9) "Ton" means two thousand pounds.

(10) "Director of the development office" or "director" means the director of the West Virginia development office created and continued under article two, chapter five-b of this code.

(c) Credits not allowed against tax. — When determining the amount of tax due under this section, no credit shall be allowed under section three-c or three-d of this article or under any other article of this chapter or any other chapter of this code unless it is expressly provided that the credit applies to the business and occupation tax on the privilege of manufacturing or producing synthetic fuel.

(d) Emergency rule authorized. — The tax commissioner may, in the commissioner’s discretion, promulgate an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements the provisions of this section.
(e) **Dedication and distribution of proceeds, creation of funds.**

(1) The first four million dollars of the net amount of tax collected during each fiscal year for exercise of the privilege taxed under this section shall be deposited into the "Mining and Reclamation Operations Fund" created in the state treasury by section thirty-two, article three, chapter twenty-two of this code.

(2) There is hereby created a fund in the state treasury entitled the "synthetic fuel-producing counties grant fund" which shall be a revolving fund that shall carry over each fiscal year. The net amount of tax collected for exercise of the privilege taxed under this section in excess of the first four million dollars during each fiscal year, not to exceed two million sixty thousand dollars, shall be deposited in the synthetic fuel-producing counties grant fund. Moneys in the synthetic fuel-producing counties grant fund in excess of moneys allocated to the director of the development office shall be dedicated to and distributed among the synthetic fuel-producing counties under the synthetic fuel-producing counties grant program as provided in this section. The county commission of a synthetic fuel-producing county shall use ninety percent of the funds distributed to the county out of the synthetic fuel-producing counties grant fund for infrastructure improvement and ten percent of the funds distributed to the county out of the synthetic fuel-producing counties grant fund for economic development.

(3) There is hereby created in the state treasury a fund entitled the "synthetic fuel-nonproducing counties fund" which shall be a revolving fund that shall carry over each fiscal year. The net amount of tax collected for exercise of the privilege taxed under this section in excess of the first six million sixty thousand dollars during each fiscal year, not to exceed two
million dollars, shall be deposited in the synthetic fuel-
nonproducing counties fund and equally divided and distributed
among the synthetic fuel-nonproducing counties. The county
commission of a synthetic fuel-nonproducing county shall first
use such moneys for regional jail and correctional authority and
county jail expenses, and shall use any remainder for such
lawful public purposes as the county commission may pre-
scribe.

(4) The net amount of the tax collected in excess of eight
million sixty thousand dollars during each fiscal year shall be
dedicated to the general revenue fund.

(5) The office of chief inspector shall annually determine
that a county's expenditures of moneys distributed under this
section is in compliance with the requirements of this section.

(6) For purposes of this subsection, “net amount of tax
collected” means the gross amount of tax collected under this
section less allowed refunds and credits.

(f) Administration of the synthetic fuel-producing counties
grant program. —

(1) The director of the development office is hereby
authorized and empowered to administer the distribution of
moneys in the synthetic fuel-producing counties grant fund.

(A) On or before the plan submission due date prescribed
by the director of the development office, the county com-
mission of each synthetic fuel-producing county may annually, or
with such frequency as may be prescribed by the director of the
development office, submit a plan to the director of the devel-
opment office for use of the county’s provisional share of the
synthetic fuel-producing counties grant fund.
(B) A grant of moneys out of the synthetic fuel-producing counties grant fund shall only be distributed to a synthetic fuel-producing county or encumbered for the use of a synthetic fuel-producing county after approval by the director of the development office of the plan for use of the county's provisional share of the fund, submitted to the director of the development office by the county commission. The director of the development office shall approve the synthetic fuel-producing county's plan for use if the plan for use reasonably conforms to the requirements of this section and the rules promulgated with relation thereto.

(C) If the county's plan is approved, the director of the development office may authorize a grant of money out of the synthetic fuel-producing counties grant fund to the county to be used by the county as specified in the approved plan for use.

(D) The director of the development office may authorize distribution of any amount encumbered for the use of the county and carried over from a prior period in accordance with applicable plans for use previously approved.

(E) The director of the development office may authorize encumbrances for any synthetic fuel-producing county of moneys in the synthetic fuel-producing counties grant fund, up to the amount of the county's provisional share for the fiscal year, for one or more qualified uses specified in the county's plan for use if the county's approved plan for use of the moneys sets forth a qualified use for the county's provisional share over a period of several fiscal years or a qualified use of the moneys calling for accumulation and distribution to the county in one or more subsequent fiscal years. Encumbered funds may carry over to succeeding fiscal years and may be used to accumulate reserves over a period of time for use by the county.
(F) In no case may an amount distributed to a synthetic fuel-producing county exceed the amount of a county's provisional share for the fiscal year plus the amount of moneys encumbered in the fund for the use of the particular county and carried over from a prior period.

(2) The director of the development office may approve distributions of a county's provisional share of the synthetic fuel-producing counties grant fund for use as the county's share for state or federal matching funds programs so long as, in the aggregate, ninety percent of the funds distributed to the county out of the synthetic fuel-producing counties grant fund are used for infrastructure improvement and ten percent of the funds distributed to the county out of the synthetic fuel-producing counties grant fund are used for economic development: Provided, That no county may use any amount distributed out of the synthetic fuel-producing counties grant fund as money to be matched under the funds matching program authorized by subsection (b), section three, article two, chapter five-b of this code.

(3) Repooling. —

(A) Any synthetic fuel-producing county that has failed to have its plan, or amended and resubmitted plan or plans, approved by the director of the development office for a period of eighteen months immediately subsequent to the initial plan submission date shall lose its entitlement to the provisional share of revenues deposited in the fund and attributable to the fiscal year to which that plan relates and the provisional share that would have been attributable to that county for that fiscal year shall be pooled with all other receipts in the synthetic fuel-producing counties grant fund attributable to revenues for the fiscal year during which the eighteen-month period ends and shall then be reallocated equally to all synthetic fuel-producing counties as part of the provisional share of each, as if the
repooled moneys were tax revenues deposited into the fund during the fiscal year in which the eighteen-month period ended. For purposes of this subsection, the “initial plan submission date” means the earlier of: (i) The required submission date, as prescribed by the director of the development office, for the initial plan for use of the county’s provisional share of the synthetic fuel-producing counties grant fund for the fiscal year, with such extensions of time to file as may be authorized under rules promulgated by the director of the development office; or (ii) the actual date of submission of the initial plan for the fiscal year. For purposes of this subsection, the term “initial plan” means the first plan for use that was submitted, or that should have been submitted, by a county for the fiscal year, before the submission of any amended, revised or resubmitted plan by the county for that fiscal year.

(B) Any synthetic fuel-producing county which fails to timely submit a plan for use of its provisional share of the synthetic fuel-producing counties grant fund, with such extensions of time to file as may be authorized under rules promulgated by the director of the development office, shall lose its entitlement to its provisional share of revenues deposited in the fund and attributable to that fiscal year and the provisional share that would have been attributable to that county for that year shall be pooled with all other receipts in the synthetic fuel-producing counties grant fund attributable to revenues for the fiscal year and shall be reallocated equally among the remaining synthetic fuel-producing counties other than the county or counties that have failed to timely file the plan for use and shall be made available for distribution to those remaining counties, as part of their provisional share for the fiscal year.

(C) Funds encumbered pursuant to approval of the director of the development office under this subsection shall not be subject to repooling: Provided, That if the director of the
development office determines that moneys previously distributed to a county out of the synthetic fuel-producing counties grant fund have not been used as required under the approved plan for the county or determines that previously distributed moneys derived from encumbered funds have not been used for the qualified purpose for which the encumbrance was originally approved or if there appears to be a reasonable probability that encumbered funds will not be used for that qualified purpose, the director of the development office may revoke the encumbrance of any funds of that synthetic fuel-producing county remaining in the fund and repool the funds so encumbered for reallocation to all synthetic fuel-producing counties. The director of the development office may, in the director’s discretion, give the county an opportunity to cure the nonqualified use of moneys derived from the synthetic fuel-producing counties grant fund or to submit an alternative plan for use of the encumbered funds which may be approved by the director if that plan complies with the requirements of this section.

(g) Promulgation of rules by the director of the development office authorized. -- The director of the development office, in his or her discretion, may promulgate an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements the synthetic fuel-producing counties grant program, distribution of moneys out of or encumbrance of moneys in the synthetic fuel-producing counties grant fund. The director of the development office is hereby granted continuing authority to promulgate in accordance with article three, chapter twenty-nine-a of this code such interpretive, legislative or procedural rules, or any combination thereof, for administration of the synthetic fuel-producing counties grant program as the director of the development office may find necessary and appropriate. The director of the development office may prescribe criteria for qualification
(h) There is hereby dedicated and allocated to the West Virginia development office sixty thousand dollars annually for administration of the synthetic fuel-producing counties grant program under this section. Sixty thousand dollars shall be paid out of the synthetic fuel-producing counties grant fund to the director of the development office each fiscal year for administration of the synthetic fuel-producing counties grant program.

(i) **Effective date.** —

(1) This section as enacted in the year two thousand took effect upon enactment. The measure of tax shall include all synthetic fuel sold or shipped after the first day of January, two thousand one, regardless of when the synthetic fuel was manufactured or produced in this state.

(2) Amendments to this section enacted during the fifth extraordinary session of the Legislature in the year two thousand one shall have retroactive effect to the first day of January, two thousand one, and the measure of tax shall include all synthetic fuel sold or shipped after the first day of January, two thousand one, regardless of when the synthetic fuel was manufactured or produced in this state.

(j) **Expiration date.** — The tax imposed in this section shall expire and become void and of no effect for synthetic fuels produced after the thirtieth day of June, two thousand seven.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3e. **Imposition of tax on privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal.**

(a) The Legislature hereby finds and declares the following:
(1) That some mining operations in this state process coal to create a saleable clean coal product.

(2) That the by-product, waste or residue created from processing coal is commonly deposited in what are known as refuse or gob piles.

(3) That, as a result of technological developments and other factors, the material contained in some refuse or gob piles located in this state can be recovered and further processed to produce saleable clean coal.

(4) That, under the existing laws of this state, coal produced from processing material contained in refuse, gob piles, slurry ponds, pond fines or other sources of waste coal would be subject to the annual privilege tax imposed on the severance of coal pursuant to section three of this article and the minimum severance tax imposed by section three, article twelve-b of this chapter.

Based on the foregoing findings, the Legislature concludes that an incentive to extracting and recovering material contained in refuse, gob piles and other sources of waste coal located in this state and subsequently processing, washing and preparing this material to produce coal should be implemented to encourage the production of this coal from refuse or gob piles located in this state.

(b) Imposition of tax. — In lieu of: (i) The annual privilege tax imposed on the severance of coal imposed by section three of this article; (ii) the additional tax on severance, extraction and production of coal imposed by section six of this article; and (iii) the minimum severance tax imposed by section three, article twelve-b of this chapter for the privilege of engaging or continuing within this state in the business of extracting and recovering material from a refuse, gob pile or other sources of waste coal and subsequently processing, washing and preparing
this extracted or recovered material to produce coal for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising that privilege an annual privilege tax.

(c) *Rate and measure of tax.* — The tax imposed in subsection (b) of this section shall be two and one-half percent of the gross value of the coal so produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(d) *Tax in addition to other taxes.* — The tax imposed by this section applies to all persons extracting and recovering material from refuse, gob piles or other sources of waste coal located in this state and subsequently processing, washing and preparing this extracted and recovered material to produce coal for sale, profit or commercial use and shall be in addition to all other taxes imposed by law: Provided, That the tax imposed by this section is in lieu of the tax imposed by sections three and six of this article and section three, article twelve-b of this chapter.

(e) *Exemption.* — The tax imposed in subsection (b) of this section shall not apply to any electrical power cogeneration plant burning material from its wholly owned refuse or gob pile.

(f) *Dedication of taxes collected, creation of fund.* — 

(1) There is hereby created in the state treasury a fund entitled the "waste coal-producing counties fund" which shall be a revolving fund that shall carry over each fiscal year. The taxes collected under the provisions of this section shall be deposited in the waste coal-producing counties fund and are hereby dedicated to the county commissions of the counties in which the refuse, gob piles or other sources of waste coal are located, from which taxable waste coal production has occurred
during the year, for use in economic development and infra-
structure improvements: Provided, That the county shall use
ninety percent of the funds for infrastructure improvement and
ten percent of the funds for economic development.

(2) Moneys in the waste coal-producing counties fund shall
be distributed by the state treasurer annually to the counties in
which the refuse, gob piles or other sources of waste coal are
located, from which taxable waste coal production has occurred
during the year, in an amount prorated to the number of tons of
taxable waste coal produced in each such county during the
preceding year. The distribution shall be paid separate from any
other payment of moneys to the county by the treasurer. For
purposes of this subdivision, the term “ton” means two thou-
sand pounds.

(3) The office of chief inspector shall annually determine
that counties’ expenditures of moneys distributed under this
section is in compliance with the requirements of this section.

CHAPTER 12

(H. B. 507 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed September 11, 2001; in effect from passage. Approved by the Governor.]
ships in Fayette, Nicholas and Raleigh counties which will be held in the month of September, two thousand one.

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

That article two, chapter five-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 twelve-a, to read as follows:

**ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

§5B-2-12a. Tourism fund support of 2001 World Rafting Championships in Fayette, Nicholas and Raleigh counties.

Notwithstanding the provisions of section twelve of this article, the tourism commission may expend moneys from the tourism promotion fund in the amount necessary and up to but not exceeding four hundred thousand dollars to support the 2001 World Rafting Championships in Fayette, Nicholas and Raleigh counties which will be held in the month of September, two thousand one. Any requirements for matching grants under the rules promulgated pursuant to section twelve of this article shall not apply to this section.

The provisions of this section shall expire on the thirty-first day of December, two thousand one.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of agriculture, fund 8736, fiscal year 2002, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.
WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand two, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 8736, fiscal year 2002, organization 1400, be supplemented and amended by increasing the total appropriation by one million seventy-seven thousand one hundred thirty dollars as follows:

TITLE II — APPROPRIATIONS.

Sec. 6 Appropriations of federal funds.

EXECUTIVE

259—Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2002 Org 1400

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

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for unclassified - total by one million seventy-seven thousand one hundred thirty 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 division of natural resources, fund 8707, fiscal year 2002, organization 0310, 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 8707, fiscal year 2002, organization 0310, be supplemented and amended by increasing the total appropriation by eight hundred twenty-five thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 6 Appropriations of federal funds.

3 BUREAU OF COMMERCE
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 twenty-five 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 federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the division of forestry, fund 8703, fiscal year 2002, organization 0305, 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 8703, fiscal year 2002, organization 0305, be supplemented and amended by increasing the total appropriation by one hundred thirty-two thousand dollars as follows:

TITLE II — APPROPRIATIONS.

Sec. 6 Appropriations of federal funds.

BUREAU OF COMMERCE

289—Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2002 Org 0305

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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-two thousand dollars for expenditure during fiscal year two thousand two.
CHAPTER 4
(H. B. 612 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed December 1, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of commerce, West Virginia development office, fund 8705, fiscal year 2002, organization 0307, 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 8705, fiscal year 2002, organization 0307, be supplemented and amended to read as follows:

1  TITLE II — APPROPRIATIONS.

2  Sec. 6 Appropriations of federal funds.

3  BUREAU OF COMMERCE

4  291—West Virginia Development Office
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 creating a new item of appropriation in the amount of ten million thirty-one thousand dollars for expenditure during fiscal year two thousand two.

CHAPTER 5

(H. B. 613 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed October 22, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of military affairs and public safety, West Virginia state police, fund 8741, fiscal year 2002, organization 0612, all supplementing and amending the appropri-
ation 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 8741, fiscal year 2002, organization 0612, be supplemented and amended by increasing the total appropriation by one hundred fifty-one thousand six hundred forty-eight dollars as follows:

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<td>Unclassified - Total</td>
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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 hundred fifty-one thousand six hundred forty-eight dollars for expenditure during fiscal year two thousand two.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the division of protective services, fund 0585, fiscal year 2002, organization 0622, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated October 21, 2001, setting forth therein the cash balance as of July 1, 2001; and further included the estimate of revenues for the fiscal year 2002, less net appropriation balances forwarded and regular appropriations for fiscal year 2002; and

WHEREAS, It appears from the governor’s statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 0585, fiscal year 2002, organization 0622, be amended and increased in the line items as follows:
TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

68—Division of Protective Services

(WV Code Chapter 15)

Fund 0585 FY 2002 Org 0622

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$818,960</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 item of appropriation for unclassified by eight hundred eighteen thousand nine hundred sixty dollars, for expenditure during the fiscal year two thousand two.

CHAPTER 7

(H. B. 615 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth
day of June, two thousand two, in the amount of fifty-four thousand dollars from the parking lots operating fund, fund 2240, fiscal year 2002, organization 0211, and in the amount of seventy-one thousand dollars from the state building commission, fund 2241, fiscal year 2002, organization 0211, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the division of protective services, fund 0585, fiscal year 2002, organization 0622.

WHEREAS, The Legislature finds that the account balances in the parking lots operating fund, fund 2240, fiscal year 2002, organization 0211 and the state building commission, fund 2241, fiscal year 2002, organization 0211 exceeds that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the parking lots operating fund, fund 2240, fiscal year 2002, organization 0211 be decreased by expiring the amount of fifty-four thousand dollars and the state building commission, fund 2241, fiscal year 2002, organization 0211, be decreased by expiring the amount of seventy-one thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand two, to fund 0585, fiscal year 2002, organization 0622, be supplemented and amended by increasing the total appropriation by one hundred twenty-five thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 68—Division of Protective Services

4 (WV Code Chapter 15)
The purpose of this bill is to expire the sum of fifty-four thousand dollars from the parking lots operating fund, fund 2240, fiscal year 2002, organization 0211 and seventy-one thousand dollars from the state building commission, fund 2241, fiscal year 2002, organization 0211, and to supplement the division of protective services, fund 0585, fiscal year 2002, organization 0622, in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by adding one hundred twenty-five thousand dollars to the appropriation for unclassified - surplus for expenditure during the fiscal year two thousand two.

CHAPTER 8

(H. B. 618 — By Delegates Michael, Doyle, Leach, Mezzatesta, Warner, Boggs and Stalnaker)

[Passed December 1, 2001; in effect from passage. Approved by the Governor.]
ment of administration — board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218.

WHEREAS, The Legislature finds that the account balance in the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218, 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, to the department of administration — board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218, be decreased by expiring the amount of five hundred thousand dollars to a new fund, 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 five hundred thousand dollars from the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218, to a new fund, in 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, to be available for expenditure during the fiscal year two thousand two.
CHAPTER 9

(S. B. 6016 — By Senators Craigo, Anderson, Bailey, Boley, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, in the department of tax and revenue, racing commission - general administration, fund 7305, fiscal year 2002, organization 0707, 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, racing commission - general administration, fund 7305, fiscal year 2002, organization 0707, 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, fund 7305, fiscal year 2002, organization 0707, be supplemented and amended by increasing the total appropriation by fifty-seven thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.
DEPARTMENT OF TAX AND REVENUE

174—Racing Commission—

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2002 Org 9707

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>7,000</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 adding fifty thousand dollars to the existing appropriation for personal services and seven thousand dollars to the existing appropriation for employee benefits for expenditure during the fiscal year two thousand two.

CHAPTER 10

(S. B. 6017 — By Senators Craigo, Anderson, Bailey, Boley, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining
unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the department of military affairs and public safety, office of emergency services, fund 8727, fiscal year 2002, organization 0606, 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 a new program 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 8727, fiscal year 2002, organization 0606, be supplemented and amended by increasing the total appropriation by seventy-six thousand dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unclassified - Total</th>
<th>096</th>
<th>$76,000</th>
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</thead>
<tbody>
<tr>
<td>Federal</td>
<td>Funds</td>
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<td></td>
</tr>
</tbody>
</table>

TITLE II—APPROPRIATIONS.

Sec. 6 Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

279—Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 2002 Org 0606
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 seventy-six thousand dollars for expenditure during the fiscal year two thousand two.

CHAPTER 11

(S. B. 6018 — By Senators Craigo, Anderson, Bailey, Boley, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the department of tax and revenue, lottery commission, revenue and transfers fund, fund 7202, organization 0705, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of one hundred three thousand eight hundred four dollars and forty-one cents from the department of education and the arts - board of trustees of the university system of West Virginia and board of directors of the state college system - central office - control account - lottery education fund, fund 4057, fiscal year 2001, organization 0452, activity 867, and making a supplementary appropriation of lottery net profits from the balance of moneys remaining as an unappropriated balance in lottery net profits to the higher education policy commission - lottery education - higher education policy commission - control account, fund 4925, fiscal year 2002, organization 0441, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.
WHEREAS, The Legislature finds that the account balance in the department of education and the arts - board of trustees of the university system of West Virginia and board of directors of the state college system - central office - control account - lottery education fund, fund 4057, fiscal year 2001, organization 0452, activity 867, exceeds that which is necessary for the purpose for which the account was established; and

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

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the department of education and the arts - board of trustees of the university system of West Virginia and board of directors of the state college system - central office - control account - lottery education fund, fund 4057, fiscal year 2001, organization 0452, activity 867, be decreased by expiring the amount of one hundred three thousand eight hundred four dollars and forty-one cents to the department of tax and revenue, lottery commission, revenue and transfers fund, fund 7202, fiscal year 2002, organization 0705, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 4925, fiscal year 2002, organization 0441, be supplemented and amended by increasing the total appropriation by one hundred three thousand eight hundred four dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 4. Appropriations from lottery net profits.

3 247—Higher Education Policy Commission—

4 Lottery Education—
5 Higher Education Policy Commission—

6 Control Account

7 (WV Code Chapters 18B and 18C)

8 Fund 4925 FY 2002 Org 0441

9 Activity Lottery Funds

10 15 HEAPS Grant Program ............. 867 $ 103,804

12 The purpose of this bill is to expire the sum of one hundred three thousand eight hundred four dollars and forty-one cents from the department of education and the arts - board of trustees of the university system of West Virginia and board of directors of the state college system - central office - control account - lottery education fund, fund 4057, fiscal year 2001, organization 0452, activity 867, to the balance of the department of tax and revenue, lottery commission - revenue and transfers fund, fund 7202, organization 0705, 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, and to supplement the higher education policy commission - lottery education - higher education policy commission - control account, fund 4925, fiscal year 2002, organization 0441, in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by increasing the existing appropriation for HEAPS Grant Program by one hundred three thousand eight hundred four dollars for expenditure during 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 bureau of environment - division of environmental protection - special reclamation fund, fund 3321, fiscal year 2002, organization 0313, 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 bureau of environment - division of environmental protection - special reclamation fund, fund 3321, fiscal year 2002, organization 0313, 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 3321, fiscal year 2002, organization 0313, be supplemented and amended by increasing the total appropriation by nine million five hundred ninety-six thousand seven hundred nine dollars in the line items 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 personal services by five hundred twenty-five thousand six hundred twelve dollars, employee benefits by one hundred sixty-two thousand nine hundred thirty-nine dollars and unclassified by eight million nine hundred eighty thousand one hundred fifty-eight dollars for expenditure during the fiscal year two thousand two for the reclamation of bond forfeited permits and water treatment costs.

CHAPTER 13

(S. B. 6020 — By Senators Craigo, Anderson, Bailey, Boley, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of environment - solid waste management board, fund 3288, fiscal year 2002, organization 0312, 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 bureau of environment - solid waste management board, fund 3288, fiscal year 2002, organization 0312, 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 3288, fiscal year 2002, organization 0312, be supplemented and amended by increasing the total appropriation by four hundred eighty thousand dollars in the line item as follows:

```
1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 BUREAU OF ENVIRONMENT
4 204—Solid Waste Management Board
5 (WV Code Chapter 20)
6 Fund 3288 FY 2002 Org 0312
7
8 Act- Other
9 4 Unclassified ................. 099 $ 480,000
```
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 by four hundred eighty thousand dollars for expenditure during the fiscal year two thousand two.

CHAPTER 14

(S. B. 6021 — By Senators Craigo, Anderson, Bailey, Boley, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of environment - division of environmental protection - mining and reclamation operations fund, fund 3324, fiscal year 2002, organization 0313, 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 bureau of environment - division of environmental protection - mining and reclamation operations fund, fund 3324, fiscal year 2002, organization 0313, 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 3324, fiscal year 2002, organization 0313, be supplemented and amended by increasing the total appropriation by seven million six hundred fifty-one thousand four hundred fifty-three dollars in the line items as follows:

1. TITLE II—APPROPRIATIONS.

2. Sec. 3. Appropriations from other funds.

3. BUREAU OF ENVIRONMENT

4. 208—Division of Environmental Protection—

5. Mining and Reclamation Operations Fund

6. (WV Code Chapter 22)

7. Fund 3324 FY 2002 Org 0313

8. 

<table>
<thead>
<tr>
<th>Activity</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001 $4,113,290</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004 37,000</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010 1,294,801</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099 2,206,362</td>
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</tbody>
</table>

9. 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 four million one hundred thirteen thousand two hundred ninety dollars, annual increment by thirty-seven thousand dollars, employee benefits by one million two hundred ninety-four thousand eight hundred one dollars and unclassified by two million two hundred sixty-two dollars for expenditure during the fiscal year two thousand two.
CHAPTER 15

(S. B. 6022 — By Senators Craigo, Anderson, Bailey, Boley, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the bureau of environment - division of environmental protection - solid waste reclamation and environmental response fund, fund 3332, fiscal year 2002, organization 0313, 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 bureau of environment - division of environmental protection - solid waste reclamation and environmental response fund, fund 3332, fiscal year 2002, organization 0313, 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 3332, fiscal year 2002, organization 0313, be supplemented and amended by increasing the total appropriation by four hundred seven thousand dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.
Sec. 3. Appropriations from other funds.

BUREAU OF ENVIRONMENT

211—Division of Environmental Protection—

Solid Waste Reclamation and Environmental Response Fund

(WV Code Chapter 20)

Fund 3332 FY 2002 Org 0313

<table>
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<th>001</th>
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<th>099</th>
<th>46,080</th>
<th>13,920</th>
<th>347,000</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<td></td>
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<tr>
<td>Employee Benefits</td>
<td>2</td>
<td>010</td>
<td></td>
<td></td>
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<tr>
<td>Unclassified</td>
<td>4</td>
<td>099</td>
<td></td>
<td></td>
<td></td>
<td></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 personal services by forty-six thousand eight hundred dollars, employee benefits by thirteen thousand nine hundred twenty dollars and unclassified by three hundred forty-seven thousand dollars for expenditure during the fiscal year two thousand two.

CHAPTER 16

(S. B. 6023 — By Senators Craigo, Anderson, Bailey, Bohey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, McCabe, Minear, Plymale, Prezioso, Sharpe, Sprouse and Unger)

[Passed November 30, 2001; in effect from passage. Approved by the Governor.]
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand two, to the auditor's office - national white collar crime center, fund 8807, fiscal year 2002, organization 1200, 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 8807, fiscal year 2002, organization 1200, be supplemented and amended by increasing the total appropriation by four million two hundred fifty-seven thousand three hundred seventy-five dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

EXECUTIVE

258—Auditor's Office—

National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2002 Org 1200
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 fifty-seven thousand three hundred seventy-five dollars for expenditure during the fiscal year two thousand two.

CHAPTER 17

(H. B. 608 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed December 1, 2001: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six-b, article fifteen, chapter thirty-one of said code; to amend and reenact section two, article twenty of said chapter; and to amend and reenact section fourteen, article three, chapter thirty-three of said code, all relating generally to the improvement, construction, acquisition, leasing and permanent financing of regional jail facilities, correctional facilities, juvenile facilities and state police facilities; authorizing the superintendent of state police to provide for facilities necessary or useful for the effective operation of the West Virginia state police; providing legislative findings and declarations; authorizing the economic development authority to
issue certain bonds; providing purposes for expenditure of bond proceeds; providing limitations on maturity dates and total amount of bonds issued; providing for allocation, priority and conditions of expenditure of bond proceeds; authorizing the economic development authority to lease certain facilities; providing definitions of certain juvenile facilities; removing certain provisions relating to the establishment, funding and administration of a debt service fund and the lien on its funding source; and providing for the transfer of certain income tax fund amounts as appropriated by the Legislature.

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

That section ten, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section six-b, article fifteen, chapter thirty-one of said code be amended and reenacted; that section two, article twenty of said chapter be amended and reenacted; and that section fourteen, article three, chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter 15. Public Safety.

15. Public Safety.


33. Insurance.

**CHAPTER 15. PUBLIC SAFETY.**

**ARTICLE 2. WEST VIRGINIA STATE POLICE.**

§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

1 (a) The standard uniform to be used by the West Virginia state police after the effective date of this article shall be as
follows: Forestry green blouse with West Virginia state police emblem on sleeve; black shoulder strap, one-inch black stripe around sleeve, four inches from end of sleeve; forestry green breeches with one-inch black stripe down the side; trousers (slacks) with one-inch black stripe down the side for officers and clerks regularly enlisted in the state police; forestry green shirts with West Virginia state police emblem on sleeve; black shoulder straps; forestry green mackinaw with West Virginia state police emblem on sleeve; black shoulder straps; one-inch black stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; black Sam Browne belt with holster; black leggings and shoes; the officer’s uniform will have one and one-quarter inch black stripe around the sleeve of blouse and mackinaw four inches from end of sleeve circumposed with one-half inch gold braid, also black collars on blouse, with two silver shoulder bars for captains, one silver shoulder bar for first lieutenant, one gold shoulder bar for second lieutenant. For noncommissioned officers the uniform blouse and shirt will have thereon black chevrons of the appropriate rank.

(b) The superintendent shall establish the weapons and enforcement equipment which shall be authorized for use by members of the state police, and shall provide for periodic inspection of such weapons and equipment. He shall provide for the discipline of members using other than authorized weapons and enforcement equipment.

(c) The superintendent shall provide the members of the state police with suitable arms and weapons, and, when he deems it necessary, with suitably equipped automobiles, motorcycles, watercraft, airplanes and other means of conveyance, to be used by the West Virginia state police, the governor, and other officers and executives in the discretion of the governor, in times of flood, disaster and other emergencies, for traffic study and control, criminal and safety work, and in other
matters of official business. He shall also provide the standard
uniforms for all members of the state police, for officers,
noncommissioned officers and troopers herein provided for. All
uniforms and all arms, weapons and other property furnished
the members of the state police by the state of West Virginia
shall be and remain the property of the state.

(d) The superintendent is authorized to purchase and
maintain on behalf of members group life insurance not to
exceed the amount of five thousand dollars on behalf of each
member.

(e) The superintendent is authorized to contract and furnish
at state police expense medical and hospital services for
treatment of illness or injury of a member which shall be
determined by the superintendent to have been incurred by such
member while engaged in the performance of duty and from
causes beyond control of such members. Notwithstanding any
other provision of this code, the superintendent shall have the
right of subrogation in any civil action or settlement brought by
or on behalf of a member in relation to any act by another
which results in the illness, injury or death of a member. To this
day, the superintendent is hereby authorized to initiate such an
action on behalf of the state police in order to recover the costs
incurred in providing medical and hospital services for the
treatment of a member resulting from injury or illness originat-
ing in the performance of official duties. This subsection shall
not affect the power of a court to apply ordinary equitable
defenses to the right of subrogation.

The superintendent is further empowered to consult with
the commissioner of the bureau of employment programs in an
effort to defray the cost of medical and hospital services. In no
case will the compensation rendered to health care providers for
medical and hospital services exceed the then current rate
schedule in use by the bureau of employment programs, workers’ compensation division.

Third-party reimbursements received by the superintendent after the expiration of the fiscal year in which the injury, illness or death occurred will be deposited to a nonexpiring special revenue account. Funds deposited to this account may be used solely for defraying the costs of medical or hospital services rendered to any sworn members as a direct result of an illness, injury or death resulting from the performance of official duties.

(f) The superintendent shall establish and maintain local headquarters at such places in West Virginia as are in his judgment suitable and proper to render the West Virginia state police most efficient for the purpose of preserving the peace, protecting property, preventing crime, apprehending criminals and carrying into effect all other provisions of this article. The superintendent shall provide, by acquisition, lease or otherwise, for local headquarters, for housing and quarters for the accommodation of the members of the West Virginia state police, and for any other facilities necessary or useful for the effective operation of the West Virginia state police, and shall provide all equipment and supplies necessary for the members of the West Virginia state police to perform their duties.

CHAPTER 31. CORPORATIONS.

Article
15. West Virginia Economic Development Authority.
20. West Virginia Regional Jail and Correctional Facility Authority.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.
§31-15-6b. Special power of authority to issue bonds or notes to repay and refinance capital investment of investment management board in regional jail and correctional facility authority; authorizing issuance of bonds to finance regional jail facilities, correctional facilities, juvenile facilities and state police facilities.

(a) The Legislature finds and declares that the supreme court of appeals has determined and ordered that the constitution of this state imposes a duty on behalf of the state to make significant improvements in the jail and correctional facility system, including the duty to make capital improvements to facilities and to pay for the cost of those improvements; that many of the existing facilities used by the West Virginia state police, including those facilities identified in section ten, article two, chapter fifteen of this code, are in need of significant capital improvement or replacement, and that in some cases the acquisition and construction of additional state police facilities is needed; that the acquisition and construction of the capital improvements identified in this subsection require that the cost of the facilities be financed over time; that section fifty-one, article six of the constitution prohibits the Legislature amending the budget bill so as to create a deficit; that the enacting of new taxes, or the diversion of revenues from other essential departments and functions of government, in order to support capital improvements in regional jail facilities, correctional facilities, juvenile facilities and state police facilities is not in the interests of the people of the state represented in the Legislature, and is specifically rejected by the Legislature in its exercise of its legitimate constitutional powers; that there have been previously funded certain regional jail facilities and correctional facilities through funds available for investment through the West Virginia investment management board, the proceeds of
which have and are being used by the regional jail and correctional facility authority to finance the cost of capital improvements to regional jail facilities and correctional facilities, the repayment of such investment being made from transfers to the regional jail and correctional facility investment fund established under section twenty-one, article six, chapter twelve of this code, from funds on deposit in the insurance tax fund established under subsection (b), section fourteen, article three, chapter thirty-three of this code, such transfers undertaken in the manner set forth in subsection (c), section fourteen, article three, chapter thirty-three of this code; that the rate of return being paid under subsection (b), section twenty-one, article six, chapter twelve for the investment is subject to annual adjustment and theretofore subject to the volatility of the financial markets and it is anticipated that the rate of return paid on such investment will be in excess of the interest rate that would be payable with respect to bonds issued under this article to repay the investment, to make the capital improvements identified in this subsection, and to acquire or construct certain regional jail facilities, correctional facilities, juvenile facilities and state police facilities.

(b) To provide for: (1) The repayment of all or a portion of the investment; (2) the financing of capital improvements to regional jail facilities, correctional facilities, juvenile facilities and state police facilities; (3) the financing of the acquisition of certain existing regional jail facilities, correctional facilities, juvenile facilities and state police facilities; (4) the financing of the acquisition and construction of new regional jail facilities, correctional facilities, juvenile facilities and state police facilities; and (5) the payment of the costs of issuance of the bonds, bonds of the authority may be issued in accordance with the provisions of this article. Any bonds issued pursuant to the provisions of this section shall mature at a time or times not
exceeding twenty-five years from their respective dates. In no event may the outstanding principal amount of the bonds exceed a total amount that would require annual debt service payments in excess of sixteen million dollars.

(c) (1) The proceeds from the sale of the bonds shall be allocated and expended for the following purposes in the following order of priority:

(A) For the costs of issuance of the bonds;

(B) For payment of the return of the investment made pursuant to section twenty-one, article six, chapter twelve of this code;

(C) For the costs of the projects included in the letter submitted by the regional jail and correctional facility authority to the joint committee on government and finance dated the first day of April, two thousand one, pursuant to the amendment and reenactment of section twenty-one, article six, chapter twelve of this code in chapter sixty-six, acts of the Legislature, regular session, two thousand one: Provided, That the letter shall not be construed to prioritize any project or projects which are included in the letter;

(D) For the costs of completion of any other capital improvement projects for regional jail facilities, correctional facilities or juvenile facilities that may be determined by the regional jail and correctional facility authority, subject to the provisions of subdivision (2) of this subsection. Prior to the expenditure of any funds for these additional projects, the regional jail and correctional facility authority shall certify to the joint committee on government and finance a separate list of the additional projects to be funded from the bond proceeds. This certified list may not thereafter be altered or amended other than by legislative enactment; and
(E) For the costs of capital improvements to or the acquisition or construction of state police facilities: Provided, That no proceeds of the bonds may be expended for a state police facility purpose unless and until the Legislature by concurrent resolution has approved the purpose and amount of each project for which proceeds from the issuance of the bonds have been allocated under this subsection.

(2) From the balance of the proceeds of the bonds remaining after meeting the requirements of paragraphs (A) and (B), subdivision (1) of this subsection, an amount not less than eighty million dollars shall be allocated for expenditure for the purposes set forth in paragraphs (C) and (D), subdivision (1) of this subsection. In the event the regional jail and correctional facility authority determines that an amount less than eighty million dollars is necessary for those purposes, the difference may be allocated for expenditure for the purposes and subject to the conditions set forth in paragraph (E), subdivision (1) of this subsection.

(d) The economic development authority may lease facilities acquired or constructed pursuant to the provisions of this section to the department of administration.

(e) For purposes of this section, the terms "regional jail facilities", "correctional facilities" and "juvenile facilities" have the meanings set forth in section two, article twenty of this chapter.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-2. Definitions.

1 Unless the context indicates clearly otherwise, as used in this article:
(a) "Adjacent regional juvenile detention facility" means a facility constructed or maintained on property owned or controlled by the regional jail authority and designed: (1) For the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility or who are awaiting trial as an adult pursuant to section ten, article five, chapter forty-nine of this code; or (2) for the court-ordered, short term placement of juveniles in a facility that is characterized by programmatic intervention and by staff restrictions of the movements and activities of juveniles placed there, that limits the juveniles' access to the surrounding community and that is not characterized by construction fixtures designed to physically restrict the movements and activities of juveniles.

(b) "Authority" or "West Virginia Regional Jail Authority" means the West Virginia regional jail and correctional facility authority created by this article.

(c) "Board" means the governing body of the authority.

(d) "Bonds" means bonds of the authority issued under this article.

(e) "Cost of construction or renovation of a local jail facility, regional jail facility or juvenile facility" means the cost of all lands, water areas, property rights and easements, financing charges, interest prior to and during construction and for a period not exceeding six months following the completion of construction, equipment, engineering and legal services, plans, specifications and surveys, estimates of costs and other expenses necessary or incidental to determining the feasibility or practicability of any project, together with any other expenses necessary or incidental to the financing and the con-
struction or renovation of the facilities and the placing of the facilities in operation.

(f) "County" means any county of this state.

(g) "Federal agency" means the United States of America and any department, corporation, agency or instrumentality created, designated or established by the United States of America.

(h) "Fund" or "funds" means a regional jail and correctional facility authority fund provided in section ten of this article, including those accounts that may be established by the authority for accurate accounting of the expenditure of public funds by that agency.

(i) "Government" means state and federal government, and any political subdivision, agency or instrumentality of the state or federal government, corporate or otherwise.

(j) "Inmate" means any adult person properly committed to a local or regional jail facility or a correctional facility.

(k) "Local jail facility" means any county facility for the confinement, custody, supervision or control of adult persons convicted of misdemeanors, awaiting trial or awaiting transportation to a state correctional facility.

(l) "Municipality" means any city, town or village in this state.

(m) "Notes" means any notes as defined in section one hundred four, article three, chapter forty-six of this code issued under this article by the authority.

(n) "Correctional facility" means any correctional facility, penitentiary or other correctional institution operated by the division of corrections for the incarceration of adults.
(o) "Regional jail facility" or "regional jail" means any facility operated by the authority and used jointly by two or more counties for the confinement, custody, supervision or control of adult persons convicted of misdemeanors or awaiting trial or awaiting transportation to a state correctional facility.

(p) "Revenues" means all fees, charges, moneys, profits, payments of principal of, or interest on, loans and other investments, grants, contributions and all other income received by the authority.

(q) "Security interest" means an interest in the loan portfolio of the authority which is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

(r) "Work farm" has the same meaning as that term is used in section twelve, article eight, chapter seven of this code authorizing work farms for individual counties.

(s) "Juvenile detention facility" or "juvenile detention center" means a facility operated by the division of juvenile services: (1) For the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility or who are awaiting trial as an adult pursuant to section ten, article five, chapter forty-nine of this code; or (2) for the court-ordered, short term placement of juveniles in a facility that is characterized by programmatic intervention and by staff restrictions of the movements and activities of juveniles placed there, that limits the juveniles' access to the surrounding community and that is not characterized by construction fixtures designed to physically restrict the movements and activities of juveniles.

(t) "Juvenile correctional facility" means a facility operated by the division of juvenile services: (1) For the
postdispositional confinement of juveniles adjudicated of offenses that would be criminal offenses if committed by an adult; or (2) for the court-ordered placement of juveniles in a facility that is characterized by programmatic intervention and by staff restrictions of the movements and activities of juveniles placed there; that limits the juveniles' access to the surrounding community and that is not characterized by construction fixtures designed to physically restrict the movements and activities of juveniles.

(u) "Juvenile facility" means an adjacent regional juvenile detention facility, a juvenile detention facility, a juvenile detention center or a juvenile correctional facility.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

(a) Every insurer transacting insurance in West Virginia shall file with the commissioner, on or before the first day of March, each year, a financial statement made under oath of its president or secretary and on a form prescribed by the commissioner. The insurer shall also, on or before the first day of March of each year subject to the provisions of section fourteen-c of this article, under the oath of its president or secretary, make a premium tax return for the previous calendar year, on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected and received by it during the previous calendar year on policies covering risks resident, located or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly
payments as required to be made pursuant to the provisions of section fourteen-c of this article, if any, less any adjustments to the gross amount of the direct premiums made during the calendar year, if any, and transmit with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the taxable premium, and also includes any additional tax due under section fourteen-a of this article. All taxes received by the commissioner shall be paid into the insurance tax fund created in subsection (b) of this section.

(b) There is created in the state treasury a special revenue fund, administered by the treasurer, designated the "insurance tax fund." This fund is not part of the general revenue fund of the state. It consists of all amounts deposited in the fund pursuant to subsection (a) of this section, sections fifteen and seventeen of this article, any appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund.

(c) The treasurer shall dedicate and transfer from the insurance tax fund to the regional jail and correctional facility investment fund created under the provisions of section twenty-one, article six, chapter twelve of this code, on or before the tenth day of each month, an amount equal to one twelfth of the projected annual investment earnings to be paid and the capital invested to be returned, as certified to the treasurer by the investment management board: Provided, That the amount dedicated and transferred may not exceed twenty million dollars in any fiscal year. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the regional jail and correctional facility investment fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. Each month a lien on the
revenues generated from the insurance premium tax, the
annuity tax and the minimum tax, provided in this section and
sections fifteen and seventeen of this article, up to a maximum
amount equal to one twelfth of the projected annual principal
and return is granted to the investment management board to
secure the investment made with the regional jail and correc-
tional facility authority pursuant to section twenty, article six,
chapter twelve of this code. The treasurer shall, no later than the
last business day of each month, transfer amounts the treasurer
determines are not necessary for making refunds under this
article to meet the requirements of subsection (d), section
twenty-one, article six, chapter twelve of this code, to the credit
of the general revenue fund. Commencing on the first day of the
month following the month in which the investment created
under the provisions of section twenty-one, article six, chapter
twelve of this code, is returned to the investment management
board, the treasurer shall transfer all amounts deposited in the
insurance tax fund as appropriated by the Legislature.

CHAPTER 18

(S. B. 6024 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed December 11, 2001; in effect from passage. Approved by the Governor.]
fourteen of said chapter by adding thereto a new section, designated section one hundred six; and to amend and reenact section six, article two-a, chapter fifty-one of said code as contained in said acts, all relating to making technical revisions to the law creating a family court system; repealing misnumbered sections; revising archaic terminology in miscellaneous provisions relating to child support orders; declaring that section one hundred six, article fourteen, chapter forty-eight, as enacted by chapter five, acts of the Legislature, fifth extraordinary session, two thousand one, shall be deemed and constituted as a new section; and adjusting the salary levels of secretary-clerks and family case coordinators of family court judges consistent with current levels based on annual adjustments.

Be it enacted by the Legislature of West Virginia:

That sections nine hundred one and nine hundred two, article thirteen, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as contained in chapter five, acts of the Legislature, fifth extraordinary session, two thousand one, be repealed; that sections eight hundred one and eight hundred two of said article be amended and reenacted; that article fourteen of said chapter be amended by adding thereto a new section, designated section one hundred six; and that section six, article two-a, chapter fifty-one of said code as contained in said acts be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.
51. Courts and Their Officers.

CHAPTER 48. DOMESTIC RELATIONS.

Article

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

PART VIII. MISCELLANEOUS PROVISIONS RELATING TO CHILD
SUPPORT ORDERS.

§48-13-801. Tax exemption for child due support.
§48-13-802. Investment of child support.

§48-13-801. Tax exemption for child due support.

Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the payee parent except in cases of extended shared parenting. In extended shared parenting cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the payor parent only if the total of the payee parent’s income and child support is greater when the exemption is awarded to the payor parent.

§48-13-802. Investment of child support.

(a) The court has the discretion, in appropriate cases, to direct that a portion of child support be placed in trust and invested for future educational or other needs of the child. The court may order such investment when all of the child’s day-to-day needs are being met such that, with due consideration of the age of the child, the child is living as well as his or her parents.

(b) If the amount of child support ordered per child exceeds the sum of two thousand dollars per month, the court is required to make a finding, in writing, as to whether investments shall be made as provided for in subsection (a) of this section.
(c) A trustee named by the court shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. A trustee shall be governed by the provisions of the uniform prudent investor act as set forth in article six-c, chapter forty-four of this code. The court may prescribe the powers of the trustee and provide for the management and control of the trust. Upon petition of a party or the child’s guardian or next friend and upon a showing of good cause, the court may order the release of funds in the trust from time to time.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

PART I. ACTION TO OBTAIN AN ORDER FOR SUPPORT OF MINOR CHILD.

§48-14-106. Modification of support order.

(a) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee or the obligor, revise or alter such order and make a new order as the altered circumstances or needs of a child, an obligee or the obligor may render necessary to meet the ends of justice.

(b) The supreme court of appeals shall make available to the family courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income or that the amount of support required to be paid is not within fifteen percent of the child support guidelines. The clerk of the circuit court and the secretary-clerk of the family court shall
make such forms available to persons desiring to petition the court pro se for a modification of the support award.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.


(a) Until the thirty-first day of December, two thousand two, a family court judge is entitled to receive as compensation for his or her services an annual salary of sixty thousand dollars. Beginning the first day of January, two thousand three, a family court judge is entitled to receive as compensation for his or her services an annual salary of sixty-two thousand five hundred dollars.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court judge is entitled to receive an annual salary of twenty-five thousand three hundred thirty-two dollars. In addition, any person employed as a secretary-clerk to a family law master on the effective date of the enactment of this section during the sixth extraordinary session of the Legislature in the year two thousand one who is receiving an additional five hundred dollars per year up to ten years of a certain period of prior employment under the provisions of the prior enactment of section eight of this article during the second extraordinary session of the Legislature in the year one thousand nine hundred ninety-nine shall continue to receive such additional amount. Further, the secretary-clerk will receive such percentage or proportional salary increases as may be provided for by general law for other public employees and is entitled to receive the annual incremental salary increase as provided for in article five, chapter five of this code.
(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure. The annual salary of the family case coordinator of the family court judge shall be established by the administrative director of the supreme court of appeals but may not exceed thirty-six thousand sixty dollars. The family case coordinator will receive such percentage or proportional salary increases as may be provided for by general law for other public employees and is entitled to receive the annual incremental salary increase as provided for in article five, chapter five of this code.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the director of the administrative office of the supreme court of appeals.

(f) Family court judges and members of their staffs are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the director of the administrative office of the supreme court of appeals under such guidelines as he or she may prescribe, as approved by the supreme court of appeals.

(g) Notwithstanding any other provision of law, family court judges are not eligible to participate in the retirement system for judges under the provisions of article nine of this chapter.
AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-p; to amend and reenact sections two, three and five, article twelve, chapter twenty-nine of said code; to further amend said chapter by adding thereto a new article, designated article twelve-b; to amend chapter thirty-three of said code by adding thereto two new articles, designated articles twenty-e and twenty-f; to amend and reenact sections five, six, ten and eleven, article seven-b, chapter fifty-five of said code; to further amend said article by adding thereto four new sections, designated sections six-a, six-b, six-c and six-d; to amend and reenact section eleven, article six, chapter fifty-six of said code; and to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code, all relating to medical professional liability generally; providing certain tax credits for certain health care providers; setting forth legislative findings and purpose; defining terms; creating tax credit and providing eligibility therefor; establishing amount of credit; providing for the forfeiture of excess credit; providing for the application of the tax credit; requiring annual schedule; effect of credit on estimated taxes; providing for the computation and application of credit; authorizing tax commissioner to promulgate legislative rules; providing for the construction of article; establishing burden of proof; relating to claiming the credit; establishing effective date for credit; providing for termination of tax credit; modifying
definitions; continuing, reestablishing and reconstituting board of
risk and insurance management; establishing qualifications, terms
and compensation of members of the board; clarifying and
expanding powers and duties of board; increasing salary of
executive director; authorizing the board to employ certain
employees, including legal counsel; eliminating requirement for
attorney general’s knowledge and consent to settlements and
releases; making technical revisions; providing that board of risk
and insurance management shall administer the optional medical
liability insurance programs; establishing duties and reporting
requirements of the board; establishing procedure for approval of
board financial plans; providing rule-making authority; providing
for the establishment and operation of medical professional
liability insurance programs for certain physicians through the
board of risk and insurance management as an alternative to
commercial coverage for malpractice claims when comparable
commercial coverage is not available; setting short title and
legislative findings; defining terms; establishing a state medical
malpractice advisory panel; establishing qualifications, terms and
compensation of panel members; providing for the organization
and reporting requirements of the panel; establishing medical
professional liability insurance programs, including a preferred
medical liability insurance program and a high-risk medical
liability insurance program and exceptions to participation;
establishing criteria for eligibility to participate in program;
specifying powers and duties of the board of risk and insurance
management relating to medical malpractice insurance; establish­
ing special revenue account in state treasury for deposit of
collected premiums and for expenditure and investment of funds
in the account; providing for payment of start-up operating
expenses of the program and a pool from which claims may be
paid and for amounts so paid to be reimbursed from collected
premiums; authorizing the board to establish procedures for
payment of claims; requiring certain documentation for payment
of a medical malpractice settlement or judgment; exempting
specific claim reserve information from disclosure under freedom of information act; authorizing board to post supersedeas bond when it appeals a medical malpractice judgment against a health care provider; specifying effective date; allowing policies written after the effective date to be retroactive to the effective date; providing for the establishment and operation of a medical professional liability insurance joint underwriting association; providing short title, legislative findings and stating intent and purpose; defining terms; creating medical professional liability insurance joint underwriting association and providing for the state board of risk and insurance management to exercise the powers of the association temporarily; creating a board of directors; qualifications and compensation of board members; specifying powers and duties of the association; providing for an interim plan of operation to be administered by the state board of risk and insurance management; providing for a final plan of operation to be administered by the board of directors; specifying the duties and powers of the insurance commissioner; establishing eligibility requirements for policyholders; providing for issuance of policies and guidelines for setting rates and premiums; creating a special revenue account in state treasury for deposit of initial capital, surplus and collected premiums, and for expenditure and investment of funds in the account; providing for assumption of assets and administrative control by the board of directors and a pool from which claims may be paid; clarifying premium tax liability of association; absolving state from responsibility for obligations of association; establishing methods by which a deficit in the association's accounts may be recouped and reimbursed; requiring the commissioner to report to the board of directors when any member insurer's authority to transact insurance in this state has been terminated; providing that the association is subject to examination and regulation by the commissioner; requiring the association to submit to the commissioner an annual statement; providing that the association is immune from suit; specifying operative date; allowing policies
written after the operative date to be retroactive to the effective date; authorizing the formation of a physicians mutual insurance company; setting forth a short title; establishing legislative findings and purpose; defining terms; authorizing the creation of a company; establishing the requirements and limitations of a company; establishing the immunity of the state from all debts, claims, obligations and liabilities of a company; providing for governance and organization of a company; providing for the management and administration of a company; providing for the funding of the initial policyholders' surplus; authorizing a one-time assessment against physicians to assist in funding the initial capital surplus; providing for licensure application and approval of the commissioner; setting forth the authority of the commissioner; authorizing the company to issue certain policies of insurance; providing for the transfer of policies from the state board of risk and insurance management; authorizing risk management practices; providing for the controlling law, liberal construction and severability of this article; providing for medical professional liability actions; eliminating certain third party causes of action against insurers; prescribing time when health care provider may file certain causes of action against insurer; establishing certain prerequisites for filing an action against a health care provider and providing exceptions; providing for pre-litigation mediation upon request of health care provider; providing for the tolling of the statute of limitations; establishing confidentiality of certain documents; providing parties with access to medical records and establishing procedures therefor; providing for an expedited resolution of cases against health care providers; requiring court to convene a mandatory status conference; providing for mandatory mediation; establishing trial date; authorizing court to order a summary jury trial upon joint motion; when counsel and parties are subject to sanctions; authorizing court to direct payment of costs in certain instances; establishing summary jury trial procedures; providing for a twelve-member jury and allowing a verdict to be rendered by nine-member jury;
establishing operative date of revisions; establishing severability and nonseverability of certain provisions; and increasing the filing fee for medical professional liability actions and providing for the disposition thereof.

Be it enacted by the Legislature of West Virginia:

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

Chapter
  11. Taxation.
  29. Miscellaneous Boards and Officers.
  33. Insurance.
  55. Actions, Suits and Arbitration; Judicial Sale.
  56. Pleading and Practice.
  59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 11. TAXATION.

ARTICLE 13P. TAX CREDIT FOR MEDICAL LIABILITY INSURANCE PREMIUMS.
§11-13P-1. Legislative finding and purpose.

The Legislature finds that the retention of physicians practicing in this state is in the public interest and promotes the general welfare of the people of this state. The Legislature further finds that the promotion of stable and affordable medical malpractice liability insurance premium rates will induce retention of physicians practicing in this state.

In order to effectively decrease the cost of medical liability insurance premiums paid in this state on physicians’ services, there is hereby provided a tax credit for certain medical liability insurance premiums paid.


(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 the context in which the term is used.

(b) Terms defined. –

(1) “Adjusted annual medical liability premium” means statewide average of medical liability insurance premiums by specialty and subspecialty groups directly paid by eligible
taxpayers in those speciality and subspecialty groups during the taxable year to cover physicians' services performed during the year reduced by the sum of ten thousand dollars.

(2) "Eligible taxpayer" means any person subject to tax under section sixteen, article twenty-seven of this chapter or a physician who is a partner, member, shareholder or employee of an eligible taxpayer.

(3) "Person" means and includes any natural person, corporation, limited liability company, trust or partnership.

(4) "Physicians' services" means health care providers services taxable under section sixteen, article twenty-seven of this chapter performed in this state by physicians licensed by the state board of medicine or the state board of osteopathic medicine.

(5) "Statewide average medical liability insurance premiums" are the average of premiums for each specialty and subspecialty group as determined by the state insurance commission.

§11-13P-3. Eligibility for tax credits; creation of the credit.

There shall be allowed to every eligible taxpayer a credit against the tax payable under section sixteen, article twenty-seven of this chapter. The amount of this credit shall be determined and applied as provided in this article.

§11-13P-4. Amount of credit allowed.

The amount of annual credit allowable under this article to an eligible taxpayer shall be equal to ten percent of the adjusted annual medical liability insurance premium for the taxpayer's specialty or subspecialty group or ten percent of the taxpayer's actual annual medical liability insurance premium, whichever
is less: Provided, That no credit shall be allowed for any
medical liability insurance premium paid on behalf of an
eligible taxpayer employed by the state, its agencies or subdivi-
sions or an eligible taxpayer organization pursuant to coverage
provided under article twelve, chapter twenty-nine of this code.

§11-13P-5. Excess credit forfeited.

If after application of the credit against tax under this
article, any credit remains for the taxable year, the amount
remaining and not used is forfeited. Unused credit may not be
carried back to any prior taxable year and shall not carry
forward to any subsequent taxable year.

§11-13P-6. Application of credit; schedules; estimated taxes.

(a) The credit allowed under this article shall be applied
against the tax payable under section sixteen, article twenty-
seven of this chapter.

(b) To assert this credit against tax, the eligible taxpayer
shall prepare and file with its annual tax return filed under
article twenty-seven of this chapter, and for information
purposes, a schedule showing the amount paid for medical
liability coverage for the taxable year, the amount of credit
allowed under this article, the taxes against which the credit is
being applied and other information that the tax commissioner
may require. This annual schedule shall set forth the informa-
tion and be in the form prescribed by the tax commissioner.

(c) An eligible taxpayer may consider the amount of credit
allowed under this article when determining the eligible
taxpayer’s liability under article twenty-seven of this chapter
for periodic payments of estimated tax for the taxable year, in
accordance with the procedures and requirements prescribed by
the tax commissioner. The annual total tax liability and total tax
credit allowed under this article are subject to adjustment and
reconciliation pursuant to the filing of the annual schedule required by subsection (b) of this section.

§11-13P-7. Computation and application of credit.

(a) Credit resulting from premiums directly paid by persons who pay the tax imposed by section sixteen, article twenty-seven of this chapter. - The annual credit allowable under this article for eligible taxpayers other than payors described in subsection (b) of this section, shall be applied as a credit against the eligible taxpayer's state tax liability determined under section sixteen, article twenty-seven of this chapter, determined after application of all other allowable credits and exemptions.

(b) Credit for premiums directly paid by partners, members or shareholders of partnerships, limited liability companies, or corporations for or on behalf of such organizations; application of credit.

(I) Qualification for credit.

(A) For purposes of this section the term "eligible taxpayer organization" means a partnership, limited liability company, or corporation that is an eligible taxpayer.

(B) For purposes of this section the term "payor" means a natural person who is a partner, member, shareholder or owner, in whole or in part, of an eligible taxpayer organization and who pays medical liability insurance premiums for or on behalf of the eligible taxpayer organization.

(C) Medical liability insurance premiums paid by a payor (as defined in this section) qualify for tax credit under this article, provided that such payments are made to insure against medical liabilities arising out of or resulting from physicians' services provided by a physician while practicing in service to or under the organizational identity of an eligible taxpayer.
organization or as an employee of such eligible taxpayer organization where such insurance covers the medical liability of:

(i) The eligible taxpayer organization; or

(ii) One or more physicians practicing in service to or under the organizational identity of the eligible taxpayer organization or as an employee of the eligible taxpayer organization; or

(iii) Any combination thereof.

(2) Application of credit by the payor against health care provider tax on physician's services. - The annual credit allowable shall be applied to reduce the tax liability directly payable by the payor under section sixteen, article twenty-seven of this chapter, determined after application of all other allowable credits and exemptions.

(3) Application of credit by the eligible taxpayer organization against health care provider tax on physician's services. - After application of this credit as provided in subdivision (2) of this subsection, remaining annual credit shall then be applied to reduce the tax liability directly payable by the eligible taxpayer organization under section sixteen, article twenty-seven of this chapter, determined after application of all other allowable credits and exemptions.

(4) Apportionment among multiple eligible taxpayer organizations. - Where a payor described in subdivision (1) of this subsection pays medical liability insurance premiums for and provides services to or under the organizational identity of two or more eligible taxpayer organizations described in this section or as an employee of two or more such eligible taxpayer organizations, the tax credit shall, for purposes of subdivision (3) of this subsection, be allocated among such eligible taxpayer organizations in proportion to the medical liability insurance
premiums paid directly by the payor during the taxable year to
cover physicians' services during such year for, or on behalf of,
each eligible taxpayer organization. In no event may the total
credit claimed by all eligible taxpayers and eligible taxpayer
organizations exceed the credit which would be allowable if the
payor had paid all such medical liability insurance premiums
for or on behalf of one eligible taxpayer organization, and if all
physician's services had been performed for, or under the
organizational identity of, or by employees of, one eligible
taxpayer organization.

1 The tax commissioner shall propose for promulgation
2 pursuant to the provisions of article three, chapter twenty-nine-a
3 of this code such rules as may be necessary to carry out the
4 purposes of this article.

§11-13P-9. Construction of article; burden of proof.
1 The provisions of this article shall be reasonably construed.
2 The burden of proof is on the person claiming the credit
3 allowed by this article to establish by clear and convincing
4 evidence that the person is entitled to the amount of credit
5 asserted for the taxable year.

§11-13P-10. Effective date.
1 This article shall be effective for taxable years beginning
2 after the thirty-first day of December, two thousand one:
3 Providing, That the assertion of the credit by an eligible
4 taxpayer shall not be allowed prior to the first day of July, two
5 thousand two.

§11-13P-11. Termination of tax credit.
No credit shall be allowed under this article for any taxable year ending after the thirty-first day of December, two thousand four.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-2. Definitions.
§29-12-3. State board of risk and insurance management; creation, composition, qualifications, and compensation.
§29-12-5. Powers and duties of board.

§29-12-2. Definitions.

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

(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
16 carriers, including life, accident, health, fidelity, indemnity,
17 casualty, hospitalization and other types and kinds of insurance
18 companies, organizations and associations, but excepting and
19 excluding workers' compensation coverage.

(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. "State property
activities" includes ambulances, as defined in section three,
article four-c, chapter sixteen of this code.

(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. "State property"
includes ambulances, as defined in section three, article four-c,
chapter sixteen of this code.

§29-12-3. State board of risk and insurance management; cre­
atation, composition, qualifications, and compensa­
tion.

(a) (1) The "state board of insurance of West Virginia" is
hereby reestablished, reconstituted and continued as the state
board of risk and insurance management. The board shall be
composed of five members. One member shall be the vice
chancellor of health sciences of the West Virginia higher
education policy commission. The remaining four members
shall be appointed by the governor with the advice and consent
of the Senate. One member shall be appointed by the governor
from a list of three eligible persons submitted to the governor by the president of the Senate, and one member shall be appointed by the governor from a list of three eligible persons submitted to the governor by the speaker of the House of Delegates. Each member shall be a resident of West Virginia and shall have experience in one or more of the following areas: law, accounting, business, insurance or actuarial science.

(2) Initial appointment of the members other than the vice chancellor for health sciences shall be for the following terms:

One member shall be appointed for a term ending the thirtieth day of June, two thousand three;

One member shall be appointed for a term ending the thirtieth day of June, two thousand four;

One member shall be appointed for a term ending the thirtieth day of June, two thousand five; and

One member shall be appointed for a term ending the thirtieth day of June, two thousand six.

(3) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending the thirtieth day of June of the fourth year following the year the preceding term expired. In the event a vacancy occurs it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the board may be removed from office by the governor except for official misconduct, incompetency, neglect of duty, or gross immoral-ity.

(4) Members of the board appointed prior to the reenactment of this article during the sixth extraordinary
session of the Legislature, two thousand one, shall serve until the fifteenth day of December, two thousand one.

(b) The insurance commissioner of West Virginia shall serve as secretary of the board without vote and shall make available to the board the information, facilities and services of the office of the state insurance commissioner.

(c) The members of the board shall receive from the executive director of the board the same compensation authorized by law for members of the Legislature for the interim duties for each day, or portion thereof, the member is engaged in the discharge of official duties. All board members shall be reimbursed for their actual and necessary expenses incurred in the discharge of official duties, except that mileage shall be reimbursed at the same rate as that authorized for members of the Legislature.

(d) Notwithstanding any provision of this section to the contrary, the board is subject to the provisions of section twelve of this article.

§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, inspections 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, exposures, 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 or by a charitable or public service organization, the board is authorized to provide property and liability insurance to the political subdivisions or such organizations to insure their property, activities and responsibilities. Such 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 or such organization 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 or the organization and may include administrative expenses. 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 promot-
ing the campaign of any candidate for public office.

(c)(1) The board shall have general supervision and control
over the optional medical liability insurance programs provid-
ing 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 include, but not be limited to, an audited financial statement which shall follow the accounting practices and procedures prescribed by the national association of insurance commissioners procedures manual, as amended, 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 preceding 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 which shall follow the accounting practices and procedures prescribed by the national association of insurance commissioners procedures manual, as amended, 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 implementation of the financial plans required by this section;

(iii) Submit to the governor and the Legislature a prospective 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-1. Short title.
§29-12B-2. Legislative findings.
§29-12B-3. Definitions.
§29-12B-4. State medical malpractice advisory panel; creation, composition, duties and compensation.
§29-12B-5. Organization, meetings, records and reports of panel.
§29-12B-6. Health care provider professional liability insurance programs.
§29-12B-7. Eligibility criteria for participation in health care provider professional liability insurance programs.
§29-12B-8. Preferred professional liability insurance program.
§29-12B-9. High risk professional liability insurance program.
§29-12B-10. Deposit, expenditure and investment of premiums.
§29-12B-11. Payments for settlement or judgment.
§29-12B-12. Information exempt from disclosure.
§29-12B-14. Effective date.

§29-12B-1. Short title.

This article may be cited as the “West Virginia Health Care Provider Professional Liability Insurance Availability Act.”

§29-12B-2. Legislative findings.
The Legislature finds and declares that there is a need for the state of West Virginia to assist in making professional liability insurance available for certain necessary health care providers in West Virginia to assure that quality medical care is available for the citizens of the state.

§29-12B-3. Definitions.

As used in this article, the following terms have the meanings set forth herein:

(a) “Board” means the state board of risk and insurance management.

(b) “Health care provider” means:

(1) A person licensed by the West Virginia board of medicine to practice medicine in this state;

(2) A person licensed by the West Virginia board of osteopathy to practice medicine in this state;

(3) A podiatrist licensed by the West Virginia board of medicine;

(4) An optometrist licensed by the West Virginia board of optometry;

(5) A pharmacist licensed by the West Virginia board of pharmacy;

(6) A registered nurse holding an advanced practice announcement from the West Virginia board of examiners for registered professional nurses;

(7) A physician’s assistant licensed by either the West Virginia board of medicine or the West Virginia board of osteopathy;
(8) A dentist licensed by the West Virginia board of dental examiners;

(9) A physical therapist licensed by the West Virginia board of physical therapy;

(10) A chiropractor licensed by the West Virginia board of chiropractic;

(11) A professional limited liability company or medical corporation certified by the state board of medicine;

(12) An association, partnership or other entity organized for the purpose of rendering professional services by persons who are health care providers;

(13) A hospital, medical clinic, psychiatric hospital or other medical facility authorized by law to provide professional medical services; and

(14) Such other health care provider as the board may from time to time approve, and for whom an adequate rate can be established.

"Health care provider" does not include any provider of professional medical services that has medical malpractice insurance pursuant to article twelve of this chapter.

(b) "Sexual acts" means that sexual conduct which constitutes a criminal or tortious act under the laws of West Virginia.

(c) "Prior acts" coverage means coverage for claims arising out of the providing of medical services, including medical treatment, which are first reported to the board during the effective policy period, but which occurred on or after the retroactive date reported in the policy declarations.
(d) "High risk" means the probability of loss is greater than average based on criteria specified in this article and established by the board.

(e) "Retroactive date" means the date designated in the policy declarations, before which coverage is not applicable.

(f) "Tail coverage" or "extended reporting coverage" is coverage that protects the health care provider against all claims arising from professional services performed while the claims-made policy was in effect and included in the policy but reported after the termination of the policy.

§29-12B-4. State medical malpractice advisory panel; creation, composition, duties and compensation.

(a) (1) There is hereby created, under the direction and control of the board, the medical malpractice advisory panel. The panel shall be composed of seven members appointed by the governor with the advice and consent of the Senate. Each member shall be a resident of West Virginia. No more than three members may reside in the same congressional district, no more than two members may reside in the same county, and no more than four members may belong to the same political party.

(2) Initial appointment of the members shall be for the following terms:

One member shall be appointed for a term ending the thirtieth day of June, two thousand two;

Two members shall be appointed for a term ending the thirtieth day of June, two thousand three;

Two members shall be appointed for a term ending the thirtieth day of June, two thousand four; and
Two members shall be appointed for a term ending the thirtieth day of June, two thousand five.

(3) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending the thirtieth day of June of the fourth year following the year the preceding term expired. In the event a vacancy occurs it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the panel may be removed from office by the governor except for official misconduct, incompetency, neglect of duty, or gross immorality.

(4) The panel shall consist of the following:

(A) A physician licensed in this state by the state board of medicine recommended from a list of three candidates from a specialty area and three candidates from a non-specialty area submitted by the state medical association;

(B) A physician licensed by the state board of osteopathy recommended from a list of three candidates submitted by the state society of osteopathic medicine;

(C) A physician licensed by the state board of medicine from a specialty area recommended from the list of three candidates submitted by the West Virginia academy of family practitioners;

(D) A chief executive officer or chief financial officer of a hospital recommended from a list of three submitted by the state hospital association;

(E) One consumer or consumer representative;
(F) One person with training or experience in underwriting; and

(G) A person with training or experience in insurance industry management.

(b) The members of the panel shall receive from the executive director of the board the same compensation authorized by law for members of the Legislature for their interim duties for each day, or portion thereof, the member is engaged in the discharge of official duties. All panel members shall be reimbursed for their actual and necessary expenses incurred in the discharge of official duties, except that mileage shall be reimbursed at the same rate as that authorized for members of the Legislature.

(c) The panel shall advise the board with regard to those duties imposed on the board by the provisions of this article and the provisions of subsection (c), section five, article twelve of this chapter relating to medical professional liability insurance.

§29-12B-5. Organization, meetings, records and reports of panel.

(a) The panel shall select one of its members as chairman and shall meet in the office of the board upon the call of the board. The panel shall keep records of all of its proceedings which shall be public and open to inspection: Provided, That any discussion or consideration of the financial or personal information of an insured may be held by the panel in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code. The panel shall exercise and perform the duties prescribed by this article.

(b) The panel shall report in writing to the board and the legislative auditor on or before the thirty-first day of August of each year. Such report shall contain a summary of the panel’s proceedings during the preceding fiscal year.
§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 providers consisting of a preferred professional liability insurance program and a high risk professional liability insurance program.

(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, assessments pursuant to the West Virginia insurance guaranty association act set forth in article twenty-six, chapter thirty-three of this code, and any other assessment against premiums.

(I) 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.
§29-12B-7. Eligibility criteria for participation in health care provider professional liability insurance programs.

(a) Only those health care providers unable to obtain medical professional liability insurance because it is not available through the voluntary insurance market from insurers licensed to transact insurance in West Virginia at rates approved by the commissioner are eligible to obtain coverage pursuant to the provisions of this article: Provided, That any health care provider who can obtain medical professional liability insurance only pursuant to a “consent to” or “guide A” rate agreement is eligible to obtain coverage. Any health care provider who has medical professional liability insurance pursuant to the provisions of article twelve, chapter twenty-nine of this code is not eligible to obtain insurance pursuant to the provisions of this article.

(b) In addition to other eligibility criteria for participation in the health care provider professional liability insurance program established by the provisions of this article or criteria imposed by the board, every participant in the programs shall:

(1) Maintain a policy of not excluding patients whose health care coverage is provided through the West Virginia public employees insurance plan, the West Virginia children’s health insurance program, West Virginia medicaid or the West Virginia worker’s compensation fund based solely on the fact that the person’s health care coverage is provided by any of the aforementioned entities;

(2) Annually participate, at his or her own expense, in a risk management program approved by the board relating to risk management; and
(3) Agree in writing to the board’s authority to assign his or her policy, individually or collectively, to a third party if the third party coverage is comparable, as determined by the board.

§29-12B-8. Preferred professional liability insurance program.

(a) Eligibility to participate in the preferred professional liability insurance program shall be determined by underwriting criteria approved by the board and set forth in a written underwriting manual, and shall be subject to rates approved by the board and set forth in a written rating manual. Participation in the preferred professional liability insurance program shall not be limited based on geographic location or specialty, but may be limited based upon indemnity loss history, number of patient exposures, refusal to participate in risk management/loss control programs or any other grounds the board may approve, as set forth in a written underwriting manual. The board shall periodically review its underwriting manual and make any changes it considers necessary or appropriate.

(b) Qualification for participation in the preferred professional liability insurance program shall be reviewed each year, and any participant may be transferred to the high risk professional liability insurance program, as set forth in the written underwriting manual approved by the board.

§29-12B-9. High risk professional liability insurance program.

(a) The rate charged participants in the high risk professional liability insurance program may be higher than those established and approved by the board for participants in the preferred professional insurance program as set forth in a written rating manual. Risks may be refused coverage under criteria approved by the board, as set forth in its underwriting manual. The board of risk and insurance management shall periodically review its underwriting manual and make any changes it deems necessary or appropriate.
(b) If a majority of the board determines that a health care provider covered by one of the programs created by this article presents an extreme risk because of the number of claims filed against him or her or the outcome of such claims, said board may, after notice and a hearing in accordance with the provisions of the West Virginia administrative procedures act, chapter twenty-nine-a of this code, terminate coverage for all claims against that health care provider. Coverage shall terminate thirty days after the board’s decision. Upon termination of coverage under this subsection, the board shall notify the licensing or disciplinary board having jurisdiction over the health care provider of said provider’s name and of the reasons for termination of the coverage.

(c) The board may terminate coverage for a health care provider’s failure to pay premiums by providing written notice of such termination by first-class mail no less than thirty days prior to termination of coverage.

§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.
14 (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.

20 (c) For purposes of establishing a pool from which settlements and judgments may be paid, a portion of the initial capitalization of the pool may be provided by the Legislature in an amount, upon terms and conditions, and from sources as may be determined by the Legislature in its sole discretion.

§29-12B-11. Payments for settlement or judgment.

1 All payments made in satisfaction of any settlement or judgment shall be in accordance with the procedures established by the board. No settlement or judgment may be paid until there is recorded in the office of the executive director: (1) A certified copy of a final judgment against a health care provider insured by either of the medical liability programs created pursuant to this article, or a certified copy of an order approving settlement in a summary proceeding; or (2) appropriate settlement documentation to include a written settlement determination issued by or on behalf of the board.

§29-12B-12. Information exempt from disclosure.

1 Any specific claim reserve information is exempt from public disclosure under the freedom of information act set forth in article one, chapter twenty-nine-b of this code.


1 In the event of a judgment against a health care provider from which the health care provider or the board wishes to appeal, the board is not liable for more than its share of the
§29-12B-14. Effective date.

The provisions of this article are effective from passage. Any policies written under this article may have an effective date retroactive to the effective date of this article.

CHAPTER 33. INSURANCE.

Article
20E. West Virginia Medical Professional Liability Insurance Joint Underwriting Association Act.
20F. Physicians' Mutual Insurance Company.

ARTICLE 20E. WEST VIRGINIA MEDICAL PROFESSIONAL LIABILITY INSURANCE JOINT UNDERWRITING ASSOCIATION ACT.

§33-20E-1. Short title.
§33-20E-2. Legislative findings.
§33-20E-3. Intent and purpose.
§33-20E-4. Definitions.
§33-20E-5. Joint underwriting association.
§33-20E-6. Board of directors.
§33-20E-8. State board of risk and insurance management to exercise board of directors' powers temporarily; interim plan of operation.
§33-20E-10. Duties and powers of commissioner.
§33-20E-11. Eligibility for coverage.
§33-20E-12. Issuance of policy.
§33-20E-13. Rates; initial filing; basis for rates and premiums.
§33-20E-14. The Medical Professional Liability Insurance Fund; capitalization; transfer of assets and liabilities to board of directors.
§33-20E-15. Deposit of funds; investments; premium tax liability; state not responsible for liabilities or expenses of association.
§33-20E-16. Deficit; recoupment; assessments; reimbursement of members.
§33-20E-1. Short title.

This article may be cited as the "West Virginia Medical Professional Liability Insurance Joint Underwriting Association Act".

§33-20E-2. Legislative findings.

The Legislature finds and declares:

(a) That recent developments in the voluntary insurance market have made it impossible for certain West Virginia health care providers to obtain professional liability insurance coverage from insurers licensed to transact insurance in this state;

(b) That the unavailability of such insurance will have a deleterious effect on the quality and availability of public health programs and services to the citizens of this state;

(c) That it is in the best interests of the citizens of this state to preserve the quality and availability of public health programs and services; and

(d) That the establishment and funding of a joint underwriting association will make available medical professional liability insurance to health care providers, thus preserving public health programs and services for the citizens of this state.

§33-20E-3. Intent and purpose.

The purpose of this article is to create a mechanism to provide medical professional liability insurance to health care
providers who are unable to secure such coverage at approved rates through the voluntary market, in order to preserve public health programs and services for the citizens of this state.

§33-20E-4. Definitions.

As used in this article, the following terms have the meanings set forth below:

(a) "Association" means the joint underwriting association created by this article.

(b) "Board" means the board of directors established pursuant to section six of this article.

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

(d) "Health care provider" means a person, partnership, corporation, facility or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, hospital, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, or psychologist.

(e) "Medical professional liability insurance", commonly known as "medical malpractice insurance", means insurance coverage for any claim for damage or loss against a health care provider arising out of the death or injury of any person proximately caused by negligence in the rendering, or the failure to render, professional services by a health care provider.

(f) "Member insurer" means every insurer authorized to write and engaged in writing, within this state, casualty insurance, as defined in section ten, article one of this chapter.
(g) "Net direct written premiums" means, for purposes of this article, direct gross premiums written in this state on casualty insurance policies, less return premiums thereon, but does not include premiums on contracts between insurers or reinsurers.

(h) "State board" means the state board of risk and insurance management.

§33-20E-5. Joint underwriting association.

(a) There is hereby created a nonprofit unincorporated legal entity to be known as the West Virginia medical professional liability insurance joint underwriting association composed of member insurers. Every insurer authorized to write and engaged in writing, within this state, casualty insurance, on a direct basis, is and shall remain a member insurer, as a condition of its authority to transact insurance in this state.

(b) Each member insurer shall participate in the association in the proportion that its net direct written premiums during the preceding calendar year, as reported in the annual statements and other reports filed by the member with the commissioner, bear to the aggregate net direct premiums written in this state by all members of the association.

(c) The association shall perform its functions under a plan of operation approved by the commissioner under section nine of this article.

§33-20E-6. Board of directors.

(a) The administrative powers of the association shall be vested in a board of directors, which shall consist of nine persons serving terms established in the plan of operation. Seven of the board members shall be representatives of the member insurers and shall be appointed by the commissioner,
with consideration given to whether all member insurers are fairly represented. One member shall be a health care provider, and another shall be a citizen, both appointed by the governor with the advice and consent of the Senate.

(b) The citizen and health care provider members of the board shall receive the same compensation authorized by law for members of the Legislature for their interim duties for each day, or portion thereof, the member is engaged in the discharge of official duties. All board members shall be reimbursed for their actual and necessary expenses incurred in the discharge of official duties, except that mileage shall be reimbursed at the same rate as that authorized for members of the Legislature. All payments for compensation and expenses shall be made from the assets of the association.

§33-20E-7. Association’s powers and duties.

(a) The association has, for purposes of this article and to the extent approved by the commissioner, the general powers and authority granted under the laws of this state to insurers licensed to transact insurance as defined in article one, chapter thirty-three of this code.

(b) The association may take any necessary action to make medical professional liability insurance available including, but not limited to:

(1) Assessing member insurers amounts necessary to pay the obligations of the association, administration expenses, the cost of examinations and other expenses authorized under this article.

(2) Establishing underwriting standards and criteria.

(3) Requiring an eligible health care provider to purchase an extended reporting endorsement, if available, from his or her
previous primary medical professional liability carrier with respect to claims arising during previous policy periods.

(4) Entering into such contracts as are necessary or proper to carry out the provisions and purposes of this article, including contracts authorizing competent third parties with experience with joint underwriting associations or the medical professional liability line of insurance to administer the plan of operation, issue policies, oversee risk management, oversee investment management, set rates, underwrite risk or process claims or any combination thereof. Any such third-party contract must be approved by the commissioner. The provisions of article three, chapter five-a of this code, relating to purchasing procedures, do not apply to any contracts or agreements executed by or on behalf of the association under this subsection.

(5) Suing, including taking legal action necessary to recover any assessments for, on behalf of, or against member insurers.

(6) Investigating claims brought against the association and adjusting, compromising, defending, settling, and paying covered claims, to the extent of the association's obligation, and denying all other claims.

(7) Classifying risks as may be applicable and equitable.

(8) Establishing actuarially sound rates, rate classifications and rating adjustments, subject to approval by the commissioner.

(9) Purchasing reinsurance in an amount as it may from time to time consider appropriate.

(10) Issuing and marketing policies of insurance providing coverage required by this article in its own name.
(11) Investing, reinvesting and administering all funds and moneys held by the association.

(12) Establishing accounts and funds, including a reserve fund, to effectuate the purposes of this article.

(13) Developing, effectuating and promulgating any loss prevention programs aimed at the best interests of the association and the insured public.

§33-20E-8. State board of risk and insurance management to exercise board of directors' powers temporarily; interim plan of operation.

(a) Prior to the commissioner's approval of the final plan of operation in accordance with section nine of this article, the administrative powers of the association will be exercised by the state board of risk and insurance management.

(b) The state board shall submit to the commissioner an interim plan of operation consistent with the provisions of this article, to become effective and operative upon approval in writing by the commissioner.

(c) If the state board fails to submit a suitable interim plan of operation within thirty days, the commissioner shall adopt an interim plan which shall continue in force until superceded by a final plan of operation, submitted by the board and approved by the commissioner in accordance with section nine of this article.

(d) The interim plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of professional liability insurance, and shall:

(i) Establish actuarially sound rates and premiums;
(2) Establish procedures for handling assets of the association;

(3) Establish procedures by which claims may be filed with the association and acceptable forms for filing claims;

(4) Establish procedures for records to be kept of all financial transactions of the association;

(5) Establish a procedure by which any member insurer or policyholder aggrieved by a final action or decision of the state board or the board of directors may appeal to the commissioner within thirty days after the action or decision; and

(6) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(e) The interim plan may also provide for:

(1) Assessments of members to defray losses and expenses;

(2) Creation and administration of a reserve fund;

(3) Commission arrangements;

(4) Reasonable and objective underwriting standards; and

(5) Purchase and cession of reinsurance.

(f) A health care provider is not eligible to obtain coverage under the interim plan if he or she refuses, on a regular basis, to accept patients solely because their health care coverage is provided pursuant to the West Virginia public employees insurance act, the West Virginia children's health program, West Virginia medicaid, or the West Virginia workers' compensation fund.
(g) All member insurers shall comply with the interim plan of operation.


(a) Once the commissioner has approved the selection of the initial board members, the board shall, within thirty days, submit to the commissioner a final plan of operation consistent with the provisions of this article.

(b) If the board fails to submit a suitable final plan of operation within the time provided in subsection (a) of this section, the commissioner shall adopt a final plan of operation as necessary or advisable to effectuate the provisions of this article.

(c) The board shall not assume administrative control of the association until the commissioner approves the final plan of operation.

(d) In addition to the matters specified in subsection (d) of section eight of this article to be included in the interim plan of operation, the final plan of operation shall:

(1) Establish procedures for the transfer of all assets and liabilities of the association from the state board to the board of directors created by section six of this article.

(2) Establish the terms of office of the board of directors.

(3) Establish regular places and times for meetings of the board of directors.

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board.
(5) Establish procedures for assessments of member insurers to defray losses and expenses;

(6) Establish reasonable and objective underwriting standards;

(7) Establish actuarially sound rates and premiums;

(8) Contain such additional provisions as are necessary or proper for the execution of the powers and duties of the association.

(e) All member insurers shall comply with the final plan of operation.

(f) Amendments to the plan of operation may be made by the commissioner or by the board of directors with the approval of the commissioner.

§33-20E-10. Duties and powers of commissioner.

(a) The commissioner shall, upon request of the board, provide the association with a statement of the net direct written premiums of each member insurer.

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to comply with the plan of operation or fails to pay an assessment when due.

(c) Any final order of the commissioner under this article shall be subject to judicial review as provided by section fourteen, article two of this chapter.

§33-20E-11. Eligibility for coverage.

(a) Only those health care providers who are unable to obtain medical professional liability insurance because it is not
available through the voluntary insurance market from insurers licensed to transact insurance in West Virginia at rates approved by the commissioner are eligible to obtain coverage through the association: Provided, That any health care provider who can obtain medical professional liability insurance only pursuant to a "consent to" or "guide A" rate agreement will remain eligible to obtain coverage through the association. Any health care provider who has medical professional liability insurance pursuant to article twelve of chapter twenty-nine of this code is not eligible to obtain insurance through the association.

(b) The commissioner shall designate, based upon market conditions, the categories of health care providers who are eligible to obtain coverage from the association.

§33-20E-12. Issuance of policy.

(a) If an eligible applicant meets the underwriting standards and other requirements and conditions of the association as set forth in the approved plan of operation and there is no unpaid, uncontested premium, charge or assessment due from the applicant for any prior insurance of the same kind, the association, upon receipt of the premium, charge or assessment or a portion thereof as prescribed by the plan of operation, shall cause to be issued a policy of medical professional liability insurance.

(b) The policy may not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the policyholder.

§33-20E-13. Rates; initial filing; basis for rates and premiums.

(a) The rates, rating plans, rating rules and rating classifications applicable to insurance written by the association are subject to the provisions of article twenty-b of this chapter.
Policy forms applicable to insurance written by the association must conform to the requirements of the provisions of section eight, article six of this chapter.

(b) Within such time as the commissioner shall direct, the association shall submit an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical professional liability insurance. Rates approved by the state board pursuant to section eight of this article shall remain in effect until the association's initial filing is approved.

(c) In the event the commissioner disapproves the initial filing, in whole or in part, the association shall amend the filing, in whole or in part, in accordance with the direction of the commissioner.

(d) Initial rates and premiums are to be set in consideration of the past and prospective loss and expense experience for insurers writing medical professional liability insurance within this state.

(e) After the initial year of operation, the board shall 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 upon which premiums shall be based. The resultant premium rates must be arrived at on an actuarially sound basis and must be calculated to be self-supporting.

(f) The rates and premiums charged for insurance policies issued pursuant to this article shall not be deemed excessive because they contain an amount reasonably calculated to recoup a deficit of the association pursuant to section sixteen of this article.
§33-20E-14. The Medical Professional Liability Insurance Fund; capitalization; transfer of assets and liabilities to board of directors.

(a) There is hereby established a special revenue fund, to be known as the "medical professional liability insurance fund," into which any initial capital, surplus or premiums or assessments charged and collected by the state board under the provisions of the interim plan shall be deposited.

(b) A portion of the association's initial capital and surplus may be provided by the Legislature, in an amount, upon terms and conditions, and from sources as may be determined by the Legislature in its sole discretion.

(c) Upon approval of the final plan of operation by the commissioner, the state board shall transfer the assets and liabilities of the association to the board of directors.

§33-20E-15. Deposit of funds; investments; premium tax liability; state not responsible for liabilities or expenses of association.

(a) The board shall deposit all sums transferred from the state board into an account of the association as specified in the final plan of operation.

(b) The board may invest sums from the association's account. Any interest earned on investments or any profit generated by collection of premiums or other means shall be returned to the association's account for the purpose of implementing this article.

(c) The association is liable for premium taxes to the same extent and in the same manner as a licensed insurer engaged in transacting insurance in this state.
(d) The state is not responsible for any costs, expenses, liabilities, judgments, or other obligations of the association.

§33-20E-16. Deficit; recoupment; assessments; reimbursement of members.

(a) A deficit sustained by the association in any one calendar year may be recouped, pursuant to the plan of operation then in effect, by one or more of the following procedures:

1. A contribution from a reserve fund, if any, until the same is exhausted;

2. An assessment upon the member insurers;

3. A prospective rate increase.

(b) In the event the board opts to assess the member insurers, each member shall be responsible for the proportion of the deficit its net direct written premiums for the preceding year bear to the aggregate net direct premiums written by all members in the preceding calendar year. Net direct written premiums subject to the provisions of article twenty-a of this chapter shall not be considered in determining a member insurer's proportional share of the deficit. A member insurer may not be assessed in any year an amount greater than two percent of its net direct written premiums for the preceding calendar year.

(c) The assessment of a member insurer may be ordered deferred, in whole or in part, upon application by the insurer if the commissioner determines that payment of the assessment may render the insurer insolvent or in danger of insolvency or otherwise seriously impair the financial stability of the member insurer.
(d) After the deficit which necessitated the assessment has been recouped, each member insurer shall be entitled to reimbursement of any assessment through a credit against the premium taxes imposed by sections fourteen and fourteen-a, article three of this chapter, in equal amounts per year for three successive years following the assessment. At the option of the member insurer, the premium tax credit may be taken over an additional number of years. The tax credit established under this subsection shall be applicable only to general revenue funds.

(e) A member insurer may not impose a policy surcharge on any policyholder of the member insurer for any assessment paid by the member insurer pursuant to subsection (b) of this section or otherwise refer to the assessment paid by the member insurer in any billing statement or notice provided to any policyholder of the member insurer. Nothing in this section shall prohibit a member insurer from treating any assessment payments as an expense of the member insurer for all purposes.

§33-20E-17. Commissioner to report to board termination of authority to transact insurance.

If the authority of a member to transact insurance in this state terminates for any reason, the commissioner shall notify the board.

§33-20E-18. Examination of association.

The association shall be subject to examination and regulation by the commissioner.

§33-20E-19. Annual statements.

The association shall file in the office of the commissioner, on or before the thirtieth day of March of each year, a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding calendar year.
The commissioner shall prescribe the matters and information to be contained in and the form of the annual statement. The commissioner may, at any time, require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.


There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association, the board, the commissioner or their agents or employees for any action taken by them in the exercise and performance of their powers and duties under this article or for any statements made in good faith by them in any reports or communications, concerning risks insured or to be insured by the association, or at any administrative hearings conducted in connection therewith.


The provisions of this article may only become operable upon the passage of a resolution by the Legislature. Any policies written under this article may have an effective date retroactive to the operative date.

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§33-20F-1. Short title.
§33-20F-2. Findings and purpose.
§33-20F-3. Definitions.
§33-20F-4. Authorization for creation of company; requirements and limitations.
§33-20F-5. Governance and organization.
§33-20F-6. Management and administration of a company.
§33-20F-7. Initial capital and surplus; special assessment.
§33-20F-8. Application for license; authority of commissioner.
§33-20F-9. Kinds of coverage authorized; transfer of policies from the state board of risk and insurance management; risk management practices authorized.

§33-20F-10. Controlling law.

§33-20F-11. Liberal construction.

§33-20F-12. Severability.

§33-20F-1. Short title.

This article shall be known and may be cited as the "Physicians' Mutual Insurance Company Act".

§33-20F-2. Findings and purpose.

(a) The Legislature finds that:

(1) There is a nationwide crisis in the field of medical liability insurance;

(2) Similar crises have occurred at least three times during the past three decades;

(3) Physicians in West Virginia find it increasingly difficult, if not impossible, to obtain medical liability insurance either because coverage is unavailable or unaffordable;

(4) The difficulty or impossibility in obtaining medical liability insurance may result in many qualified physicians leaving the state;

(5) Access to health care is of utmost importance to the citizens of West Virginia;

(6) A mechanism is needed to remedy this recurring medical liability crisis; and

(7) A physicians' mutual insurance company or a similar entity has proven to be a successful mechanism in other states
for helping physicians secure insurance and for stabilizing the insurance market.

(b) The purpose of this article is to create a mechanism for the formation of a physicians’ mutual insurance company that will provide:

(1) A means for physicians to obtain medical professional liability insurance that is available and affordable; and

(2) Compensation to persons who suffer injuries as a result of medical professional liability as defined in subsection (d), section two, article seven-b, chapter fifty-five of this code.

§33-20F-3. Definitions.

For purposes of this article, the term:

(a) “Board of medicine” means the West Virginia board of medicine as provided in section five, article three, chapter thirty of this code.

(b) “Board of osteopathy” means the West Virginia board of osteopathy as provided in section three, article fourteen, chapter thirty of this code.

(c) “Commissioner” means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of this code.

(d) “Company” means any physicians’ mutual insurance company created pursuant to the terms of this article.

(e) “Physician” means an individual who is licensed by the board of medicine or the board of osteopathy to practice medicine or podiatry in West Virginia.
§33-20F-4. Authorization for creation of company; requirements and limitations.

(a) Subject to the provisions of this article, a company is hereby authorized to be created as a domestic, private, nonstock, nonprofit corporation. As an incentive for its creation, any company that meets the requirements set forth in this article may be eligible for funds from the Legislature in accordance with the provisions of section seven of this article. A company must remain for the duration of its existence a domestic mutual insurance company owned by its policyholders and may not be converted into a stock corporation, a for-profit corporation or any other entity not owned by its policyholders.

(b) For the duration of its existence, a company is not and may not be considered a department, unit, agency, or instrumentality of the state for any purpose. All debts, claims, obligations, and liabilities of a company, whenever incurred, shall be the debts, claims, obligations, and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer, or employee of the state.

(c) The moneys of a company are not and may not be considered part of the general revenue fund of the state. The debts, claims, obligations, and liabilities of a company are not and may not be considered a debt of the state or a pledge of the credit of the state.

(d) A company is not subject to provisions of article nine-a, chapter six of this code or the provisions of article one, chapter twenty-nine-b of this code.

§33-20F-5. Governance and organization.

(a) A company is to be governed by a board of directors consisting of eleven directors, as follows:
(1) At least, but not more than, four directors who are physicians licensed by the board of medicine or the board of osteopathy and who represent the various physician organizations within the state;

(2) Three directors who have substantial experience as an officer or employee of a company in the insurance industry;

(3) At least two directors who are officers and employees of the company and are responsible for the daily management of the company; and

(4) Two directors with general knowledge and experience in business management.

(b) In addition to the eleven directors required by subsection (a) of this section, the bylaws of a company may provide for the addition of at least two directors who represent an entity or institution which lends or otherwise provides funds to the company.

(c) Relating to the directors provided for in subsection (a) of this section and to the extent possible, the directors are to reside in different geographical areas of the state. The number of such directors from any one congressional district in the state may not exceed the number of directors from any other congressional district in the state by more than two.

(d) The directors and officers of a company are to be chosen in accordance with the articles of incorporation and bylaws of the company. The initial directors shall serve for the following terms: (1) Three for four year terms; (2) three for three year terms; (3) three for two year terms; and (4) two for one year terms. Thereafter, the directors shall serve staggered terms of four years. If additional directors are added to the board as provided in subsection (b) of this section, the initial term for those directors is four years. No director chosen
pursuant to subsection (a) of this section may serve more than two consecutive terms.

(e) The incorporators are to prepare and file articles of incorporation and bylaws in accordance with the provisions of this article and the provisions of chapters thirty-one and thirty-three of this code.

§33-20F-6. Management and administration of a company.

(a) If the board of directors determines that the affairs of a company may be administered suitably and efficiently, the company may enter into a contract with a licensed insurer, licensed health service plan, insurance service organization, third party administrator, insurance brokerage firm or other firm or company with suitable qualifications and experience to administer some or all of the affairs of the company, subject to the continuing direction of the board of directors as required by the articles of incorporation and bylaws of the company, and the contract.

(b) The company shall file a true copy of the contract with the commissioner as provided in section twenty-one, article five of this chapter.

§33-20F-7. Initial capital and surplus; special assessment.

(a) A portion of the initial capital and surplus of a company may be provided by direction of the Legislature, in an amount, upon terms and conditions, and from sources as may be determined by the Legislature in its sole discretion.

(b) In the event that a portion of the initial capital and surplus of a company is provided by direction of the Legislature pursuant to subsection (a) of this section, a special one time assessment for the privilege of practicing in West Virginia may be assessed on every physician licensed by the board of
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10 medicine and every physician licensed by the board of osteopathy to practice medicine in this state. The executive director of
11 the medical licensing board shall establish the amount of the
12 assessment, in consultation with the board of directors of the
13 company or their designee. The amount of the assessment may
14 not exceed one thousand dollars. The assessment is to be
15 assessed and collected by the board of medicine and the board
16 of osteopathy, on forms as the board of medicine and the board
17 of osteopathy may prescribe.

19 (c) If the special assessment is collected pursuant to
20 subsection (b) of this section, the Legislature hereby dedicates
21 the entire proceeds of the special assessment to the company.
22 The board of medicine and the board of osteopathy shall
23 promptly pay over to the company all amounts collected
24 pursuant to this section.

§33-20F-8. Application for license; authority of commissioner.

1 (a) As soon as practical, a company desiring to do business
2 pursuant to the provisions of this article shall file its corporate
3 charter and bylaws with the commissioner and apply for a
4 license to transact insurance in this state. Notwithstanding any
5 other provision of this code, the commissioner must act on the
6 documents within fifteen days of the filing by a company.

7 (b) In recognition of the medical liability insurance crisis in
8 this state at the time of enactment of this article, and the critical
9 need to expedite the initial operation of a company, the Legislature hereby authorizes the commissioner to review the doc-
10 umentation submitted by a company and to determine the initial
11 capital and surplus requirements of a company, notwithstanding
12 the provisions of section five-b, article three of this chapter.
13 The commissioner has the sole discretion to determine the
14 capital and surplus funds of a company and to monitor the
15 economic viability of the company during its initial operation
and duration on not less than a monthly basis. A company shall furnish the commissioner with all information and cooperate in all respects as may be necessary for the commissioner to perform the duties set forth in this section and in other provisions of this chapter.

(c) Subject to the provisions of subsection (d) of this section, the commissioner may waive other requirements imposed on mutual insurance companies by the provisions of this chapter as the commissioner determines is necessary to enable a company to begin insuring physicians in this state at the earliest possible date.

(d) Within thirty-six months of the date of the issuance of its license to transact insurance, a company must comply with the capital and surplus requirements set forth in section five-b, article three of this chapter and with all other requirements imposed upon mutual insurance companies by the provisions of this chapter.

§33-20F-9. Kinds of coverage authorized; transfer of policies from the state board of risk and insurance management; risk management practices authorized.

(a) Upon approval by the commissioner for a license to transact insurance in this state, a company may issue nonassessable policies of malpractice insurance, as defined in subdivision (9), subsection (e), section ten, article one of this chapter, insuring a physician. Additionally, a company may issue other types of casualty or liability insurance as may be approved by the commissioner.

(b) A company must accept the transfer of medical malpractice insurance obligations and risks of existing or in force contracts of insurance on physicians from the state board of risk and insurance. Subject to approval by the commissioner, a company may impose reasonable terms and conditions upon
any transfer from the state board of risk and insurance manage-
ment, but the terms and conditions may not be designed or
construed to prohibit or unduly restrict such transfers.

(c) A company shall make policies of insurance available
to physicians in this state, regardless of practice type or
specialty. Policies issued by a company to each class of
physicians are to be essentially uniform in terms and conditions
of coverage.

(d) Notwithstanding the provisions of subsections (b) or (c)
of this section, a company may:

(1) Establish reasonable classifications of physicians,
insured activities, and exposures based on a good faith determi-
nation of relative exposures and hazards among classifications;

(2) Vary the limits, coverages, exclusions, conditions, and
loss-sharing provisions among classifications;

(3) Establish, for an individual physician within a classifi-
cation, reasonable variations in the terms of coverage, including
rates, deductibles and loss-sharing provisions, based on the
insured’s prior loss experience and current professional training
and capability; and

(4) 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.

(e) A company shall establish reasonable risk management
and continuing education requirements which policyholders
must meet in order to be and remain eligible for coverage.

§33-20F-10. Controlling law.
To the extent applicable, and when not in conflict with the provisions of this article, the provisions of chapters thirty-one and thirty-three of this code apply to any company created pursuant to the provisions of this article. If a provision of this article and another provision of this code are in conflict, the provision of this article controls.

§33-20F-11. Liberal construction.

This article is enacted to address a situation critical to the citizens of the State of West Virginia by providing a mechanism for the speedy and deliberate creation of a company to begin offering medical liability insurance to physicians in this state at the earliest possible date, and to accomplish this purpose, this article must be liberally construed.

§33-20F-12. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity may not affect other provisions or applications of this article and to this end, the provisions of this article are declared to be severable.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated; limitation on bad faith claims; filing of first party bad faith claims.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

§55-7B-6a. Access to medical records.

§55-7B-6b. Expedited resolution of cases against health care providers; time frames.

§55-7B-6c. Summary jury trial.

§55-7B-6d. Twelve-member jury trial.

§55-7B-10. Effective date; applicability of provisions.
§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated; limitation on bad faith claims; filing of first party bad faith claims.

(a) In any medical professional liability action against a health care provider, no specific dollar amount or figure may be included in the complaint, but the complaint may include a statement reciting that the minimum jurisdictional amount established for filing the action is satisfied. However, any party defendant may at any time request a written statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff who shall serve a responsive statement as to the damages sought within thirty days thereafter. If no response is served within the thirty days, the party defendant requesting the statement may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.

(b) Notwithstanding any other provision of law, absent privity of contract, no plaintiff who files a medical professional liability action against a health care provider may file an independent cause of action against any insurer of the health care provider alleging the insurer has violated the provisions of subdivision (9), section four, article eleven, chapter thirty-three of this code. Insofar as the provisions of section three, article eleven, chapter thirty-three of this code prohibit the conduct defined in subdivision (9), section four, article eleven, chapter thirty-three of this code, no plaintiff who files a medical professional liability action against a health care provider may file an independent cause of action against any insurer of the health care provider alleging the insurer has violated the provisions of said section three.

(c) No health care provider may file a cause of action against his or her insurer alleging the insurer has violated the
provisions of subdivision (9), section four, article eleven, chapter thirty-three of this code until the jury has rendered a verdict in the underlying medical professional liability action or the case has otherwise been dismissed, resolved or disposed of.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

(a) Notwithstanding any other provision of this code, no person may file a medical professional liability action against any health care provider without complying with the provisions of this section.

(b) At least thirty days prior to the filing of a medical professional liability action against a health care provider, the claimant shall serve by certified mail, return receipt requested, a notice of claim. The notice of claim shall include a statement of the theory or theories of liability upon which a cause of action may be based, together with a screening certificate of merit. The certificate of merit shall be executed under oath by a health care provider qualified as an expert under the West Virginia rules of evidence and shall state with particularity: (1) the expert’s familiarity with the applicable standard of care in issue; (2) the expert’s qualifications; (3) the expert’s opinion as to how the applicable standard of care was breached; and (4) the expert’s opinion as to how the breach of the applicable standard of care resulted in injury or death. A separate screening certificate of merit must be provided for each health care provider against whom a claim is asserted. The person signing the screening certificate shall have no financial interest in the underlying claim, but may participate as an expert witness in any judicial proceeding. Nothing in this subsection may be construed to limit the application of rule fifteen of the rules of civil procedure.
(c) Notwithstanding any provision of this code, if a claimant or if represented by counsel, the claimant's counsel, believes that no screening certificate of merit is necessary because the cause of action is based upon a well-established legal theory of liability which does not require expert testimony supporting a breach of the applicable standard of care, the claimant or if represented by counsel, the claimant's counsel, shall file a statement specifically setting forth the basis of the alleged liability of the health care provider in lieu of a screening certificate of merit.

(d) If a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within sixty days of the date the health care provider receives the notice of claim.

(e) Any health care provider who receives a notice of claim pursuant to the provisions of this section must respond, in writing, to the claimant within thirty days of receipt of the claim or within thirty days of receipt of the certificate of merit if the claimant is proceeding pursuant to the provisions of subsection (d) of this section.

(f) Upon receipt of the notice of claim or of the screening certificate, if the claimant is proceeding pursuant to the provisions of subsection (d) of this section, the health care provider is entitled to pre-litigation mediation before a qualified mediator upon written demand to the claimant.

(g) If the health care provider demands mediation pursuant to the provisions of subsection (f) of this section, the mediation shall be concluded within forty-five days of the date of the
The mediation shall otherwise be conducted pursuant to rule 25 of the trial court rules, unless portions of the rule are clearly not applicable to a mediation conducted prior to the filing of a complaint or unless the supreme court of appeals promulgates rules governing mediation prior to the filing of a complaint. If mediation is conducted, the claimant may depose the health care provider before mediation or take the testimony of the health care provider during the mediation.

(h) The failure of a health care provider to timely respond to a notice of claim, in the absence of good cause shown, constitutes a waiver of the right to request pre-litigation mediation. Except as otherwise provided in this subsection, any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled from the date of the mailing of a notice of claim to thirty days following receipt of a response to the notice of claim, thirty days from the date a response to the notice of claim would be due, or thirty days from the receipt by the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs. If a claimant has sent a notice of claim relating to any injury or death to more than one health care provider, any one of whom has demanded mediation, then the statute of limitations shall be tolled with respect to, and only with respect to, those health care providers to whom the claimant sent a notice of claim to thirty days from the receipt of the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded.

(i) Notwithstanding any other provision of this code, a notice of claim, a health care provider’s response to any notice claim, a certificate of merit and the results of any mediation conducted pursuant to the provisions of this section are confi-
92  dential and are not admissible as evidence in any court proceed-
93  ing unless the court, upon hearing, determines that failure to
disclose the contents would cause a miscarriage of justice.

§55-7B-6a. Access to medical records.

(a) Within thirty days of the filing of an answer by a
defendant in a medical professional liability action or, if there
are multiple defendants, within thirty days following the filing
of the last answer, the plaintiff shall provide each defendant and
each defendant shall provide the plaintiff with access, as if a
request had been made for production of documents pursuant to
rule 34 of the rules of civil procedure, to all medical records
pertaining to the alleged act or acts of medical professional
liability which: (1) Are reasonably related to the plaintiff’s
claim; and (2) are in the party’s control. The plaintiff shall also
provide releases for such other medical records known to the
plaintiff but not under his or her control but which relate to the
plaintiff’s claim. If the action is one alleging wrongful death,
the records shall be for the deceased except inasmuch as the
plaintiff alleges injury to himself or herself.

(b) Upon receipt and review of the records referred to in
subsection (a) of this section, any party may make a written
request to any other party for medical records of the plaintiff or
the deceased related to his or her medical care and which are
reasonably related to the plaintiff’s claim. Such request shall be
specific as to the type of record requested and shall be accom-
panied by a brief statement as to why its disclosure would be
relevant to preparation of a claim or of a defense. The party
receiving the request shall provide access to any such records
under his or her control or a release for medical records for such
records not under his or her control unless the party receiving
the request believes that the records requested are not reason-
ably related to the claim.
(c) If a party receives a request for existing records he or she believes are not reasonably related to the claim, he or she shall provide written notice to the requesting party of the existence of such records and schedule a hearing before the court to determine whether access should be provided.

(d) If a party has reasonable cause to believe that medical records reasonably related to the claim of medical negligence exist and access have not been provided or a release has not been provided therefor, he or she shall give written notice thereof to the party upon whom the request is made, and if said records are not received within fourteen days of the written notice, obtain a hearing on the matter before the court.

(e) In the event a hearing is required pursuant to the provisions of subsection (c) or (d) of this section, the court at the conclusion thereof shall make a finding as to the reasonableness of the parties' request for or refusal to provide records and may assess costs pursuant to the rules of civil procedure.

§55-7B-6b. Expedited resolution of cases against health care providers; time frames.

(a) In each professional liability action filed against a health care provider, the court shall convene a mandatory status conference within sixty days after the appearance of the defendant. It shall be the duty of the defendant to schedule the conference with the court upon proper notice to the plaintiff.

(b) During the status conference the parties shall inform the court as to the status of the action, the identification of contested facts and issues, the progress of discovery and the time necessary to complete discovery. The plaintiff shall advise the court whether the plaintiff intends to proceed without an expert, whether the expert who signed the screening certificate of merit will testify upon trial or whether additional experts will be offered by plaintiff. The court shall determine whether the
plaintiff may proceed without an expert or otherwise establish
dates for the disclosure of expert witnesses by both the plaintiff
and all defendants. The court shall also order the parties to
participate in mandatory mediation. The mediation shall be
conducted pursuant to the provisions of trial court rule 25.

(c) Absent an order expressly setting forth reasons why the
interests of justice would otherwise be served, the court shall
enter a scheduling order which sets a trial date within twenty-
four months from the date the defendant made an appearance,
or if there is more than one defendant, twenty-four months from
the date the last defendant makes an appearance in the proceed-
ing. The trial date shall be adhered to unless, for good cause
shown, the court enters an order continuing the trial date.

(d) The court may order a summary jury trial of the case if
all parties represent a case is ready for trial and jointly move the
court for a summary jury trial, as provided in section six-c of
this article.

(e) Counsel and parties are subject to sanctions for failures
and lack of preparation specified in rule 16(f) of the rules of
civil procedure respecting pretrial conferences or orders and are
subject to the payment of reasonable expenses, including
attorneys fees, for failure to participate in good faith in the
development and submission of a proposed discovery plan as
required by the rules of civil procedure.

(f) In the event that the court determines prior to trial that
either party is presenting or relying upon a frivolous or dilatory
claim or defense, for which there is no reasonable basis in fact
or at law, the court may direct in any final judgment the
payment to the prevailing party of reasonable litigation ex-
penses, including deposition and subpoena expenses, travel
expenses incurred by the party, and such other expenses
necessary to the maintenance of the action, excluding attorney’s fees and expenses.

§55-7B-6c. Summary jury trial.

(a) The court must determine the date of the summary jury trial, the length of presentations by counsel, and the length of deliberations by the jury, so that the proceeding can be completed in no more than one day.

(b) Unless the court orders otherwise, the parties or representatives of the parties must be present at the summary jury trial.

(c) The trial shall be conducted before a six-member jury selected from the regular jury panel. The court shall conduct a brief voir dire of the panel, and each party may exercise two challenges. No alternate jurors will be impaneled.

(d) All evidence shall be presented by the attorneys for the parties. The attorneys may summarize, quote from, and comment on pleadings, depositions, or other discovery requests and responses, exhibits and statements of potential witnesses. No potential testimony of a witness may be referred to unless the reference is based on: (i) The product of discovery procedures; (ii) a written sworn statement of the witness; or (iii) an affidavit of counsel stating that although an affidavit of the witness is not available and cannot be obtained by the exercise of reasonable diligence, the witness would be called at trial and counsel has been told the substance of the testimony of the witness. The substance of the witness’ testimony must also be included in the affidavit of counsel.

(e) Unless the court orders otherwise, presentations shall be limited to one hour for each party. In the case of multiple parties represented by separate counsel, the court shall make a reasonable adjustment of the time allowed.
(f) Opposing counsel may object during the course of a presentation if the presentation violates the provisions of subsection (d) of this section or goes beyond the limits of propriety in statements as to evidence or other comments.

(g) Following the presentations by counsel, the court shall give an abbreviated set of instructions to the jury on the applicable law. The jury will be encouraged to return a verdict that represents a unanimous verdict of the jurors. If after a reasonable time a unanimous verdict is not possible, the jury shall be directed to return a special verdict consisting of an anonymous statement of each juror’s finding on liability and damages. Following the verdict, the court may invite, but may not require, the jurors to informally discuss the case with the attorneys and the parties.

(h) Unless the court orders otherwise, the proceedings will not be recorded. However, a party may arrange for recording at its own expense. Statements in briefs or summaries submitted in connection with the summary jury trial and statements by counsel at trial are not admissible in any evidentiary proceeding. The summary jury trial verdict is not admissible in any evidentiary proceeding.

(i) Within thirty days following the jury verdict, each party must file a notice setting forth whether the party intends to accept the summary jury trial verdict or whether the party rejects the summary jury trial verdict and desires to proceed to trial. If all parties accept the summary jury trial verdict, the verdict will be deemed a final determination on the merits and judgment may be entered on the verdict by the court. If a verdict is rendered upon the subsequent trial of the case which is not more than twenty percent more favorable to a party who rejected the summary jury trial verdict and indicated a desire to proceed to trial, the rejecting party is liable for the costs incurred by the other party or parties subsequent to the sum-
62 mary jury trial, in a similar manner as is provided in rule 68(c)
63 of the rules of civil procedure when a claimant rejects an offer
64 of judgment, and is liable for attorneys' fees incurred after the
65 summary jury trial.

§55-7B-6d. Twelve-member jury trial.

1 Notwithstanding any other provision of this code, the jury
2 in any trial of an action for medical professional liability shall
3 consist of twelve members. The judge shall instruct the jury that
4 they should endeavor to reach a unanimous verdict but, if they
5 cannot reach a unanimous verdict, they may return a majority
6 verdict of nine of the twelve members of the jury. The judge
7 shall accept and record any verdict reached by nine members of
8 the jury. The verdict shall bear the signatures of all jurors who
9 have concurred in the verdict. The verdict shall be announced
10 in open court, either by the jury foreperson or by any of the
11 jurors concurring in the verdict. After a verdict has been
12 returned and before the jury has been discharged, the jury shall
13 be polled at the request of any party or upon the court's own
14 motion. The poll shall be conducted by the clerk of the court
15 asking each juror individually whether the verdict announced is
16 such juror's verdict. If, upon the poll, a majority of nine
17 members of the jury has not concurred in the verdict, the jury
18 may be directed to retire for further deliberations or the jury
19 may be discharged.

§55-7B-10. Effective date; applicability of provisions.

1 (a) The provisions of House Bill 149, enacted during the
2 first extraordinary session of the Legislature, 1986, shall be
3 effective at the same time that the provisions of Enrolled Senate
4 Bill 714, enacted during the regular session, 1986, become
5 effective, and the provisions of said House Bill 149 shall be
6 deemed to amend the provisions of Enrolled Senate Bill 714.
7 The provisions of this article shall not apply to injuries which
(b) The amendments to this article as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, two thousand one, apply to all causes of action alleging medical professional liability which are filed on or after the first day of March, two thousand two.


(a) If any provision of this article as enacted during the first extraordinary session of the Legislature, 1986, in House Bill 149, or as enacted during the regular session of the Legislature, 1986, in Senate Bill 714, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end, the provisions of this article are declared to be severable.

(b) If any provision of the amendments to section five of this article, any provision of new section six-d of this article or any provision of the amendments to section eleven, article six, chapter fifty-six of this code as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, two thousand one, is held invalid, or the application thereof to any person is held invalid, then, notwithstanding any other provision of law, every other provision of said House Bill 601 shall be deemed invalid and of no further force and effect.

(c) If any provision of the amendments to sections six or ten of this article or any provision of new sections six-a, six-b or six-c of this article as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, two thousand one, is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end, such provisions are deemed severable.
§56-6-11. Execution of order of inquiry and trial of case by court; six member jury in civil trials; twelve member jury in eminent domain, medical professional liability and criminal trials.

(a) The court, in an action at law, if neither party requires a jury, or if the defendant has failed to appear and the plaintiff does not require a jury, shall ascertain the amount the plaintiff is entitled to recover in the action, if any, and render judgment accordingly. In any case, in which a trial by jury would be otherwise proper, the parties or their counsel, by consent entered of record, may waive the right to have a jury, and thereupon the whole matter of law and fact shall be heard and determined, and judgment given by the court. Absent such waiver, in any civil trial a jury shall consist of six members and in any criminal trial a jury shall consist of twelve members.

(b) The provisions of this section do not apply to any proceeding had pursuant to article two, chapter fifty-four of this code, the provisions of which apply to all cases involving the taking of property for a public use.

(c) The provisions of this section providing for a six member jury trial do not apply to any proceeding had pursuant to article seven-b, chapter fifty-five of this code, the provisions of which apply to all cases involving a medical professional liability action.
§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered as such clerk the following fees, and such fees shall be paid in advance by the parties for whom such services are to be rendered:

(1) For instituting any civil action under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding, eighty-five dollars;

(2) Beginning on and after the first day of January, two thousand two, for instituting an action for medical professional liability, two hundred fifty dollars;

(3) Beginning on and after the first day of July, one thousand nine hundred ninety-nine, for instituting an action for divorce, separate maintenance or annulment, one hundred thirty-five dollars;

(4) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, eighty-five dollars; and

(5) For petitioning for an expedited modification of a child support order, thirty-five dollars.

(b) In addition to the foregoing fees, the following fees shall likewise be charged and collected:

(1) For preparing an abstract of judgment, five dollars;
(2) For any transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, fifty cents;

(3) For action on suggestion, ten dollars;

(4) For issuing an execution, ten dollars;

(5) For issuing or renewing a suggestee execution, including copies, postage, registered or certified mail fees and the fee provided by section four, article five-a, chapter thirty-eight of this code, three dollars;

(6) For vacation or modification of a suggestee execution, one dollar;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate's court, three dollars;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, five dollars;

(9) For postage and express and for sending or receiving decrees, orders or records, by mail or express, three times the amount of the postage or express charges;

(10) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, fifty cents; and

(11) For additional service (plaintiff or appellant) where any case remains on the docket longer than three years, for each additional year or part year, twenty dollars.

(c) The clerk shall tax the following fees for services in any criminal case against any defendant convicted in such court:

(1) In the case of any misdemeanor, fifty-five dollars; and
(2) In the case of any felony, sixty-five dollars.

d) No such clerk shall be required to handle or accept for disbursement any fees, cost or amounts, of any other officer or party not payable into the county treasury, except it be on order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.

(a) Except for those payments to be made from amounts equaling filing fees received for the institution of divorce actions as prescribed in subsection (b) of this section, and except for those payments to be made from amounts equaling filing fees received for the institution of actions for divorce, separate maintenance and annulment as prescribed in subsection (b) of this section, for each civil action instituted under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts described in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the action as follows:

(1) Into the regional jail and correctional facility authority fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of sixty dollars; and

(2) Into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(b) For each action for divorce, separate maintenance or annulment instituted in the circuit court, the clerk of the court
shall, at the end of each month, report to the supreme court of appeals, the number of actions filed by persons unable to pay, and pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the divorce action as follows:

(1) Into the regional jail and correctional facility authority fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of ten dollars;

(2) Into the special revenue account of the state treasury, established pursuant to section six hundred four, article two, chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section twenty-two, article two-a, chapter fifty-one of this code, an amount of seventy dollars; and

(4) Into the court security fund in the state treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the family court fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as determined by subdivision (3), subsection (a), section eleven of this article and for petitioning for an expedited modification of a child support order as provided in subdivision (4), subsection (a), section eleven of this article.
(d) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the family court fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to every fee received pursuant to the provisions of section five hundred eight, article twenty-seven, chapter forty-eight of this code.

(e) The clerk of each circuit court shall, at the end of each month, pay into the regional jail and correctional facility authority fund in the state treasury an amount equal to forty dollars of every fee for service received in any criminal case against any respondent convicted in such court and shall pay an amount equal to five dollars of every such fee into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code.

(f) Beginning the first day of January, two thousand two, the clerk of the circuit court shall, at the end of each month, pay into the medical liability fund established under article twelve-b, chapter twenty-nine of this code an amount equal to one hundred sixty-five dollars of every filing fee received for instituting a medical professional liability action.
AN ACT to amend and reenact sections two, three, six and eight, article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three and four, article twenty-c of said chapter, all relating to medical malpractice liability insurance; modifying factors considered for establishing insurance rates; creating a prohibition for the use of certain nonapproved rates; prohibiting insurers from requiring execution of certain rate endorsements and creating exceptions thereto; extending waiting period for certain filings; modifying methodology for determining when subsequent reporting violations occur; expanding entities required to report claims made against health care providers; extending the time frame to report certain claims; adding information relating to certain claims which must be reported to the insurance commissioner; modifying the method that insurance commissioner may assess and dispose of civil penalties; removing a reason an insurer may use to cancel an existing insurance policy; and extending date of notice required of an insurer for nonrenewal of an insurance policy or contract.

Be it enacted by the Legislature of West Virginia:

That sections two, three, six and eight, article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, three and four, article twenty-c of said chapter be amended and reenacted, all to read as follows:

Article
20B. Rates and Malpractice Insurance Policies.
20C. Cancellation and Nonrenewal of Malpractice Insurance Policies.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-2. Ratemaking.
§33-20B-3. Rate filings.
§33-20B-6. Rate review and reporting.
§33-20B.8. Insurers required to report results of civil actions against physicians or
podiatrists; penalties for failure to report; notice and hearing.

§33-20B-2. Ratemaking.

1 Any and all modifications of rates shall be made in accor-
2 dance with the following provisions:

3 (a) Due consideration shall be given to the past and
4 prospective loss experience within and outside this state.

5 (b) Due consideration shall be given to catastrophe hazards,
6 if any, to a reasonable margin for underwriting profit and
7 contingencies, to dividends, savings or unabsorbed premium
8 deposits allowed or returned by insurers to their policyholders,
9 members or subscribers and actual past expenses and demon-
10 strable prospective or projected expenses applicable to this
11 state.

12 (c) Rates shall not be excessive, inadequate or unfairly
13 discriminatory.

14 (d) Risks may not be grouped by territorial areas for the
15 establishment of rates and minimum premiums.

16 (e) An insurer may use guide "A" rates and other
17 nonapproved rates, also known as "consent to rates": Provided,
18 That the insurer shall, prior to entering into an agreement with
19 an individual provider or any health care entity, submit guide
20 "A" rates and other nonapproved rates to the commissioner for
21 review and approval: Provided, however, That the commis-
22 sioner shall propose legislative rules for promulgation in
23 accordance with the provisions of article three, chapter twenty-
24 nine-a of this code, which set forth the standards and procedure
25 for reviewing and approving guide "A" rates and other
26 nonapproved rates. No insurer may require execution of a
27 consent to rate endorsement for the purpose of offering to issue
or issuing a contract or coverage to an insured or continuing an existing contract or coverage at a rate in excess of that provided by a filing otherwise applicable.

(f) Except to the extent necessary to meet the provisions of subdivision (c) of this section, uniformity among insurers, in any matters within the scope of this section, is neither required nor prohibited.

(g) Rates made in accordance with this section may be used subject to the provisions of this article.

§33-20B-3. Rate filings.

(a) Every filing for malpractice insurance made pursuant to subsection (a), section four, article twenty of this chapter shall state the proposed effective date of the filing, the character and extent of the coverage contemplated and information in support of the filing. The information furnished in support of a filing shall include: (i) The experience or judgment of the insurer or rating organization making the filing; (ii) its interpretation of any statistical data the filing relies upon; (iii) the experience of other insurers or rating organizations; and (iv) any other relevant factors required by the commissioner. When a filing is not accompanied by the information required by this section upon which the insurer supports the filing, the commissioner shall require the insurer to furnish the information and, in that event, the waiting period prescribed by subsection (b) of this section shall commence as of the date the information is furnished.

A filing and any supporting information shall be open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his or her position concerning the filing. Any person or organization may file with the commis-
sioner a signed statement declaring and supporting his or her or its position concerning the filing. Upon receipt of any such statement prior to the effective date of the filing, the commis-
sioner shall mail or deliver a copy of the statement to the filer, which may file a reply. This section is not applicable to any memorandum or statement of any kind by any employee of the commissioner.

(b) Every filing shall be on file for a waiting period of ninety days before it becomes effective. The commissioner may extend the waiting period for an additional period not to exceed thirty days if he or she gives written notice within the waiting period to the insurer or rating organization which made the filing that he or she needs the additional time for the consider-
atation of the filing. Upon written application by the insurer or rating organization, the commissioner may authorize a filing which he or she has reviewed to become effective before the expiration of the waiting period or any extension of the waiting period. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof.

(c) No insurer shall make or issue a contract or policy of malpractice insurance except in accordance with the filings which are in effect for the insurer as provided in this article.

§33-20B-6. Rate review and reporting.

(a) The commissioner shall review annually the rules, rates and rating plans filed and in effect for each insurer providing five percent or more of the malpractice insurance coverage in this state in the preceding calendar year to determine whether the filings continue to meet the requirements of this article and whether the filings are unfair or inappropriate given the loss experience in this state in the preceding year.
The commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code establishing procedures for the fair and appropriate evaluation and determination of the past loss experience and prospective or projected loss experience of insurers within and outside this state, actual past expenses incurred in this state and demonstrable prospective or projected expenses applicable to this state.

(b) The commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code establishing procedures whereby each insurer providing five percent or more of the malpractice insurance coverage in this state annually shall submit to the commissioner the following information:

(1) The number of claims filed per category;

(2) The number of civil actions filed;

(3) The number of civil actions compromised or settled;

(4) The number of verdicts in civil actions;

(5) The number of civil actions appealed;

(6) The number of civil actions dismissed;

(7) The total dollar amount paid in claims compromised or settled;

(8) The total dollar amount paid pursuant to verdicts in civil actions;

(9) The number of claims closed without payment and the amount held in reserve for all such claims;

(10) The total dollar amount expended for loss adjustment expenses, commissions and brokerage expenses;
(11) The total dollar amount expended in defense and litigation of claims;

(12) The total dollar amount held in reserve for anticipated claims;

(13) Net profit or loss;

(14) Investment and other income on net realized capital gains and loss reserves and unearned premiums; and

(15) The number of malpractice insurance policies canceled for reasons other than nonpayment of premiums.

The commissioner shall establish, in the rules, methods of allocating investment and other income among capital gains, loss reserves, unearned premiums and other assets if an insurer does not separately account for and allocate that income.

Any insurer who fails to submit any information to the commissioner, as required by this subsection, in accordance with the rules promulgated under this subsection, shall be fined ten thousand dollars for each of the first five failures and shall be fined one hundred thousand dollars for the sixth and each subsequent failure.

(c) The commissioner shall report annually, during the month of November, to the joint standing committee on the judiciary the following information pertaining to each insurer providing five percent or more of the malpractice insurance coverage in this state:

(1) The loss experience within the state during the preceding calendar year;

(2) The rules, rates and rating plans in effect on the date of the report;
(3) The investment portfolio, including reserves, and the annual rate of return on the investment portfolio; and

(4) The information submitted to the commissioner pursuant to the rules promulgated by authority of subsection (b) of this section.

§33-20B-8. Insurers required to report results of civil actions against physicians or podiatrists; penalties for failure to report; notice and hearing.

(a) Every insurer issuing, or issuing for delivery in this state, a professional liability policy or providing professional liability insurance to health care providers, including, but not limited to, physicians, osteopathic physicians or surgeons, podiatrists or chiropractors, hospitals, medical clinics, professional limited liability companies, medical corporations or partnerships in this state shall submit to the commissioner, within sixty days from the date of entry of any judgment or dismissal without payment, the date a release is executed in connection with a settlement or the date a file is closed on any claim in which a law suit has not been filed involving the insured, the following information:

(1) The date of any judgment, dismissal or settlement;

(2) Whether any appeal has been taken on the judgment and, if so, by which party;

(3) The amount of any settlement or judgment against the insured;

(4) Whether the claim was the subject of mediation;

(5) Whether any settlement of a claim was made in a lump sum payment, a structured settlement or a combination of the two; and

(6) Any other information required by the commissioner.
For purposes of this section, "claim" means a third-party request for indemnification.

(b) If there is any additional resolution, including appellate decision or other subsequent action, the insurer shall file a supplemental report to the commissioner.

(c) The West Virginia insurance guaranty association created pursuant to article twenty-six of this chapter and the state board of risk and insurance management created pursuant to article twelve, chapter twenty-nine of this code are subject to the reporting requirements of subsection (a) of this section.

(d) Any insurer or entity that fails to report any information required to be reported under this section is subject to a civil money penalty to be imposed by the insurance commissioner. Upon a determination of the commissioner that there is probable cause to believe that any insurer or entity has failed or refused to make a report required by this section, the commissioner shall provide written notice to the alleged violator stating the nature of the alleged violation. Upon written request of the alleged violator within thirty days of the date of the commissioner's written notice, the commissioner shall notify the alleged violator of the time and place of a hearing at which the alleged violator may appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(e) If the commissioner determines that a violation of this section has occurred, the commissioner shall assess a civil penalty of not less than one thousand dollars nor more than ten thousand dollars per violation. Anyone so assessed shall be notified of the assessment in writing and the notice shall specify the reasons for the assessment. If the alleged violator requests a hearing, as provided in subsection (d) of this section, the commissioner may not make his or her determination of
violation and assessment until the conclusion of the hearing. The amount of penalty collected shall be deposited in the general revenue fund.

(f) If any violator fails to pay the amount of the penalty assessment to the commissioner within thirty days after issuance of notice of the penalty assessment, the commissioner may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. In any civil action, the court’s review of the commissioner’s action shall be conducted in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(g) No person or entity may be held liable in any civil action with respect to any report made pursuant to this section if the report was made without knowledge of any falsity of the information contained in the report.

ARTICLE 20C. CANCELLATION AND NONRENEWAL OF MALPRACTICE INSURANCE POLICIES.

§33-20C-2. Cancellation prohibited except for specified reasons; notice.
§33-20C-3. Insurer to specify reasons for cancellation.
§33-20C-4. Notice period for cancellation; ninety-day notice required for nonrenewal.

§33-20C-2. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing malpractice insurance in this state may cancel the policy, except for one or more of the following reasons:

(a) The named insured fails to discharge any of his or her obligations to pay premiums for the policy or any installment of the policy within a reasonable time of the due date;

(b) The policy was obtained through material misrepresentation;
MEDICAL MALPRACTICE

(c) The insured violates any of the material terms and conditions of the policy; or

d) Reinsurance is unavailable. The insurer shall supply sufficient proof of the unavailability to the commissioner.

e) Any purported cancellation of a policy providing malpractice insurance attempted in contravention of this section is void.

§33-20C-3. Insurer to specify reasons for cancellation.

In every instance in which a policy or contract of malpractice insurance is canceled by the insurer, the insurer or its duly authorized agent shall cite within the written notice of the action the allowable reason in section two of this article for which the action was taken and shall state with specificity the circumstances giving rise to the allowable reason cited. The notice of the action shall further state that the insured has a right to request a hearing, pursuant to section five of this article, within thirty days.

§33-20C-4. Notice period for cancellation; ninety-day notice required for nonrenewal.

(a) No insurer shall fail to renew a policy or contract providing malpractice insurance unless written notice of the nonrenewal is forwarded to the insured by certified mail, return receipt requested, not less than ninety days prior to the expiration date of the policy.

(b) No insurer shall cancel a policy or contract providing malpractice insurance during the term of the policy unless written notice of the cancellation is forwarded to the insured by certified mail, return receipt requested, not more than thirty days after the reason for the cancellation, as provided in section two of this article, arose or occurred or the insurer learned that
AN ACT to amend and reenact section one, article one-f, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the leave of absence term for public officials and employees for drills, parades, active duty and other military obligations.

Be it enacted by the Legislature of West Virginia:

That section one, article one-f, 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 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-1. Leave of absence for public officials and employees for drills, parades, active duty, etc.

(a) All officers and employees of the state, or subdivisions or municipalities thereof, who shall be members of the national guard or armed forces reserves, shall be entitled to military leave of absence from their respective offices or employments without loss of pay, status or efficiency rating, on the days during which they are ordered, by properly designated authority, to be engaged in drills, parades or other duty, during business hours, field training or active service of the state, for
a maximum period of thirty working days in any one calendar year.

(b) Effective the eleventh day of September, two thousand one, all officers and employees of the state, or subdivisions or municipalities thereof, who are ordered or called to active duty by the properly designated federal authority shall be entitled to military leave of absence from their respective offices or employments without loss of pay, status or efficiency rating for a maximum period of thirty working days for a single call to active duty: Provided, That an officer or employee of the state, or subdivisions or municipalities called to active duty who has not used all or some portion of the thirty working days of military leave of absence granted by subsection (a) shall be entitled to add the number of unused days from that calendar year to the thirty working days granted by this subsection, up to a maximum of sixty days for a single call to active duty: Provided, however, That none of the unused days of military leave of absence granted by subsection (a) may be carried over and used in the next calendar year.

(c) The term "without loss of pay" means that the officer or employee shall continue to receive his or her normal salary or compensation, notwithstanding the fact that such officer or employee may have received other compensation from federal or state sources during the same period.

CHAPTER 22

(H. B. 605 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 13, 2001; in effect from passage. Approved by the Governor.]
AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-e, relating to exempting from West Virginia personal income tax active duty military pay received for period of time a member of national guard or armed forces reserves is called to active duty pursuant to Executive Order of President of the United States for duty in "operation enduring freedom" or domestic security duty; and providing for such exemption to be retroactive.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12e. Additional modification reducing federal adjusted gross income.

1 For taxable years beginning after the thirty-first day of December, two thousand, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, active duty military pay received for the period of time an individual is on active duty as a member of the national guard or armed forces reserves called to active duty pursuant to an Executive Order of the President of the United States for duty in "operation enduring freedom" or for domestic security duty is an authorized modification reducing federal adjusted gross income, but only to the extent the active duty military pay is included in federal adjusted gross income for the taxable year in which it is received.
AN ACT to amend and reenact section seventeen, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-four, all relating to acts which threaten public safety; prohibiting threats of terrorist acts; prohibiting conveying false information concerning a terrorist act; prohibiting using hoax substances or devices to commit a terrorist act; providing penalties; requiring restitution and reimbursement; and providing definitions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-17. False reports concerning bombs or other explosive devices; penalties.

§61-6-24. Threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited; penalties.

§61-6-17. False reports concerning bombs or other explosive devices; penalties.
(a) Any person who imparts or conveys or causes to be imparted or conveyed any false information, knowing or having reasonable cause to believe the information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place or concerning an attempt or alleged attempt being made or to be made to so place or explode any bomb or other explosive device is guilty of a felony and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than two thousand dollars or confined in a state correctional facility for not less than one year nor more than three years, or both.

(b) If any person violates any provision of this section and the violation directly causes economic harm as defined in subsection (d) of this section, in addition to any other penalty, the circuit court may order the offender to pay the victim or victims restitution, in accordance with the provisions of article eleven-a of this chapter, for economic loss caused by the violation in an amount not to exceed the economic harm suffered. Nothing in this section may be construed to limit the circuit court's authority to order restitution pursuant to other provisions of this code.

(c) Notwithstanding any provision of this section to the contrary, any person violating the provisions of subsection (a) of this section whose violation of the subsection results in another suffering serious bodily injury is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one year nor more than five years or fined not more than ten thousand dollars, or both. Each injury resulting from a violation of subsection (a) of this section constitutes a separate offense.
(d) As used in this section, "economic harm" means all direct, incidental and consequential pecuniary harm suffered by a victim as a result of criminal conduct. Economic harm includes, but is not limited to, the following:

(1) All wages, salaries or other compensation lost as a result of the criminal conduct;

(2) The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

(3) The cost of all wages, salaries or other compensation paid to employees for time those employees spent in reacting to the results of the criminal conduct; or

(4) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct.

§61-6-24. Threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited; penalties.

(a) As used in this section:

(1) "Economic harm" means all direct, incidental and consequential pecuniary harm suffered by a victim as a result of criminal conduct. Economic harm includes, but is not limited to, the following:

(A) All wages, salaries or other compensation lost as a result of the criminal conduct;

(B) The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;
(C) The cost of all wages, salaries or other compensation paid to employees for time those employees spent in reacting to the results of the criminal conduct; or

(D) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct.

(2) "Hoax substance or device" means any substance or device that is shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed, priced or delivered so as to cause a reasonable person to believe that the substance or device is of a nature which is capable of causing serious bodily injury or damage to property or the environment.

(3) "Terrorist act" means an act that is:

(A) Likely to result in serious bodily injury or damage to property or the environment; and

(B) Intended to:

(i) Intimidate or coerce the civilian population;

(ii) Influence the policy of a branch or level of government by intimidation or coercion;

(iii) Affect the conduct of a branch or level of government by intimidation or coercion; or

(iv) Retali ate against a branch or level of government for a policy or conduct of the government.

(b) Any person who knowingly and willfully threatens to commit a terrorist act, without the intent to commit the act, is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than twenty-five thousand dollars or confined in a state correctional facility for not less than one year nor more than three years, or both.
(c) Any person who knowingly and willfully conveys false information knowing the information to be false concerning an attempt or alleged attempt being made or to be made of a terrorist act is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than twenty-five thousand dollars or confined in a state correctional facility for not less than one year nor more than three years, or both.

(d) Any person who uses a hoax substance or device with the specific intent to commit a terrorist act is guilty of a felony and, upon conviction thereof, shall be fined not less than ten thousand dollars nor more than fifty thousand dollars or confined in a state correctional facility for not less than one year nor more than five years, or both.

(e) The court shall order any person convicted of an offense under this section to pay the victim restitution in an amount not to exceed the total amount of any economic harm suffered.

(f) The court shall order any person convicted of an offense under this section to reimburse the state or any subdivision of the state for any expenses incurred by the state or the subdivision incident to its response to a violation of this section.

(g) The conviction of any person under the provisions of this section does not preclude or otherwise limit any civil proceedings arising from the same act.
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Regular Session, 2002

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Regular Session, 2002

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**First Extraordinary Session, 2002**

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**First Extraordinary Session, 2002**

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**Fifth Extraordinary Session, 2001**

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**Fifth Extraordinary Session, 2001**

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Sixth Extraordinary Session, 2001

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Sixth Extraordinary Session, 2001

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