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*Regular Session, 2003*

*Volume II*

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### ACTS

#### Third Extraordinary Session, 2002

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AN ACT to amend and reenact section eight, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the confidentiality of adult protective service records; changing the current requirement that the adult protective service agency destroy the records in two years to thirty years.

Be it enacted by the Legislature of West Virginia:

That section eight, article six, 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 6. SOCIAL SERVICES FOR ADULTS.

§9-6-8. Confidentiality of records.

1 (a) Except as otherwise provided in this section, all records of the department, state and regional long-term care ombudsmen, nursing home or facility administrators, the office of health facility licensure and certification and all protective services agencies concerning an adult or facility resident under this article shall be confidential and shall not be released, except in accordance with the provisions of section eleven of this article.
(b) Unless the adult concerned is receiving adult protective services or unless there are pending proceedings with regard to the adult, the records maintained by the adult protective services agency shall be destroyed thirty years following their preparation. A circuit court or the supreme court of appeals may subpoena such records, but shall, before permitting their use in connection with any court proceeding, review the same for relevancy and materiality to the issues in the proceeding, and may issue such order to limit the examination and use of such records or any part thereof, having due regard for the purposes of this article and the requirements of the litigation as shall be just.

CHAPTER 119

(Com. Sub. for H. B. 2675 — By Delegates Beane, Amores, Campbell, Craig, Mahan, Michael and Webster)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections seven-d and seven-e; to amend article sixteen-b of said chapter by adding thereto two new sections, designated sections six-a and six-b; to amend article two, chapter nine of said code by adding thereto two new sections, designated sections twelve and twelve-a; to amend article fifteen, chapter thirty-three of said code by adding thereto a new section, designated section four-h; to amend article sixteen of said chapter by adding thereto a new section, designated section three-r; to amend article twenty-four of said chapter by adding thereto a new section, designated section four-a; to
amend and reenact section six, article twenty-five of said chapter; to amend article twenty-five-a of said chapter by adding thereto a new section, designated section twenty-four-a; and to further amend said chapter by adding thereto a new article, designated article twenty-five-f, all relating to mandating coverage for certain clinical trials under public employees insurance, children's health program, medicaid program, accident and sickness insurance, groups accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, healthcare corporations and health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections seven-d and seven-e; that article sixteen-b of said chapter be amended by adding thereto two new sections, designated sections six-a and six-b; that article two, chapter nine of said code be amended by adding thereto two new sections, designated sections twelve and twelve-a; that article fifteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section four-h; that article sixteen of said chapter be amended by adding thereto a new section, designated section three-r; that article twenty-four of said chapter be amended by adding thereto a new section, designated section four-a; that section six, article twenty-five of said chapter be amended and reenacted; that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section twenty-four-a; and that said chapter be further amended by adding thereto a new article, designated article twenty-five-f, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.


33. Insurance.
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.

Article
16B. West Virginia Children's Health Program.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7d. Coverage for patient cost of clinical trials.
§5-16-7e. Definitions.

§5-16-7d. Coverage for patient cost of clinical trials.

1 (a) The provisions of this section and section seven-e of this
2 article apply to the health plans regulated by this article.
3
4 (b) This section does not apply to a policy, plan or contract
5 paid for under Title XVIII of the Social Security Act.
6
7 (c) A policy, plan or contract subject to this section shall
8 provide coverage for patient cost to a member in a clinical trial,
9 as a result of:
10
11 (1) Treatment provided for a life-threatening condition; or
12
13 (2) Prevention of, early detection of or treatment studies on
14 cancer.
15
16 (d) The coverage under subsection (c) of this section is
17 required if:
18
19 (1)(A) The treatment is being provided or the studies are
20 being conducted in a Phase II, Phase III or Phase IV clinical
21 trial for cancer and has therapeutic intent; or
(B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for any other life-threatening condition and has therapeutic intent;

(2) The treatment is being provided in a clinical trial approved by:

(A) One of the national institutes of health;

(B) An NIH cooperative group or an NIH center;

(C) The FDA in the form of an investigational new drug application or investigational device exemption;

(D) The federal department of veterans affairs; or

(E) An institutional review board of an institution in the state which has a multiple project assurance contract approved by the office of protection from research risks of the national institutes of health;

(3) The facility and personnel providing the treatment are capable of doing so by virtue of their experience, training and volume of patients treated to maintain expertise;

(4) There is no clearly superior, noninvestigational treatment alternative;

(5) The available clinical or preclinical data provide a reasonable expectation that the treatment will be more effective than the noninvestigational treatment alternative;

(6) The treatment is provided in this state: Provided, That, if the treatment is provided outside of this state, the treatment must be approved by the payor designated in subsection (a) of this section;
(7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles and is otherwise subject to all restrictions and obligations of the health plan; and

(8) Reimbursement for treatment by an out of network or noncontracting provider shall be reimbursed at a rate which is no greater than that provided by an in network or contracting provider. Coverage shall not be required if the out of network or noncontracting provider will not accept this level of reimbursement.

(e) Payment for patient costs for a clinical trial is not required by the provisions of this section, if:

(1) The purpose of the clinical trial is designed to extend the patent of any existing drug, to gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage relating to additional clinical indications for an existing drug; or

(2) The purpose of the clinical trial is designed to keep a generic version of a drug from becoming available on the market; or

(3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or repackaged version of an existing drug.

(f) Any provider billing a third party payor for services or products provided to a patient in a clinical trial shall provide written notice to the payor that specifically identifies the services as part of a clinical trial.

(g) Notwithstanding any provision in this section to the contrary, coverage is not required for Phase I of any clinical trial.
§5-16-7e. Definitions.

For purposes of section seven-d of this article:

(a) A "clinical trial" is a study that determines whether new drugs, treatments or medical procedures are safe and effective on humans. To determine the efficacy of experimental drugs, treatments or procedures, a study is conducted in four phases including the following:

Phase II: The experimental drug or treatment is given to, or a procedure is performed on, a larger group of people to further measure its effectiveness and safety.

Phase III: Further research is conducted to confirm the effectiveness of the drug, treatment or procedure, to monitor the side effects, to compare commonly used treatments and to collect information on safe use.

Phase IV: After the drug, treatment or medical procedure is marketed, investigators continue testing to determine the effects on various populations and to determine whether there are side effects associated with long-term use.

(b) "Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group.

(c) "Cooperative group" includes:

(1) The national cancer institute clinical cooperative group;

(2) The national cancer institute community clinical oncology program;

(3) The AIDS clinical trial group; and
The community programs for clinical research in AIDS.

(d) "FDA" means the federal food and drug administration.

(e) "Life-threatening condition" means that the member has a terminal condition or illness that according to current diagnosis has a high probability of death within two years, even with treatment with an existing generally accepted treatment protocol.

(f) "Member" means a policyholder, subscriber, insured, certificate holder or a covered dependent of a policyholder, subscriber, insured or certificate holder.

(g) "Multiple project assurance contract" means a contract between an institution and the federal department of health and human services that defines the relationship of the institution to the federal department of health and human services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

(h) "NIH" means the national institutes of health.

(i) "Patient cost" means the routine costs of a medically necessary health care service that is incurred by a member as a result of the treatment being provided pursuant to the protocols of the clinical trial. Routine costs of a clinical trial include all items or services that are otherwise generally available to beneficiaries of the insurance policies. "Patient cost" does not include:

(1) The cost of the investigational drug or device;

(2) The cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided to the member for purposes of the clinical trial;
(3) Services customarily provided by the research sponsor free of charge for any participant in the trial;

(4) Costs associated with managing the research associated with the clinical trial including, but not limited to, services furnished to satisfy data collection and analysis needs that are not used in the direct clinical management of the participant; or

(5) Costs that would not be covered under the participant’s policy, plan, or contract for noninvestigational treatments;

(6) Adverse events during treatment are divided into those that reflect the natural history of the disease, or its progression, and those that are unique in the experimental treatment. Costs for the former are the responsibility of the payor as provided in section two of this article, and costs for the later are the responsibility of the sponsor. The sponsor shall hold harmless any payor for any losses and injuries sustained by any member as a result of his or her participation in the clinical trial.

ARTICLE 16B. WEST VIRGINIA CHILDREN’S HEALTH INSURANCE PROGRAM.

§5-16B-6a. Coverage for patient cost of clinical trials.

§5-16B-6b. Definitions.

§5-16B-6a. Coverage for patient cost of clinical trials.

1 (a) The provisions of this section and section six-b of this article apply to the health plans regulated by this article.

2 (b) This section does not apply to a policy, plan or contract paid for under Title XVIII of the Social Security Act.

3 (c) A policy, plan or contract subject to this section shall provide coverage for patient cost to a member in a clinical trial, as a result of:

4 (1) Treatment provided for a life-threatening condition; or
(2) Prevention of, early detection of or treatment studies on cancer.

(d) The coverage under subsection (c) of this section is required if:

(1)(A) The treatment is being provided or the studies are being conducted in a Phase II, Phase III or Phase IV clinical trial for cancer and has therapeutic intent; or

(B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for any other life-threatening condition and has therapeutic intent;

(2) The treatment is being provided in a clinical trial approved by:

(A) One of the national institutes of health;

(B) An NIH cooperative group or an NIH center;

(C) The FDA in the form of an investigational new drug application or investigational device exemption;

(D) The federal department of veterans affairs; or

(E) An institutional review board of an institution in the state which has a multiple project assurance contract approved by the office of protection from research risks of the national institutes of health;

(3) The facility and personnel providing the treatment are capable of doing so by virtue of their experience, training and volume of patients treated to maintain expertise;

(4) There is no clearly superior, noninvestigational treatment alternative;
(5) The available clinical or preclinical data provide a reasonable expectation that the treatment will be more effective than the noninvestigational treatment alternative;

(6) The treatment is provided in this state: Provided, That, if the treatment is provided outside of this state, the treatment must be approved by the payor designated in subsection (a) of this section;

(7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles and is otherwise subject to all restrictions and obligations of the health plan; and

(8) Reimbursement for treatment by an out of network or noncontracting provider shall be reimbursed at a rate which is no greater than that provided by an in network or contracting provider. Coverage shall not be required if the out of network or noncontracting provider will not accept this level of reimbursement.

(e) Payment for patient costs for a clinical trial is not required by the provisions of this section, if:

(1) The purpose of the clinical trial is designed to extend the patent of any existing drug, to gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage relating to additional clinical indications for an existing drug; or

(2) The purpose of the clinical trial is designed to keep a generic version of a drug from becoming available on the market; or

(3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or repackaged version of an existing drug.
Any provider billing a third party payor for services or products provided to a patient in a clinical trial shall provide written notice to the payor that specifically identifies the services as part of a clinical trial.

Notwithstanding any provision in this section to the contrary, coverage is not required for Phase I of any clinical trial.

§5-16B-6b. Definitions.

For purposes of section six-a of this article:

(a) A “clinical trial” is a study that determines whether new drugs, treatments or medical procedures are safe and effective on humans. To determine the efficacy of experimental drugs, treatments or procedures, a study is conducted in four phases including the following:

Phase II: The experimental drug or treatment is given to, or a procedure is performed on, a larger group of people to further measure its effectiveness and safety.

Phase III: Further research is conducted to confirm the effectiveness of the drug, treatment or procedure, to monitor the side effects, to compare commonly used treatments and to collect information on safe use.

Phase IV: After the drug, treatment or medical procedure is marketed, investigators continue testing to determine the effects on various populations and to determine whether there are side effects associated with long-term use.

(b) “Cooperative group” means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group.
(c) "Cooperative group" includes:

(1) The national cancer institute clinical cooperative group;

(2) The national cancer institute community clinical oncology program;

(3) The AIDS clinical trial group; and

(4) The community programs for clinical research in AIDS.

(d) "FDA" means the federal food and drug administration.

(e) "Life-threatening condition" means that the member has a terminal condition or illness that according to current diagnosis has a high probability of death within two years, even with treatment with an existing generally accepted treatment protocol.

(f) "Member" means a policyholder, subscriber, insured, certificate holder or a covered dependent of a policyholder, subscriber, insured or certificate holder.

(g) "Multiple project assurance contract" means a contract between an institution and the federal department of health and human services that defines the relationship of the institution to the federal department of health and human services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

(h) "NIH" means the national institutes of health.

(i) "Patient cost" means the routine costs of a medically necessary health care service that is incurred by a member as a result of the treatment being provided pursuant to the protocols of the clinical trial. Routine costs of a clinical trial include all items or services that are otherwise generally available to
beneficiaries of the insurance policies. "Patient cost" does not include:

(1) The cost of the investigational drug or device;

(2) The cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided to the member for purposes of the clinical trial;

(3) Services customarily provided by the research sponsor free of charge for any participant in the trial;

(4) Costs associated with managing the research associated with the clinical trial including, but not limited to, services furnished to satisfy data collection and analysis needs that are not used in the direct clinical management of the participant; or

(5) Costs that would not be covered under the participant’s policy, plan, or contract for noninvestigational treatments;

(6) Adverse events during treatment are divided into those that reflect the natural history of the disease, or its progression, and those that are unique in the experimental treatment. Costs for the former are the responsibility of the payor as provided in section two of this article, and costs for the later are the responsibility of the sponsor. The sponsor shall hold harmless any payor for any losses and injuries sustained by any member as a result of his or her participation in the clinical trial.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-12a. Definitions.

(a) The provisions of this section and section twelve-a of this article apply to the health plans regulated by this article.

(b) This section does not apply to a policy, plan or contract paid for under Title XVIII of the Social Security Act.

(c) A policy, plan or contract subject to this section shall provide coverage for patient cost to a member in a clinical trial, as a result of:

(1) Treatment provided for a life-threatening condition; or

(2) Prevention of, early detection of or treatment studies on cancer.

(d) The coverage under subsection (c) of this section is required if:

(1)(A) The treatment is being provided or the studies are being conducted in a Phase II, Phase III or Phase IV clinical trial for cancer and has therapeutic intent; or

(B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for any other life-threatening condition and has therapeutic intent;

(2) The treatment is being provided in a clinical trial approved by:

(A) One of the national institutes of health;

(B) An NIH cooperative group or an NIH center;

(C) The FDA in the form of an investigational new drug application or investigational device exemption;
(D) The federal department of veterans affairs; or

(E) An institutional review board of an institution in the state which has a multiple project assurance contract approved by the office of protection from research risks of the national institutes of health;

(3) The facility and personnel providing the treatment are capable of doing so by virtue of their experience, training and volume of patients treated to maintain expertise;

(4) There is no clearly superior, noninvestigational treatment alternative;

(5) The available clinical or preclinical data provide a reasonable expectation that the treatment will be more effective than the noninvestigational treatment alternative;

(6) The treatment is provided in this state: Provided, That, if the treatment is provided outside of this state, the treatment must be approved by the payor designated in subsection (a) of this section;

(7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles and is otherwise subject to all restrictions and obligations of the health plan; and

(8) Reimbursement for treatment by an out of network or noncontracting provider shall be reimbursed at a rate which is no greater than that provided by an in network or contracting provider. Coverage shall not be required if the out of network or noncontracting provider will not accept this level of reimbursement.

(e) Payment for patient costs for a clinical trial is not required by the provisions of this section, if:
The purpose of the clinical trial is designed to extend the patent of any existing drug, to gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage relating to additional clinical indications for an existing drug; or

(2) The purpose of the clinical trial is designed to keep a generic version of a drug from becoming available on the market; or

(3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or repackaged version of an existing drug.

(f) Any provider billing a third party payor for services or products provided to a patient in a clinical trial shall provide written notice to the payor that specifically identifies the services as part of a clinical trial.

(g) Notwithstanding any provision in this section to the contrary, coverage is not required for Phase I of any clinical trial.

§9-2-12a. Definitions.

For purposes of section twelve of this article:

(a) A "clinical trial" is a study that determines whether new drugs, treatments or medical procedures are safe and effective on humans. To determine the efficacy of experimental drugs, treatments or procedures, a study is conducted in four phases including the following:

Phase II: The experimental drug or treatment is given to, or a procedure is performed on, a larger group of people to further measure its effectiveness and safety.
Phase III: Further research is conducted to confirm the effectiveness of the drug, treatment or procedure, to monitor the side effects, to compare commonly used treatments and to collect information on safe use.

Phase IV: After the drug, treatment or medical procedure is marketed, investigators continue testing to determine the effects on various populations and to determine whether there are side effects associated with long-term use.

(b) "Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group.

(c) "Cooperative group" includes:

(1) The national cancer institute clinical cooperative group;

(2) The national cancer institute community clinical oncology program;

(3) The AIDS clinical trial group; and

(4) The community programs for clinical research in AIDS.

(d) "FDA" means the federal food and drug administration.

(e) "Life-threatening condition" means that the member has a terminal condition or illness that according to current diagnosis has a high probability of death within two years, even with treatment with an existing generally accepted treatment protocol.

(f) "Member" means a policyholder, subscriber, insured, certificate holder or a covered dependent of a policyholder, subscriber, insured or certificate holder.
(g) "Multiple project assurance contract" means a contract between an institution and the federal department of health and human services that defines the relationship of the institution to the federal department of health and human services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

(h) "NIH" means the national institutes of health.

(i) "Patient cost" means the routine costs of a medically necessary health care service that is incurred by a member as a result of the treatment being provided pursuant to the protocols of the clinical trial. Routine costs of a clinical trial include all items or services that are otherwise generally available to beneficiaries of the insurance policies. "Patient cost" does not include:

1. The cost of the investigational drug or device;
2. The cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided to the member for purposes of the clinical trial;
3. Services customarily provided by the research sponsor free of charge for any participant in the trial;
4. Costs associated with managing the research associated with the clinical trial including, but not limited to, services furnished to satisfy data collection and analysis needs that are not used in the direct clinical management of the participant; or
5. Costs that would not be covered under the participant's policy, plan, or contract for noninvestigational treatments;
6. Adverse events during treatment are divided into those that reflect the natural history of the disease, or its progression, and those that are unique in the experimental treatment. Costs
for the former are the responsibility of the payor as provided in
section two of this article, and costs for the later are the
responsibility of the sponsor. The sponsor shall hold harmless
any payor for any losses and injuries sustained by any member
as a result of his or her participation in the clinical trial.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.


1 The provisions relating to clinical trials established in
2 article twenty-five-f of this chapter shall apply to the individual
3 market regulated by this article.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3r. Coverage for patient cost of clinical trials.

1 The provisions relating to clinical trials established in
2 article twenty-five-f of this chapter shall apply to the health
3 benefit plans regulated by this article.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SER-
VICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

The provisions relating to clinical trials established in article twenty-five-f of this chapter shall apply to the insurance regulated by this article.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.

Corporations organized under this article are subject to supervision and regulation of the insurance commissioner. The corporations organized under this article, to the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated of the following articles of this chapter: Article four (general provisions), except that section sixteen of said article shall not be applicable thereto; article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article ten (rehabilitation and liquidation); section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l,
ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


The provisions relating to clinical trials established in article twenty-five-f of this chapter shall apply to the insurance regulated by this article.

ARTICLE 25F. COVERAGE FOR PATIENT COST OF CLINICAL TRIALS.

§33-25F-1. Definitions.
§33-25F-2. Coverage applicable under this article.

§33-25F-1. Definitions.

For purposes of this article:
(a) A "clinical trial" is a study that determines whether new drugs, treatments or medical procedures are safe and effective on humans. To determine the efficacy of experimental drugs, treatments or procedures, a study is conducted in four phases including the following:

Phase II: The experimental drug or treatment is given to, or a procedure is performed on, a larger group of people to further measure its effectiveness and safety.

Phase III: Further research is conducted to confirm the effectiveness of the drug, treatment or procedure, to monitor the side effects, to compare commonly used treatments and to collect information on safe use.

Phase IV: After the drug, treatment or medical procedure is marketed, investigators continue testing to determine the effects on various populations and to determine whether there are side effects associated with long-term use.

(b) "Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group.

(c) "Cooperative group" includes:

(1) The national cancer institute clinical cooperative group;

(2) The national cancer institute community clinical oncology program;

(3) The AIDS clinical trial group; and

(4) The community programs for clinical research in AIDS.

(d) "FDA" means the federal food and drug administration.
(e) "Life-threatening condition" means that the member has a terminal condition or illness that according to current diagnosis has a high probability of death within two years, even with treatment with an existing generally accepted treatment protocol.

(f) "Member" means a policyholder, subscriber, insured, certificate holder or a covered dependent of a policyholder, subscriber, insured or certificate holder.

(g) "Multiple project assurance contract" means a contract between an institution and the federal department of health and human services that defines the relationship of the institution to the federal department of health and human services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

(h) "NIH" means the national institutes of health.

(i) "Patient cost" means the routine costs of a medically necessary health care service that is incurred by a member as a result of the treatment being provided pursuant to the protocols of the clinical trial. Routine costs of a clinical trial include all items or services that are otherwise generally available to beneficiaries of the insurance policies. "Patient cost" does not include:

1. The cost of the investigational drug or device;
2. The cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided to the member for purposes of the clinical trial;
3. Services customarily provided by the research sponsor free of charge for any participant in the trial;
(4) Costs associated with managing the research associated with the clinical trial including, but not limited to, services furnished to satisfy data collection and analysis needs that are not used in the direct clinical management of the participant; or

(5) Costs that would not be covered under the participant’s policy, plan, or contract for noninvestigational treatments;

(6) Adverse events during treatment are divided into those that reflect the natural history of the disease, or its progression, and those that are unique in the experimental treatment. Costs for the former are the responsibility of the payor as provided in section two of this article, and costs for the later are the responsibility of the sponsor. The sponsor shall hold harmless any payor for any losses and injuries sustained by any member as a result of his or her participation in the clinical trial.

§33-25F-2. Coverage applicable under this article.

(a) This section applies to:

(1) Insurers and nonprofit health service plans that provide hospital, medical, surgical or pharmaceutical benefits to individuals or groups on an expense-incurred basis under a health insurance policy or contract issued or delivered in the state; and

(2) Health maintenance organizations that provide hospital, medical, surgical or pharmaceutical benefits to individuals or groups under contracts that are issued or delivered in the state.

(b) This section does not apply to a policy, plan or contract paid for under Title XVIII of the Social Security Act.

(c) A policy, plan or contract subject to this section shall provide coverage for patient cost to a member in a clinical trial, as a result of:
(1) Treatment provided for a life-threatening condition; or

(2) Prevention of, early detection of or treatment studies on cancer.

(d) The coverage under subsection (c) of this section is required if:

(1)(A) The treatment is being provided or the studies are being conducted in a Phase II, Phase III or Phase IV clinical trial for cancer and has therapeutic intent; or

(B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for any other life-threatening condition and has therapeutic intent;

(2) The treatment is being provided in a clinical trial approved by:

(A) One of the national institutes of health;

(B) An NIH cooperative group or an NIH center;

(C) The FDA in the form of an investigational new drug application or investigational device exemption;

(D) The federal department of veterans affairs; or

(E) An institutional review board of an institution in the state which has a multiple project assurance contract approved by the office of protection from research risks of the national institutes of health;

(3) The facility and personnel providing the treatment are capable of doing so by virtue of their experience, training and volume of patients treated to maintain expertise;
(4) There is no clearly superior, noninvestigational treatment alternative;

(5) The available clinical or preclinical data provide a reasonable expectation that the treatment will be more effective than the noninvestigational treatment alternative;

(6) The treatment is provided in this state: Provided, That, if the treatment is provided outside of this state, the treatment must be approved by the payor designated in subsection (a) of this section;

(7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles and is otherwise subject to all restrictions and obligations of the health plan; and

(8) Reimbursement for treatment by an out of network or noncontracting provider shall be reimbursed at a rate which is no greater than that provided by an in network or contracting provider. Coverage shall not be required if the out of network or noncontracting provider will not accept this level of reimbursement.

(e) Payment for patient costs for a clinical trial is not required by the provisions of this section, if:

(1) The purpose of the clinical trial is designed to extend the patent of any existing drug, to gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage relating to additional clinical indications for an existing drug; or

(2) The purpose of the clinical trial is designed to keep a generic version of a drug from becoming available on the market; or
(3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or repackaged version of an existing drug.

(f) Any provider billing a third party payor for services or products provided to a patient in a clinical trial shall provide written notice to the payor that specifically identifies the services as part of a clinical trial.

(g) Notwithstanding any provision in this section to the contrary, coverage is not required for Phase I of any clinical trial.

CHAPTER 120

(Com. Sub. for H. B. 2003 — By Delegate Amores)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen; and to amend and reenact section sixteen, article twelve-a of said chapter, all relating to authorizing political subdivisions to establish and maintain self-insurance pools; authorizing the board of risk and insurance management to propose rules dealing with insurance programs; authorizing West Virginia insurance agents to establish and write policies for self-insurance programs and pools; and requiring the insurance commissioner to propose legislative rules relating to self-insurance programs and pools for political subdivisions.

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

Article
12A. Governmental Tort Claims and Insurance Reform Act.

ARTICLE 12. STATE INSURANCE.

§29-12-14. Promulgation of rules.

1 The board of risk and insurance management is authorized to propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, that are necessary to administer the powers and duties of the board including, but not limited to, rules setting minimum contract terms for entities participating in insurance programs and mandatory waiting periods for reentry into insurance programs for entities which have terminated coverage through the board.

ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.


(a) A political subdivision may use public funds to secure insurance with respect to its potential liability and that of its employees for damages in civil actions for injury, death or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees, including insurance coverage procured through the state board of risk and insurance management. The insurance may be at the limits for the circumstances, and subject to the terms and conditions that are determined by the political subdivision in its discretion.
The insurance may be for the period that is set forth in specifications for competitive bids or, when competitive bidding is not required, for the period that is mutually agreed upon by the political subdivision and insurance company. The period does not have to be, but can be, limited to the fiscal cycle under which the political subdivision is funded and operates.

(b)(1) Regardless of whether a political subdivision procures a policy or policies of liability insurance pursuant to subsection (a) of this section or otherwise:

(A) Any political subdivision may establish and maintain a self-insurance program relative to its potential liability and that of its employees for damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees;

or

(B) Any group of two or more political subdivisions may establish and maintain a self-insurance pool relative to their collective potential liability and that of their collective employees for damages in civil actions for injury, death or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees.

(2) If it so chooses, the political subdivision or group of political subdivisions may contract with any person, any licensed West Virginia insurance agent, other political subdivision, municipal association, county association or regional council of governments for purposes of the administration of the program or pool.

(c) Political subdivisions that have established self-insurance programs relative to their potential liability and that of their employees, as described in subdivision (A), subsection (b)(1) of this section, may mutually agree that their self-
insurance programs may be jointly administered in a specified manner.

(d) The purchase of liability insurance, or the establishment and maintenance of a self-insurance program, by a political subdivision does not constitute a waiver of any immunity it may have pursuant to this article or any defense of the political subdivision or its employees.

(e) The authorization for political subdivisions to secure insurance and to establish and maintain self-insurance programs and pools, as set out in subsections (a) and (b) in this section, are in addition to any other authority to secure insurance or to establish and maintain self-insurance that is granted pursuant to this code or the constitution of this state, and they are not in derogation of any other authorization.

(f) An insurance agent licensed in West Virginia is authorized to establish or write policies for a self-insurance program or pool for political subdivisions, pursuant to the provisions of this section.

(g) The commissioner of insurance shall propose rules for legislative approval, pursuant to the provisions of chapter twenty-nine-a of this code, setting forth the criteria for establishing and maintaining self-insurance programs and pools for political subdivisions.

CHAPTER 121

(H. B. 2764 — By Delegates H. White, Hrutkay and R. M. Thompson)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section four, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the subpoena power of the insurance commissioner; setting forth requirements for contents of subpoena; providing for subpoenas to be issued to persons and to corporations; providing that pendency of another action does not relieve a person's duty to respond to subpoena of the commissioner; and providing that evidence produced in response to subpoena and interrogatories are exempt from the disclosure requirements of the freedom of information act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-4. Authority to take depositions, subpoena witnesses, etc.

(a) For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondences, memoranda, agreements or other documents or records which the commissioner considers relevant or material to the inquiry. The commissioner's authority to subpoena witnesses and documents outside the state shall exist to the maximum extent permissible under federal constitutional law.

(b) Subpoenas may be issued to any person and may require that person, among other things, to:

(1) Testify under oath;
(2) Answer written interrogatories under oath;

(3) Produce documents and tangible things; and

(4) Permit inspection and copying of documents.

(c) Content of subpoena. A subpoena shall:

(1) Describe generally the nature of the investigation;

(2) If the subpoena requires testimony under oath, specify the date, time and place for the taking of testimony;

(3) If the subpoena requires answers to written interrogatories, contain a copy of the written interrogatories;

(4) If the subpoena requires the production of tangible things or documents:

(A) Describe the things and documents to be produced with reasonable specificity; and

(B) Specify a date, time, and place at which the things and documents are to be produced;

(5) Notify the person to whom the subpoena is directed of the obligation to supplement responses;

(6) Advise the person to whom the subpoena is directed that the person may be represented by counsel; and

(7) Identify a member of the office of the insurance commissioner who may be contacted in reference to the subpoena.

(d) For subpoenas to corporations and other entities, the following apply:
(1) A subpoena directed to a corporation, partnership or other business entity that requires testimony under oath shall describe with reasonable particularity the subject matter of the testimony;

(2) An entity that receives a subpoena to answer written interrogatories or to testify under oath shall designate one or more of its officers, agents, employees or other authorized persons familiar with the subject matter specified in the subpoena to respond to the subpoena on its behalf;

(3) The persons designated by an entity to respond to a subpoena on its behalf shall answer the interrogatories or testify as to all matters known or reasonably available to the entity; and

(4) A subpoena directed to an entity that requires testimony under oath or answers to written interrogatories shall advise the entity of its obligations under this section.

(e) Effect of other proceedings. The institution or pendency of administrative or judicial proceedings against a person by the commissioner does not relieve the person of his or her obligation to respond to a subpoena issued under this section.

(f) Subpoenas for interrogatories and answers and requests for production of documents or tangible things and answers propounded and obtained under this section pursuant to an investigation are exempted from disclosure under the provisions of article one, chapter twenty-nine-b of this code, and are not open to public inspection. The commissioner may not disclose facts or information obtained from the investigation except as the official duty of the commissioner requires.

(g) Nothing in this section prohibits the commissioner from providing information or receiving information from any local, state, federal or international law-enforcement authorities,
69 including any prosecuting authority; from complying with
70 subpoenas or other lawful process in criminal proceedings or
71 other action by the state; or from taking action as may other-
72 wise be provided in this article.

CHAPTER 122

(S. B. 400 — By Senators Minard, Jenkins and Sharpe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and nineteen, article
two, chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to amend and
reenact section nine, article seven of said chapter; and to amend
and reenact section one, article thirty-nine of said chapter, all
relating to authorizing limited disclosure of confidential informa-
tion received by the insurance commissioner; making amend-
ments regarding disclosure of confidential information by the
insurance commissioner to federal banking agencies required by
the federal Gramm-Leach-Bliley Act; and making technical
corrections.

Be it enacted by the Legislature of West Virginia:

That sections nine and nineteen, article two, chapter thirty-three
of the code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted; that section nine, article
seven of said chapter be amended and reenacted; and that section one,
article thirty-nine of said chapter be amended and reenacted, all to
read as follows:
Article
2. Insurance Commissioner.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

1 (a) The purpose of this section is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this section are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be considered appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

10 (b) For purposes of this section, the following definitions shall apply:

12 (1) "Commissioner" means the commissioner of insurance of this state;

14 (2) "Company" or "insurance company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner, including, but not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care
corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group or other insurer regardless of the type of coverage written, benefits provided or guarantees made by each;

(3) “Department” means the department of insurance of this state; and

(4) “Examiners” means the commissioner of insurance or any individual or firm having been authorized by the commissioner to conduct an examination pursuant to this section, including, but not limited to, the commissioner’s deputies, other employees, appointed examiners or other appointed individuals or firms who are not employees of the department of insurance.

(c) The commissioner or his or her examiners may conduct an examination under this section of any company as often as the commissioner in his or her discretion considers appropriate. The commissioner or his or her examiners shall at least once every five years visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The commissioner may also examine the affairs of any insurer applying for a license to transact any insurance business in this state.

(d) The commissioner or his or her examiners shall, at a minimum, conduct an examination of every foreign or alien insurer licensed in this state not less frequently than once every five years. The examination of an alien insurer may be limited to its United States business: Provided, That in lieu of an examination under this section of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance
department for the company’s state of domicile or port-of-entry state until the first day of January, one thousand nine hundred ninety-four. Thereafter, the reports may only be accepted if:

(1) The insurance department was at the time of the examination accredited under the national association of insurance commissioners’ financial regulation standards and accreditation program; or

(2) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(e) In scheduling and determining the nature, scope and frequency of examinations conducted pursuant to this section, the commissioner may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiners’ handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

(f) For purposes of completing an examination of any company under this section, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(g) The commissioner may also cause to be examined, at the times as he or she considers necessary, the books, records, papers, documents, correspondence and methods of doing
business of any agent, broker, excess lines broker or solicitor licensed by this state. For these purposes, the commissioner or his or her examiners shall have free access to all books, records, papers, documents and correspondence of all the agents, brokers, excess lines brokers and solicitors wherever the books, records, papers, documents and records are situate. The commissioner may revoke the license of any agent, broker, excess lines broker or solicitor who refuses to submit to the examination.

(h) In addition to conducting an examination, the commissioner or his or her examiners may, as the commissioner considers necessary, analyze or review any phase of the operations or methods of doing business of an insurer, agent, broker, excess lines broker, solicitor or other individual or corporation transacting or attempting to transact an insurance business in the state of West Virginia. The commissioner may use the full resources provided by this section in carrying out these responsibilities, including any personnel and equipment provided by this section as the commissioner considers necessary.

(i) Examinations made pursuant to this section shall be conducted in the following manner:

(1) Upon determining that an examination should be conducted, the commissioner or his or her designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. The appointment of any examiners pursuant to this section by the commissioner shall not be subject to the requirements of article three, chapter five-a of this code, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the attorney general. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook.
adopted by the national association of insurance commissioners. The commissioner may also employ any other guidelines or procedures as the commissioner may consider appropriate;

(2) Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subdivision (1) of this subsection timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so;

(3) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, refusal or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, refusal or nonrenewal of any license or authority shall be conducted pursuant to section eleven of this article;

(4) The commissioner or his or her examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination, analysis or review. The subpoenas shall be enforced pursuant to the provisions of section six of this article;

(5) When making an examination, analysis or review under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, professionals or specialists with training or experience in reinsurance, investments or information systems or other
professionals and specialists as examiners, the cost of which
shall be borne by the company which is the subject of the
examination, analysis or review or, in the commissioner's
discretion, paid from the commissioner's examination revolving
fund. The commissioner may recover costs paid from the
commissioner's examination revolving fund pursuant to this
subdivision from the company upon which the examination,
analysis or review is conducted unless the subject of the
examination, analysis or review is an individual described in
subdivision (2), subsection (q) of this section;

(6) Nothing contained in this section may be construed to
limit the commissioner's authority to terminate or suspend any
examination, analysis or review in order to pursue other legal
or regulatory action pursuant to the insurance laws of this state.
The commissioner or his or her examiners may at any time
testify and offer other proper evidence as to information
secured during the course of an examination, analysis or review
whether or not a written report of the examination has at that
time either been made, served or filed in the commissioner's
office;

(7) Nothing contained in this section may be construed to
limit the commissioner's authority to use and, if appropriate, to
make public any final or preliminary examination report, any
examiner or company workpapers or other documents or any
other information discovered or developed during the course of
any examination, analysis or review in the furtherance of any
legal or regulatory action which the commissioner may, in his
or her sole discretion, consider appropriate. An examination
report, when filed, shall be admissible in evidence in any action
or proceeding brought by the commissioner against an insur-
ance company, its officers or agents and shall be prima facie
evidence of the facts stated therein.
(j) Examination reports prepared pursuant to the provisions of this section shall comply with the following requirements:

(1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and any conclusions and recommendations the examiners find reasonably warranted from the facts;

(2) No later than sixty days following completion of the examination the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than ten days to make a written submission or rebuttal with respect to any matters contained in the examination report;

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner’s workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation; or

(B) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining
additional data, documentation or information and refiling pursuant to subdivision (2) of this subsection; or

(C) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information and testimony;

(4) All orders entered pursuant to this subsection shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any order issued pursuant to paragraph (A), subdivision (3) of this subsection shall be considered a final administrative decision and may be appealed pursuant to section fourteen of this article and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(k) Hearings conducted pursuant to this section shall be subject to the following requirements:

(1) Any hearing conducted pursuant to this section by the commissioner or the commissioner's authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any hearing, the commissioner shall enter an order pursuant to paragraph (A), subdivision (3), subsection (j) of this section;
(2) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents considered relevant to the investigation whether under the control of the commissioner, the company or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record. Nothing contained in this section shall require the commissioner to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency;

(3) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The company and the commissioner shall be permitted to make closing statements and may be represented by counsel of their choice.

(1) Adoption of the examination report shall be subject to the following requirements:

(1) Upon the adoption of the examination report under paragraph (A), subdivision (3), subsection (j) of this section, the commissioner may continue to hold the content of the examination report as private and confidential information for a period of ninety days except to the extent provided in subdivision (6), subsection (i) of this section. Thereafter, the commissioner may
open the report for public inspection so long as no court of
competent jurisdiction has stayed its publication;

(2) Nothing contained in this section may prevent or be
construed as prohibiting the commissioner from disclosing the
content of an examination report, preliminary examination
report or results or any matter relating thereto or the results of
any analysis or review to the insurance department of this or
any other state or country or to law-enforcement officials of this
or any other state or agency of the federal government at any
time, so long as the agency or office receiving the report or
matters relating thereto agrees in writing to hold it confidential
and in a manner consistent with this section;

(3) In the event the commissioner determines that regula-
tory action is appropriate as a result of any examination,
analysis or review, he or she may initiate any proceedings or
actions as provided by law;

(4) All working papers, recorded information, documents
and copies thereof produced by, obtained by or disclosed to the
commissioner or any other person in the course of an examina-
tion, analysis or review made under this section must be given
confidential treatment and are not subject to subpoena and may
not be made public by the commissioner or any other person,
except to the extent provided in subdivision (5), subsection (i)
of this section. Access may also be granted in accordance with
section nineteen of this article. The parties must agree in
writing prior to receiving the information to provide to it the
same confidential treatment as required by this section unless
the prior written consent of the company to which it pertains
has been obtained.

(m) The commissioner may require any examiner to furnish
a bond in such amount as the commissioner may determine to
be appropriate and the bond shall be approved, filed and
premium paid, with suitable proof submitted to the commis-
ioner, prior to commencement of employment by the commis-
ioner. No examiner may be appointed by the commissioner if
the examiner, either directly or indirectly, has a conflict of
interest or is affiliated with the management of or owns a
pecuniary interest in any person subject to examination under
this section. This section shall not be construed to automatically
preclude an examiner from being:

   (1) A policyholder or claimant under an insurance policy;

   (2) A grantor of a mortgage or similar instrument on the
examiner’s residence to a regulated entity if done under
customary terms and in the ordinary course of business;

   (3) An investment owner in shares of regulated diversified
investment companies; or

   (4) A settlor or beneficiary of a “blind trust” into which any
otherwise impermissible holdings have been placed;

   (5) Notwithstanding the requirements of this subsection, the
commissioner may retain, from time to time, on an individual
basis qualified actuaries, certified public accountants or other
similar individuals who are independently practicing their
professions even though these persons may, from time to time,
be similarly employed or retained by persons subject to
examination under this section.

(n) Personnel conducting examinations, analyses or reviews
of either a domestic, foreign or alien insurer shall be compen-
sated for each day worked at a rate set by the commissioner.
The personnel shall also be reimbursed for their travel and
living expenses at the rate set by the commissioner. Other
individuals who are not employees of the department of
insurance shall all be compensated for their work, travel and
living expenses at rates approved by the commissioner or as
otherwise provided by law. As used in this section, the costs of
an examination, analysis or review means:

(1) The entire compensation for each day worked by all
personnel, including those who are not employees of the
department of insurance, the conduct of the examination,
analysis or review calculated as hereinbefore provided;

(2) Travel and living expenses of all personnel, including
those who are not employees of the department of insurance,
directly engaged in the conduct of the examination, analysis or
review calculated at the rates as hereinbefore provided for;

(3) All other incidental expenses incurred by or on behalf
of the personnel in the conduct of any authorized examination,
analysis or review.

(o) All insurers subject to the provisions of this section
shall annually pay to the commissioner on or before the first
day of July, one thousand nine hundred ninety-one, and every
first day of July thereafter an examination assessment fee of
eight hundred dollars. Four hundred fifty dollars of this fee
shall be paid to the treasurer of the state to the credit of a
special revolving fund to be known as the "Commissioner's
Examination Revolving Fund" which is hereby established and
three hundred fifty dollars shall be paid to the treasurer of the
state. The commissioner may at his or her discretion, upon
notice to the insurers subject to this section, increase this
examination assessment fee or levy an additional examination
assessment fee of two hundred fifty dollars. In no event may the
total examination assessment fee, including any additional
examination assessment fee levied, exceed one thousand five
hundred dollars per insurer in any calendar year.

(p) The moneys collected by the commissioner from an
increase or additional examination assessment fee shall be paid
to the treasurer of the state to be credited to the commissioner's
examination revolving fund. Any funds expended or obligated by the commissioner from the commissioner’s examination revolving fund may be expended or obligated solely for defrayment of the costs of examinations, analyses or reviews of the financial affairs and business practices of insurance companies, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state made by the commissioner pursuant to this section or for the purchase of equipment and supplies, travel, education and training for the commissioner’s deputies, other employees and appointed examiners necessary for the commissioner to fulfill the statutory obligations created by this section.

(q) The commissioner may require other individuals who are not employees of the department of insurance who have been appointed by the commissioner to conduct or participate in the examination, analysis or review of insurers, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state to:

1. Bill and receive payments directly from the insurance company being examined, analyzed or reviewed for their work, travel and living expenses as previously provided for in this section; or

2. If an individual agent, broker or solicitor is being examined, analyzed or reviewed, bill and receive payments directly from the commissioner’s examination revolving fund for their work, travel and living expenses as previously provided for in this section. The commissioner may recover costs paid from the commissioner’s examination revolving fund pursuant to this subdivision from the person upon whom the examination, analysis or review is conducted.
(r) The commissioner and his or her examiners shall be entitled to immunity to the following extent:

(1) No cause of action shall arise nor shall any liability be imposed against the commissioner or his or her examiners for any statements made or conduct performed in good faith while carrying out the provisions of this section;

(2) No cause of action shall arise, nor shall any liability be imposed, against any person for the act of communicating or delivering information or data to the commissioner or his or her examiners pursuant to an examination, analysis or review made under this section if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive;

(3) The commissioner or any examiner shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this section and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is “substantially justified” if it had a reasonable basis in law or fact at the time that it was initiated;

(4) This subsection does not abrogate or modify in any way any constitutional immunity or common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (1) of this subsection.


In order to assist the commissioner in the regulation of insurers in this state, it is the duty of the commissioner to maintain, as confidential, and to take all reasonable steps to oppose any effort to secure disclosure of, any documents or information received from the national association of insurance
commissioners, federal banking agencies or insurance departments of other states which is confidential in such other jurisdictions. It is within the power of the commissioner to share information, including otherwise confidential information, with the national association of insurance commissioners, the board of governors of the federal reserve system or other appropriate federal banking agency or insurance departments of other states: Provided, That such other jurisdictions agree to maintain the same level of confidentiality as is available under this statute and to take all reasonable steps to oppose any effort to secure disclosure of the information. "Federal banking agency" means the comptroller of the currency, the director of the office of thrift supervision, the board of governors of the federal reserve system or the federal deposit insurance corporation as set forth in section three of the federal deposit insurance act.

ARTICLE 7. ASSETS AND LIABILITIES.


(a) Title. — This section shall be known as the standard valuation law.

(b) Reserve valuation. — The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state and may certify the amount of any such reserves specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he or she may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he or she may accept any valuation made, or caused to be made, by the insurance supervisory
official of any state or other jurisdiction when such valuation
complies with the minimum standard herein provided and if the
official of such state or jurisdiction accepts as sufficient and for
all valid legal purposes the certificate of valuation of the
commissioner when such certificate states the valuation to have
been made in a specified manner according to which the
aggregate reserves would be at least as large as if they had been
computed in the manner prescribed by the law of that state or
jurisdiction.

(c) Actuarial opinion of reserves. — This subsection shall
become operative on the first day of January, one thousand nine
hundred ninety-six.

(1) General. — Every life insurance company doing
business in this state shall annually submit the opinion of a
qualified actuary as to whether the reserves and related actuarial
items held in support of the policies and contracts specified by
the commissioner by regulation are computed appropriately, are
based on assumptions which satisfy contractual provisions, are
consistent with prior reported amounts and comply with
applicable laws of this state. The commissioner by regulation
shall define the specifics of this opinion and add any other item
considered to be necessary to its scope.

(2) Actuarial analysis of reserves and assets supporting
such reserves. —

(A) Every life insurance company, except as exempted by
or pursuant to regulation, shall also annually include in the
opinion required by subdivision (1) of this subsection an
opinion of the same qualified actuary as to whether the reserves
and related actuarial items held in support of the policies and
contracts specified by the commissioner by regulation, when
considered in light of the assets held by the company with
respect to the reserves and related actuarial items, including, but
not limited to, the investment earnings on the assets and the
considerations anticipated to be received and retained under the
policies and contracts, make adequate provision for the com-
pany's obligations under the policies and contracts, including,
but not limited to, the benefits under and expenses associated
with the policies and contracts.

(B) The commissioner may provide by regulation for a
transition period for establishing any higher reserves which the
qualified actuary may consider necessary in order to render the
opinion required by this subsection.

(3) Requirement for opinion under subdivision (2). -- Each
opinion required by subdivision (2) of this subsection shall be
governed by the following provisions:

(A) A memorandum in form and substance acceptable to
the commissioner as specified by regulation shall be prepared
to support each actuarial opinion.

(B) If the insurance company fails to provide a supporting
memorandum at the request of the commissioner within a
period specified by regulation or the commissioner determines
that the supporting memorandum provided by the insurance
company fails to meet the standards prescribed by the regula-
tions or is otherwise unacceptable to the commissioner, the
commissioner may engage a qualified actuary at the expense of
the company to review the opinion and the basis for the opinion
and prepare such supporting memorandum as is required by the
commissioner.

(4) Requirement for all opinions. -- Every opinion shall be
governed by the following provisions:

(A) The opinion shall be submitted with the annual state-
ment reflecting the valuation of such reserve liabilities for each
year ending on or after the thirty-first day of December, one
thousand nine hundred ninety-five.

(B) The opinion shall apply to all business in force,
including individual and group health insurance plans, in form
and substance acceptable to the commissioner as specified by
regulation.

(C) The opinion shall be based on standards adopted, from
time to time, by the actuarial standards board and on such
additional standards as the commissioner may by regulation
prescribe.

(D) In the case of an opinion required to be submitted by a
foreign or alien company, the commissioner may accept the
opinion filed by that company with the insurance supervisory
official of another state if the commissioner determines that the
opinion reasonably meets the requirements applicable to a
company domiciled in this state.

(E) For the purposes of this section, “qualified actuary”
means a member in good standing of the American academy of
actuaries who meets the requirements set forth in such regula-
tions.

(F) Except in cases of fraud or willful misconduct, the
qualified actuary shall not be liable for damages to any person
(other than the insurance company and the commissioner) for
any act, error, omission, decision or conduct with respect to the
actuary’s opinion.

(G) Disciplinary action by the commissioner against the
company or the qualified actuary shall be defined in regulations
by the commissioner.

(H) Any memorandum in support of the opinion and any
other material provided by the company to the commissioner in
connection therewith shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder: Provided, That the memorandum or other material may otherwise be released by the commissioner: (i) With the written consent of the company; (ii) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material; or (iii) in accordance with section nineteen, article two of this chapter. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited by the company before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(d) Computation of minimum standards. -- Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all such policies and contracts issued prior to the effective date of this section shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all such policies and contracts issued on or after the effective date of this section shall be the commissioner's reserve valuation methods defined in subsections (g), (h), (k) and (m) of this section, three and one-half percent interest or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after the first day of June, one thousand nine hundred seventy-four, four percent interest for such policies issued prior to the sixth day of April, one thousand nine hundred seventy-seven, five and one-half
percent interest for single premium life insurance policies and
four and one-half percent interest for all other such policies
issued on and after the sixth day of April, one thousand nine
hundred seventy-seven, and the following tables:

(1) For all ordinary policies of life insurance issued on the
standard basis, excluding any disability and accidental death
benefits in such policies: The commissioners 1941 standard
ordinary mortality table for such policies issued prior to the
operative date of subsection (4a), section thirty, article thirteen
of this chapter; the commissioners 1958 standard ordinary
mortality table for such policies issued on or after the operative
date of said subsection and prior to the operative date of
subsection (4c) of said section: Provided, That for any category
of such policies issued on female risks, all modified net
premiums and present values referred to in this section may be
calculated according to an age not more than six years younger
than the actual age of the insured; and for such policies issued
on or after the operative date of subsection (4c), section thirty,
article thirteen of this chapter: (i) The commissioners 1980
standard ordinary mortality table; or (ii) at the election of the
company for any one or more specified plans of life insurance,
the commissioners 1980 standard ordinary mortality table with
ten-year select mortality factors; or (iii) any ordinary mortality
table adopted after the year one thousand nine hundred eighty
by the national association of insurance commissioners that is
approved by regulation promulgated by the commissioner for
use in determining the minimum standard of valuation for such
policies.

(2) For all industrial life insurance policies issued on the
standard basis, excluding any disability and accidental death
benefits in such policies: The 1941 standard industrial mortality
table for such policies issued prior to the operative date of
subdivision (4), subsection (b), section thirty, article thirteen of
this chapter and for such policies issued on or after such
operative date, the commissioners 1961 standard industrial mortality table or any industrial mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies: The 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies: The group annuity mortality table for 1951, any modification of such table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: For policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-six, the tables of period two disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-one, and prior to the first day of January, one thousand
nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) disability table (1926); and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the Class (3) disability table (1926).

Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after the first day of January, one thousand nine hundred sixty-six, the 1959 accidental death benefits table or any accidental death benefits table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, for policies issued on or after the first day of January, one thousand nine hundred sixty-one, and prior to the first day of January, one thousand nine hundred sixty-six, either such table or, at the option of the company, the intercompany double indemnity mortality table; and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, either such table or, at the option of the company, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis and other special benefits: Such tables as may be approved by the commissioner.

(e) Computation of minimum standard for annuities. — Except as provided in subsection (f) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, as defined herein, and for all annuities and
pure endowments purchased on or after such operative date
under group annuity and pure endowment contracts shall be the
commissioner's reserve valuation methods defined in subsec-
tions (g) and (h) of this section and the following tables and
interest rates:

(1) For individual annuity and pure endowment contracts
issued prior to the sixth day of April, one thousand nine
hundred seventy-seven, excluding any disability and accidental
death benefits in such contracts: The 1971 individual annuity
mortality table or any modification of this table approved by the
commissioner and six percent interest for single premium
immediate annuity contracts and four percent interest for all
other individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity
contracts issued on or after the sixth day of April, one thousand
nine hundred seventy-seven, excluding any disability and
accidental death benefits in such contracts: The 1971 individual
annuity mortality table or any individual annuity mortality table
adopted after the year one thousand nine hundred eighty by the
national association of insurance commissioners that is ap-
proved by regulation promulgated by the commissioner for use
in determining the minimum standard of valuation for such
contracts or any modification of these tables approved by the
commissioner and seven and one-half percent interest;

(3) For individual annuity and pure endowment contracts
issued on or after the sixth day of April, one thousand nine
hundred seventy-seven, other than single premium immediate
annuity contracts, excluding any disability and accidental death
benefits in such contracts: The 1971 individual annuity mortal-
ity table or any individual annuity mortality table adopted after
the year one thousand nine hundred eighty by the national
association of insurance commissioners that is approved by
regulation promulgated by the commissioner for use in deter-
mining the minimum standard of valuation for such contracts or
any modification of these tables approved by the commissioner
and five and one-half percent interest for single premium
defered annuity and pure endowment contracts and four and
one-half percent interest for all other such individual annuity
and pure endowment contracts;

(4) For all annuities and pure endowments purchased prior
to the sixth day of April, one thousand nine hundred seventy-
seven, under group annuity and pure endowment contracts,
excluding any disability and accidental death benefits pur-
chased under such contracts: The 1971 group annuity mortality
table or any modification of this table approved by the commis-

(5) For all annuities and pure endowments purchased on or
after the sixth day of April, one thousand nine hundred sev-
enty-seven, under group annuity and pure endowment contracts,
excluding any disability and accidental death benefits pur-
chased under such contracts: The 1971 group annuity mortality
table or any group annuity mortality table adopted after the year
one thousand nine hundred eighty by the national association of
insurance commissioners that is approved by regulation
promulgated by the commissioner for use in determining the
minimum standard of valuation for such annuities and pure
endowments or any modification of these tables approved by
the commissioner and seven and one-half percent interest.

After the third day of June, one thousand nine hundred
seventy-four, any company may file with the commissioner a
written notice of its election to comply with the provisions of
this subsection after a specified date before the first day of
January, one thousand nine hundred seventy-nine, which shall
be the operative date of this subsection for such company
provided, if a company makes no such election, the operative
date of this section for such company shall be the first day of January, one thousand nine hundred seventy-nine.

(f) Computation of minimum standard by calendar year of issue. —

(1) Applicability of this section. — The interest rates used in determining the minimum standard for the valuation of:

(A) All life insurance policies issued in a particular calendar year, on or after the operative date of subdivision (4), subsection (c), section thirty, article thirteen of this chapter as amended;

(B) All individual annuity and pure endowment contracts issued in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two;

(C) All annuities and pure endowments purchased in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two, under group annuity and pure endowment contracts; and

(D) The net increase, if any, in a particular calendar year after the first day of January, one thousand nine hundred eighty-two, in amounts held under guaranteed interest contracts, shall be the calendar year statutory valuation interest rates as defined in this subsection.

(2) Calendar year statutory valuation interest rates. —

(A) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one quarter of one percent:

(i) For life insurance, I = .03 + W(R1 -.03) + W/2(R2 -.09);
(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options, \( I = 0.03 + W \cdot W - 0.03 \) where \( R_1 \) is the lesser of \( R \) and \( 0.09 \), \( R_2 \) is the greater of \( R \) and \( 0.09 \), \( R \) is the reference interest rate defined in this subsection and \( W \) is the weighting factor defined in this section;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subparagraph (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply;

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply.

(B) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent, the calendar year statutory valuation
interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for the year one thousand nine hundred eighty (using the reference interest rate defined for the year one thousand nine hundred seventy-nine) and shall be determined for each subsequent calendar year regardless of when subdivision (4), subsection (c), section thirty, article thirteen of this chapter, as amended, becomes operative.

(3) Weighting factors. –

(A) The weighting factors referred to in the formulas stated above are given in the following tables:

(i) Weighting Factors for Life Insurance:

<table>
<thead>
<tr>
<th>Guarantee</th>
<th>Duration (Years)</th>
<th>Weighting Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10 or less</td>
<td>.50</td>
</tr>
<tr>
<td></td>
<td>More than 10, but not more than 20</td>
<td>.45</td>
</tr>
<tr>
<td></td>
<td>More than 20</td>
<td>.35</td>
</tr>
</tbody>
</table>

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;
(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80;

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph (ii) of this paragraph, shall be as specified in clauses (I), (II) and (III) of this subparagraph, according to the rules and definitions in clauses (IV), (V) and (VI) of this subparagraph:

(I) For annuities and guaranteed interest contracts valued on an issue year basis:

<table>
<thead>
<tr>
<th>Guarantee Duration (Years)</th>
<th>Weighting Factor for Plan Type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
</tr>
<tr>
<td>5 or less:</td>
<td>.80</td>
</tr>
<tr>
<td>More than 5, but not more than 10:</td>
<td>.75</td>
</tr>
<tr>
<td>More than 10, but not more than 20:</td>
<td>.65</td>
</tr>
<tr>
<td>More than 20:</td>
<td>.45</td>
</tr>
</tbody>
</table>

(II) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in subparagraph (i) of this paragraph increased by:

<table>
<thead>
<tr>
<th>Weighting Factor for Plan Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
</tr>
<tr>
<td>.15</td>
</tr>
</tbody>
</table>
(III) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in clause (I) of this subparagraph or derived in clause (II) of this subparagraph increased by:

Weighting Factor for Plan Type

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C1</th>
</tr>
</thead>
<tbody>
<tr>
<td>.05</td>
<td>.05</td>
<td>.05</td>
</tr>
</tbody>
</table>

(IV) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(V) Plan type as used in the above tables is defined as follows:

Plan Type A:

At any time policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years
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450 or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted;

452 Plan Type B:

453 Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years;

461 Plan Type C:

462 Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

468 (VI) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation
standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) Reference interest rate. —

(A) Reference interest rate referred to in subparagraph (ii), paragraph (A), subdivision (2) of this subsection shall be defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s investors service, inc.

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s investors service, inc.

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s investors service, inc.
(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration of ten years or less, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (ii) of this paragraph, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(5) Alternative method for determining reference interest rates. –

In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's investors service, inc., or in the event that the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate,
then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by regulation promulgated by the commissioner, may be substituted.

(g) Reserve valuation method. — Life insurance and endowment benefits.

Except as otherwise provided in subsections (h), (k) and (m) of this section, reserves according to the commissioners reserve valuation method for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of subdivision (1) of this subsection over subdivision (2) of this subsection, as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: Provided, That such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.
(2) A net one-year term premium for such benefits provided for in the first policy year: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of such policy anniversary calculated as described in that paragraph, but with:

(i) The value defined in subdivision (1) of that paragraph being reduced by fifteen percent of the amount of such excess first-year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on such date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in subsections (d) and (f) of this section shall be used.

Reserves according to the commissioners' reserve valuation method for: (i) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organiza-
tion, or by both, other than a plan providing individual retire-
ment accounts or individual retirement annuities under section
408 of the Internal Revenue Code (26 U. S. C. §408) as now or
hereafter amended; (iii) disability and accidental death benefits
in all policies and contracts; and (iv) all other benefits, except
life insurance and endowment benefits in life insurance policies
and benefits provided by all other annuity and pure endowment
contracts, shall be calculated by a method consistent with the
principles of the preceding paragraphs of this section.

(h) Reserve valuation method. — Annuity and pure endow-
ment benefits. This subsection shall apply to all annuity and
pure endowment contracts other than group annuity and pure
endowment contracts purchased under a retirement plan or plan
of deferred compensation established or maintained by an
employer (including a partnership or sole proprietorship) or by
an employee organization, or by both, other than a plan
providing individual retirement accounts or individual retire-
ment annuities under section 408 of the Internal Revenue Code
(26 U. S. C. §408) as now or hereafter amended.

Reserves according to the commissioners’ annuity reserve
method for benefits under annuity or pure endowment con-
tracts, excluding any disability and accidental death benefits in
such contracts, shall be the greatest of the respective excesses
of the present values, at the date of valuation, of the future
guaranteed benefits, including guaranteed nonforfeiture
benefits, provided for by such contracts at the end of each
respective contract year over the present value, at the date of
valuation, of any future valuation considerations derived from
future gross considerations, required by the terms of such
contract, that become payable prior to the end of such respec-
tive contract year.

The future guaranteed benefits shall be determined by using
the mortality table, if any, and the interest rate, or rates,
specified in such contracts for determining guaranteed benefits.
The valuation considerations are the portions of the respective
gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(i) Minimum reserves. —

(1) In no event shall a company’s aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the effective date of this section be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (g), (h), (k) and (l) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (c) of this section.

(j) Optional reserve calculation. —

Reserves for all policies and contracts issued prior to the effective date of this section may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the commissioner issued on or after the effective date of this section may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher
than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided: Provided, That for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection (c) of this section shall not be considered to be the adoption of a higher standard of valuation.

(k) Reserve calculation. — Valuation net premium exceeding the gross premium charged.

If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest and method actually used for such policy or contract or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in subsections (d) and (f) of this section: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the gross premium in the first
policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (g) of this section, ignoring the second paragraph of said subsection.

The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with said subsection, including the second paragraph of that section, and the minimum reserve calculated in accordance with this subsection.

(l) Reserve calculation. — Indeterminate premium plans.

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (g), (h) and (k) of this section, the reserves which are held under any such plan must:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) Be computed by a method which is consistent with the principles of this standard valuation law as determined by regulations promulgated by the commissioner.

(m) Minimum standards for health (disability, accident and sickness) plans. —
The commissioner shall promulgate a regulation containing the minimum standards applicable to the valuation of health (disability, sickness and accident) plans.

(n) The commissioner shall promulgate a rule on or before the first day of November, one thousand nine hundred ninety-five, prescribing the guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with subsection (c) of this section and for memoranda in support thereof; guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from subdivision (2) of said subsection of the standard valuation law; and rules applicable to the appointment of an appointed actuary.

(o) Effective date. —

All acts and parts of acts inconsistent with the provision of this section are hereby repealed as of the effective date of this section. This section shall take effect the first day of January, one thousand nine hundred ninety-six.

(p) Modification of the standard valuation law for certain types of contracts. —

(1) The commissioner may, by rule, establish alternative methods of calculating reserve liabilities, which methods shall be used to calculate reserve liabilities for the types of policies, annuities or other contracts identified in the rule: Provided, That the method specified in the rule shall be one which, in the opinion of the commissioner and in light of the methods applied to such contracts by the insurance regulators of other states, is appropriate to such contracts. This power shall be in addition to, and in no way diminish, rule-making power granted to the commissioner elsewhere in this code.
(2) The legislative rule filed in the state register on the twentieth day of August, one thousand nine hundred ninety-six, (valuation of life insurance policies, 114 CSR 49) is hereby disapproved and is not authorized for promulgation: Provided, That for purposes of determining the legal effects of the aforementioned rule, this provision shall be considered to have taken effect on the thirty-first day of December, one thousand nine hundred ninety-seven. This disapproval shall in no way limit the commissioner’s power to promulgate in the future a rule similar or identical to the rule here disapproved.

ARTICLE 39. DISCLOSURE OF MATERIAL TRANSACTIONS.


(a) Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance programs unless the acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance programs have been submitted to the commissioner for review, approval or information purposes pursuant to other provisions of this chapter.

(b) The report required in subsection (a) of this section is due within fifteen days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be filed with:

(1) The insurance commissioner; and

(2) The national association of insurance commissioners.

(d) All reports obtained by or disclosed to the commissioner pursuant to this article shall be given confidential treatment and
shall not be subject to subpoena and shall not be made public by
the commissioner, the national association of insurance
commissioners or any other person in accordance with section
nineteen, article two of this chapter without the prior written
consent of the insurer to which it pertains unless the commis-
sioner, after giving the insurer who would be affected thereby
notice and an opportunity to be heard, determines that the
interest of policyholders, shareholders or the public will be
served by the publication thereof, in which event the commis-
sioner may publish all or any part thereof in such manner as he
or she may consider appropriate.

CHAPTER 123

(Com. Sub. for H. B. 2556 — By Mr. Speaker, Mr. Kiss)

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-three of the code of
West Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section fifteen-a,
relating to requiring the insurance commissioner to issue an
annual communication to state and local governmental entities
and nonprofit organizations to increase awareness of certain flood
insurance issues.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-three of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be amended by
adding thereto a new section, designated section fifteen-a, to read as follows:
ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-15a. Annual flood insurance communication to public entities by commissioner.

(a) The commissioner shall annually issue a communication to West Virginia state and local governmental entities and nonprofit organizations which shall have the following objectives:

(1) To make state and local governmental entities and nonprofit organizations aware of the 1988 amendments to the federal Robert T. Stafford Emergency Assistance and Disaster Relief Act which impose penalties in the form of reductions in Federal Emergency Management Agency (FEMA) disaster relief funds on public entities who fail to purchase adequate flood insurance on all property located in identified flood hazard areas;

(2) To make state and local governmental entities and nonprofit organizations generally aware of the magnitude of risk exposure and potential financial loss that may result from these penalties; and

(3) To make state and local governmental entities and nonprofit organizations aware that low-cost, federally subsidized flood insurance may be available through the National Flood Insurance Program (NFIP).

(b) The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.
AN ACT to amend article five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven, relating to the redomestication of domestic insurance companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. ORGANIZATION AND PROCEDURES OF DOMESTIC STOCK AND MUTUAL INSURERS.

§33-5-27. Redomestication of stock and mutual insurers.

(a) A domestic insurer may, upon the approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance and, upon such transfer, shall cease to be a domestic insurer and shall be admitted to this state if qualified as a foreign insurer. The commissioner shall approve the proposed transfer unless he or she determines the transfer is not in the best interest of the policyholders of this state.

(b) The certificate of authority, agents' appointments and licenses, rates and other items which the commissioner allows,
in his or her discretion, that are in existence at the time an insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation or any other lawful method shall continue in full force and effect upon transfer if the insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of a transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner.

(c) A transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner. However, every transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

CHAPTER 125

(Com. Sub. for H. B. 2715 — By Delegates H. White, Hrutkay and R. M. Thompson)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article twelve-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nonadmitted insurers and the regulation of surplus lines insurance; defining terms for implementation of the NAIC nonadmitted insurers model act; establish-
ing consistency among states; providing specific provisions from the model; liberalizing reciprocity for licensing nonresident surplus lines licensees; providing grounds upon which the commission may deny a nonadmitted insurer access to the state; providing for the regulation of surplus lines; enforcement; violations; penalties; service of process; and eliminating certain conflicting excess line related provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12C. SURPLUS LINE.

§33-12C-1. Short title.
§33-12C-2. Purpose - necessity for regulation.
§33-12C-3. Definitions.
§33-12C-4. Placement of insurance business.
§33-12C-5. Surplus lines insurance.
§33-12C-6. Withdrawal of eligibility as a surplus lines insurer.
§33-12C-7. Surplus lines tax.
§33-12C-8. Surplus lines licenses.
§33-12C-9. Suspension, revocation or nonrenewal of surplus lines licensee's license.
§33-12C-10. Actions against eligible surplus lines insurers transacting surplus lines business.
§33-12C-11. Duty to file evidence of insurance and affidavits.
§33-12C-12. Evidence of the insurance and subsequent changes to the insurance.
§33-12C-13. Licensee's duty to notify insured.
§33-12C-14. Effect of payment to surplus lines licensee.
§33-12C-15. Surplus lines licensees may accept business from other producers.
§33-12C-16. Records of surplus lines licensee.
§33-12C-17. Reports - summary of exported business.
§33-12C-18. Penalties.
§33-12C-19. Violations.
§33-12C-20. Service of process.
§33-12C-21. Legal or administrative procedures.
§33-12C-22. Enforcement.
§33-12C-23. Suits by nonadmitted insurers.
§33-12C-24. Countersignature requirements.
§33-12C-25. Fees.
§33-12C-26. Coverage must be place in solvent insurer.
§33-12C-27. Change of address.
§33-12C-29. Hearings.

§33-12C-1. Short title.

1 This article shall be known and may be cited as “The
2 Nonadmitted Insurance Act”.

§33-12C-2. Purpose - necessity for regulation.

1 This article shall be liberally construed and applied to
2 promote its underlying purposes which include:

3 (a) Protecting persons seeking insurance in this state;

4 (b) Permitting surplus lines insurance to be placed with
5 reputable and financially sound nonadmitted insurers and
6 exported from this state pursuant to this article;

7 (c) Establishing a system of regulation which will permit
8 orderly access to surplus lines insurance in this state and
9 encourage admitted insurers to provide new and innovative
10 types of insurance available to consumers in this state;

11 (d) Providing a system through which persons may pur-
12 chase insurance other than surplus lines insurance, from
13 nonadmitted insurers pursuant to this article;

14 (e) Protecting revenues of this state; and

15 (f) Providing a system pursuant to this article which
16 subjects nonadmitted insurance activities in this state to the
17 jurisdiction of the insurance commissioner and state and federal
18 courts in suits by or on behalf of the state.

§33-12C-3. Definitions.
As used in this article:

(a) "Admitted insurer" means an insurer licensed to do an insurance business in this state.

(b) "Business entity" means a corporation, association, partnership, limited liability company, or other legal entity.

(c) "Capital," as used in the financial requirements of section five of this article, means funds paid in for stock or other evidence of ownership.

(d) "Commissioner" means the insurance commissioner of West Virginia, or the commissioner's deputies or staff, or the commissioner, director or superintendent of insurance in any other state.

(e) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance pursuant to section five of this article.

(f) "Export" means to place surplus lines insurance with a nonadmitted insurer.

(g) "Foreign decree" means any decree or order in equity of a court located in any United States jurisdiction, including a federal court of the United States, against any person engaging in the transaction of insurance in this state.

(h) "Individual" means any private or natural person as distinguished from a partnership, corporation, limited liability company or other legal entity.

(i) "Insurance" means any of the lines of authority in section ten, article one of this chapter.
"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. Wherever the word "agent" appears in this chapter, it shall mean an individual insurance producer.

"Insurer" means any person, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, insurance exchange syndicate, fraternal benefit society, and any other legal entity engaged in the business of making contracts of insurance under section two, article one of this chapter.

"Kind of insurance" means one of the types of insurance required to be reported in the annual statement which must be filed with the commissioner by admitted insurers.

"License" means a document issued by this state's insurance commissioner authorizing an individual to act as a surplus lines licensee for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurer.

"Nonadmitted insurer" means an insurer not licensed to do an insurance business in this state.

"Person" means any natural person or other entity, including, but not limited to, individuals, partnerships, associations, trusts or corporations.

"Policy" or "contract" means any contract of insurance including, but not limited to, annuities, indemnity, medical or hospital service, workers' compensation, fidelity or suretyship.

"Reciprocal state" means a state that has enacted provisions substantially similar to:
Section seven, subdivision (5) of subsection (b) of section nine, subsection (j) of section sixteen, and subsection (d) of section seventeen of this article; and

(2) The NAIC model allocation schedule and reporting form.

"Surplus," as used in the financial requirements of section five of this article, means funds over and above liabilities and capital of the company for the protection of policyholders.

"Surplus lines insurance" means any property and casualty insurance in this state on properties, risks or exposures, located or to be performed in this state, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, pursuant to section seven of this article. Wherever the term "excess line" appears in this chapter, it shall mean surplus lines insurance.

"Surplus lines licensee" means an individual licensed under section five of this article to place insurance on properties, risks or exposures located or to be performed in this state with nonadmitted insurers eligible to accept such insurance. Wherever the term "excess line broker" appears in this chapter, it shall mean surplus lines licensee.

"Transaction of insurance"

(1) For purposes of this article, any of the following acts in this state effected by mail or otherwise by a nonadmitted insurer or by any person acting with the actual or apparent authority of the insurer, on behalf of the insurer, is deemed to constitute the transaction of an insurance business in or from this state:
(A) The making of or proposing to make, as an insurer, an insurance contract;

(B) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

(C) The taking or receiving of an application for insurance;

(D) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for insurance or any part thereof;

(E) The issuance or delivery in this state of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(F) The solicitation, negotiation, procurement or effectuation of insurance or renewals thereof;

(G) The dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, the fixing of rates or investigation or adjustment of claims or losses or the transaction of matters subsequent to effectuation of the contract and arising out of it, or any other manner of representing or assisting a person or insurer in the transaction of risks with respect to properties, risks or exposures located or to be performed in this state;

(H) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance;

(I) The offering of insurance or the transacting of insurance business; or
(J) Offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.

(2) The provisions of this subsection shall not operate to prohibit employees, officers, directors or partners of a commercial insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer, provided that the person's compensation is not based on buying insurance.

(3) The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered or issued for delivery or takes effect.

(v) "Line of insurance" means coverage afforded under the particular policy that is being placed.

(w) "Model allocation schedule and reporting form" means the current version of the NAIC model allocation schedule and reporting form for surplus lines insurers.

(x) "Wet marine and transportation insurance" means:

(1) Insurance upon vessels, crafts, hulls and other interests in them or with relation to them;

(2) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;

(3) Insurance of freight and disbursements pertaining to a subject of insurance within the scope of this subsection; and

(4) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks
or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any incidental delays, transshipment, or reshipment; provided, however, that insurance of personal property and interests therein shall not be considered wet marine and transportation insurance if the property has:

(A) Been transported solely by land; or

(B) Reached its final destination as specified in the bill of lading or other shipping document; or

(C) The insured no longer has an insurable interest in the property.

§33-12C-4. Placement of insurance business.

(a) An insurer shall not engage in the transaction of insurance unless authorized by a license in force pursuant to the laws of this state, or exempted by this article or otherwise exempted by the insurance laws of this state.

(b) A person shall not engage in a transaction of insurance or shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, a nonadmitted insurer in the solicitation, negotiation, procurement or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist the insurer in the transaction of insurance.

(c) A person who represents or aids a nonadmitted insurer in violation of this section shall be subject to the penalties set forth in section eighteen of this article. No insurance contract entered into in violation of this section shall preclude the
insured from enforcing his rights under the contract in accordance with the terms and provisions of the contract of insurance and the laws of this state, to the same degree those rights would have been enforceable had the contract been lawfully procured.

(d) If the nonadmitted insurer fails to pay a claim or loss within the provisions of the insurance contract and the laws of this state, a person who assisted or in any manner aided directly or indirectly in the procurement of the insurance contract, shall be liable to the insured for the full amount under the provisions of the insurance contract.

(e) This section shall not apply to a person, properly licensed as an agent in this state who, for a fee and pursuant to a written agreement, is engaged solely to offer to the insured advice, counsel or opinion, or service with respect to the benefits, advantages or disadvantages promised under any proposed or in-force policy of insurance if the person does not, directly or indirectly, participate in the solicitation, negotiation or procurement of insurance on behalf of the insured;

(f) The insurance must be procured only through an individual licensed surplus lines licensee;

(g) This section shall not apply to a person acting in material compliance with the insurance laws of this state in the placement of the types of insurance identified in subdivisions (1), (2), (3) and (4) below:

(1) Surplus lines insurance as provided in section five of this article. For the purposes of this subsection, a licensee shall be deemed to be in material compliance with the insurance laws of this state, unless the licensee committed a violation of section five of this article that proximately caused loss to the insured;
(2) Transactions for which a license to do business is not required of an insurer under the insurance laws of this state;

(3) Reinsurance provided that, unless the commissioner waives the requirements of this subsection:

(A) The assuming insurer is authorized to do an insurance or reinsurance business by its domiciliary jurisdiction and is authorized to write the type of reinsurance in its domiciliary jurisdiction; and

(B) The assuming insurer satisfies all legal requirements for such reinsurance in the state of domicile of the ceding insurer;

(4) The property and operation of railroads or aircraft engaged in interstate or foreign commerce, wet marine and transportation insurance;

(5) Transactions subsequent to issuance of a policy not covering properties, risks or exposures located, or to be performed in this state at the time of issuance, and lawfully solicited, written or delivered outside this state.

§33-12C-5. Surplus lines insurance.

(a) Surplus lines insurance may be placed by a surplus lines licensee if:

(1) Each insurer is an eligible surplus lines insurer; and

(2) Each insurer is authorized to write the type of insurance in its domiciliary jurisdiction; and

(3) The full amount or line of insurance cannot be obtained from insurers who are admitted to do business in this state. The full amount or type of insurance may be procured from eligible surplus lines insurers, provided that a diligent search is made by the individual insurance producer among the insurers who are
admitted to transact and are actually writing the particular type of insurance in this state if any are writing it; and

(4) All other requirements of this article are met.

(b) Subject to subdivision (3), subsection (a) of this section, a surplus lines licensee may place any coverage with a nonadmitted insurer eligible to accept the insurance, unless specifically prohibited by the laws of this state.

(c) A surplus lines licensee shall not place coverage with a nonadmitted insurer, unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer:

(1) Has established satisfactory evidence of good repute and financial integrity; and

(2) Qualifies under one of the following paragraphs:

(A) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

(i)(I) The minimum capital and surplus requirements under the law of this state; or

(ii) The requirements of subparagraph (i), paragraph (A) of this subdivision may be satisfied by an insurer’s possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. In no event shall the commissioner make an affirmative finding of accept-
ability when the nonadmitted insurer’s capital and surplus is less than four million five hundred thousand dollars; or

(B) In the case of an insurance exchange created by the laws of a state other than this state:

(i) The syndicates of the exchange shall maintain under terms acceptable to the commissioner capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than seventy-five million dollars in the aggregate; and

(ii) The exchange shall maintain under terms acceptable to the commissioner not less than fifty percent of the policyholder surplus of each syndicate in a custodial account accessible to the exchange or its domiciliary commissioner in the event of insolvency or impairment of the individual syndicate; and

(iii) In addition, each individual syndicate to be eligible to accept surplus lines insurance placements from this state shall meet either of the following requirements:

(I) For insurance exchanges which maintain funds in an amount of not less than fifteen million dollars for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of the domiciliary jurisdiction, of not less than five million dollars; or

(II) For insurance exchanges which do not maintain funds in an amount of not less than fifteen million dollars for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than the minimum capital and surplus requirements under the laws of its domiciliary jurisdiction or fifteen million dollars, whichever is greater; or
(C) In the case of a Lloyd's plan or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers:

(i) The plan or group maintains a trust fund that shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States; and

(ii) In addition, the group shall establish and maintain in trust a surplus in the amount of one hundred million dollars; which shall be available for the benefit of United States surplus lines policyholders of any member of the group.

(iii) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(iv) The trust funds shall be maintained in an irrevocable trust account in the United States in a qualified financial institution, consisting of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state and, in addition, the trust required by subparagraph (ii) of this subdivision shall satisfy the requirements of the standard trust agreement required for listing with the national association of insurance commissioners (NAIC) international insurers department or any successor thereto; or

(D) In the case of a group of incorporated insurers under common administration, which has continuously transacted an insurance business outside the United States for at least three years immediately prior to this time, and which submits to this
(i) The group shall maintain an aggregate policyholders’ surplus of ten billion dollars; and

(ii) The group shall maintain in trust a surplus in the amount of ten billion dollars; which shall be available for the benefit of United States surplus lines policyholders of any member of the group; and

(iii) Each insurer shall individually maintain capital and surplus of not less than twenty-five million dollars per company.

(iv) The trust funds shall satisfy the requirements of the standard trust agreement requirement for listing with the NAIC international insurers department or any successor thereto, and shall be maintained in an irrevocable trust account in the United States in a qualified financial institution, and shall consist of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state.

(v) Additionally, each member of the group shall make available to the commissioner an annual certification of the member’s solvency by the member’s domiciliary regulator and its independent public accountant; or

(E) Except for an exchange or plan complying with paragraph (B), (C) or (D) of this subdivision, an insurer not domiciled in one of the United States or its territories shall satisfy the capital and surplus requirements of paragraph (A), subdivision (2), subsection (c) of this section and shall have in force a trust fund of not less than the greater of:
(i) Five million four hundred thousand dollars; or

(ii) Thirty percent of the United States surplus lines gross liabilities, excluding aviation, wet marine and transportation insurance liabilities, not to exceed sixty million dollars, to be determined annually on the basis of accounting practices and procedures substantially equivalent to those promulgated by this state, as of the thirty-first day of December next preceding the date of determination, where:

(I) The liabilities are maintained in an irrevocable trust account in the United States in a qualified financial institution, on behalf of U.S. policyholders consisting of cash, securities, letters of credit or other investments of substantially the same character and quality as those which are eligible investments pursuant to article eight of this chapter for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state. The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the requirements of the Standard Trust Agreement required for listing with the NAIC international insurers department or any successor thereto; and

(II) The insurer may request approval from the commissioner to use the trust fund to pay valid surplus lines claims; provided, however, that the balance of the trust fund is never less than the greater of five million four hundred thousand dollars or thirty percent of the insurer's current gross U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance liabilities; and

(III) In calculating the trust fund amount required by this subsection, credit shall be given for surplus lines deposits separately required and maintained for a particular state or U.S. territory, not to exceed the amount of the insurer's loss and loss adjustment reserves in the particular state or territory;
(F) An insurer or group of insurers meeting the requirements to do a surplus lines business in this state at the effective date of this law shall have two years from the date of enactment to meet the requirements of paragraph (E) of this subdivision, as follows:

<table>
<thead>
<tr>
<th>Year Following Enactment</th>
<th>Trust Fund Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>15% of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of $30,000,000</td>
</tr>
<tr>
<td>2</td>
<td>30% of U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of $60,000,000</td>
</tr>
</tbody>
</table>

(G) The commissioner shall have the authority to adjust, in response to inflation, the trust fund amounts required by paragraph (E) of this subdivision.

(3) In addition to all of the other requirements of this subsection, an insurer not domiciled in the United States or its territories shall be listed on the NAIC’s quarterly listing of alien insurers. The commissioner may waive the requirement in this subdivision or the requirements of subparagraph (ii), paragraph (E), subdivision (2), subsection (c) of this section may be satisfied by an insurer’s possessing less than the trust fund amount specified in subparagraph (ii), paragraph (E), subdivision (2), subsection (c) of this section upon an affirmative finding of acceptability by the commissioner if the commissioner is satisfied that the placement of insurance with the insurer is necessary and will not be detrimental to the public and the policyholder. In determining whether business may be
placed with the insurer, the commissioner may consider such factors as:

(A) The interests of the public and policyholders;

(B) The length of time the insurer has been authorized in its domiciliary jurisdiction and elsewhere;

(C) Unavailability of particular coverages from authorized insurers or unauthorized insurers meeting the requirements of this section;

(D) The size of the company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force or other appropriate criteria;

(E) The kinds of business the company writes, its net exposure and the extent to which the company’s business is diversified among several lines of insurance and geographic locations; and

(F) The past and projected trend in the size of the company’s capital and surplus considering such factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria; and

(4) Has caused to be provided to the commissioner a copy of its current annual statement certified by the insurer and an actuarial opinion as to the adequacy of, and methodology used to determine, the insurer’s loss reserves. The statement shall be provided at the same time it is provided to the insurer’s domicile, but in no event more than eight months after the close of the period reported upon, and shall be certified as a true and correct copy by an accounting or auditing firm licensed in the jurisdiction of the insurer’s domicile and certified by a senior officer of the nonadmitted insurer as a true and correct copy of the statement filed with the regulatory authority in the domicile
of the nonadmitted insurer. In the case of an insurance ex-
change qualifying under paragraph (B), subdivision (2) of this
subsection, the statement may be an aggregate combined
statement of all underwriting syndicates operating during the
period reported; and

(5) In addition to meeting the requirements in subdivisions
(1) to (4) of this subsection an insurer shall be an eligible
surplus lines insurer if it appears on the most recent list of
eligible surplus lines insurers published by the commissioner
from time to time but at least annually. Nothing-in this subdivi-
sion shall require the commissioner to place or maintain the
name of any nonadmitted insurer on the list of eligible surplus
lines insurers.

(6) Notwithstanding subsection (a) of this section, only that
portion of any risk eligible for export for which the full amount
of coverage is not procurable from listed eligible surplus lines
insurers may be placed with any other nonadmitted insurer
which does not appear on the list of eligible surplus lines
insurers published by the commissioner pursuant to subdivision
(5) of this subsection but nonetheless meets the requirements
set forth in subdivisions (1) and (2), subsection (c) of this
section and any regulations of the commissioner. The surplus
lines licensee seeking to provide coverage through an unlisted
nonadmitted insurer shall make a filing specifying the amounts
and percentages of each risk to be placed, and naming the
nonadmitted insurers with which placement is intended. Within
thirty days after placing the coverage, the surplus lines licensee
shall also send written notice to the insured that the insurance,
or a portion thereof, has been placed with the nonadmitted
insurer.

(d) Insurance procured under this section shall be valid and
enforceable as to all parties.
§33-12C-6. Withdrawal of eligibility as a surplus lines insurer.

1 (a) The commissioner may declare a surplus lines insurer ineligible if the commissioner has reason to believe that:

3 (1) Is in unsound financial condition or has acted in an untrustworthy manner;

5 (2) No longer meets standards set forth in subsection (c) of this section;

7 (3) Has willfully violated the laws of this state; or

8 (4) Does not conduct a proper claims practice;

(b) The commissioner shall promptly mail notice of all such declarations to each surplus lines licensee.

§33-12C-7. Surplus lines tax.

1 (a) In addition to the full amount of gross premiums charged by the insurer for the insurance, every person licensed pursuant to section eight of this article shall collect and pay to the commissioner a sum equal to four percent of the gross premiums and gross fees charged, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license. Where the insurance covers properties, risks or exposures located or to be performed both in and out of this state, the sum payable shall be computed on that portion of the gross premiums allocated to this state pursuant to subsection (g) of this section less the amount of gross premiums allocated to this state and returned to the insured due to cancellation of policy. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any.
(b) The individual insurance producer may not:

(1) Pay directly or indirectly the tax or any portion thereof, either as an inducement to the policyholder to purchase the insurance or for any other reason; or

(2) Rebate all or part of the tax or the surplus lines licensee’s commission, either as an inducement to the policyholder to purchase the insurance or for any reason.

(c) The surplus lines licensee may charge the prospective policyholder a fee for the cost of underwriting, issuing, processing, inspecting, service or auditing the policy for placement with the surplus line insurer if:

(1) The service is required by the surplus line insurer;

(2) The service is actually provided by the individual insurance producer or the cost of the service is actually incurred by the surplus lines licensee; and

(3) The provision or cost of the service is reasonable, documented and verifiable.

(d) The surplus lines licensee shall make a clear and conspicuous written disclosure to the policyholder of:

(1) The total amount of premium for the policy;

(2) Any fee charged;

(3) The total amount of any fee charged; and

(4) The total amount of tax on the premium and fee.

(e) The clear and conspicuous written disclosure required by subdivision (4) of this subsection is subject to the record maintenance requirements of section eight of this article.
(f) This tax is imposed for the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and additional revenue for volunteer and part volunteer fire companies and departments. This tax is required to be paid and remitted, on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter, in respect of which taxes shall be due and payable and final computation of actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments prior made, and filed with the annual return to be made on or before the first day of March of the succeeding year. Provisions of this chapter relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of this tax to the extent that the provisions are not in conflict with this section.

All taxes remitted to the commissioner pursuant to this subsection shall be paid by him or her into a special account in the state treasury, designated “municipal pensions and protection fund,” and after appropriation by the Legislature, shall be distributed in accordance with the provisions of subsection (c), section fourteen-d, article three of this chapter. The surplus lines licensee shall return to the policyholder the tax on any unearned portion of the premium returned to the policyholder because of cancellation of policy.

(g) If a surplus lines policy procured through a surplus lines licensee covers properties, risks or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to the properties, risks or exposures located or to be performed in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state shall be considered written on properties, risks or
exposures located or to be performed in this state, except
premiums which are properly allocated or apportioned and
reported as taxable premiums of a reciprocal state. In no event
shall the tax payable to this state be less than the tax due
pursuant to subsection (h) of this section; provided, however, in
the event that the amount of tax due under this provision is less
than fifty dollars in any jurisdiction, it shall be payable in the
jurisdiction in which the affidavit required in section eleven is
filed. The commissioner may, at least annually furnish to the
commissioner of a reciprocal state, as defined in subsection (q),
section three of this article, a copy of all filings reporting an
allocation of taxes as required by this subsection.

(h) In determining the amount of gross premiums taxable
in this state for a placement of surplus lines insurance covering
properties, risks or exposures only partially located or to be
performed in this state, the tax due shall be computed on the
portions of the premiums which are attributable to properties,
risks or exposures located or to be performed in this state and
which relates to the kinds of insurance being placed as deter-
mined by reference to the model allocation schedule and
reporting form.

(1) If a policy covers more than one classification:

(A) For any portion of the coverage identified by a classifi-
cation on the allocation schedule, the tax shall be computed by
using the allocation schedule for the corresponding portion of
the premium;

(B) For any portion of the coverage not identified by a
classification on the allocation schedule, the tax shall be
computed by using an alternative equitable method of allocation
for the property or risk;

(C) For any portion of the coverage where the premium is
indivisible, the tax shall be computed by using the method of
allocation which pertains to the classification describing the predominant coverage.

(2) If the information provided by the surplus lines licensee is insufficient to substantiate the method of allocation used by the surplus lines licensee, or if the commissioner determines that the licensee's method is incorrect, the commissioner shall determine the equitable and appropriate amount of tax due to this state as follows:

(A) By use of the allocation schedule where the risk is appropriately identified in the schedule;

(B) Where the allocation schedule does not identify a classification appropriate to the coverage, the commissioner may give significant weight to documented evidence of the underwriting bases and other criteria used by the insurer. The commissioner may also consider other available information to the extent sufficient and relevant, including the percentage of the insured's physical assets in this state, the percentage of the insured's sales in this state, the percentage of income or resources derived from this state, and the amount of premium tax paid to another jurisdiction for the policy.

(i) Collection of tax.

If the tax owed by a surplus lines licensee under this section has been collected and is not paid within the time prescribed, the same shall be recoverable in a suit brought by the commissioner against the surplus lines licensee. The commissioner may charge interest for any unpaid tax, fee, financial assessment or penalty, or portion thereof: Provided, That interest may not be charged on interest. Interest shall be calculated using the annual rates which are established by the tax commissioner pursuant to section seventeen-a of article ten, chapter eleven of this code, and shall accrue daily.
§33-12C-8. Surplus lines licenses.

(a) A person shall not procure a contract of surplus lines insurance with a nonadmitted insurer unless the person possesses a current surplus lines insurance license issued by the commissioner.

(b) The commissioner may issue a surplus lines license to a qualified holder of a current property and casualty individual insurance producer's license but only when the individual insurance producer has:

1. Remitted the two hundred dollar annual fee to the commissioner, of which all fees so collected are to be used for the purposes set forth in section thirteen, article three of this chapter;

2. Submitted a completed license application on a form supplied by the commissioner;

3. Passed a qualifying examination approved by the commissioner, except that all holders of a license prior to the effective date of this article shall be deemed to have passed such an examination; and

4. If a resident, established and continues to maintain an office in this state.

(c) If the commissioner determines that a surplus lines licensee of another state is competent, trustworthy and meets the licensing requirements of this state, the commissioner may, in his or her discretion, issue a nonresident surplus lines license. A license shall not be issued unless the prospective licensee furnishes the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident surplus lines licensee may be served. The licensee shall promptly notify the
30 commissioner in writing of every change in its designated agent
31 for service of process, and the change shall not become effective until acknowledged by the commissioner.

33 (d) Each surplus lines license shall expire at midnight on
34 the thirty-first day of May next following the date of issuance,
35 and an application for renewal shall be filed before the first day
36 of May of each year upon payment of the annual fee and
37 compliance with other provisions of this article. A surplus lines
38 licensee who fails to apply for renewal of the license before the
39 first day of May shall pay a penalty of one hundred dollars and
40 be subject to penalties provided by law before the license will
41 be renewed.

§33-12C-9. Suspension, revocation or nonrenewal of surplus lines licensee’s license.

1 (a) The commissioner may examine and investigate the
2 business affairs of every individual applying for or holding a
3 surplus lines insurance license to determine whether such
4 individual has been or is engaged in unfair or deceptive
5 practices in any state.

6 (b) The commissioner may place on probation, suspend,
7 revoke or refuse to issue or renew the license of a surplus lines
8 licensee or may levy a civil penalty in a sum not to exceed five
9 thousand dollars or any combination of actions after notice and
10 hearing pursuant to section thirteen, article two of this chapter
11 upon one or more of the following grounds:

12 (1) Removal of the resident surplus lines licensee’s office
13 from this state;

14 (2) Removal of the resident surplus lines licensee’s office
15 accounts and records from this state during the period during
16 which the accounts and records are required to be maintained
17 under section sixteen of this article;
(3) Closing of the surplus lines licensee’s office for a period of more than thirty business days, unless permission is granted by the commissioner;

(4) Failure to make and file required reports;

(5) Failure to transmit required tax on surplus lines premiums to this state or a reciprocal state to which a tax is owing;

(6) Violation of any provision of this article; or

(7) For any cause for which an insurance license could be denied, revoked, suspended or renewal refused pursuant to section twenty-four, article twelve of this chapter.

§33-12C-10. Actions against eligible surplus lines insurers transacting surplus lines business.

(a) An eligible surplus lines insurer may be sued upon a cause of action arising in this state under a surplus lines insurance contract made by it or evidence of insurance issued or delivered by the surplus lines licensee. A policy issued by the eligible surplus lines insurer shall contain a provision stating the substance of this section and designating the person to whom the commissioner shall mail process.

(b) The remedies provided in this section are in addition to any other methods provided by law for service of process upon insurers.

§33-12C-11. Duty to file evidence of insurance and affidavits.

(a) On or before the first day of March, two thousand four, and on or before the first day of March thereafter, each surplus lines licensee shall file, on a form prescribed by the commissioner, a report under oath, setting forth facts from which it may be determined whether the requirements of section five of this
article have been met with respect to each surplus line policy
procured by the surplus lines licensee during the preceding
calendar year.

(b) The written report shall include, but not be limited to,
the following:

(1) The name and address of the insured;

(2) The identity of the insurer or insurers;

(3) A description of the subject and location of the risk and
the risk insured against;

(4) Return premium paid, if any;

(5) The amount of gross premium charged for the insur-
ance;

(6) The amount of the insurance;

(7) Such other pertinent information as the commissioner
may reasonably require; and

(8) An affidavit on a standardized form promulgated by the
commissioner, as to the diligent efforts to place the coverage
with admitted insurers and the results of that effort. The
affidavit shall be open to public inspection. The affidavit shall
affirm that the insured was expressly advised in writing prior to
placement of the insurance that:

(A) The surplus lines insurer with whom the insurance was
to be placed is not licensed in this state and is not subject to its
supervision; and

(B) In the event of the insolvency of the surplus lines
insurer, losses will not be paid by the state insurance guaranty
fund.
§33-12C-12. Evidence of the insurance and subsequent changes to the insurance.

(a) Upon placing surplus lines insurance, the surplus lines licensee shall promptly deliver to the insured the policy, or if the policy is not then available, a certificate as described in subsection (d) of this section, cover note, binder or other evidence of insurance. The certificate described in subsection (d) of this section, cover note, binder or other evidence of insurance shall be executed by the surplus lines licensee and shall show the description and location of the subject of the insurance, coverages including any material limitations other than those in standard forms, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, and the name and address of the insured and surplus lines insurer or insurers and proportion of the entire risk assumed by each, and the name of the surplus lines licensee and the licensee’s license number.

(b) A surplus lines licensee shall not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any eligible surplus lines insurer, or a nonadmitted insurer pursuant to subdivision (4), subsection (c), section five of this article, unless the licensee has authority from the insurer to cause the risk to be insured, or has received information from the insurer in the regular course of business that the insurance has been granted.

(c) If, after delivery of any evidence of insurance, there is any change in the identity of the insurers, or the proportion of the risk assumed by any insurer, or any other material change in coverage as stated in the surplus lines licensee’s original evidence of insurance, or in any other material as to the insurance coverage so evidenced, the surplus lines licensee shall promptly issue and deliver to the insured or the original producing individual insurance producer appropriate substitute
for, or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible for the coverage.

(d) As soon as reasonably possible after the placement of the insurance, the surplus lines licensee shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured to replace any evidence of insurance previously issued. Each certificate or policy of insurance shall contain or have attached a complete record of all policy insuring agreements, conditions, exclusions, clauses, endorsements or any other material facts that would regularly be included in the policy.

(e) A surplus lines licensee who fails to comply with the requirements of this subsection shall be subject to the penalties provided in this article.

(f) The surplus lines licensee shall give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice shall be printed in sixteen-point type on a separate document affixed to the application. The applicant shall sign and date a copy of the notice to acknowledge receiving it. The surplus lines licensee shall maintain the signed notice in its file for a period of ten years from expiration of the policy. The surplus lines licensee shall tender a copy of the signed notice to the insured at the time of delivery of each policy the licensee transacts with a nonadmitted insurer. The copy shall be a separate document affixed to the policy.

"Notice: 1. An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty
funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines brokers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance agent or surplus lines licensee. You may also contact your insurance commission consumer help line.”

§33-12C-13. Licensee’s duty to notify insured.

(a) No contract of insurance placed by a surplus lines licensee under this article shall be binding upon the insured and no premium or fee charged shall be due and payable until the surplus lines licensee shall have notified the insured in writing, in a form acceptable to the commissioner, a copy of which shall be maintained by the licensee with the records of the contract and available for possible examination, that:

1. The insurer with which the licensee places the insurance is not licensed by this state and is not subject to its supervision; and

2. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

(b) Nothing herein contained shall nullify any agreement by any insurer to provide insurance.

§33-12C-14. Effect of payment to surplus lines licensee.

A payment of premium to a surplus lines licensee acting for a person other than itself in procuring, continuing or renewing any policy of insurance procured under this section shall be
deemed to be payment to the insurer, whatever conditions or stipulations may be inserted in the policy or contract notwithstanding.

§33-12C-15. Surplus lines licensees may accept business from other producers.

A surplus lines licensee may originate surplus lines insurance or accept such insurance from any other individual insurance producer duly licensed as to the kinds of insurance involved, and the surplus lines licensee may compensate the individual insurance producer for the business. The surplus lines licensee shall have the right to receive from the insurer the customary commission.

§33-12C-16. Records of surplus lines licensee.

(a) Each surplus lines licensee shall keep in this state a full and true record of each surplus lines insurance contract placed by or through the licensee, including a copy of the policy, certificate, cover note or other evidence of insurance showing each of the following items applicable:

(1) Amount of the insurance, risks and perils insured;

(2) Brief description of the property insured and its location;

(3) Gross premium charged;

(4) Any return premium paid;

(5) Rate of premium charged upon the several items of property;

(6) Effective date and terms of the contract;

(7) Name and address of the insured;
(8) Name and address of the insurer;

(9) Amount of tax and other sums to be collected from the insured;

(10) Allocation of taxes by state as referred to in subsection (f) of this section; and

(11) Identity of the producing broker, any confirming correspondence from the insurer or its representative, and the application.

(b) The record of each contract shall be kept open at all reasonable times to examination by the commissioner without notice for a period not less than ten years following termination of the contract. In lieu of maintaining offices in this state, each nonresident surplus lines licensee shall make available to the commissioner any and all records that the commissioner deems necessary for examination.

§33-12C-17. Reports - summary of exported business.

(a) On or before the first day of May, two thousand four, and on or before the first day of May thereafter, the end of the month following each year, each surplus lines licensee shall file with the commissioner, on forms prescribed by the commissioner, a verified report in duplicate of all surplus lines insurance transacted during the preceding period;

(b) The report shall show the following:

(1) Aggregate gross premiums written;

(2) Aggregate return premiums;

(3) Amount of aggregate tax remitted to this state; and
(4) Amount of aggregate tax due or remitted to each other state for which an allocation is made pursuant to section seven of this article.

§33-12C-18. Penalties.

(a) A person who in this state represents or aids a nonadmitted insurer in violation of this article is guilty of a misdemeanor and upon conviction thereof, may be fined not more than ten thousand dollars per each act or sentenced to not less than ten days nor more than one year, or both fined and imprisoned.

(b) In addition to any other penalty provided herein or otherwise provided by law, including any suspension, revocation or refusal to renew a license, any person, firm, association or corporation violating any provision of this article shall be liable to a civil penalty not exceeding ten thousand dollars for the first offense, and not exceeding twenty thousand dollars for each succeeding offense.

(c) The above penalties are not exclusive remedies. Penalties may also be assessed under article eleven of this chapter.

§33-12C-19. Violations.

Whenever the commissioner believes, from evidence satisfactory to him or her, that a person is violating or about to violate the provisions of this article, the commissioner may cause a complaint to be filed in the circuit court of Kanawha County for restitution and to enjoin and restrain the person from continuing the violation or engaging in or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order of judgment awarding such preliminary or final injunctive relief and restitution as in its judgment is proper.
§33-12C-20. Service of process.

(a) Any act of transacting insurance by an unauthorized person or a nonadmitted insurer is equivalent to and shall constitute an irrevocable appointment by the unauthorized person or insurer, binding upon it, its executor or administrator, or successor in interest of the secretary of state or his or her successor in office, to be the true and lawful attorney of the unauthorized person or insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the commissioner or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner and which arises out of transacting insurance in this state by the unauthorized person or insurer. Any act of transacting insurance in this state by a nonadmitted insurer shall signify its acceptance of its agreement that any lawful process in such court action, suit or proceeding and any notice, order, pleading or process in such administrative proceeding before the commissioner so served shall be of the same legal force and validity as personal service of process in this state upon the unauthorized person or insurer.

(b) Service of process in the action shall be made by delivering to and leaving with the secretary of state, or some person in apparent charge of the office, two copies thereof and by payment to the secretary of state of the fee prescribed by law. Service upon the secretary of state as attorney shall be service upon the principal.

(c) The secretary of state shall forward by certified mail one of the copies of the process or notice, order, pleading or process in proceedings before the commissioner to the defendant in the court proceeding or to whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on the commissioner.
which shall show the day and hour of service. Service is sufficient, provided:

(1) Notice of service and a copy of the court process or the notice, order, pleading or process in the administrative proceeding are sent within fifteen days by certified mail by the plaintiff or the plaintiff’s attorney in the court proceeding or by the commissioner in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding; and

(2) The defendant’s receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff’s attorney in a court proceeding or of the commissioner in an administrative proceeding, showing compliance are filed with the clerk of the court in which the action, suit or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond, or within such further time as the court or commissioner may allow.

(d) A plaintiff shall not be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading or process in proceedings before the commissioner is served under this section until the expiration of forty-five days from the date of filing of the affidavit of compliance.

(e) Nothing in this section shall limit or affect the right to serve any process, notice, order or demand upon any person or insurer in any other manner now or hereafter permitted by law.
(f) Each nonadmitted insurer assuming insurance in this state, or relative to property, risks or exposures located or to be performed in this state, shall be deemed to have subjected itself to this article.

(g) Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted insurer may be sued upon any cause of action arising in this state, or relative to property, risks or exposures located or to be performed in this state, under any insurance contract made by it.

(h) Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted insurer subject to arbitration or other alternative dispute resolution mechanism arising in this state or relative to property, risks or exposures located or to be performed in this state under an insurance contract made by it shall conduct the arbitration or other alternative dispute resolution mechanism in this state.

(i) A policy or contract issued by the nonadmitted insurer or one which is otherwise valid and contains a condition or provision not in compliance with the requirements of this article is not thereby rendered invalid but shall be construed and applied in accordance with the conditions and provisions which would have applied had the policy or contract been issued or delivered in full compliance with this article.

§33-12C-21. Legal or administrative procedures.

(a) Before any nonadmitted insurer files or causes to be filed any pleading in any court action, suit or proceeding or in any notice, order, pleading or process in an administrative proceeding before the commissioner instituted against the person or insurer, by services made as provided in this article, the insurer shall either:
(1) File with the clerk of the court in which the action, suit or proceeding is pending, or with the commissioner of insurance in administrative proceedings before the commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in the action or administrative proceeding; or

(2) Procure a certificate of authority to transact the business of insurance in this state. In considering the application of an insurer for a certificate of authority, for the purposes of this paragraph the commissioner need not assert the provisions of section sixteen, article three of this chapter against the insurer with respect to its application if the commissioner determines that the company would otherwise comply with the requirements for a certificate of authority.

(b) The commissioner of insurance, in any administrative proceeding in which service is made as provided in this article, may in the commissioner's discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) of this section and to defend the action.

(c) Nothing in subsection (a) of this section shall be construed to prevent a nonadmitted insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in this article, on the ground that the nonadmitted insurer has not done any of the acts enumerated in the pleadings.

(d) Nothing in subsection (a) of this section shall apply to placements of insurance which were lawful in the state in which the placement took place and which were not unlawful placements under the laws of this state. Without limiting the general-
§33-12C-22. Enforcement.

(a) The commissioner shall have the authority to proceed in the courts of this state or any other United States jurisdiction to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of insurance.

(b) Filing and status of foreign decrees.

A copy of a foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any circuit court of this state. The clerk, upon verifying with the commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of a circuit court of this state. A foreign decree so filed has the same effect and shall be deemed a decree of a circuit court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a decree of a circuit court of this state and may be enforced or satisfied in like manner.

(c) Notice of filing.

(1) At the time of the filing of the foreign decree, the plaintiff shall make and file with the clerk of the court an affidavit setting forth the name and last known post-office address of the defendant.

(2) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner of this state and shall make a note of the mailing in the...
docket. In addition, the plaintiff may mail a notice of the filing of the foreign decree to the defendant and to the commissioner of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the plaintiff has been filed.

(3) No execution or other process for enforcement of a foreign decree filed hereunder may issue until thirty days after the date the decree is filed.

(d) Stay of the foreign decree.

(1) If the defendant shows the circuit court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(2) If the defendant shows the circuit court any ground upon which enforcement of a decree of any circuit court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

(e) It shall be the policy of this state that the insurance commissioner shall cooperate with regulatory officials in other United States jurisdictions to the greatest degree reasonably practicable in enforcing lawfully issued orders of such other officials subject to public policy and the insurance laws of the state. Without limiting the generality of the foregoing, the commissioner may enforce an order lawfully issued by other
§33-12C-23. Suits by nonadmitted insurers.

A nonadmitted insurer may not commence or maintain an action in law or equity, including arbitration or any other dispute resolution mechanism, in this state to enforce any right arising out of any insurance transaction except with respect to:

(a) Claims under policies lawfully written in this state;

(b) Liquidation of assets and liabilities of the insurer (other than collection of new premium), resulting from its former authorized operations in this state;

(c) Transactions subsequent to issuance of a policy not covering domestic risks at the time of issuance, and lawfully procured under the laws of the jurisdiction where the transaction took place;

(d) Surplus lines insurance placed by a licensee under authority of section eight of this article;

(e) Reinsurance placed under the authority of article thirty-eight of this chapter;

(f) The continuation and servicing of life insurance, health insurance policies or annuity contracts remaining in force as to residents of this state where the formerly authorized insurer has withdrawn from the state and is not transacting new insurance in the state;

(g) Servicing of policies written by an admitted insurer in a state to which the insured has moved but in which the company does not have a certificate of authority until the term expires;
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26 (h) Claims under policies covering wet marine and trans-
27 portation insurance;

28 (i) Placements of insurance which were lawful in the
29 jurisdiction in which the transaction took place and which were
30 not unlawful placements under the laws of this state.

§33-12C-24. Countersignature requirements.

1 Surplus lines insurance shall be countersigned by a duly
2 licensed resident surplus lines licensee.

§33-12C-25. Fees.

1 The commissioner shall receive the following fees from
2 surplus lines licensees: For letters of certification, five dollars;
3 for letters of clearance, ten dollars; for duplicate license, five
4 dollars. All fees and moneys so collected shall be used for the
5 purposes set forth in section thirteen, article three of this
6 chapter.

§33-12C-26. Coverage must be placed in solvent insurer.

1 No surplus lines licensee may knowingly place any
2 coverage in an insolvent insurer.

§33-12C-27. Change of address.

1 A surplus lines licensee shall notify the commissioner of
2 any change in his or her mailing address within thirty days of
3 such change. The commissioner shall maintain the mailing
4 address of each surplus lines licensee on file. Failure to timely
5 inform the insurance commissioner of a change in legal name
6 or address may result in a penalty pursuant to section twenty-
7 four, article twelve of this chapter.

If any provisions of this article, or the application of the provision to any person or circumstance, shall be held invalid, the remainder of the article and the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

§33-12C-29. Hearings.

(a) When conducting any hearing authorized by section thirteen, article two of this chapter which concerns any surplus lines licensee, the commissioner shall give notice of the hearing and the matters to be determined therein to the surplus lines licensee by certified mail, return receipt requested, sent to the last address filed by a person or entity pursuant to section eight of this article.

(b) If a surplus lines licensee fails to appear at the hearing, the hearing may proceed, at which time the commissioner shall establish that notice was sent to the person pursuant to this section prior to the entry of any orders adverse to the interests of a surplus lines licensee based upon the allegations against the person which were set forth in the notice of hearing. Certified copies of all orders entered by the commissioner shall be sent to the person affected therein by certified mail, return receipt requested, at the last address filed by a person with the commissioner.

(c) A surplus lines licensee who fails to appear at a hearing of which notice has been provided pursuant to this section, and who has had an adverse order entered by the commissioner against them as a result of their failure to so appear may, within thirty calendar days of the entry of an adverse order, file with the commissioner a written verified appeal with any relevant documents attached thereto, which demonstrates good and
reasonable cause for the person’s failure to appear, and may request reconsideration of the matter and a new hearing. The commissioner in his or her discretion, and upon a finding that the surplus lines licensee has shown good and reasonable cause for his or her failure to appear, shall issue an order that the previous order be rescinded, that the matter be reconsidered, and that a new hearing be set.

(d) Orders entered pursuant to this section are subject to the judicial review provisions of section fourteen, article two of this chapter.

CHAPTER 126

(S. B. 357 — By Senators Minard, Jenkins, Sharpe and Minear)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-a, article thirteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standard nonforfeiture law for individual deferred annuities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. LIFE INSURANCE.

(a) This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

(b) This section may not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

(c) In the case of contracts issued on or after the operative date of this section as defined in subsection (l) of this section, no contract of annuity, except as stated in subsection (b) of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which, in the opinion of the commissioner, are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of the value as is specified in subsections (e), (f), (g), (h) and (j) of this section;

(2) If a contract provides for a lump sum settlement at maturity or at any other time, that, upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of the amount as is specified in
subsection (e), (f), (h) and (j) of this section. The company shall reserve the right to defer the payment of the cash surrender benefit for a period of six months after demand therefor with surrender of the contract;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits; and

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to the period would be less than twenty dollars monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit and by the payment shall be relieved of any further obligation under the contract.

(d) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract
shall be based upon minimum nonforfeiture amounts as defined in this section:

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to the time at a rate of interest of three percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to the time, decreased by the sum of:

(A) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per annum; and

(B) The amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less than an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in
all prior contract years for which the percentage was sixty-five percent.

Notwithstanding any other provision of this section, any contract issued on or after the first day of July, two thousand three, and before the first day of July, two thousand five, the interest rate at which net considerations, prior withdrawals and partial surrenders shall be accumulated for the purpose of determining nonforfeiture amounts may not be less than one and one-half percent per annum.

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(A) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(B) The annual contract charge shall be the lesser of: (i) Thirty dollars; or (ii) ten percent of the gross annual consideration.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars.
(e) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(f) For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from consideration paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, the present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

(g) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, the present value being calculated for
the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values shall be calculated on a basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(h) For the purpose of determining the benefits calculated under subsections (f) and (g) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant’s seventieth birthday or the tenth anniversary of the contract, whichever is later.

(i) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that the benefits are not provided.

(j) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.
(k) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (e), (f), (g), (h) and (j) of this section, additional benefits payable: (1) In the event of total and permanent disability; (2) as reversionary annuity or deferred reversionary annuity benefits; or (3) as other policy benefits additional to life insurance, endowment and annuity benefits and considerations for all the additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of the additional benefits shall not be required in any paid-up benefits unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(l) After the effective date of this section, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before the second anniversary of the effective date of this section. After the filing of the notice, then upon the specified date which shall be the operative date of this section for the company, this section shall become operative with respect to annuity contracts thereafter issued by the company. If a company makes no election, the operative date of this section for the company shall be the second anniversary of the effective date of this section.
AN ACT to amend article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-q; to amend article twenty-four of said chapter by adding thereto a new section, designated section seven-h; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-f; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-g, all relating generally to group accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations and health maintenance organizations; and prohibiting certain contracts of insurance from requiring subscribers to obtain prescription drugs from a mail-order pharmacy in order to obtain benefits for drugs.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-q; that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-h; that article twenty-five of said chapter be amended by adding thereto a new section, designated section eight-f; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-g, all to read as follows:
Article
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3q. Required use of mail-order pharmacy prohibited.

(a) An insurer issuing group accident and sickness policies in this state pursuant to the provisions of this article may not require any person covered under a contract which provides coverage for prescription drugs to obtain the prescription drugs from a mail-order pharmacy in order to obtain benefits for the drugs.

(b) An insurer may not violate the provisions of subsection (a) of this section through the use of an agent or contractor or through the action of an administrator of prescription drug benefits.

(c) The insurance commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement and enforce the provisions of this section.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7h. Required use of mail-order pharmacy prohibited.

(a) A corporation defined in section two of this article may not require any person covered under a contract which provides coverage for prescription drugs to obtain the prescription drugs from a mail-order pharmacy in order to obtain benefits for the drugs.
(b) A corporation may not violate the provisions of subsection (a) of this section through the use of an agent or contractor or through the action of an administrator of prescription drug benefits.

(c) The insurance commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement and enforce the provisions of this section.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8f. Required use of mail-order pharmacy prohibited.

(a) A health care corporation issuing a contract under the provisions of this article may not require any person covered under a contract which provides coverage for prescription drugs to obtain the prescription drugs from a mail-order pharmacy in order to obtain benefits for the drugs.

(b) A health care corporation may not violate the provisions of subsection (a) of this section through the use of an agent or contractor or through the action of an administrator of prescription drug benefits.

(c) The insurance commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement and enforce the provisions of this section.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8g. Required use of mail-order pharmacy prohibited.

(a) A health maintenance organization issuing coverage in this state pursuant to the provisions of this article may not require any person covered under a contract which provides coverage for prescription drugs to obtain the prescription drugs
from a mail-order pharmacy in order to obtain benefits for the
drugs.

(b) A health maintenance organization may not violate the
provisions of subsection (a) of this section through the use of an
agent or contractor or through the action of an administrator of
prescription drug benefits.

c) The insurance commissioner may propose rules for
legislative approval in accordance with the provisions of article
three, chapter twenty-nine-a of this code to implement and
enforce the provisions of this section.

CHAPTER 128

(S. B. 488 — By Senators Minard, Jenkins, Minear, Sharpe and Ross)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten and twelve, article
twenty-two, chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, all relating to the
contingent liability of members of farmers’ mutual fire insurance
companies; and limiting the amount of risk such companies may
undertake.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. FARMERS’ MUTUAL FIRE INSURANCE COMPANIES.
§33-22-10. Contingent liability of member.

§33-22-12. Limit of risk.

§33-22-10. Contingent liability of member.

1 The contingent liability of a member of such company may, with the approval of the commissioner, be limited to one or more times the annual premium as computed for the policy and the company may issue a policy without contingent liability to the member if at the time of issuance the net premium written to surplus as to policyholders does not exceed four to one and the company maintains unearned premium and other reserves on the same basis as that required of domestic insurers transacting like kinds of insurance. In the absence of such limitation of contingent liability each member shall be liable for his or her pro rata share of losses and expenses of the company, including a reasonable contribution to a surplus fund.

§33-22-12. Limit of risk.

1 No such company shall insure any single risk comprising a building and contents or other property so located as to be subject to destruction by a single fire for a greater amount than one thousand dollars until its insurance in force shall be as much as five hundred thousand dollars, nor shall it then insure any such risks for an amount greater than one fifth of one percent of the net insurance in force under its policies or ten percent of its surplus, whichever is greater, unless the risks insured by the company in excess of the amounts above stipulated are simultaneously covered by reinsurance.

11 Any company having received an extension of its license to permit it to issue policies of insurance pursuant to subsection (c), section eight of this article shall be subject to the provisions of section sixteen, article four of this chapter.
CHAPTER 129

(S. B. 356 — By Senators Minard, Jenkins, Minear and Sharpe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, two-a, three and seven, article twenty-seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to insurance company holding systems and amendments required by the federal Gramm-Leach-Bliley Act; allowing insurance companies to acquire or be acquired by depository institutions; amending the period of time within which a public hearing and action thereon may be taken by the commissioner upon a statement filed by a person offering to acquire control of an insurance company; authorizing the commissioner to share confidential information gathered pursuant to said article with the board of governors of the federal reserve system or other appropriate federal banking agency; and making technical changes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. INSURANCE COMPANY HOLDING SYSTEMS.

§33-27-2a. Subsidiaries of insurers; authorization; investment authority; exemptions; qualifications; cessation of controls.
§33-27-3. Acquisition of control of or merger with domestic insurer; filing requirements; statements; alternative filing material; approval by the


1 As used in this article:

2 (a) An “affiliate” of or person “affiliated” with a specific
3 person is a person that, directly or indirectly through one or
4 more intermediaries, controls or is controlled by or is under
5 common control with the person specified.

6 (b) “Commissioner” means the insurance commissioner,
7 his or her deputies or the insurance department, as appropriate.

8 (c) “Control” (including the terms “controlling”, “con-
9 trolled by” and “under common control with”) means the
10 possession, direct or indirect, of the power to direct or cause the
11 direction of the management and policies of a person, whether
12 through the ownership of voting securities, by contract other
13 than a commercial contract for goods or nonmanagement
14 services or otherwise, unless the power is the result of an
15 official position with or corporate office held by the person.
16 Control shall be presumed to exist if any person, directly or
17 indirectly, owns, controls, holds with the power to vote or holds
18 proxies representing ten percent or more of the voting securities
19 of any other person or controls or appoints a majority of the
20 board of directors, voting members or similar governing body
21 of any other person. This presumption may be rebutted by a
22 showing made in the manner provided by subsection (1), section
23 four of this article that control does not exist in fact. The
24 commissioner may determine after furnishing all persons in
25 interest notice and opportunity to be heard and making specific
26 findings of fact to support the determination that control exists
27 in fact notwithstanding the absence of a presumption to that
28 effect.
(d) “Depository institution” means a bank or savings association as those terms are defined in section three of the federal deposit insurance act. The term “depository institution” does not include an insurance company.

(e) “Insurance holding company system” consists of two or more affiliated persons, one or more of which is an insurer.

(f) “Insurer” means any person or persons or corporation, partnership or company authorized by the laws of this state to transact the business of insurance in this state, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

(g) “Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a depository institution or any other legal entity or any combination of the foregoing acting in concert, but does not include any securities broker performing no more than the usual and customary broker’s function and holding less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.

(h) A “security holder” of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(i) A “subsidiary” of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(j) “Voting security” includes any security convertible into or evidencing a right to acquire a voting security.
§33-27-2a. Subsidiaries of insurers; authorization; investment authority; exemptions; qualifications; cessation of controls.

(a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business with the commissioner's prior approval:

1. Any kind of insurance business authorized by the jurisdiction in which it is incorporated;

2. Acting as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

3. Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent or any affiliate or subsidiary;

4. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

5. Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

6. Rendering investment advice to governments, government agencies, corporations or other organizations or groups;

7. Rendering other services related to the operations of an insurance business, including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;

8. Ownership and management of assets which the parent corporation could itself own or manage;
(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) Financing of insurance premiums, agents and other forms of consumer financing;

(11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business;

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section; and

(13) Organizing or acquiring one or more subsidiaries that are depository institutions.

(b) In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under any other provision of this chapter, a domestic insurer may also with the commissioner's prior approval:

(1) Invest in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of such insurer's assets or fifty percent of such insurer's surplus as regards policyholders: Provided, That after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded and there shall be included:

(A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not
represented by the purchase of capital stock or issuance of other securities; and

(B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer: Provided, That each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subdivision (1) of this subsection or in article eight of this chapter applicable to the insurer. For the purpose of this subdivision, “the total investment of the insurer” includes:

(A) Any direct investment by the insurer in an asset; and

(B) The insurer’s proportionate share of any investment in an asset by any subsidiary of the insurer which shall be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the ownership of such subsidiary;

(3) With the approval of the commissioner invest any greater amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries: Provided, That after such investment the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs.

(c) Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (b) of this section shall not be subject to any of the
otherwise applicable restrictions or prohibitions contained in this chapter applicable to such investments of insurers except section twenty-one, article eight of this chapter.

(d) Whether any investment pursuant to subsection (a) or (b) of this section meets the applicable requirements thereof is to be determined before such investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made such investment shall have met the requirements for investment under any other provision of this chapter and the insurer has notified the commissioner thereof.

§33-27-3. Acquisition of control of or merger with domestic insurer; filing requirements; statements; alternative filing material; approval by the commissioner; hearings; notice; mailings to shareholders; expenses; exemptions; violations and jurisdiction.

(a) Any person other than the issuer shall not make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer and a person shall not enter into an agreement to merge with or
otherwise to acquire control of a domestic insurer or any person
controlling a domestic insurer unless at the time any such offer,
request or invitation is made or any such agreement is entered
into, or prior to the acquisition of such securities if no offer or
agreement is involved, the person has filed with the commis-
sioner and has sent to the insurer and, to the extent permitted by
applicable federal laws, rules and regulations, the insurer has
sent to its shareholders a statement containing the information
required by this section and the offer, request, invitation,
agreement or acquisition has been approved by the commis-
sioner in the manner hereinafter prescribed.

(b) For purposes of this section, a “domestic insurer”
includes any other person controlling a domestic insurer unless
the other person as determined by the commissioner is either
directly or through its affiliates primarily engaged in business
other than the business of insurance.

(c) The statement to be filed with the commissioner
hereunder shall be made under oath or affirmation and shall
contain the following information:

(1) The name and address of each person by whom or on
whose behalf the merger or other acquisition of control referred
to in subsection (a) of this section is to be effected (hereinafter
called “acquiring party”);

(2) If such person is an individual, his or her principal
occupation and all offices and positions held during the past
five years and any conviction of crimes other than minor traffic
violations during the past ten years;

(3) If such person is not an individual, a report of the nature
of its business operations during the past five years or for such
lesser period as the person and any predecessors thereof shall
have been in existence; an informative description of the
business intended to be done by the person and the person’s
subsidiaries; and a list of all individuals who are or who have
been selected to become directors or executive officers of the
person, or who perform or will perform functions appropriate
to those positions. The list shall include for each individual the
information required by subdivision (2) of this subsection;

(4) The source, nature and amount of the consideration used
or to be used in effecting the merger or other acquisition of
control, a description of any transaction wherein funds were or
are to be obtained for any such purpose, including any pledge
of the insurer’s stock or the stock of any of its subsidiaries or
controlling affiliates, and the identity of persons furnishing such
consideration: Provided, That where a source of the consider-
ation is a loan made in the lender’s ordinary course of business,
the identity of the lender shall remain confidential if the person
filing the statement so requests;

(5) Fully audited financial information as to the earnings
and financial condition of each acquiring party for the preced-
ing five fiscal years of each acquiring party (or for such lesser
period as each acquiring party and any predecessors thereof
shall have been in existence) and similar unaudited information
as of a date not earlier than ninety days prior to the filing of the
statement;

(6) Any plans or proposals which each acquiring party may
have to liquidate the insurer, to sell its assets or merge or
consolidate it with any person or to make any other material
change in its business or corporate structure or management;

(7) The number of shares of any security referred to in
subsection (a) of this section which each acquiring party
proposes to acquire and the terms of the offer, request, invita-
tion, agreement or acquisition referred to in said subsection and
a statement as to the method by which the fairness of the
proposal was arrived at;
(8) The amount of each class of any security referred to in subsection (a) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(9) A full description of any contracts, arrangements or understanding with respect to any security referred to in subsection (a) of this section in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. The description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(10) A description of the purchase of any security referred to in subsection (a) of this section during the twelve calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid therefor;

(11) A description of any recommendations to purchase any security referred to in subsection (a) of this section made during the twelve calendar months preceding the filing of the statement by an acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;

(12) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (a) of this section and, if distributed, of additional soliciting material relating thereto;

(13) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) of this section for tender and the
amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto; and

(14) Any additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the public interest.

(d) If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by subdivisions (1) through (14), inclusive, of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the commissioner may require that the information called for by subdivisions (1) through (14), inclusive, shall be given with respect to the corporation and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

(e) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to the insurer within two business days after the person learns of the change. The insurer shall send the amendment to its shareholders.

(f) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section is proposed to be made by means of a registration statement under the Securities
Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in said subsection may utilize such documents in furnishing the information called for by that statement.

(g) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon, he or she finds that any of the following conditions exists:

(1) After the change of control the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently authorized;

(2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(3) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(4) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section are unfair and unreasonable to the security holders of the insurer;

(5) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;
The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

The public hearing required by this section shall be held within forty days after the statement required by subsection (a) of this section is filed, and at least fifteen days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons as may be designated by the commissioner. The insurer shall give notice of the public hearing to its security holders. The commissioner shall make a determination within twenty days after the conclusion of the hearing.

The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

To the extent permitted by applicable federal laws, rules and regulations, all statements, amendments or other material filed pursuant to the provisions of this section and all notices of public hearings held pursuant to the provisions of this section shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the
commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(k) The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as: (1) Not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or (2) as otherwise not comprehended within the purposes of this section.

(l) The following are violations of this section:

(1) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b) of this section; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his or her approval thereto.

(m) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section and over all actions involving such person arising out of violations of this section and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the secretary of state to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the secretary of state and transmitted by registered or certified mail by the secretary of state to such person at his or her last known address.

All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section six of this article and all information reported pursuant to sections four and five of this article shall be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to insurance departments of other states and to the board of governors of the federal reserve system or other appropriate federal banking agency in accordance with section nineteen, article two of this chapter, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in any manner as he or she may consider appropriate.

CHAPTER 130

(Com. Sub. for H. B. 2702 — By Delegates H. White, Hrutkay and R. M. Thompson)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article thirty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the elimination of fees levied on risk retention groups.

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

ARTICLE 32. RISK RETENTION ACT.

§33-32-5. Tax on Premiums Collected.

(a) Each risk retention group shall pay to the commissioner, annually on the first day of March, a tax at the rate of two percent of the taxable premiums on policies or contracts of insurance covering property or risks in this state and on risk and property situated elsewhere upon which no premium tax is otherwise paid during the previous year. Each risk retention group is also subject to the additional premium taxes levied by sections fourteen-a and fourteen-d, article three of this chapter.

(b) The taxes provided for in this section constitute all taxes collectible under the laws of this state from any risk retention group, and no other premium tax or other taxes shall be levied or collected from any risk retention group by the state or any county, city or municipality within this state, except ad valorem taxes. Each risk retention group shall be subject to the same interests, additions, fines and penalties for nonpayment as are generally applicable to insurers.

(c) To the extent that a risk retention group uses insurance agents, each agent shall keep a complete and separate record of all policies procured from each risk retention group. The record shall be open to examination by the commissioner, as provided in section nine, article two of this chapter. These records shall, for each policy and each kind of insurance provided under the policy, include the following:

(1) The limit of liability;

(2) The time period covered;
(3) The effective date;

(4) The name of the risk retention group which issued the policy;

(5) The gross premium charged; and

(6) The amount of return premiums, if any.

CHAPTER 131

(S. B. 486 — By Senators Minard, Jenkins, Rowe, Sharpe, Ross and Minear)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article thirty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the requirement that a certified public accountant must notify the insurer’s board of directors or its audit committee if the insurer has materially misstated the insurer’s financial condition.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.


(a) The independent certified public accountant shall immediately notify, in writing, the insurer’s board of directors
or its audit committee and the commissioner of any determina-
tion by the independent certified public accountant that the
insurer has materially misstated its financial condition as
reported to the commissioner as of the thirty-first day of
December immediately preceding or of any determination that
the insurer does not meet the applicable minimum capital and
surplus requirement of this chapter or, in the case of an insurer
not subject to capital and surplus requirement, that the surplus
of the insurer is less than one hundred thousand dollars as of the
thirty-first day of December immediately preceding. For
purposes of this article, material misstatement shall have the
meaning prescribed by the professional standards and pro-
nouncements of the American institute of certified public
accountants: Provided, That the independent certified public
accountant shall report a misstatement that overstates the
surplus as regards policyholders in single financial statement
items by five percent or more or, when taken together with all
financial statement items, the surplus as regards policyholders
is overstated by ten percent or more.

(b) No independent public accountant shall be liable in any
manner to any person for any statement made in connection
with subsection (a) of this section if the statement is made in
good faith in compliance with said subsection.

(c) If the accountant, subsequent to the date of the audited
financial report filed pursuant to this article, becomes aware of
facts which might have affected the report, the commissioner
notes the obligation of the accountant to take action as pre-
scribed in volume 1, section AU 561 of the professional
standards of the American institute of certified public accoun-
tants.
CHAPTER 132

(S. B. 485 — By Senators Minard, Jenkins, Minear, Sharpe and Ross)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article forty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the granting of authority to the insurance commissioner to enter into agreements and compromises relating to taxes, interest, penalties and other charges; and imposing conditions upon such authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-4a. Agreements and compromises.

1 (a) Prior to commencing any civil action, the commissioner may compromise any claim relating to the liability of a person with respect to any tax, including any surcharge, interest, additional tax, fee, fine or penalty, administered by the commissioner under this chapter for any taxable period. The following conditions apply to any agreement entered into under this subsection:

8 (1) The agreement must be in writing;
(2) In the absence of a showing of fraud, malfeasance or misrepresentation of a material fact, then:

(A) The agreement shall be final and conclusive;

(B) The agreement and the matters so agreed upon shall not be reopened or the agreement modified by any officer, employee or agent of this state; and

(C) In any civil action or administrative proceeding, the compromise agreement or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith may not be annulled, modified, set aside or disregarded.

(b) The commissioner may compromise all or part of any civil case arising under the provisions of this article. The following conditions apply to any agreement entered into under this subsection:

(1) Any liability for tax, including any surcharge, interest, additional tax, fee, fine or penalty, may be compromised upon consideration of the terms and conditions of the compromise agreement in light of any or all of the following:

(A) Doubt as to liability;

(B) Doubt as to the ability to collect;

(C) Strength of the taxpayer’s defenses to the assessment of the tax, surcharge, interest, additional tax, fee, fine or penalty;

(D) Age of the dispute;

(E) The anticipated time and resources which will be required to develop the civil action for adjudication; and
(F) Any other factors relevant to the determination of whether citizens of the state of West Virginia are best served by entering into a compromise agreement.

(2) In all matters involving issues in respect of a tax liability in controversy of fifteen thousand dollars or more for one or all of the years involved in claim or case, the commissioner shall seek the written recommendation of the attorney general before entering into the compromise agreement. The written recommendation of the attorney general shall be placed in the commissioner's file.

(c) Whenever a compromise agreement is made by the commissioner under subsection (a) or (b) of this section, there shall be placed on file in the commissioner's office an opinion from the commissioner's legal counsel. The opinion must include the following:

(1) The amount of tax, surcharge, additional tax, fee and interest assessed;

(2) The anticipated fine or penalty imposed by law on the person against whom the tax, surcharge, additional tax, fee and interest was assessed; and

(3) The amount actually paid in accordance with the terms of the compromise agreement;

(4) The reasons underlying the decision to enter into a compromise agreement: *Provided*, That the requirements of this subsection do not apply with respect to any agreement in which the amount of the tax assessed, including any surcharge, interest, additional tax, fee, fine or penalty, is less than one thousand dollars.

(d) *Report to Legislature.* — The commissioner shall submit to the speaker of the House of Delegates, the president
of the Senate and the legislative auditor a quarterly report summarizing the issues and amounts of liabilities contained in the agreements and compromises into which he or she has entered pursuant to this section. The report shall be in a form which preserves the confidentiality of the identity of the taxpayers involved in the agreements and compromises. Notwithstanding any other provision of law to the contrary, the agreements and compromises entered into pursuant to this section shall be subject to audit, in their entirety, by the legislative auditor.

CHAPTER 133

(S. B. 352 — By Senators Hunter, Unger, Bailey, Helmick, Rowe, Kessler, Plymale, Dempsey, White, Bowman, Edgell, McCabe, Love, Sprouse, Minard, Snyder, Caldwell, Chafin, Ross, Sharpe, Guills, Jenkins, Fanning, Prezioso and Minear)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor; in Effect March 16, 2003. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five and seven, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia jobs act; defining terms; revising legislative findings; removing six-month residency requirement; requiring reporting to the joint committee on government and finance; changing reporting dates; and changing the effective date.

Be it enacted by the Legislature of West Virginia:
That sections two, three, four, five and seven, article one-c, 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 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.
§21-1C-3. Legislative findings; statement of policy.
§21-1C-4. Local labor market utilization on public improvement construction projects; waiver certificates.
§21-1C-5. Applicability and scope of article; reporting requirements.
§21-1C-7. Effective date.

§21-1C-2. Definitions.

As used in this article:

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

(2) (A) The term “employee” means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry;

(B) The term “employee” does not include:

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

(ii) Bona fide independent contractors; or

(iii) Salaried supervisory personnel necessary to assure efficient execution of the employee’s work;
(3) The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

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

(5) The term "public authority" means any officer, board, commission or agency of the state of West Virginia and its subdivisions, including counties and municipalities. Further, the economic grant committee, economic development authority, infrastructure and jobs development council and school building authority shall be required to comply with the provisions of this article for loans, grants or bonds provided for public improvement construction projects;

(6) The term "public improvement" includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

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

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

The Legislature finds that the employment of persons from outside the local labor market on public improvement construction projects contracted for and subsidized by the taxpayers of the state contributes significantly to the rate of unemployment and the low per capita income among qualified state residents who would otherwise be hired for these jobs.
Therefore, the Legislature declares that residents of local labor markets should be employed for the construction of public improvement projects which directly utilize taxpayer funding, in whole or in part.

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

(a) Employers shall hire at least seventy-five percent of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

(b) Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the bureau of employment programs’ division of employment services of the number of qualified employees needed and provide a job description of the positions to be filled.

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

§21-1C-5. Applicability and scope of article; reporting requirements.
(a) This article applies to expenditures for construction projects by any public authority for public improvements as defined by this article.

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

(c) The division of labor shall compile the information required by this section and submit it to the joint committee on government and finance by the fifteenth day of October, two thousand five, for a legislative audit to be prepared for the December, two thousand five, interim session. Beginning with the legislative interim meetings in May, two thousand three, and continuing through the interim period ending in November, two thousand five, the division of labor shall provide quarterly reports to the joint committee on government and finance on the information compiled pursuant to this article. The joint committee may forward these reports to the legislative auditor to review and make comments regarding the usefulness of the information collected and to suggest changes to the division’s method of reporting to ensure the information collected will prove useful in evaluating the effectiveness of the provisions of this article.

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

§21-1C-7. Effective date.

This article is effective from passage through the fifteenth day of March, two thousand six.

CHAPTER 134

(Com. Sub. for H. B. 2529 — By Delegates Beane, Kuhn, Brown, Ellem and Leggett)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five-a, five-b, five-c and five-d, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the licensure and regulation of psychophysiological detection of deception examiners; creating categories of licensure; authorizing legislative rules; prohibited activities; and penalties.

Be it enacted by the Legislature of West Virginia:

That sections five-a, five-b, five-c and five-d, article five, 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 5. WAGE PAYMENT AND COLLECTION.

§21-5-5a. Definitions.
§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

§21-5-5d. Penalties; cause of action.

§21-5-5a. Definitions.

As used in sections five-b, five-c and five-d of this article, unless the context clearly requires otherwise:

1. “Employer” means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government; public benefit corporation, public authority or political subdivision of the state; or other business entity, which employs or seeks to employ an individual or individuals. All provisions of sections five-b, five-c and five-d of this article pertaining to employers shall apply in equal force and effect to their agents and representatives.

2. “Employee” means an individual employed by an employer.

3. “Psychophysiological detection of deception instrument” means an instrument used for the detection of deception which records permanently and simultaneously a person’s cardiovascular and respiratory patterns and galvanic skin response: Provided, That the instrument may record other physiological changes pertinent to the detection of deception.

4. “Prospective employee” means an individual seeking or being sought for employment with an employer.

5. “Psychophysiological detection of deception” means an examination which records permanently and simultaneously a person’s cardiovascular and respiratory patterns and galvanic skin response.
§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

No employer may require or request either directly or indirectly, that any employee or prospective employee of the employer submit to a psychophysiological detection of deception examination, lie detector or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness, and no employer may knowingly allow the results of any examination administered outside this state to be utilized for the purpose of determining whether to employ a prospective employee or to continue the employment of an employee in this state: Provided, That the provisions of this section shall not apply to employees or prospective employees who would have direct access to the manufacture, storage, distribution or sale of any controlled substance listed in schedule I, II, III, IV or V of section eight hundred twelve of title twenty-one of the United States code: Provided, however, That the provisions of this section shall not apply to law-enforcement agencies or to military forces of the state as defined by section one, article one, chapter fifteen of the code: Provided further, That the results of any examination shall be used solely for the purpose of determining whether to employ or to continue to employ any person exempted hereunder and for no other purpose.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

(a) No person, firm or corporation shall administer a psychophysiological detection of deception examination, lie detector or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate
truthfulness without holding a current valid license to do so as issued by the commissioner of labor. No examination shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he or she:

(1) Is at least twenty-one years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the commissioner of labor or under his or her supervision, to determine his or her competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the commissioner of labor in his or her sole discretion which qualifications are to be at least as stringent as those recommended by the American polygraph association.

(c) The commissioner of labor may designate and administer any test the commissioner considers appropriate to those persons applying for a license to administer psychophysiological detection of deception, lie detector or similar examination. The test shall be designed to ensure that
the applicant is thoroughly familiar with the code of ethics of
the American polygraph association and has been trained in
accordance with association rules. The test must also include a
rigorous examination of the applicant’s knowledge of and
familiarity with all aspects of operating psychophysiological
detection of deception equipment and administering
psychophysiological detection of deception examinations.

(d) The license to administer psychophysiological detection
of deception, lie detector or similar examinations to any person
shall be issued for a period of one year. It may be reissued from
year to year. The licenses to be issued are:

(1) “Class I license” which authorizes an individual to
administer psychophysiological detection of deception exami-
nations for all purposes which are permissible under the
provisions of this article and other applicable laws and rules.

(2) “Class II license” which authorizes an individual who
is a full-time employee of a law-enforcement agency to
administer psychophysiological detection of deception exami-
nations to its employees or prospective employees only.

(e) The commissioner of labor shall charge a fee to be
established by legislative rule. The fees shall be deposited in the
general revenue fund of the state. In addition to any other
information required, an application for a license shall include
the applicant’s social security number.

(f) The commissioner of labor shall propose rules for
legislative approval in accordance with the provisions of article
three, chapter twenty-nine-a of this code governing the adminis-
tration of psychophysiological detection of deception, lie
detector or similar examination to any person: Provided, That
all applicable rules in effect on the effective date of sections
five-a, five-b, five-c and five-d of this article will remain in
effect until amended, withdrawn, revoked, repealed or replaced. The legislative rules shall include:

(1) The type and amount of training or schooling necessary for a person before which he or she may be licensed to administer or interpret a psychophysiological detection of deception, lie detector or similar examination;

(2) Testing requirements including the designation of the test to be administered to persons applying for licensure;

(3) Standards of accuracy which shall be met by machines or other devices to be used in psychophysiological detection of deception, lie detector or similar examination;

(4) The conditions under which a psychophysiological detection of deception, lie detector or similar examination may be administered;

(5) Fees for licenses, renewals of licenses and other services provided by the commissioner;

(6) Any other qualifications or requirements, including continuing education, established by the commissioner for the issuance or renewal of licenses; and

(7) Any other purpose to carry out the requirements of sections five-a, five-b, five-c and five-d of this article.

§21-5-5d. Penalties; cause of action.

(a) It shall be a misdemeanor to administer or interpret a psychophysiological detection of deception, lie detector or similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without having received a valid and current license to do so as issued by the commissioner of labor or in violation of any rule or regula-
tion promulgated by the commissioner under section five-c of this article. Any person convicted of violating section five-c shall be fined not more than five hundred dollars.

(b) Any person who violates section five-b of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars.

(c) Any employee or prospective employee has a right to sue an employer or prospective employer for a violation of the provisions of section five-b of this article. If successful, the employee or prospective employee shall recover threefold the damages sustained by him or her, together with reasonable attorneys' fees, filing fees and reasonable costs of the action. Reasonable costs of the action may include, but shall not be limited to, the expenses of discovery and document reproduction. Damages may include, but shall not be limited to, back pay for the period during which the employee did not work or was denied a job.

CHAPTER 135

(H. B. 2847 — By Delegates Stemple, Crosier, Williams, Kominar and Cann)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the law-enforcement agency that places a person under arrest being responsible for the person's initial transportation to a regional or county jail, except where a transportation agreement exists between the other agency
and the sheriff; and requiring convicted persons to pay cost of transportation.

_Be it enacted by the Legislature of West Virginia:_

That section thirteen, article seven, 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 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.**

§7-7-13. Allowance for expenses of sheriff.

1 The county commission of every county having a population of thirty thousand or less as determined by the latest official census available and which, as provided in section two-a, article eight of this chapter, has directed the sheriff as jailer to feed prisoners shall, in addition to his or her compensation, allow to the sheriff for keeping and feeding each prisoner, other than federal prisoners or prisoners held under civil process as provided by law, not more than five dollars per day for each prisoner.

2 The limitation per day shall not include cost of personal service, bed or bedding, soaps and disinfectants and items of like kind, the cost of which shall be paid out of the allowance fixed by the county commission under the provisions of present law.

3 All supplies of whatever kind for keeping and feeding prisoners shall be purchased upon the requisition of the sheriff under rules prescribed by the county commission. At the end of each month the sheriff shall file with the county commission a detailed statement showing the name of each prisoner, date of commitment, date of discharge, the number of days in jail and an itemized statement showing each purchase and the cost for keeping and feeding prisoners.
The county commission of every county shall allow the actual and necessary expenses incurred by the sheriff in the discharge of his or her duties including, but not limited to, those incurred in arresting, pursuing or transporting persons accused or convicted of crimes and offenses; in the cost of law-enforcement and safety equipment; in conveying or transporting a prisoner from and to jail to participate in court proceedings; and in conveying or transferring any person to or from any state institution where he or she may be committed from his or her county, where the sheriff is authorized to convey or transfer the person: Provided, That the law-enforcement agency that places a person under arrest shall be responsible for the person's initial transportation to a regional or county jail, except where there is a preexisting agreement between the county and the political body the other law-enforcement agency serves. Any person transported to the regional jail as provided for by the provisions of this section shall, upon conviction for the offense causing his or her incarceration, pay the reasonable costs of the transportation. The money is to be collected by the court of conviction at the current mileage reimbursement rate. The county commission shall allow the actual and necessary expenses incurred in serving summonses, notices or other official papers in connection with the sheriff's office.

Every sheriff shall file monthly, under oath, an accurate account of all the actual and necessary expenses incurred by him or her, his or her deputies, assistants and employees in the performance and discharge of their official duties supported by verified accounts before reimbursement thereof shall be allowed by the county commission. Reimbursement, properly allowed, shall be made from the general county fund.
AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-one, relating to the West Virginia state police and the reemployment of recently retired troopers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-51. State police reemployment.

(a) The Legislature finds:

(1) That the West Virginia state police is currently suffering from an unacceptably high number of vacant trooper positions, and that given the time factors and expense associated with the hiring and training of personnel with no prior law-enforcement experience, it is in the interest of the state to reemploy recently retired troopers in order to fill vacant positions;

(2) That no pension rights of any kind shall accrue or attach pursuant to reemployment under this section;
(3) That the state police shall bear no responsibility for medical payments for work related injuries or illnesses of employees hired pursuant to this section, other than those commonly associated with state employees covered by workers’ compensation.

(b) Notwithstanding any provision of this code to the contrary, any member of the West Virginia state police honorably retired pursuant to the provisions of section twenty-seven of this article between the first day of December, one thousand nine hundred ninety-seven and the first day of December, two thousand two, may, at the discretion of the superintendent and subject to executive order of the governor specifying circumstances warranting such reemployment and establishing beginning and end dates for such reemployment, be reemployed subject to the provisions of this section.

(c) Notwithstanding any provision of this code to the contrary, any honorably retired member of the state police who qualifies for reemployment pursuant to the provisions of this section and who is not currently certified as a law-enforcement officer under section five, article twenty-nine, chapter thirty of this code may be deemed to have met the entry level law-enforcement recertification requirements of 149 CSR 215, Section 15.3, upon successful completion of a course of instruction prescribed by the superintendent. Such course of instruction shall include at a minimum the following subject areas: Firearms training and certification, defensive driving, mechanics of arrest, law of arrest search and seizure, West Virginia motor vehicle law, criminal law update, and domestic crimes.

(d) Any member reemployed pursuant to the provisions of this section shall hold the nonsupervisory rank of corporal and shall receive the same compensation as a regularly enlisted member of the same rank. For purposes of determining length
of service pursuant to section five of this article, any member
reemployed pursuant to this section shall receive credit for all
years of service accrued prior to their retirement, as well as
service rendered after reemployment. Any member reemployed
pursuant to this section shall exercise the same authority as a
regularly enlisted member of the state police, shall wear the
same uniform and insignia, shall be subject to the same oath,
shall execute the same bond, shall exercise the same powers
and shall be subject to the same limitations as a regularly
enlisted member of the state police.

(e) Any member reemployed pursuant to the provisions of
this section shall not be eligible for promotion or reclassification
of any type, nor shall he or she be eligible for appointment
to temporary rank pursuant to the provisions of section four of
this article.

(f) Any reemployment offered subject to the provisions of
this section shall be for a period not exceeding five years from
the effective date of this section.

(g) Any retired member applying for reemployment under
this section shall be required to pass such mental and physical
examinations, and meet such other requirements as may be
provided for in rules promulgated by the superintendent
pursuant to this section.

(h) Notwithstanding the provisions of section ten of this
article, the superintendent shall make provisions for coverage
of personnel employed pursuant to this section by the workers’
compensation division, bureau of employment programs. In the
event a member reemployed pursuant to this section sustains an
illness or injury which is work related in origin, any cost
associated with the treatment of same shall be defrayed in this
manner and not from state police funds.
(i) In the event a work related illness or injury, as described within subsection (h) above, renders a member of the division employed pursuant to the provisions of this section permanently physically or mentally disabled, the provisions of subsections (a) and (b), section twenty-nine of this article shall apply, and the member's existing pension shall be recalculated as though the disabling event had occurred coincident with the member's original retirement. Any change in benefits resulting from this recalculation shall not be retroactive in nature. The provisions of subsection (c), section twenty-nine of this article shall not apply with respect to payments for medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees. Neither shall the provisions of this subsection apply in the event the member is disabled due to some cause or event which is determined not to be work related.

(j) Any individual reemployed pursuant to this section is not eligible to contribute to any pension plan administered by the consolidated public retirement board, nor may he or she establish or accrue any new pension eligibility pursuant to such reemployment.

(k) Notwithstanding any provision of this code to the contrary, any member reemployed pursuant to this section shall serve at the will and pleasure of the superintendent, and is subject to termination without cause. Any member reemployed pursuant to this section shall not be included in the classified service of the civil service system.

(l) Notwithstanding any provision of this code to the contrary, compensation paid to any member reemployed pursuant to this section shall be in addition to any retirement payments or pension benefits which he or she is already entitled to receive under section twenty-seven of this article.
(m) The provisions of this section shall terminate on the first day of April, two thousand four.

CHAPTER 137

(Com. Sub. for H. B. 2592 — By Delegates Mahan, Cann, Kominar and Faircloth)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article two of said chapter, 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 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 the department of administration to promulgate a legislative rule relating to the general administration of records management and preservation; authorizing the department of
administrations to promulgate a legislative rule relating to records retention and disposal scheduling; authorizing the department of administration to promulgate a legislative rule relating to the management of records maintained by the records center; authorizing the department of administration to promulgate a legislative rule relating to technology access for the visually impaired; authorizing the department of administration to promulgate a legislative rule relating to parking; authorizing the department of administration to promulgate a legislative rule relating to qualifications for participation; authorizing the auditor to promulgate a legislative rule relating to the standards for requisitions for payment issued by state officers on the auditor; authorizing the auditor to promulgate a legislative rule relating to the transaction fee and rate structure; authorizing the auditor to promulgate a legislative rule relating to the state auditor's computer and technology donation program; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the public employees retirement system; authorizing the consolidated public retirement board to promulgate a legislative rule relating to benefit determination and appeal; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the teachers defined benefit plan; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the West Virginia state police disability determination and appeal process; authorizing the ethics commission to promulgate a legislative rule relating to lobbying; and authorizing the division of personnel to promulgate a legislative rule relating to the division.

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.

1 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.

1 (a) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, authorized under the authority of section eight, article eight, 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 fifth day of December, two thousand two, relating to the department of administration
(general administration of records management and preservation, 148 CSR 12), is authorized.

(b) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, authorized under the authority of section eight, article eight, 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 fifth day of December, two thousand two, relating to the department of administration (records retention and disposal scheduling, 148 CSR 13), is authorized.

(c) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, authorized under the authority of section eight, article eight, 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 fifth day of December, two thousand two, relating to the department of administration (management of records maintained by the records center, 148 CSR 14), is authorized.

(d) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, authorized under the authority of section three, article ten-n, chapter eighteen, 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 twentieth day of December, two thousand two, relating to the department of administration (technology access for visually impaired, 148 CSR 15), is authorized.

(e) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, 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 twentieth day of December, two thousand two, relating to the department of administration (parking, 148 CSR 6), is authorized with the following amendments:

"On page one, section one, subsection 1.1, following the word 'in' by inserting 'the city of Charleston';

On page one, section two, subsection 2.1, line thirty-seven, following the word 'buildings' by inserting 'in the city of Charleston';

On page two, section four, following the word 'buildings' by inserting 'in the city of Charleston';

On page two, section five, line five, following the word 'purpose' by striking the remainder of the sentence;

On page two, section five, following the number '2007' by striking 'Each spending unit shall remit payment monthly to the Department of Administration for all parking spaces assigned to each spending unit. It is the responsibility of the spending unit to keep all spaces assigned to its employees and to collect the appropriate monthly fee';

On page two, section five, paragraph two, following the word 'Secretary' and the parenthesis and the period by striking the remainder of the paragraph;

On page two, section five, following paragraph two by inserting 'The Secretary may charge a reasonable fee to replace a parking tag or access card issued to a public officer or employee.';
On page two, section six, subsection 6.1, line thirteen, following the word 'rule' and the period by striking 'The Secretary may also authorize the removal, immobilization, or any other remedy considered necessary, at owners expense, of a vehicle whose owner owes more than ten (10) unpaid violations.' and inserting 'For the purposes of this subdivision, a 'motor vehicle parked in violation of this rule' shall include a motor vehicle owned by a person who owes more than ten (10) unpaid violations and is parked on property described in subsection 2.1 of this rule.';

On page three, section seven, subsection 7.1, following line nine, by striking 'Lost Parking Tag 10.00 Lost Access Card 15.00';

On page three, section seven, subsection 7.2, line ten, following the word 'days' and the period by striking 'These fines may be remitted by payroll deduction to the Office of the Secretary. In addition to the penalties set forth in subsection 6.1, a civil' and inserting 'A';

And,

On page three, section seven, subsection 7.2, line fourteen, following the word 'paid' by striking 'with' and inserting 'within'.”

(f) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, authorized under the authority of section five, article three-a, 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 twentieth day of December, two thousand two, relating to the department of administration (qualifications for participation, 186 CSR 4), is authorized.


(a) The legislative rule filed in the state register on the twenty-third day of July, two thousand two, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the consolidated public retirement board (public employees retirement system, 162 CSR 5), is authorized with the amendment set forth below:

On page two, section nine, by striking out the period and inserting in lieu thereof a colon and the following: Provided,
That beginning on the first day of July, two thousand three, each participating public employer shall contribute ten and five-tenths percent (10.5%) of each compensation payment of all its employees who are members of the Public Employees Retirement System.

(b) The legislative rule filed in the state register on the twenty-third day of July, two thousand two, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of October, two thousand two, relating to the consolidated public retirement board (benefit determination and appeal, 162 CSR 2), is authorized with the amendment set forth below:

On page one, section 2.1, following the words “the Board shall” by inserting a comma and the words “as part of its initial review,”.

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

(d) The legislative rule filed in the state register on the twenty-third day of July, two thousand two, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth
day of October, two thousand two, relating to the consolidated public retirement board (West Virginia state police disability determination and appeal process, 162 CSR 9), is authorized.

§64-2-4. Ethics commission.

The legislative rule filed in the state register on the nineteenth day of July, two thousand two, authorized under the authority of section two, article three, chapter six-b, of this code, relating to the ethics commission (lobbying, 158 CSR 12), is authorized.

§64-2-5. Division of personnel.

The legislative rule filed in the state register on the twenty-third day of July, two thousand two, under the authority of section ten, article six, chapter twenty-nine, of this code, modified by the division of personnel to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, two thousand two, relating to the division of personnel (administrative rule of the division of personnel, 143 CSR 1), is authorized.

CHAPTER 138

(Com. Sub. for H. B. 2603 — By Delegates Mahan, Cann, Kominar and Faircloth)

[Passed March 6, 2003; in effect from passage. Approved by the Governor.]
tive 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 department of environmental protection to promulgate a legislative rule relating to the NOx budget trading program as a means of control and reduction of nitrogen oxides from nonelectric generating units; authorizing the department of environmental protection to promulgate a legislative rule relating to permits for the construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits and procedures for evaluation; authorizing the department of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources pursuant to 40 CFR part 60; authorizing the department of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the department of environmental protection to promulgate a legislative rule relating to the NOx budget trading program as a means of control and reduction of nitrogen oxides from electric generating units; authorizing the department of environmental protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the department of environmental protection to promulgate a
legislative rule relating to emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63; authorizing the department of environmental protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the department of environmental protection to promulgate a legislative rule relating to surface mining and reclamation; authorizing the department of environmental protection to promulgate a legislative rule relating to coal related dam safety; authorizing the department of environmental protection to promulgate a legislative rule relating to standards for the beneficial use of materials similar to sewage sludge; authorizing the department of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the department of environmental protection to promulgate a legislative rule relating to the hazardous waste management fund certification legislative rule concerning fee assessment; authorizing the department of environmental protection to promulgate a legislative rule relating to water pollution control permit fee schedules; authorizing the environmental quality board to promulgate a legislative rule relating to requirements governing water quality standards; and authorizing the oil and gas conservation commission to promulgate a legislative rule relating to rules of the commission.

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 to read as follows:

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

§64-3-1. Division of environmental protection.
§64-3-2. Environmental quality board.
§64-3-3. Oil and gas conservation commission.

§64-3-1. Division of environmental protection.
(a) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (NOx budget trading program as a means of control and reduction of nitrogen oxides from nonelectric generating units, 45 CSR 1), is authorized with the following amendment:

On page thirty-four, subsection 54.6, in the first sentence after the words “starting in” by inserting the word “2005 or” and after the word “2006,” by inserting the words “if the Secretary determines the Administrator is utilizing this later date for purposes of implementation under 40 CFR Part 96 or 40 CFR Part 52 in any state with a compliance date of May 31, 2004,”

(b) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits and procedures for evaluation, 45 CSR 13), is authorized.

(c) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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.

(d) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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.

(e) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, 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 amendment:

On page thirty-two, subsection 54.6, in the first sentence after the words “starting in” by inserting the word “2005 or” and after the word “2006.” by inserting the words “if the Secretary determines the Administrator has approved or promulgated this later date for purposes of implementation under 40 CFR Part 96 or 40 CFR Part 52 in any state with a compliance date of May 31, 2004,“

(f) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (requirements for operating permits, 45 CSR 30), is authorized.

(g) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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 for source categories pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.
(h) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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 fourth day of November, two thousand two, relating to the department of environmental protection (acid rain provisions and permits, 45 CSR 33), is authorized.

(i) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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 thirteenth day of January, two thousand three, relating to the department of environmental protection (surface mining and reclamation rule, 38 CSR 2), is authorized with the following amendments:

On page twenty-two, following paragraph 3.7.c.2. by inserting a new division 3.7.d to read as follows:

"3.7.d. A survey of the watershed identifying all man made structures and residents in proximity to the disposal area to determine potential storm runoff impacts. At least thirty (30) days prior to any beginning of placement of material, the accuracy of the survey shall be field verified. Any changes shall be documented and brought to the attention of the Secretary to determine if there is a need to revise the permit."

On page twenty-five, subdivision 3.12.a.6. by following the words "to surface lands, structures," by striking the remainder of the paragraph and inserting in lieu thereof "or facilities, due to subsidence;";
On page twenty-five, subdivision 3.12.a.7. by striking in both places they appear in the paragraph the words “perennial streams or wetlands”; 

On page twenty-six, paragraph 3.12.a.8.D. by striking the words “lands, perennial streams or wetlands.”; 

On page thirty-five, subparagraph 3.22.f.5.A.2. by striking the words “been dedicated” and inserting in lieu thereof, the words “are available”; 

On page fifty-eight, at the end of subdivision 5.4.b.4. by adding the following: “All sediment control systems for valley fills, including durable rock fills, shall be designed for the entire disturbed acreage of the fill and shall include a schedule indicating timing and sequence of construction over the life of the fill.”; 

On page fifty-eight, at the end of subdivision 5.4.b.11. by adding the following: “The location of discharge points and the volume to be released shall not cause a net increase in peak runoff from the proposed permit area when compared to pre-mining conditions and shall be compatible with the post-mining configuration and adequately address watershed transfer.” 

On page sixty-two, following division 5.5.1. by inserting a new subsection 5.6, to read as follows: 

“5.6 Storm Water Runoff. 5.6.a. Each application for a permit shall contain a storm water runoff analysis which includes the following: 

5.6.a.1. An analysis showing the changes in storm runoff caused by the proposed operation(s) using standard engineering and hydrologic practices and assumptions.
5.6.a.2. The analysis will evaluate pre-mining, worst case during mining, and post-mining (Phase III standards) conditions. The storm used for the analysis will be the largest required design storm for any sediment control or other water retention structure proposed in the application. The analysis must take into account all allowable operational clearing and grubbing activities. The applicant will establish evaluation points on a case-by-case basis depending on site specific conditions including, but not limited to, type of operation and proximity of man-made structures.

5.6.a.3. The worst case during mining and post-mining evaluations must show no net increase in peak runoff compared to the pre-mining evaluation.

5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) storm event or greater must be reported to the Secretary within twenty-four (24) hours and shall include the results of a permit wide drainage system inspection.

5.6.c. Each application for a permit shall contain a sediment retention plan to minimize downstream sediment deposition within the watershed resulting from precipitation events. Sediment retention plans may include, but are not limited to decant ponds, secondary control structures, increased frequency for cleaning out sediment control structures, or other methods approved by the Secretary.

5.6.d. After the first day of January, two thousand four, all active mining operations must be consistent with the requirements of this subdivision. The permittee must demonstrate in
writing that the operation is in compliance or a revision shall be
prepared and submitted to the Secretary for approval within the
schedule described in 5.6.d.1. Full compliance with the permit
revision shall be accomplished within 180 days from the date
of Secretary approval. Active mining operations for the purpose
of this subsection exclude permits that have obtained at least a
Phase I release and are vegetated: Provided, however, permits
or portions of permits that meet at least Phase I standards and
are vegetated will be considered on a case-by-case basis.

5.6.d.1. Schedule of Submittal.

5.6.d.1.a. Within 180 days from the first day of January,
two thousand four, all active mining operations with permitted
acreage greater than 400 acres must demonstrate in writing that
the operation is in compliance or a revision shall be prepared
and submitted to the Secretary for approval.

5.6.d.1.b. Within 360 days from the first day of January,
two thousand four, all active mining operations with permitted
acreage between 200 and 400 acres must demonstrate in writing
that the operation is in compliance or a revision shall be
prepared and submitted to the Secretary for approval.

5.6.d.1.c. Within 540 days from the first day of January,
two thousand four, all active mining operations with permitted
acreage between 100 and less than 200 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.d. Within 720 days from the first day of January,
two thousand four, all active mining operations with permitted
acreage between 50 and less than 100 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.
5.6.d.1.e. Within 900 days from the first day of January, two thousand four, all active mining operations with permitted acreage less than 50 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval: Provided, however, an exemption may be considered on a case by case basis. Furthermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement.

On page ninety-five, subsection 8.2.e., following the words “not to Impound water or” by inserting the following: “and shall not be placed in such manner or location to”;

On page ninety-five, subsection 9.1.a., at the end of the sentence, by adding the following: “Reforestation opportunities must be maximized for all areas not directly associated with the primary approved post mining land use. All revegetation plans must include a map identifying areas to be reforested, planting schedule and stocking rates.”;

On page one hundred fifty-eight, by revising the first sentence in subdivision 14.14.g.1 to read as follows: “14.14.g.1. For fills proposed after January 1, 2004, Secretary may only approve the design, construction, and use of a single lift fill with an erosion protection zone or a durable rock fill designed to be reclaimed from the toe upward, both consisting of at least eighty (80) percent durable rock if it can be determined, based on information provided by the operator, that the following conditions exist:”;  

On page one hundred fifty-eight, following paragraph 14.14.g.1.b. by inserting new 14.14.g.2. and 14.14.g.3. to read as follows:

“14.14.g.2. Design Specifications and Requirements of Single Lift Fills with an Erosion Protection Zone. In addition to the requirements of this subdivision, the design, specifications
and requirements of single lift fills with an erosion protection zone shall be in accordance with the following:

14.14.g.2.A. Erosion Protection Zone.

The erosion protection zone is a designed structure constructed to provide energy dissipation to minimize erosion vulnerability and may extend beyond the designed toe of the fill.

14.14.g.2.A.1. The effective length of the erosion protection zone shall be at least one half the height of the fill measured to the target fill elevation or fill design elevation as defined in the approximate original contour procedures and shall be designed to provide a continuous underdrain extension from the fill through and beneath the erosion protection zone.

14.14.g.2.A.2. The height of the erosion protection zone shall be sufficient to accommodate designed flow from the underdrain of the fill and shall comply with 14.14.e.1. of this rule.

14.14.g.2.A.3. The erosion protection zone shall be constructed of durable rock as defined in 14.14.g.1. originating from a permit area and shall be of sufficient gradation to satisfy the underdrain function of the fill.

14.14.g.2.A.4. The outer slope or face of the erosion protection zone shall be no steeper than two (2) horizontal or one (1) vertical (2:1). The top of the erosion protection zone shall slope toward the fill at a three (3) to five (5) percent grade and slope laterally from the center toward the sides at one (1) percent grade to discharge channels capable of passing the peak runoff of a one-hundred (100) year, twenty-four (24) hour precipitation event.
14.14.g.2.A.5. Prior to commencement of single lift construction of the durable rock fill, the erosion protection zone must be seeded and certified by a registered professional engineer as a critical phase of fill construction. The erosion protection zone shall be maintained until completion of reclamation of the fill.

14.14.g.2.A.6. Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be regraded and revegetated in accordance with the reclamation plan.

14.14.g.2.B. Single Lift Construction Requirements.

14.14.g.2.B.1 Excess spoil disposal shall commence at the head of the hollow and proceed downstream to the final toe. Unless required for construction of the underdrain, there shall be no material placed in the fill from the sides of the valley more than 300 feet ahead of the advancing toe. Exceptions from side placement of material limits may be approved by the Secretary if requested and the applicant can demonstrate through sound engineering that it is necessary to facilitate access to isolated coal seams, the head of the hollow or otherwise facilitates fill stability, erosion, or drainage control.

14.14.g.2.B.2. During construction, the fill shall be designed and maintained in such a manner as to prevent water from discharging over the face of the fill.

14.14.g.2.B.2.(a) The top of the fill shall be configured to prevent water from discharging over the face of the fill and to direct water to the sides of the fill.

14.14.g.2.B.2.(b) Water discharging along the edges of the fill shall be conveyed in such a manner to minimize erosion along the edges of the fill.
14.14.g.3. Design Specifications and Requirements for Durable Rock Fills designed to be reclaimed from the toe upward. Durable rock fills that are designed to be reclaimed from the toe upward shall comply with all requirements of this subdivision including the following:

14.14.g.3.A. Transportation of Material to toe of fill. The method of transporting material to the toe of the fill shall be specified in the application and shall include a plan for inclement weather dumping. The means of transporting material to the toe may be by any method authorized by the Act and this rule and is not limited to the use of roads.

14.14.g.3.A.1. Constructed roads shall be graded and sloped in such a manner that water does not discharge over the face. Sumps shall be constructed along the road in switchback areas and shall be located at least 15 feet from the outslope.

14.14.g.3.A.2. The constructed road shall be in compliance with all applicable State and Federal safety requirements. The design criteria to comply with all applicable State and Federal safety requirements shall be included in the permit.

14.14.g.3.B. Once the necessary volume of material has been transported to the toe of the fill, face construction and installation of terraces and permanent drainage shall commence. The face construction and reclamation of the fill shall be from the bottom up with progressive construction of terraces and permanent drainage in dumping increments not to exceed 100 feet.”;
On page one hundred fifty eight, by renumbering existing subdivision 14.14.g.2 as 14.14.g.4 and renumbering the subsequent subdivisions accordingly;

On page one hundred sixty, subdivision 14.15.a.2., following the words “unreclaimed area” by inserting the following: “minimize surface water runoff, comply with the storm water runoff plan and to quickly establish and maintain a specified ratio of disturbed versus reclaimed area throughout the life of the operation.”;

On page one hundred sixty-two, division 14.15.c., following the words “meets Phase I standards” by inserting the words “and seeding has occurred.”;

On page one hundred sixty-three, division 14.15.g., following the words “or economically feasible” by inserting the words “and demonstrate that the variance being sought will comply with section 5.6 of this rule”; 

On page one hundred eighty-seven, division 20.6.d., following the term “Notice of Informal Assessment Conference.” by striking the subsequent sentence and insert in lieu thereof, the following: “The Secretary shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within fifteen (15) days from the date the proposed assessment or reassessment is received: Provided, however, the operator shall forward the amount of proposed penalty assessment to the Secretary for placement in an interest bearing escrow account.”;

On page one hundred eighty-eight, division 20.6.j., in the first sentence, following the words “persons request” by inserting the words “an informal conference or”, striking the words “continue to be” and following the words “completion of the” by inserting the words “conference or”;
On page one hundred ninety-eight, paragraph 22.4.g.3.A., at the end of the paragraph be inserting the following sentence: “For existing structures exceeding the minimum 2 PMP volume requirement, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.”;

On page one hundred ninety-eight, subdivision 22.4.i.6., in the first sentence following the words “used or new” by inserting the words: “or unconstructed refuse”, and by following the word “impoundments” by inserting the words “or slurry cells”;

On page two hundred six, subsection 24.3., at the end subsection by striking the period and inserting the following: “or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR Part 434 as amended.”;

And,

On page two hundred seven, subsection 24.4., following the words “subsection 12.2 of this rule” by striking the period and inserting the following: “and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended.”

(j) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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 thirteenth day of January, two thousand three, relating to the department of environmental protection (coal related dam safety, 38 CSR 4), is authorized with the following amendments:
On page eleven, paragraph 7.1.f.3.A., following the words “also be met.” by inserting the following sentence: “For existing structures exceeding the minimum 2 PMP volume requirement, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.”;

On page twelve, division 7.1.n. in the first sentence following the words “be used in new” by inserting the words “or unconstructed refuse” and following the word “impoundments” by inserting the words “or slurry cells.”, in the second sentence by following the words “be either” by inserting the words “repaired or” and following the word “replaced” by inserting a colon, striking the reminder of the sentence and inserting the proviso: “Provided, That sediment control or other water retention structures used for the treatment of effluent and designated as Class A Dams under 3.4.b. of this rule are exempt from this prohibition.”;

On page thirteen, subsection 8.1, in the second sentence following the words “demonstrated that” by inserting the word “the” and following the words “coal pillars” by inserting a comma and the words “roofs and”;

On page thirteen, division 8.2.a., in the third sentence following the words “by providing” by striking the words “a combination of”, following the words “construction barriers” striking the word “and”, following the word “grouting” inserting the words “or other means”, and following the words “establish equivalent” striking the word “distances” and inserting in lieu thereof the word “protection.” and in the last sentence following the word “Secretary” by inserting the word “may”;
“completely” and inserting in lieu thereof the words “or providing comparable protection.”;

On page thirteen, division 8.2.c., in the first sentence by striking the words “analyzed for all types of potential failures” and inserting in lieu thereof the words “3.4.c. of this rule.”;

On page fourteen, subsection 8.3., following the words “Major design” by striking the word “Components” and inserting in lieu thereof the word “considerations.”;

And,

On page twenty five, subsection 25.14, following the words “practical pool level” by inserting the words “based upon the design requirements and the AHCF”, by striking the sentence “The lowest practical pool level is obtained by removing all available clear water from the pool surface to the extent practical without violating effluent limits.” and, in the last sentence following the word “The” by inserting the words “mechanical storm”.

(k) The legislative rule filed in the state register on the twenty-third day of July, two thousand two, authorized under the authority of section twenty-two-b, article fifteen, 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 fifth day of December, two thousand two, relating to the department of environmental protection (standards for beneficial use of materials similar to sewage sludge, 33 CSR 8), is authorized.

(l) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, 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 on the sixth day of December, two thousand two, relating to the department of environmental protection (hazardous waste management, 33 CSR 20), is authorized.

(m) The legislative rule filed in the state register on the twenty-fifth day of October, two thousand two, authorized under the authority of section twenty-two, 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 on the tenth day of January, two thousand three, relating to the department of environmental protection (hazardous waste management fund certification legislative rule concerning fee assessment, 33 CSR 24), is authorized.

(n) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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-first day of January, two thousand three, relating to the department of environmental protection (water pollution control permit fee schedules, 47 CSR 26), is authorized with the following amendments:

"On page one, subsection 2.3, line two, following the words "of the", by striking out remainder of the subsection and inserting in lieu thereof the words "Department of Environmental Protection";

And,

On page two, subsection 2.11, line two, following the words "equal to", by inserting the words "or greater than".
§64-3-2. Environmental quality board.

The legislative rule filed in the state register on the second day of January, two thousand three, authorized under the authority of section four, article three, chapter twenty-two-b of this code, relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1), is authorized.

§64-3-3. Oil and gas conservation commission.

The legislative rule filed in the state register on the twenty-fourth day of July, two thousand two, authorized under the authority of section five, article nine, chapter twenty-two-c of this code, modified by the oil and gas conservation 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 three, relating to the department of environmental protection (oil and gas conservation commission, 39 CSR 1), is authorized.

CHAPTER 139

(Com. Sub. for H. B. 2599 — By Delegates Mahan, Cann, Kominar and Faircloth)

[Passed March 5, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, 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; and authorizing the division of culture and history to promulgate a legislative rule relating to the cultural facilities and capital resources grant program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-1. Division of culture and history.

The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article one, chapter twenty-nine of this code, modified by the division of culture and history to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, two thousand two, relating to the division of culture and history (cultural facilities and capital resources grant program, 82 CSR 7), is authorized.
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 the health care authority to promulgate a legislative rule relating to benchmarking and discount contracts; authorizing the department of health and human resources to promulgate a legislative rule relating to the nurse aid abuse registry; authorizing the division of health to promulgate a legislative rule relating to sewage treatment and collection system design standards; authorizing the division of health to promulgate a legislative rule relating to the medical examiner rule for post
mortem inquiries; authorizing the division of health to promulgate a legislative rule relating to surrogates for incapacitated persons in health care facilities operated by the department of health and human resources; authorizing the division of health to promulgate a legislative rule relating to the uniform credentialing of health care practitioners; authorizing the division of human services to promulgate a legislative rule relating to day care centers licensing; authorizing the division of human services to promulgate a legislative rule relating to the tel-assistance program; and authorizing the division of human services to promulgate a legislative rule relating to family day care home registration requirements.

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

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

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

§64-5-1. Health care authority.
§64-5-2. Department of health and human resources.
§64-5-3. Division of health.
§64-5-4. Division of human services.

**§64-5-1. Health care authority.**

The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section eight, article twenty-nine-b, chapter sixteen of this code, modified by the health care authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of December, two thousand two, relating to the health care authority (benchmarking and discount contracts, 65 CSR 26), is authorized.
§64-5-2. Department of health and human resources.

The legislative rule filed in the state register on the eighteenth day of July, two thousand two, under the authority of section two, article six, chapter nine, of this code, modified by the department of health and human resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, two thousand two, relating to the department of health and human resources (nurse aid abuse registry, 69 CSR 6), is authorized.

§64-5-3. Division of health.

(a) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section four, article one, chapter sixteen, of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of January, two thousand three, relating to the division of health (sewage treatment and collection system design standards, 64 CSR 47), is authorized.

(b) The legislative rule filed in the state register on the twenty-second day of July, two thousand two, under the authority of section three, article twelve, chapter sixty-one, of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, two thousand two, relating to the division of health (medical examiner rule for post mortem inquiries, 64 CSR 84), is authorized with the following amendment:

"On page twenty-seven, section twenty-three, subsection 23.5, following the word 'materials' by inserting 'may be';

And,
On page twenty-eight, section twenty-five, subsection 25.2, following the phrase ‘W. Va. Code §16-1-11’ by adding the phrase, “except as provided for in subsection 13.6 of this rule’.”

(c) The legislative rule filed in the state register on the eighth day of February, two thousand two, under the authority of section eight, article thirty, chapter sixteen, of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of May, two thousand two, relating to the division of health (surrogates for incapacitated persons in health care facilities operated by the department of health and human resources, 64 CSR 86), is authorized with the following amendment:

“On page two of the rule, section four, subsection 4.1, by striking out the remainder of the rule and inserting in lieu thereof the following:

4.1.a. Any organization authorized under state or federal laws, or under contract with the Department, to advocate for individuals in the Department’s health care facilities;

4.1.b. Any organization authorized under federal or state laws, or under contract with the Department, to provide surrogacy, guardianship or conservator services for persons in the Department’s health care facilities; and

4.1.c. Any Department employee not otherwise precluded from serving as a surrogate by the provisions of W. Va. Code §16-30-8(i).”

(d) The legislative rule filed in the state register on the eighteenth day of July, two thousand two, under the authority of section two, article one-a, chapter sixteen, of this code, modified by the division of health to meet the objections of the
legislative rule-making review committee and referred in the
state register on the thirteenth day of January, two thousand
three, relating to the division of health (uniform credentialing
of health care practitioners, 64 CSR 89), is authorized.

§64-5-4. Division of human services.

(a) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand two, under the authority
of section four, article two-b, chapter forty-nine, of this code,
modified by the division of human resources to meet the
objections of the legislative rule-making review committee and
referred in the state register on the twenty-seventh day of
September, two thousand two, relating to the division of human
resources (day care centers licensing, 78 CSR 1), is authorized
with the following amendments:

"On page two of the rule, subsection 3.12, at the end of the
second line of said subsection, following the word 'except:', by
striking out the remainder of the subsection and inserting in lieu
thereof the following:

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

3.12.b. An individual or facility that offers occasional care
of children for brief periods while parents are shopping,
engaging in recreational activities, attending religious services
or engaging in other business or personal affairs;

3.12.c. Summer recreation camps operated for children
attending sessions for periods not exceeding thirty days;"
3.12.d. Hospitals or other medical facilities that are primarily used for temporary residential care of children for treatment, convalescence or testing;

3.12.e. Persons providing family day care solely for children related to them; or

3.12.f. Any juvenile detention facility or juvenile correctional facility operated by or under contract with the division of juvenile services, created pursuant to the provisions of W.Va. Code §49-5E-2 for the secure housing or holding of juveniles committed to its custody.’

On page twenty-two of the rule, section nine, subsection 9.1, subdivision 9.1.h, paragraph 9.1.h.1, following the word ‘age’, by inserting a comma, striking out the remainder of paragraph 9.1.h.1, and inserting ‘have a minimum of a high school diploma or equivalent and:’;

On page twenty-three, subparagraph 9.1.h.2.B, following the word ‘of’ by striking out ‘two (2)’ and inserting in lieu thereof ‘ten (10)’;

On page twenty-three, subparagraph 9.1.h.3.C., by striking out the words ‘three (3)’ and inserting in lieu thereof ‘fifteen (15)’;

And,

On page twenty-three, subparagraph 9.1.h.4.C, following the word ‘of’ by striking out the words ‘one (1)’ and inserting in lieu thereof the words ‘two (2)’.”

(b) The legislative rule filed in the state register on the twenty-fifth day of June, two thousand two, under the authority of section four, article two-c, chapter twenty-four, of this code, modified by the division of human resources to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the twenty-third day of September,
two thousand two, relating to the division of human
resources (tel-assistance program, 78 CSR 15), is authorized
with the following amendments:

"On page two, section five, by striking out all of subsection
5.1 and inserting in lieu thereof the following:

‘5.1. An individual is eligible for Tel-Assistance if he or she
meets the criteria set forth in W.Va. Code §24-2C-1. et seq.’"

(c) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand two, under the authority
of section four, article two-b, chapter forty-nine, of this code,
modified by the division of human resources to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the twenty-third day of September,
two thousand two, relating to the division of human
resources (family day care home registration requirements, 78
CSR 19), is authorized with the following amendment:

"On page eight of the rule, section six, subsection four,
subdivision d, paragraph three, by striking out all of §6.4.d.3,
and by renumbering the following paragraph as ‘§6.4.d.3.’."

CHAPTER 141

(Com. Sub. for H. B. 2615 — By Delegates Mahan,
Cann, Kominar and Faircloth)

[Passed March 5, 2003; in effect from passage. Approved by the Governor.]
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 building code; authorizing the juvenile facilities standards commission to promulgate a legislative rule relating to minimum standards for the structure, operation and maintenance of juvenile detention and correctional facilities; and authorizing the state police to promulgate a legislative rule relating to the state police career progression system.

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. Juvenile facilities standards commission.
§64-6-3. State police.
§64-6-1. Fire commission.

The legislative rule filed in the state register on the nineteenth day of July, two thousand two, authorized under the authority of section five-b, 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 fifteenth day of January, two thousand three, relating to the fire commission (state building code, 87 CSR 4), is authorized.

§64-6-2. Juvenile facilities standards commission.

The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section nine-a, article twenty, chapter thirty-one of this code, modified by the juvenile facilities standards commission 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 three, relating to the juvenile facilities standards commission (minimum standards for structure, operation and maintenance of juvenile detention and correctional facilities, 101 CSR 1), is authorized. The commissioner shall on or before the thirty-first day of July, two thousand three, refile this rule (101 CSR 1) for purposes of legislative promulgation of this rule during the two thousand four regular legislative session.

§64-6-3. State police.

The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section 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 twenty-seventh day of November, two
7 thousand two, relating to the state police (state police career
8 progression system, 81 CSR 3), is authorized.

CHAPTER 142

(Com. Sub. for S. B. 287 — By Senators Ross, Minard,
Snyder, Boley and Minear)

[Passed March 7, 2003; 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; continuing rules previously promul-
gated by state agencies and boards; legislative mandate or
authorization for the promulgation of certain legislative rules;
authorizing certain of the agencies to promulgate certain legisla-
tive rules in the form that the rules were filed in the state register;
authorizing certain of the agencies to promulgate certain legisla-
tive rules with various modifications presented to and recom-
mended by the legislative rule-making review committee;
authorizing certain of the agencies to promulgate certain legisla-
tive 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 Legisla-
ture; authorizing the insurance commissioner to promulgate a
legislative rule relating to unfair trade practices; authorizing the
insurance commissioner to promulgate a legislative rule relating
to examiners’ compensation, qualifications and classification;
authorizing the insurance commissioner to promulgate a legisla-
tive rule relating to licensing and conduct of agents, agencies and solicitors; authorizing the insurance commissioner to promulgate a legislative rule relating to excess line brokers; authorizing the insurance commissioner to promulgate a legislative rule relating to AIDS; authorizing the insurance commissioner to promulgate a legislative rule relating to “tail” insurance covering certain medical and allied health care providers; authorizing the insurance commissioner to promulgate a legislative rule relating to group accident and sickness insurance minimum policy coverage standards; authorizing the insurance commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing the insurance commissioner to promulgate a legislative rule relating to quality assurance; authorizing the insurance commissioner to promulgate a legislative rule relating to medical malpractice insurance consent to rate and guide “A” rate agreements; authorizing the insurance commissioner to promulgate a legislative rule relating to credit personal property insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to standards for safeguarding consumer information; authorizing the insurance commissioner to promulgate a legislative rule relating to standard motor vehicle policy provisions; authorizing the insurance commissioner to promulgate a legislative rule relating to mental health parity; authorizing the tax commissioner to promulgate a legislative rule relating to payment of taxes by electronic funds transfer; and authorizing the tax commissioner to promulgate a legislative rule relating to tax credit for medical malpractice liability insurance premiums.

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. Insurance commissioner.

§64-7-2. Tax commissioner.

§64-7-1. Insurance commissioner.

(a) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, two thousand two, relating to the insurance commissioner (unfair trade practices, 114 CSR 14), is authorized.

(b) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, two thousand two, relating to the insurance commissioner (examiners’ compensation, qualifications and classification, 114 CSR 15), is authorized with the following amendment:

"On page one, section two, subsection 2.1 by striking the words ‘Market Conduct Examiner’.”

(c) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of October, two thousand two, relating to the insurance commissioner (licensing and conduct of agents, agencies and solicitors, 114 CSR 2), is authorized with the following amendment:
On page four, by striking out all of subsection 3.8 and inserting in lieu thereof the following:

3.8. Every business entity transacting insurance as defined in W. Va. Code §33-1-4 must be licensed as an agency insurance producer. For purposes of this section, “insurance” means all products defined or regulated by the State of West Virginia except: (i) Limited lines insurance as defined in West Virginia Code § 33-12-2(i) and (k); (ii) insurance placed by a lender in connection with collateral pledged for a loan when the debtor breaches the contractual obligation to provide this insurance; and (iii) private mortgage insurance.

On page four, subsection 4.1 after the word ‘with’ by striking out the word ‘whom’ and inserting in lieu thereof the word ‘which’;

On page five, by striking out all of subsection 5.1 and inserting in lieu thereof the following:

5.1. No person that owns or is affiliated with an insurance agency or individual insurance producer may require, as a condition precedent to making a loan, that the borrower cancel insurance and purchase new insurance with the individual insurance producer or with an agency insurance producer with which the person is affiliated.

And,

On page five, by striking out all of subsection 5.3 and inserting in lieu thereof the following:

5.3. The act of any person, that owns or is affiliated with an insurance agency or individual insurance producer, in making a loan in violation of this section, will be considered to
be the act of the individual insurance producer or agency insurance producer with which the person making the loan is affiliated. The individual insurance producer or agency insurance producer will be held strictly accountable for the acts of a person who is affiliated with the individual insurance producer or agency insurance producer and who makes a loan in violation of this section."

(d) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of October, two thousand two, relating to the insurance commissioner (excess line brokers, 114 CSR 20), is authorized with the amendments set forth below:

"On page three, subdivision 4.2.a., at the end of the subdivision by adding the following: 'The form shall contain an affidavit that the individual insurance producer complied with the due diligence requirements of this rule.'

And,

On page six, subdivision 4.6.j., after the word 'producer' by inserting the words 'required in section 4.2. of this rule'.

(e) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, two
thousand two, relating to the insurance commissioner (AIDS, 114 CSR 27), is authorized with the following amendment:

"On Appendix A to rule, fifth paragraph, by striking the entire paragraph and inserting in lieu thereof the following: Positive HIV antibody or antigen test results or other significant abnormalities discovered in the body fluid sample tested for the presence of HIV will adversely affect your application for insurance. This means that your application may be declined, that an increased premium may be charged, or that other policy changes may be necessary."

(f) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the insurance commissioner ("tail" malpractice insurance covering certain medical and allied health care providers, 114 CSR 30), is authorized.

(g) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, two thousand two, relating to the insurance commissioner (group accident and sickness insurance minimum policy coverage standards, 114 CSR 39), is authorized.

(h) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of October, two
(i) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the insurance commissioner (quality assurance, 114 CSR 53), is authorized.

(j) The legislative rule filed in the state register on the twenty-second day of February, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the insurance commissioner (medical malpractice insurance consent to rate and guide “A” rate agreements, 114 CSR 59), is authorized.

(k) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of January, two thousand three, relating to the insurance commissioner (credit personal property insurance, 114 CSR 61), is authorized.

(l) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, two thousand two, relating to the insurance commissioner (standards for safeguarding consumer information, 114 CSR 62), is authorized.
(m) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, two thousand two, relating to the insurance commissioner (standard motor vehicle policy provisions, 114 CSR 63), is authorized with the following amendments:

"On page two, subsection 3.4, lines twenty-two and twenty-three, by striking out the words ‘and may not exclude the liability of the owner with respect to use by a bailee for hire, restricted driver, or other permissive user’;

And,

On page three, subsection 3.13, lines sixteen and seventeen, by striking out the words ‘, in exchange for a multi-car discount.’ “

(n) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, two thousand two, relating to the insurance commissioner (mental health parity, 114 CSR 64), is authorized with the following amendments:

"On page one, subsection 1.1.b.1, by striking the word ‘Any’ and inserting in lieu thereof the words ‘Group health benefit plans issued by any’;
And,

On page one, subsection 1.1.b.3, by striking the word ‘plans’ and inserting in lieu thereof the words ‘benefit plans’.

§64-7-2. Tax commissioner.

(a) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand two, authorized under the authority of section five-t, 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 twenty-second day of November, two thousand two, relating to the tax commissioner (payment of taxes by electronic funds transfer, 110 CSR 10F), is authorized with the following amendments:

“On page three, subsection 3.2, by striking out the words ‘for all taxable years or reporting periods’ and inserting in lieu thereof the words ‘in tax liability per tax type per taxable year or reporting period’;

On page four, subsection 4.2, by striking out the entire subsection;

On page four, subsection 5.2, first sentence, by striking out the words ‘Each EFT payment under this rule shall be limited to’ and inserting in lieu thereof the words ‘The Department will determine whether a taxpayer meets the $100,000 tax liability threshold requiring payment of taxes by EFT by considering taxes paid for’;

On page four, subsection 5.2, second sentence, by striking out the words ‘amount paid’ and inserting in lieu thereof the words ‘taxes paid for all tax types’;
25 On page four, subsection 5.3, first sentence, by striking out
26 the words ‘Each EFT payment under this rule shall be limited
27 to’ and inserting in lieu thereof the words ‘The Department will
determine whether a taxpayer meets the $100,000 tax liability
29 threshold requiring payment of taxes by EFT by considering’;

30 On page five, subsection 7.1, by striking out the words
31 ‘Form WV/EFT-005’ and inserting in lieu thereof the words
32 ‘Form WV/EFT-5’;

33 And,

34 On page five, subsection 7.2, by striking out the words
35 ‘Form WV/EFT-005’ and inserting in lieu thereof the words
36 ‘Form WV/EFT-5’.”

37 (b) The legislative rule filed in the state register on the
38 twenty-fourth day of July, two thousand two, authorized under
39 the authority of section eight, article thirteen-p, chapter eleven
40 of this code, modified by the tax commissioner to meet the
41 objections of the legislative rule-making review committee and
42 refiled in the state register on the first day of October, two
43 thousand two, relating to the tax commissioner (tax credit for
44 medical malpractice insurance premiums, 110 CSR 13P), is
45 authorized.

CHAPTER 143

(Com. Sub. for H. B. 2648 — By Delegates Mahan,
Cann, Kominar and Faircloth)

[Passed March 5, 2003; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of highways to promulgate a legislative rule relating to traffic and safety; authorizing the division of highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; authorizing the division of motor vehicles to promulgate a legislative rule relating to the examination and issuance of driver's licenses; authorizing the division of motor vehicles to promulgate a legislative rule relating to the motor vehicle test and lock program; authorizing the division of motor vehicles to promulgate a legislative rule relating to the motor vehicle inspection manual; authorizing the division of motor vehicles to promulgate a legislative rule relating to the denial, suspension, revocation or nonrenewal of driving privileges; and authorizing the division of motor vehicles to promulgate a legislative rule relating to motor vehicle dealers, wrecker/dismantler/rebuilders and license services, automobile auctions, vehicle leasing companies, daily passenger rental car businesses and administrative due process.

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

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

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

§64-8-1. Division of highways.

(a) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand two, authorized under the authority of section eight, article two-a, chapter seventeen of this code, relating to the division of highways (traffic and safety, 157 CSR 5), is authorized.

(b) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand two, 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.

(a) The legislative rule filed in the state register on the thirtieth day of December, two thousand two, authorized under the authority of section fifteen, article two, chapter seventeen-b of this code, relating to the division of motor vehicles (examination and issuance of driver’s licenses, 91 CSR 4), is authorized with the following amendments:

"On page eight, section six, subsection 6.1, line 1, following the word 'license' by inserting 'or identification card';"
On page eight, section six, subsection 6.1, following the word 'licensee's' by inserting 'or identification card holder's';

On page eight, section six, subsection 6.1, line 7, following the word 'license' by inserting 'or identification card';

On page eight, section six, subdivision 6.1.c, following the word 'license' by inserting 'or identification card';

On page nine, section seven, subsection 7.1, following the word 'license' by inserting 'or identification card';

On page nine, section seven, subsection 7.1, following the word 'applicant' by inserting 'and the length of the applicant’s authorized legal presence in the United States';

On page ten, section seven, subsection 7.9, following the word 'licensee' by inserting 'or identification card holder';

On page ten, section seven, subsection 7.9, following the word 'license' by inserting 'or identification card';

On page twelve, section nine, subsection 9.2, following the word 'license' by inserting 'or identification card';

On page twelve, section nine, subdivision 9.2.a, line one, following the word 'licensee' by inserting 'or identification card holder';

On page twelve, section nine, subdivision 9.2.a, line two, following the word 'licensee' by inserting 'or identification card holder';

On page twelve, section nine, subdivision 9.2.b, following the word 'licensee' by inserting 'or identification card holder';
On page thirteen, section nine, subsection 9.7, following the word 'license' by inserting 'or identification card';

On page thirteen, section nine, subsection 9.8, line one, following the word 'license' by inserting 'or identification card';

On page thirteen, section nine, subsection 9.8, line two, following the word 'license' by inserting 'or identification card';

On page thirteen, section ten, subsection 10.1, line one, following the word 'license' by inserting 'or identification card';

On page thirteen, section ten, subsection 10.1, line two, following the word 'license' by inserting 'or identification card';

On page thirteen, section ten, subsection 10.1, line three, following the word 'license' by inserting 'or issue an identification card to';

On page fourteen, section ten, subsection 10.3, line one, following the word 'license' by inserting 'or issue identification cards to';

On page fourteen, section ten, subsection 10.3, following the word 'licensed' by inserting 'or issued identification cards';

And,

On page fourteen, section ten, subsection 10.3, following the word 'license' by inserting 'or identification card'.
(b) The legislative rule filed in the state register on the ninth day of October, two thousand two, authorized under the authority of section three-a, article five-a, chapter seventeen-c of this code, relating to the division of motor vehicles (motor vehicle test and lock program, 91 CSR 9), is authorized.

(c) The legislative rule filed in the state register on the eighteenth day of December, two thousand two, authorized under the authority of section four, article sixteen, chapter seventeen-c of this code, relating to the division of motor vehicles (motor vehicle inspection manual, 91 CSR 12), is authorized with the following amendment:

"On page one, section two, subsection 2.1, line 3, by striking the words ‘July 1, 2003’ and inserting in lieu thereof the phrase ‘January 1, 2002.’”

(d) The legislative rule filed in the state register on the eighteenth day of July, two thousand two, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, two thousand two, relating to the division of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges, 91 CSR 5), is authorized.

(e) The legislative rule filed in the state register on the third day of July, two thousand two, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, two thousand two, relating to the division of motor vehicles (motor vehicle dealers, wrecker/dismantler/rebuilders and
license services, automobile auctions, vehicle leasing companies, daily passenger rental car businesses and administrative due process, 91 CSR 6), is authorized.

CHAPTER 144

(Com. Sub. for S. B. 316 — By Senators Ross, Minard, Snyder, Boley and Minear)

[Passed March 7, 2003; 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; 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 division of forestry to promulgate legislative rule relating to sediment control during commercial timber harvesting operations; logger certification; authorizing division of forestry to promulgate legislative rule relating to sediment
control during commercial timber harvesting operation; licensing; authorizing development office to promulgate legislative rule relating to community development assessment and real property valuation procedures for office of coalfield community development; authorizing manufactured housing construction and safety standards board to promulgate legislative rule relating to board; authorizing division of labor to promulgate legislative rule relating to elevator safety act; authorizing division of labor to promulgate legislative rule relating to regulation of trade—weights and measures; authorizing board of miner training, education and certification to promulgate legislative rule relating to standards for certification of coal mine electricians; authorizing division of natural resources to promulgate legislative rule relating to revocation of hunting and fishing licenses; authorizing division of natural resources to promulgate legislative rule relating to special boating; authorizing division of natural resources to promulgate legislative rule relating to prohibitions when hunting and trapping; authorizing division of natural resources to promulgate legislative rule relating to deer hunting; and authorizing division of natural resources to promulgate legislative rule relating to commercial sale of wildlife.

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 BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Development office.
§64-10-2. Division of labor.
§64-10-3. Manufactured housing construction and safety standards board.
§64-10-4. Division of natural resources.
§64-10-5. Division of forestry.
§64-10-6. Board of miner training, education and certification.
§64-10-1. Development office.

The legislative rule filed in the state register on the twenty-ninth day of July, two thousand two, authorized under the authority of section twelve, article two-a, chapter five-b 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 fourteenth day of January, two thousand three, relating to the department of environmental protection (community development assessment and real property valuation procedures for office of coal field community development, 145 CSR 8), is authorized.

§64-10-2. Division of labor.

(a) The legislative rule filed in the state register on the ninth day of July, two thousand two, authorized under the authority of section eleven, article three-c, 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 eighth day of November, two thousand two, relating to the division of labor (elevator safety act, 42 CSR 21), is authorized with the following amendments:

“On page two, subsection 5.1 following the first word ‘No’, by striking out the word ‘elevator’ and inserting in lieu thereof the word ‘elevators’ and following the second words ‘certificate of operation’, by striking out the words ‘shall be issued by the Division’ and after the word ‘successfully’, by striking out the word ‘pass’ and inserting in lieu thereof the word ‘passed’;

On page three, subsection 6.2 following the word ‘Chair-lifts’, by striking out the word ‘is’ and inserting in lieu thereof the word ‘are’;

And
On page four, subsection 6.4 following the words ‘no inspection fee will’ by adding the word ‘be’.

(b) The legislative rule filed in the state register on the nineteenth day of July, two thousand two, authorized under the authority of section three, article one, chapter forty-seven 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 eighth day of November, two thousand two, relating to the division of labor (regulation of trade—weights and measures, 42 CSR 22), is authorized.

§64-10-3. Manufactured housing construction and safety standards board.

The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article nine, chapter twenty-one of this code, relating to the manufactured housing construction and safety standards board (West Virginia manufactured housing construction and safety standards board, 42 CSR 19), is authorized.

§64-10-4. Division of natural resources.

(a) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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 first day of October, two thousand two, relating to the division of natural resources (revocation of hunting and fishing licenses, 58 CSR 23), is authorized.

(b) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under
the authority of section twenty-two, article seven, chapter twenty of this code, relating to the division of natural resources (special boating, 58 CSR 26), is authorized.

(c) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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 legislature rule-making review committee and refiled in the state register on the twenty-seventh day of September, two thousand two, relating to the division of natural resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized with the following amendment:

"On page two, section three, by striking out all of subdivision 3.6.1;

And,

On page 3, by striking out all of subdivision 3.15.2 and inserting in lieu thereof a new subdivision 3.15.2, to read as follows:

'3.15.2. The applicant shall authorize, by written release, his or her medical provider to disclose to the director of the Division of Natural Resources and the medical provider shall, upon receipt of the written release, disclose to the director of the Division of Natural Resources, that portion of the applicant's medical records which substantiates the applicant's physical impairment qualifying the applicant for the issuance of a special permit for use of a modified bow. The director shall: Restrict access to medical records submitted to him or her; maintain the records in a secure locked cabinet; and not share this information with other federal, state or local agencies or entities, or any register or data bank.""
(d) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, 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-seventh day of September, two thousand two, relating to the division of natural resources (deer hunting, 58 CSR 50), is authorized.

(e) The legislative rule filed in the state register on the eighteenth day of November, two thousand two, authorized under the authority of section eleven, 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-third day of December, two thousand two, relating to the division of natural resources (commercial sale of wildlife, 58 CSR 63), is authorized with the following amendment:

"On page four, section sixty-three, by striking out all of Subsections 4.7 and 4.8 and inserting in lieu thereof new Subsections 4.7 and 4.8, to read as follows:

4.7. In order to protect the public health and the welfare of native wildlife, a licensee may not import cervids into West Virginia. When the United States department of agriculture implements rules and regulations on the interstate transportation and sale of cervids, the interstate movement of cervids into West Virginia will be governed by the United States department of agriculture rules and regulations. The Division of Natural Resources, however, may import wildlife during the normal course of its mission.

4.8. A licensee may sell or relocate cervids within West Virginia until January 15, 2004, or until the United States department of agriculture establishes rules and regulations
regarding the intrastate transportation and sale of cervids, whichever comes later. When the United States department of agriculture implements rules and regulations on the intrastate transportation and sale of cervids, the intrastate movement within West Virginia will be governed by the United States department of agriculture rules and regulations."

§64-10-5. Division of forestry.

(a) The legislative rule filed in the state register on the twenty-third day of July, two thousand two, under the authority of section four, article one-b, chapter nineteen of this code, modified by the division of forestry to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, two thousand two, relating to the division of forestry (sediment control during commercial timber harvesting operations - licensing, 22 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the twenty-third day of July, two thousand two, under the authority of section four, article one-b, chapter nineteen of this code, modified by the division of forestry to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, two thousand two, relating to the division of forestry (sediment control during commercial timber harvesting operations - logger certification, 22 CSR 3), is authorized.

§64-10-6. Board of miner training, education and certification.

The legislative rule filed in the state register on the thirteenth day of September, two thousand one, under the authority of section five, article seven, chapter twenty-two-a of this code, modified by the board of miner training, education and certification to meet the objections of the legislative rule-making
AN ACT to amend and reenact sections eleven and thirteen, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to mechanics' liens; altering the periods for perfecting certain liens; and removing archaic language.

Be it enacted by the Legislature of West Virginia:

That sections eleven 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.

§38-2-11. Notice and recordation of lien for supplies furnished to contractor or subcontractor.

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

§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 has 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 one hundred days after he or she has ceased to furnish the 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 the lien. The notice will 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 con-
tained are true, as he verily believes.

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

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

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

§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 person who
has performed any work or labor upon the building or improve-
ment thereto, under a contract with any general contractor or
with any subcontractor, as set forth in section six of this article,
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 within one hundred days after he or she ceased to
perform any work or labor a notice of the lien. The 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 performed 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 erection 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)
The lien shall be discharged unless the workman, artisan, mechanic, laborer or other person shall record in the office of the clerk of the county commission wherein the property is situate, within one hundred days after he or she ceased to do work or perform labor upon the building or improvement thereto, a notice of the lien. The notice shall be sufficient if in form and effect as that provided in section eight of this article. The recorded notice need not include the itemized account.

CHAPTER 146

(Com. Sub. for H. B. 3014 — By Mr. Speaker, Mr. Kiss, and Delegates Michael, Doyle, Anderson, H. White, G. White and Browning)

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-a, two, three, four, four-a, four-b, five, six, eight, nine-f, thirteen, fourteen, sixteen, thirty-one and thirty-three, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, one-a, two, three, three-a, four, five, six, seven, eight, nine, ten, ten-a, eleven, eighteen, twenty-one, twenty-two, twenty-seven and twenty-nine, article fifteen-a of said chapter; to amend and reenact sections one, two, three and five, article fifteen-b of said chapter; and to further amend said article fifteen-b by adding thereto twenty-one new sections, designated sections two-a, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, all relating generally to “Main Street Fairness Act of 2003”, amending consumers sales and service and use tax laws to
conform to requirements of streamlined sales and use tax agreement; incorporating in this state’s sales and use tax laws certain substantive provisions of agreement pertaining to definitions, administration, collection and enforcement of sales and use taxes; renaming simplified sales and use tax administration act as streamlined sales and use tax administration act; authorizing tax commissioner to sign agreement; specifying effective dates; deleting obsolete language and making other technical changes.

Be it enacted by the Legislature of West Virginia:

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

Article

15. Consumer Sales and Service Tax.

15A. Use Tax.

15B. Streamlined Sales and Use Tax Administration System.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-1a. Legislative findings.
§11-15-3. Amount of tax; allocation of tax and transfers.
§11-15-4a. Failure to collect taxes; liability of vendor.
§11-15-4b. Liability of purchaser; assessment and collection.
§11-15-5. Total amount collected is to be remitted.
§11-15-6. Vendor must show sale or service exempt; presumption.
§11-15-8. Furnishing of services included; exceptions.
§11-15-9f. Exemption for sales and services subject to special district excise tax.
§11-15-14. When separate records of sales required.
§11-15-33. Effective date.

§11-15-1a. Legislative findings.

1 The Legislature hereby finds and declares that:

2 (1) It is the intent of the Legislature that the consumers
3 sales tax imposed by the provisions of article fifteen and the use
4 tax imposed by the provisions of article fifteen-a of this chapter,
5 be complementary laws and wherever possible be construed and
6 applied to accomplish such intent as to the imposition, adminis-
7 tration and collection of these taxes; and

8 (2) On and after the first day of January, two thousand four,
9 the taxes levied by this article and article fifteen-a of this
10 chapter shall also be administered and collected in accordance
11 with the provisions of article fifteen-b of this chapter.


1 (a) General. — When used in this article and article fifteen-
2 a of this chapter, words defined in subsection (b) of this section
3 shall have the meanings ascribed to them in this section, except
4 in those instances where a different meaning is provided in this
5 article or the context in which the word is used clearly indicates
6 that a different meaning is intended by the Legislature.

7 (b) Definitions. —

*CLERK'S NOTE: This section was also amended by SB 531 (Chapter 238),
which passed subsequent to this act.
(1) "Business" includes all activities engaged in or caused
to be engaged in with the object of gain or economic benefit,
direct or indirect, and all activities of the state and its political
subdivisions which involve sales of tangible personal property
or the rendering of services when those service activities
compete with or may compete with the activities of other
persons.

(2) "Communication" means all telephone, radio, light,
light wave, radio telephone, telegraph and other communication
or means of communication, whether used for voice communi-
cation, computer data transmission or other encoded symbolic
information transfers and includes commercial broadcast radio,
commercial broadcast television and cable television.

(3) "Contracting":

(A) In general. — "Contracting" means and includes the
furnishing of work, or both materials and work, for another (by
a sole contractor, general contractor, prime contractor, subcon-
tractor or construction manager) in fulfillment of a contract for
the construction, alteration, repair, decoration or improvement
of a new or existing building or structure, or any part thereof,
or for removal or demolition of a building or structure, or any
part thereof, or for the alteration, improvement or development
of real property. Contracting also includes services provided by
a construction manager so long as the project for which the
construction manager provides the services results in a capital
improvement to a building or structure or to real property.

(B) Form of contract not controlling. — An activity that
falls within the scope of the definition of contracting constitutes
contracting regardless of whether the contract governing the
activity is written or verbal and regardless of whether it is in
substance or form a lump sum contract, a cost-plus contract, a
time and materials contract, whether or not open-ended, or any
other kind of construction contract.

(C) Special rules. — For purposes of this definition:

(i) The term “structure” includes, but is not limited to,
everything built up or composed of parts joined together in
some definite manner and attached or affixed to real property
or which adds utility to real property or any part thereof or
which adds utility to a particular parcel of property and is
intended to remain there for an indefinite period of time;

(ii) The term “alteration” means, and is limited to, alter-
atations which are capital improvements to a building or structure
or to real property;

(iii) The term “repair” means, and is limited to, repairs
which are capital improvements to a building or structure or to
real property;

(iv) The term “decoration” means, and is limited to,
decorations which are capital improvements to a building or
structure or to real property;

(v) The term “improvement” means, and is limited to,
improvements which are capital improvements to a building or
structure or to real property;

(vi) The term “capital improvement” means improvements
that are affixed to or attached to and become a part of a building
or structure or the real property or which add utility to real
property, or any part thereof, and that last or are intended to be
relatively permanent. As used herein, “relatively permanent”
means lasting at least a year in duration without the necessity
for regularly scheduled recurring service to maintain the capital
improvement. “Regular recurring service” means regularly
scheduled service intervals of less than one year;
(vii) Contracting does not include the furnishing of work, or both materials and work, in the nature of hookup, connection, installation or other services if the service is incidental to the retail sale of tangible personal property from the service provider's inventory: Provided, That the hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant to this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if the repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or intends to allow the real property or thing permanently attached thereto to remain in service for a year or longer; and

(viii) The term “construction manager” means a person who enters into an agreement to employ, direct, coordinate or manage design professionals and contractors who are hired and paid directly by the owner or the construction manager. The business activities of a “construction manager” as defined in this subdivision constitute contracting, so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(4) “Directly used or consumed” in the activities of manufacturing, transportation, transmission, communication or
the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include only:

(i) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(ii) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(iii) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(iv) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(v) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(vi) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;
(vii) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(viii) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(ix) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(x) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xi) Maintaining or repairing of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xii) Storing, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(xiii) Engaging in pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation,
communication, transmission or the production of natural resources; or

(xiv) Otherwise using as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(B) Uses of property or services which do not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

(5) “Directly used or consumed” in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential part of those activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.
(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include only:

(i) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(ii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and these vehicles and their equipment as are specifically designed and equipped for those purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(iii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliance, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment,
machinery, tools, supplies and repair parts used to keep in operation exempt storage devices;

(iv) Tangible personal property, custom software or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business;

(v) Tangible personal property, custom software or services used immediately in pollution control or environmental quality or protection activity or community safety or security directly relating to the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business.

(B) Uses of property or services which would not constitute direct use or consumption in the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to the activities of gas storage, generation or production or sale of
electric power, the provision of public utility service or the
operation of a utility business.

(6) "Gas storage" means the injection of gas into a storage
reservoir or the storage of gas for any period of time in a
storage reservoir or the withdrawal of gas from a storage
reservoir engaged in by businesses subject to the business and
occupation tax imposed by sections two and two-e, article
thirteen of this chapter.

(7) "Generating or producing or selling of electric power"
means the generation, production or sale of electric power
engaged in by businesses subject to the business and occupation
tax imposed by section two, two-d, two-m or two-n, article
thirteen of this chapter.

(8) "Gross proceeds" means the amount received in money,
credits, property or other consideration from sales and services
within this state, without deduction on account of the cost of
property sold, amounts paid for interest or discounts or other
expenses whatsoever. Losses may not be deducted, but any
credit or refund made for goods returned may be deducted.

(9) "Includes" and "including," when used in a definition
contained in this article, does not exclude other things otherwise
within the meaning of the term being defined.

(10) "Manufacturing" means a systematic operation or
integrated series of systematic operations engaged in as a
business or segment of a business which transforms or converts
tangible personal property by physical, chemical or other means
into a different form, composition or character from that in
which it originally existed.

(11) "Person" means any individual, partnership, associa-
tion, corporation, limited liability company, limited liability
partnership, or any other legal entity including this state or its
political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

(12) "Personal service" includes those: (A) Compensated by the payment of wages in the ordinary course of employment; and (B) rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(13) Production of natural resource.

(A) "Production of natural resources" means, except for oil and gas, the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith and the construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated facilities and apparatus, by the producer or others, including contractors and subcontractors, at a coal mine or coal production facility.

(B) For the natural resources oil and gas, "production of natural resources" means the performance, by either the owner of the natural resources, a contractor or a subcontractor, of the act or process of exploring, developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-completion activities such as the installation of the casing, tubing and other machinery and equipment and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work
performed on the well or well site after production of the well has initially commenced.

(C) All work performed to install or maintain facilities up to the point of sale for severance tax purposes is included in the "production of natural resources" and subject to the direct use concept.

(D) "Production of natural resources" does not include the performance or furnishing of work, or materials or work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, by persons other than those otherwise directly engaged in the activities specifically set forth in this subdivision (13) as "production of natural resources".

(14) "Providing a public service or the operating of a utility business" means the providing of a public service or the operating of a utility by businesses subject to the business and occupation tax imposed by sections two and two-d, article thirteen of this chapter.

(15) "Purchaser" means a person who purchases tangible personal property, custom software or a service taxed by this article.

(16) "Sale", "sales" or "selling" includes any transfer of the possession or ownership of tangible personal property or custom software for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his or her agent for consumption or use or any other purpose. "Sale" also includes the furnishing of a service for consideration.
(17) “Service” or “selected service” includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property or custom software, but does not include contracting, personal services or the services rendered by an employee to his or her employer or any service rendered for resale.

(18) “Streamlined sales and use tax agreement” or “agreement”, when used in this article, shall have the same meaning as when used in article fifteen-b of this chapter, except when the context in which the word agreement is used clearly indicates that a different meaning is intended by the Legislature.

(19) “Tax” includes all taxes, additions to tax, interest and penalties levied under this article or article ten of this chapter.

(20) “Tax commissioner” means the state tax commissioner or his or her 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 division 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 or rules promulgated for this article.

(21) “Taxpayer” means any person liable for the tax imposed by this article or additions to tax, penalties and interest imposed by article ten of this chapter.

(22) “Transmission” means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.
(23) "Transportation" means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(24) "Ultimate consumer" or "consumer" means a person who uses or consumes services or personal property.

(25) "Vendor" means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article.

(c) Additional definitions. — Other terms used in this article are defined in article fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

§11-15-3. Amount of tax; allocation of tax and transfers.

(a) Vendor to collect. — For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services defined in sections two and eight of this article, the vendor shall collect from the purchaser the tax as provided under this article and article fifteen-b of this chapter, and shall pay the amount of tax to the tax commissioner in accordance with the provisions of this article or article fifteen-b of this chapter.

(b) Amount of tax. — The general consumer sales and service tax imposed by this article shall be at the rate of six cents on the dollar of sales or services, excluding gasoline and special fuel sales, which remain taxable at the rate of five cents on the dollar of sales.
(c) Calculation tax on fractional parts of a dollar until January 1, 2004. — There shall be no tax on sales where the monetary consideration is five cents or less. The amount of the tax shall be computed as follows:

1. On each sale, where the monetary consideration is from six cents to sixteen cents, both inclusive, one cent.

2. On each sale, where the monetary consideration is from seventeen cents to thirty-three cents, both inclusive, two cents.

3. On each sale, where the monetary consideration is from thirty-four cents to fifty cents, both inclusive, three cents.

4. On each sale, where the monetary consideration is from fifty-one cents to sixty-seven cents, both inclusive, four cents.

5. On each sale, where the monetary consideration is from sixty-eight cents to eighty-four cents, both inclusive, five cents.

6. On each sale, where the monetary consideration is from eighty-five cents to one dollar, both inclusive, six cents.

7. If the sale price is in excess of one dollar, six cents on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars as follows: One cent on the fractional part of the dollar if less than seventeen cents; two cents on the fractional part of the dollar if in excess of sixteen cents but less than thirty-four cents; three cents on the fractional part of the dollar if in excess of thirty-three cents but less than fifty-one cents; four cents on the fractional part of the dollar if in excess of fifty cents but less than sixty-eight cents; five cents on the fractional part of the dollar if in excess of sixty-seven cents but less than eighty-five cents; and six cents on the fractional part of the dollar if in excess of eighty-four cents. For example, the tax on sales from one dollar and one cent to one dollar and sixteen cents, both inclusive, seven cents; on sales
from one dollar and seventeen cents to one dollar and thirty-three cents, both inclusive, eight cents; on sales from one dollar and thirty-four cents to one dollar and fifty cents, both inclusive, nine cents; on sales from one dollar and fifty-one cents to one dollar and sixty-seven cents, both inclusive, ten cents; on sales from one dollar and sixty-eight cents to one dollar and eighty-four cents, both inclusive, eleven cents and on sales from one dollar and eighty-five cents to two dollars, both inclusive, twelve cents: Provided, That beginning the first day of January, two thousand four, tax due under this article shall be calculated as provided in subsection (d) of this subsection and this subsection (c) does not apply to sales made after the thirty-first day of December, two thousand three.

(d) Calculation of tax on fractional parts of a dollar after December 31, 2003. — Beginning the first day of January, two thousand four, the tax computation under subsection (b) of this section shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(e) No aggregation of separate sales transactions, exception for coin-operated devices. — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though the sales are aggregated in the billing or payment therefor. Notwithstanding any other provision of this article, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(f) Rate of tax on certain mobile homes. — Notwithstanding any provision of this article to the contrary, after the thirty-first
day of December, two thousand three, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six percent of fifty percent of the sales price.

(g) Construction; custom software. — After the thirty-first day of December, two thousand three, whenever the words "tangible personal property" or "property" appear in this article, the same shall also include the words "custom software".

(h) Computation of tax on sales of gasoline and special fuel. — The method of computation of tax provided in this section does not apply to sales of gasoline and special fuel.

§11-15-4. Purchaser to pay; accounting by vendor.

(a) The purchaser shall pay to the vendor the amount of tax levied by this article which is added to and constitutes a part of the sales price, and is collectible by the vendor who shall account to the state for all tax paid by the purchaser.

(b) The vendor shall keep records necessary to account for:

(1) The vendor's gross proceeds from sales of personal property and services;

(2) The vendor's gross proceeds from taxable sales;

(3) The vendor's gross proceeds from exempt sales;

(4) The amount of taxes collected under this article, which taxes shall be held in trust for the state of West Virginia until paid over to the tax commissioner; and

(5) Any other information as required by this article, or article fifteen-b of this chapter, or as required by the tax commissioner.
§11-15-4a. Failure to collect tax; liability of vendor.

If any vendor fails to collect the tax imposed by section three of this article, the vendor shall be personally liable for the amount the vendor failed to collect, except as otherwise provided in this article or article fifteen-b of this chapter.

§11-15-4b. Liability of purchaser; assessment and collection.

(a) General. — If any purchaser refuses or otherwise does not pay to the vendor the tax imposed by section three of this article, or a purchaser refuses to present to the vendor a proper certificate indicating the sale is not subject to this tax, or presents to the vendor a false certificate, or after presenting a proper certificate uses the items purchased in a manner that the sale would be subject to the tax, the purchaser shall be personally liable for the amount of tax applicable to the transaction or transactions.

(b) Collection of tax from purchaser. — Nothing in this section relieves any purchaser who owes the tax and who has not paid the tax imposed by section three of this article from liability for payment of the tax. In those cases the tax commissioner has authority to make an assessment against the purchaser, based upon any information within his or her possession or that may come into his or her possession. This assessment and notice thereof shall be made and given in accordance with sections seven and eight, article ten of this chapter.

(c) Liability of vendor. — This section may not be construed as relieving the vendor from liability for the tax, except as otherwise provided in this article or article fifteen-b of this chapter.

§11-15-5. Total amount collected is to be remitted.
No profit shall accrue to any person as a result of the collection of the tax levied by this article notwithstanding the total amount of the taxes collected may be in excess of the amount for which the person would be liable by the application of the rate of tax levied by section three of this article to the vendor’s gross proceeds from taxable sales and services. The total amount of all taxes collected by the vendor shall be returned and remitted to the tax commissioner as provided in this article or article fifteen-b of this chapter.

§11-15-6. Vendor must show sale or service exempt; presumption.

(a) The burden of proving that a sale or service was exempt from the tax shall be upon the vendor, unless the vendor takes from the purchaser an exemption certificate signed by and bearing the address of the purchaser and setting forth the reason for the exemption and substantially in the form prescribed by the tax commissioner: Provided, That when the seller is registered under the streamlined sales and use tax agreement to collect the tax imposed by this article, the exemption certificate shall be in the form prescribed by the governing board of the streamlined sales and use tax agreement, and the signature of the purchaser is not required unless a paper exemption certificate is furnished to the seller.

(b) To prevent evasion, it is presumed that all sales and services are subject to the tax until the contrary is clearly established.

§11-15-8. Furnishing of services included; exceptions.

The provisions of this article apply not only to selling tangible personal property and custom software, but also to the furnishing of all services, except professional and personal services, and except those services furnished by businesses subject to the control of the public service commission when
the service or the manner in which it is delivered is subject to
regulation by the public service commission.

*§11-15-9f. Exemption for sales and services subject to special
district excise tax.

Notwithstanding any provision of this article to the con-
trary, any sale or service upon which a special district excise tax
is paid, pursuant to the provisions of section eleven, article
thirteen-b, chapter eight of this code, is exempt from the tax
imposed by this article: Provided, That the special district
close tax does not apply to sales of gasoline and special fuel.


A vendor doing business wholly or partially on a credit
basis shall remit to the tax commissioner the tax due on the
credit sale for the month in which the credit transaction
occurred.

§11-15-14. When separate records of sales required.

(a) Any vendor engaged in a business subject to this tax,
who is at the same time engaged in some other kind of business,
occupation or profession, not taxable under this article, shall
keep records to show separately the transactions used in
determining the tax base taxed under this article.

(b) In the event the person fails to keep separate records
there shall be levied upon the person a tax based upon the entire
gross proceeds of both or all of the person's businesses.


*Clerk's Note: This section was also amended by SB 558 (Chapter 88),
which passed subsequent to this act.
(a) Payment of tax. — Subject to the exceptions set forth in subsection (b) of this section, the taxes levied by this article are due and payable in monthly installments, on or before the twentieth day of the month next succeeding the month in which the tax accrued, except as otherwise provided in this article.

(b) Tax return. — The taxpayer shall, on or before the twentieth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing:

1. The total gross proceeds of the vendor’s business for the preceding month;
2. The gross proceeds of the vendor’s business upon which the tax is based;
3. The amount of the tax for which the vendor is liable; and
4. Any further information necessary in the computation and collection of the tax which the tax commissioner may require, except as otherwise provided in this article or article fifteen-b of this chapter.

(c) Remittance to accompany return. — Except as otherwise provided in this article or article fifteen-b of this chapter, a remittance for the amount of the tax shall accompany the return.

(d) Deposit of collected tax. — Tax collected by the tax commissioner shall be deposited as provided in section thirty of this article, except that:

1. Tax collected on sales of gasoline and special fuel shall be deposited in the state road fund; and
(2) Any sales tax collected by the alcohol beverage control commissioner from persons or organizations licensed under authority of article seven, chapter sixty of this code shall be paid into a revolving fund account in the state treasury, designated the drunk driving prevention fund, to be administered by the commission on drunk driving prevention, subject to appropriations by the Legislature.

(c) Return to be signed. — A return shall be signed by the taxpayer or the taxpayer's duly authorized agent, when a paper return is prepared and filed. When the return is filed electronically, the return shall include the digital mark or digital signature, as defined in article three, chapter thirty-nine-a of this code, or the personal identification number of the taxpayer, or the taxpayer's duly authorized agent, made in accordance with any procedural rule that may be promulgated by the tax commissioner.

(f) Accelerated payment. —

(1) Taxpayers whose average monthly payment of the taxes levied by this article and article fifteen-a of this chapter during the previous calendar year exceeds one hundred thousand dollars, shall remit the tax attributable to the first fifteen days of June each year on or before the twentieth day of June.

(2) For purposes of complying with subdivision (1) of this subsection the taxpayer shall remit an amount equal to the amount of tax imposed by this article and article fifteen-a of this chapter on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first fifteen days of June or, at the taxpayer’s election, the taxpayer may remit an amount equal to fifty percent of the taxpayer’s liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.
(3) For a business which has not been in existence for a full calendar year, the total tax due from the business during the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year; and if that amount exceeds one hundred thousand dollars, the tax attributable to the first fifteen days of June each year shall be remitted on or before the twentieth day of June as provided in subdivision (2) of this subsection.

(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out its return for the month of June, which is due on the twentieth day of July, the taxpayer may claim as a credit against liability under this article for tax on taxable transactions during the month of June, the amount of the advanced payment of tax made under subdivision (1) of this subsection.


(a) Construction. — If a court of competent jurisdiction finds that the provisions of this article and of article fifteen-b of this chapter conflict and cannot be harmonized, then the provisions of article fifteen-b shall control.

(b) Severability. — If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision may not affect the validity of the remaining portions of this article or any part thereof.

§11-15-33. Effective date.

The provisions of this article as amended or added during the regular legislative session in the year two thousand three shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day.
ARTICLE 15A. USE TAX.

§11-15A-1a. Legislative findings.
§11-15A-2. Imposition of tax; six percent tax rate; inclusion of services as taxable; transition rules; allocation of tax and transfers.
§11-15A-3a. Moving residence or business into state.
§11-15A-4. Evidence of use.
§11-15A-10. Payment to tax commissioner.
§11-15A-10a. Credit for sales tax liability paid to another state.
§11-15A-18. Seller must show sale not at retail; presumption.
§11-15A-22. Canceling or revoking permits.
§11-15A-29. Effective date.


(a) General. — When used in this article and article fifteen of this chapter, terms defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature:

(b) “Business” means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in this state;

(2) “Consumer” means any person purchasing tangible personal property, custom software or a taxable service from a
retailer as defined in paragraph (7) of this subsection (b) or
from a seller as defined in section two, article fifteen-b of this
chapter;

(3) "Lease" includes rental, hire and license;

(4) "Person" includes any individual, firm, partnership,
joint venture, joint stock company, association, public or
private corporation, limited liability company, limited liability
partnership, cooperative, estate, trust, business trust, receiver,
executor, administrator, any other fiduciary, any representative
appointed by order of any court or otherwise acting on behalf
of others, or any other group or combination acting as a unit,
and the plural as well as the singular number;

(5) "Purchase" means any transfer, exchange or barter,
conditional or otherwise, in any manner or by any means
whatsoever, for a consideration;

(6) "Purchase price" means the measure subject to the tax
imposed by this article and has the same meaning as sales price;

(7) "Retailer" means and includes every person engaging in
the business of selling, leasing or renting tangible personal
property or custom software or furnishing a taxable service for
use within the meaning of this article, or in the business of
selling, at auction, tangible personal property or custom
software owned by the person or others for use in this state:
Provided, That when in the opinion of the tax commissioner it
is necessary for the efficient administration of this article to
regard any salespersons, representatives, truckers, peddlers or
canvassers as the agents of the dealers, distributors, supervisors,
employees or persons under whom they operate or from whom
they obtain the tangible personal property sold by them,
irrespective of whether they are making sales on their own
behalf or on behalf of the dealers, distributors, supervisors,
employers or persons, the tax commissioner may so regard
them and may regard the dealers, distributors, supervisors,
employers, or persons as retailers for purposes of this article;

(8) “Retailer engaging in business in this state” or any like
term, unless otherwise limited by federal statute, shall mean and
include, but not be limited to, any retailer having or maintain-
ing, occupying or using, within this state, directly or by a
subsidiary, an office, distribution house, sales house, ware-
house, or other place of business, or any agent (by whatever
name called) operating within this state under the authority of
the retailer or its subsidiary, irrespective of whether the place
of business or agent is located here permanently or temporarily,
or whether retailer or subsidiary is admitted to do business
within this state pursuant to article fifteen, chapter thirty-one-d
of this code or article fourteen, chapter thirty-one-e of this code;

(9) “Sale” means any transaction resulting in the purchase
or lease of tangible personal property, custom software or a
taxable service from a retailer;

(10) “Seller” means a retailer, and includes every person
selling or leasing tangible personal property or custom software
or furnishing a taxable service in a transaction that is subject to
the tax imposed by this article;

(11) “Streamlined sales and use tax agreement” or “agree-
ment,” when used in this article, shall have the same meaning
as when used in article fifteen-b of this chapter, except when
the context in which the word agreement is used clearly
indicates that a different meaning is intended by the Legisla-
ture;

(12) “Tangible personal property” means personal property
that can be seen, weighed, measured, felt, or touched, or that is
in any manner perceptible to the senses. “Tangible personal
property” includes, but is not limited to, electricity, water, gas, and prewritten computer software;

(13) “Tax commissioner” or “commissioner” means the state tax commissioner, or his or her 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 division 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 or rules promulgated for this article;

(14) “Taxpayer” includes any person within the meaning of this section, who is subject to a tax imposed by this article, whether acting for himself or herself or as a fiduciary; and

(15) “Use” means and includes:

(A) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or

(B) The use or enjoyment in this state of the result of a taxable service. As used in this subdivision (15), “enjoyment” includes a purchaser’s right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term “use” does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the
(b) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen-a. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

§11-15A-1a. Legislative findings.

The Legislature hereby finds and declares that:

1. It is the intent of the Legislature that the use tax imposed by the provisions of article fifteen-a and the consumers sales tax imposed by the provisions of article fifteen of this chapter be complementary laws and wherever possible be construed and applied to accomplish the intent as to the imposition, administration and collection of these taxes; and

2. On and after the first day of January, two thousand four, the taxes levied by this article and article fifteen of this chapter shall also be administered and collected in accordance with the provisions of article fifteen-b of this chapter.

§11-15A-2. Imposition of tax; six percent tax rate; inclusion of services as taxable; transition rules; allocation of tax and transfers.

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property, custom software or taxable services, to be collected and paid as provided in this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property or taxable services, except as otherwise provided in this article.
(b) Calculation of tax on fractional parts of a dollar.— The tax computation under subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(c) "Taxable services," for the purposes of this article, means services of the nature that are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words "tangible personal property" or "property" appear, the same shall include the words "or taxable services," where the context so requires.

(d) Use tax is hereby imposed upon every person using tangible personal property, custom software or taxable service within this state. That person's liability is not extinguished until the tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer who is authorized by the tax commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(e) Purchases of tangible personal property or taxable services made for the government of the United States or any of its agencies by ultimate consumers is subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the state of West Virginia of a character not ordinarily readily obtainable within the state, is not subject to use tax when sold, if the industrial materials and equipment would not be subject to use taxes if sold outside of the state for use in West Virginia.
(f) This article does not apply to purchases made by counties or municipal corporations.


(a) The use in this state of the following tangible personal property, custom software and services is hereby specifically exempted from the tax imposed by this article to the extent specified:

(1) All articles of tangible personal property and custom software brought into the state of West Virginia by a nonresident individual thereof for his or her use or enjoyment while temporarily within this state or while passing through this state, except gasoline and special fuel: Provided, That fuel contained in the supply tank of a motor vehicle that is not a motor carrier may not be taxable.

(2) Tangible personal property, custom software or services, the gross receipts from the sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and the property or services are being used for the purpose for which it was exempted.

(3) Tangible personal property, custom software or services, the gross receipts or the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and upon which the tax imposed by said article fifteen has been paid.

(4) Tangible personal property, custom software or services, the sale of which in this state is not subject to the West Virginia consumers sales tax.
(5) Fifty percent of the measure of tax on mobile homes utilized by the owners thereof as their principal year-round residence and dwelling.

(b) The provisions of this section, as amended in the year two thousand three, shall apply on and after the first day of January, two thousand four.

§11-15A-3a. Moving residence or business into state.

The tax imposed by this article does not apply to tangible personal property, custom software or services purchased outside this state for use outside this state by a person who at that time was a nonresident natural person, or a business entity not actually doing business within this state, who or which later brings tangible personal property or custom software into this state in connection with his or her establishment of a permanent residence or business in this state: Provided, That the property was purchased more than six months prior to the date it was first brought into this state, or six months prior to the establishment of his or her residence or business, whichever first occurs.

§11-15A-4. Evidence of use.

For the purpose of the proper administration of this article to prevent evasion of the tax, evidence that tangible personal property, custom software or a service was sold by any person for delivery in this state is prima facie evidence that the tangible personal property, custom software or service was sold for use in this state.


The tax imposed in section two of this article shall be collected in the following manner:
(1) The tax upon the use of all tangible personal property, custom software or services, sold by a retailer engaging in business in this state, or by any other retailer as the tax commissioner authorizes pursuant to section seven of this article, or article fifteen-b of this chapter, shall be collected by the retailer and remitted to the state tax commissioner, pursuant to the provisions of sections six through ten, inclusive, of this article, or by the seller registered under article fifteen-b of this chapter, in accordance with the provisions of this article and article fifteen-b of this chapter.

(2) The tax upon the use of all tangible personal property, custom software and taxable services not paid pursuant to subdivision (1) of this section, shall be paid to the tax commissioner directly by any person using the property or service within this state, pursuant to the provisions of section eleven of this article.


(a) Every retailer engaging in business in this state and making sales of tangible personal property, custom software or taxable services for delivery into this state, or with the knowledge, directly or indirectly, that the property or service is intended for use in this state, that are not exempted under the provisions of section three of this article, shall at the time of making the sales, whether within or without the state, collect the tax imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the tax commissioner, if the tax commissioner prescribes by rule.

(b) Each retailer shall list with the tax commissioner the name and address of all the retailer’s agents operating in this state, and the location of any and all distribution or sales houses

The tax commissioner may, in his or her discretion, upon application authorize the collection of the tax imposed in section two of this article by any retailer not engaging in business within this state, who, to the satisfaction of the tax commissioner, furnishes adequate security to insure collection and payment of the tax. The retailer shall be issued, without charge, a permit to collect the tax in the manner, and subject to the rules and agreements as the tax commissioner prescribes. When authorized, it is the duty of the retailer to collect the tax upon all tangible personal property, custom software and services sold to the retailer's knowledge for use within this state, in the same manner and subject to the same requirements as a retailer engaging in business within this state. The authority and permit may be canceled when, at any time, the tax commissioner considers the security inadequate, or that the tax can more effectively be collected from the person using the property or taxable service in this state.


(a) It is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property or taxable service sold, or if added that it or any part thereof will be refunded.

(b) The tax commissioner has the power to adopt and promulgate rules for adding the tax, or the equivalent thereof, by providing different methods applying uniformly to retailers.
within the same general classification for the purpose of enabling retailers to add and collect, as far as practicable, the amount of the tax.

(c) Any person violating any of the provisions of this section within this state is guilty of a misdemeanor, and subject to the penalties provided in section seven, article nine of this chapter.


The tax required to be collected by any retailer pursuant to sections six, six-a or seven of this article, or by any seller or certified service provider pursuant to article fifteen-b of this chapter, and any tax collected by any retailer, seller or certified service provider pursuant to section six, six-a or seven of this article, or article fifteen-b of this chapter, constitutes a debt owed by the retailer, seller or certified service provider to this state. The amount of tax collected shall be held in trust for the state of West Virginia until paid over to the tax commissioner.

§11-15A-10. Payment to tax commissioner.

(a) Each retailer required or authorized, pursuant to section six, six-a or seven, or pursuant to article fifteen-b of this chapter, to collect the tax imposed in section two of this article, is required to pay to the tax commissioner the amount of the tax on or before the twentieth day of the month next succeeding each calendar month, except as otherwise provided in this article or article fifteen-b of this chapter.

(b) Each certified service provider for a Model I seller shall pay to the tax commissioner the tax levied by this article on or before the twentieth day of the month next succeeding the calendar month in which the tax accrued, except as otherwise provided in this article or article fifteen-b of this chapter.
(c) At that time, each retailer, seller or certified service provider shall file with the tax commissioner a return for the preceding monthly period, except as otherwise provided in this article or article fifteen-b of this chapter, in the form prescribed by the tax commissioner showing the sales price of any or all tangible personal property, custom software and taxable services sold by the retailer or seller during the preceding quarterly period, the use of which is subject to the tax imposed by this article, and any other information the tax commissioner may consider necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of the tax, for the period covered by the return, except as otherwise provided in this article or article fifteen-b of this chapter: Provided, That where the tangible personal property or custom software is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part of the sum is extended over a period longer than sixty days from the date of the sale, the retailer may collect and remit each monthly period that portion of the tax equal to six percent of that portion of the purchase price actually received during the monthly period.

(d) The tax commissioner may, upon request and a proper showing of the necessity to do so, grant an extension of time not to exceed thirty days for making any return and payment.

(e) Returns shall be signed by the retailer or seller or his or her duly authorized agent, and must be certified by him or her to be correct, except as otherwise provided in this article or article fifteen-b of this chapter.

(f) Accelerated payment. —

(1) For calendar years beginning after the thirty-first day of December, two thousand two, taxpayers whose average monthly payment of the taxes levied by this article and article
fifteen of this chapter during the previous calendar year exceeds one hundred thousand dollars, shall remit the tax attributable to the first fifteen days of June each year on or before the twentieth day of said month of June.

(2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall remit an amount equal to the amount of tax imposed by this article and article fifteen of this chapter on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first fifteen days of June or, at the taxpayer’s election, taxpayer may remit an amount equal to fifty percent of taxpayer’s liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

(3) For a business which has not been in existence for a full calendar year, the total tax due from the business during the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year; and if that amount exceeds one hundred thousand dollars, the tax attributable to the first fifteen days of June each year shall be remitted on or before the twentieth day of said month of June as provided in subdivision (2) of this subsection.

(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out its return for the month of June, which is due on the twentieth day of July, the taxpayer may claim as a credit against its liability under this article for tax on taxable transactions during the month of June, the amount of the advanced payment of tax made under subdivision (1) of this subsection.

§11-15A-10a. Credit for sales tax liability paid to another state.
(a) A person is entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of sales tax lawfully paid to another state for the acquisition of that property or service: Provided, That the amount of credit allowed does not exceed the amount of use tax imposed on the use of the property in this state.

(b) For purposes of this section:

(1) “Sales tax” includes a sales tax or compensating use tax imposed on the use of tangible personal property or a service by the state in which the sale occurred; and

(2) “State” includes the District of Columbia but does not include any of the several territories organized by Congress.

§151A-10. Liability of user.

(a) Any person who uses any tangible personal property, custom software or the results of a taxable service upon which the tax herein imposed has not been paid either to a retailer or direct to the tax commissioner is liable for the amount of the nonpayment, and persons required by law to hold a West Virginia business registration certificate shall on or before the fifteenth day of the month next succeeding each quarterly period pay the tax imposed in section two of this article upon all the property and services used by him or her during the preceding quarterly period and accompanied by returns the tax commissioner prescribes: Provided, That if the aggregate annual tax liability of any person under this article is six hundred dollars or less, the person shall, in lieu of the quarterly payment and filing, pay the tax on or before the fifteenth day of the first month next succeeding the end of his or her taxable year, and shall file the annual return as may be prescribed by the tax commissioner. The tax commissioner may, by
nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the foregoing minimum amounts.

(b) Any individual who is not required by law to hold a West Virginia business registration certificate, who uses any personal property or taxable service upon which the West Virginia use tax has not been paid either to a retailer or directly to the tax commissioner is liable for the West Virginia use tax upon property or taxable services and, notwithstanding the amount of the annual aggregate annual tax liability, shall pay the use tax imposed upon all property or taxable services used by him or her during the taxpayer’s federal taxable year on or before the fifteenth day of April of the taxpayer’s next succeeding federal tax year, and shall file the annual return therewith as the tax commissioner may authorize or require.

(c) All of the provisions of section ten with reference to quarterly or annual returns and payments are applicable to the returns and payments required under this section.

§11-15A-18. Seller must show sale not at retail; presumption.

(a) The burden of proving that a sale was not taxable shall be upon the seller, unless, the seller, in good faith, takes from the purchaser a certificate signed by and bearing the address of the purchaser setting forth the reason for exemption of the sale from imposition of the tax.

(b) Notwithstanding subsection (a) of this section, a seller who is registered under the streamlined sales and use tax agreement to collect this tax is relieved of the good faith requirement for the taking of an exemption certificate in accordance with article fifteen-b of this chapter, and any rule promulgated by the governing board for the agreement.
(c) To prevent evasion it is presumed that all proceeds are subject to the tax until the contrary is clearly established.

(d) This certificate shall be substantially in the form prescribed by the tax commissioner: Provided, That when the seller is registered under the streamlined sales and use tax agreement to collect the tax imposed by this article, the exemption certificate taken shall conform with requirements of the streamlined sales and use tax agreement and any rules prescribed by the governing board for the agreement.


(a) Every retailer required or authorized to collect taxes imposed by this article and every person using in this state tangible personal property, custom software or taxable services shall keep records, receipts, invoices, and other pertinent papers as the tax commissioner requires, in any form as the tax commissioner requires.

(b) In addition to the tax commissioner’s powers set forth in article ten of this chapter, the tax commissioner or any of his or her duly authorized agents is hereby authorized to examine the books, papers, records and equipment of any person who either:

(1) Is selling tangible personal property, custom software or taxable services; or

(2) Is liable for the tax imposed by this article, and to investigate the character of the business of any person in order to verify the accuracy of any return made, or if no return was made by the person, to ascertain and determine the amount due under the provisions of this article.

§11-15A-22. Canceling or revoking permits.
Whenever any retailer engaging in business in this state, or authorized to collect the tax imposed in this article pursuant to section seven of this article, fails to comply with any of the provisions of this article or any orders, or rules of the tax commissioner prescribed and adopted for this article under article ten of this chapter, the tax commissioner may, upon notice and hearing, by order, cancel the business registration certificate, if any, issued to the retailer under article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, or if the retailer is a corporation authorized to do business in this state under article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code, may certify to the secretary of state a copy of an order finding that the retailer has failed to comply with certain specified provisions, orders, or rules. The secretary of state shall, upon receipt of the certification, revoke the permit authorizing the corporation to do business in this state, and shall issue a new permit only when the corporation has obtained from the tax commissioner an order finding that the corporation has complied with its obligations under this article. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why the order should not be made, and the corporation shall be given twenty days' notice of the time, place and purpose of the hearing, which shall be heard as provided in article ten-a of this chapter. The tax commissioner shall have the power in his or her discretion to issue a new business registration certificate after the business registration certificate is canceled.


(a) If a court of competent jurisdiction finds that the provisions of this article and of article fifteen-b of this chapter conflict and cannot be harmonized, then the provisions of article fifteen-b shall control.
(b) If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision does not affect the validity of the remaining portions of this article or any part thereof.

§11-15A-29. Effective date.

The provisions of this article, as amended or added during the regular legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day.

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-1. Title.
§11-15B-2a. Streamlined sales and use tax agreement defined.
§11-15B-3. Legislative findings.
§11-15B-5. Authority to enter agreement.
§11-15B-12. Effect of seller registration and participation in streamlined sales and use tax administration.
§11-15B-16. Application of general sourcing rule and exclusions from the rules.
§11-15B-17. Direct mail sourcing.
§11-15B-18. Multiple points of use of certain products and services.
§11-15B-19. [Reserved]
§11-15B-20. [Reserved]
§11-15B-22. Effective date of rate changes for certain services.
§11-15B-23. Enactment of exemptions.
§11-15B-1. Title.

The provisions of this article shall be known as and referred to as the “Streamlined Sales and Use Tax Administration Act”.


(a) General. — When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.

(b) Terms defined. —

(1) “Agent” means a person appointed by a seller to represent the seller before the member states.

(2) “Agreement” means the streamlined sales and use tax agreement, as defined in section two-a of this article.

(3) “Alcoholic beverages” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(4) “Certified automated system” or “CAS” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax
(5) "Certified service provider" or "CSP" means an agent certified under the agreement to perform all of the seller’s sales tax functions.

(6) “Computer” means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

(7) “Computer software” means a set of coded instructions designed to cause a “computer” or automatic data processing equipment to perform a task.

(8) “Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

(9) “Delivery charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

(10) “Dietary supplement” means any product, other than "tobacco," intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) A herb or other botanical;

(iv) An amino acid;
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraph (i) through (v) of this subdivision;

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the “Supplemental Facts” box found on the label as required pursuant to 21 C.F.R. §101.36, or in any successor section of the code of federal regulations.

(11) “Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.

(12) “Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United
States, or official national formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or

(C) Intended to affect the structure or any function of the human body.

(13) “Durable medical equipment” means equipment including repair and replacement parts for the equipment, but does not include “mobility enhancing equipment,” which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(14) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(15) “Entity-based exemption” means an exemption based on who purchases the product or service or who sells the product or service.

(16) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages or tobacco.
(17) "Includes" and "including" when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

(18) "Lease" includes rental, hire and license. "Lease" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) "Lease" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code, or other provisions of federal, state or local law.

(19) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.
“Mobility enhancing equipment” means equipment, including repair and replacement parts to the equipment, but does not include “durable medical equipment,” which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

“Model I seller” means a seller that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

“Model II seller” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

“Model III seller” means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.
(25) "Personal service" includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and

(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.

(26) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue prescriptions.

(27) "Prewritten computer software" means "computer software," including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(B) "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.

(C) "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software: Provided, That where there is a reasonable, separately stated charge or an invoice or other statement of the
price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(28) "Product-based exemption" means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.

(29) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the device worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

(C) Support a weak or deformed portion of the body.

(30) "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(31) "Purchase price" means the measure subject to the tax imposed by article fifteen or article fifteen-a of this chapter and has the same meaning as sales price.

(32) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(33) "Registered under this agreement" means registration by a seller with the member states under the central registration system provided in article four of the agreement.

(34) "Retail sale" or "sale at retail" means:
(A) Any sale or lease for any purpose other than for resale as tangible personal property, sublease or subrent; and

(B) Any sale of a service other than a service purchased for resale.

(35)(A) “Sales price” means the measure subject to the tax levied by this article and includes the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller’s cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges;

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for the fair market value of any trade-in.

(B) “Sales price” does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(36) “Sales tax” means the tax levied under article fifteen of this chapter.

(37) “Seller” means any person making sales, leases or rentals of personal property or services.

(38) “Service” or “selected service” includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale, or any service furnished by a business that is subject to the control of the public service commission when the service or the manner in which it is delivered is subject to regulation by the public service commission of this state.

(39) “State” means any state of the United States and the District of Columbia.

(40) “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. “Tangible personal property” includes, but is not limited to, electricity, water, gas, and prewritten computer software.
(41) "Tax" includes all taxes levied under articles fifteen and fifteen-a of this chapter, and additions to tax, interest and penalties levied under article ten of this chapter.

(42) "Tax commissioner" means the state tax commissioner or his or her 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 division 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 or rules promulgated for this article.

(43) "Taxpayer" means any person liable for the taxes levied by articles fifteen and fifteen-a of this chapter or any additions to tax, penalties imposed by article ten of this chapter.

(44) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(45) "Use tax" means the tax levied under article fifteen-a of this chapter.

(46) "Use based exemption" means an exemption based on the purchaser’s use of the product or service.

(47) "Vendor" means any person furnishing services taxed by article fifteen or fifteen-a of this chapter, or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article and in article fifteen and fifteen-a of this chapter.

(c) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-a of this chapter, which definitions are incorporated by reference into article fifteen-b. Additionally, other sections of this article may
§11-15B-2a. Streamlined sales and use tax agreement defined.

1 As used in this article and articles fifteen and fifteen-a of this chapter, the term “streamlined sales and use tax agreement” or “agreement” means the agreement adopted the twelfth day of November, two thousand two, by states that enacted authority to engage in multistate discussions similar to that provided in section four of this article, except when the context in which the term is used clearly indicates that a different meaning is intended by the Legislature. “Agreement” does not include any substantive changes in the agreement adopted after the Legislature enacts this section in the year two thousand three.

§11-15B-3. Legislative findings.

(a) The Legislature finds that a streamlined sales and use tax administration 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.

(b) The Legislature finds that the streamlined sales and use tax agreement adopted the twelfth day of November, two thousand two, by representatives of the states participating in multistate discussions to amend and implement the agreement substantially complies with the requirements of section seven of this article, as enacted in the year two thousand two, and that this state should now sign the agreement.

§11-15B-5. Authority to enter agreement.
(a) The tax commissioner is authorized and directed to enter into the streamlined sales and use tax agreement, after the thirtieth day of June, two thousand three, 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.

(b) 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.


(a) General. — A seller that registers to collect West Virginia sales and use taxes using the online sales and use tax registration system established under the streamlined sales and use tax agreement is not required to also register under article twelve of this chapter unless the seller has sufficient presence in this state that provides at least the minimum contacts necessary for a constitutionally sufficient nexus for this state to require registration and payment of the registration tax under article twelve of this chapter.

(b) Registration by agent. — A person appointed by a seller to represent the seller before the states that are members of the
streamlined sales tax agreement may register the seller under the agreement under uniform procedures adopted by the member states. The appointment of an agent shall be in writing and submitted to a member state if requested by a member.

(c) Cancellation of registration. — A seller registered under the streamlined sales and use tax agreement may cancel its registration at any time under uniform procedures adopted by the member states.

§11-15B-12. Effect of seller registration and participation in streamlined sales and use tax administration.

(a) Collection of tax. — By registering under the streamlined sales use tax agreement, the seller agrees to collect and remit sales and use taxes for all taxable sales into this state, as well as for all other states participating in the agreement. Subsequent withdrawal or revocation of a member state does not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.

(b) Effect of registration. — A member state, or a state that has withdrawn or been expelled from the streamlined sales and use tax agreement, may not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has a nexus with that state for any tax at any time.


(a) Subject to the limitations in this section:

(1) The tax commissioner shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the streamlined sales and use tax agreement: Provided, That the
seller was not registered in this state in the twelve-month period preceding the effective date of this state’s participation in the streamlined sales and use tax agreement.

(2) The amnesty precludes assessment for uncollected or unpaid sales or use tax together with additions to tax, penalty or interest for sales made during the period the seller was not registered in this state: *Provided, That registration under the agreement occurs within twelve months after the effective date of this state’s participation in the streamlined sales and use tax agreement.*

(b) *Exceptions.* — The amnesty is not available:

(1) To a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes; or

(2) For sales or use taxes already paid or remitted to the state or to taxes collected by the seller for this state.

(c) *Period of amnesty.* — The amnesty is fully effective, absent the seller’s fraud or intentional misrepresentation of a material fact, as long as the seller continues registration under the agreement and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability during this thirty-six month period is tolled.

(d) *Effect of amnesty.* — The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

(a) Definition of receive or receipt. — For the purposes of subsection (a), section fifteen of this article, the terms “receive” and “receipt” mean:

(i) Taking possession of tangible personal property;

(2) Making first use of services; or

(3) Taking possession or making first use of custom software, whichever comes first.

(b) Limitation. — The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser.


(a) General rule. — For purposes of articles fifteen and fifteen-a of this chapter, the retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser’s designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller’s business when use of this address does not constitute bad faith.
When subdivisions (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser’s payment instrument, if no other address is available, provided use of this address does not constitute bad faith.

When none of the previous subdivisions of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, or computer software delivered electronically was first available for transmission by the seller, or from which the service was provided: Provided, that any location that merely provided the digital transfer of the product sold is disregarded for these purposes.

(b) Lease or rental. -- The lease or rental of tangible personal property, other than property identified in subsection (c) or subsection (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location may not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.
(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(c) Vehicles. — The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(d) Sale or lease or rental of transportation equipment. — The retail sale, including lease or rental, of transportation equipment is sourced the same as a retail sale in accordance
with the provisions of subsection (a) of this section, notwithstanding the exclusion of lease or rental in subsection (a) of this section. "Transportation equipment" means any of the following:

(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand pounds or greater, trailers, semitrailers, or passenger buses that are:

   (A) Registered through the international registration plan;
   and

   (B) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3) of this subsection.

§11-15B-16. Application of general sourcing rule and exclusions from the rules.

(a) General. — Sellers who collect the taxes levied by articles fifteen and fifteen-a of this chapter shall source the retail sale of a product, as provided in section fifteen of this article. As used in this section, the term "product" includes
§11-15B-17. Direct mail sourcing.

(a) General. — Notwithstanding section fifteen of this article, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a “direct mail form” or information to show the jurisdictions to which the direct mail is delivered to recipients.

(1) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form remains in effect for all future sales of direct mail by the seller to the purchaser until revoked in writing.

(2) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith by the seller, the seller is relieved of any further obligation to collect tax on any transaction where the seller has
collected tax pursuant to the delivery information provided by the purchaser.

(b) When purchaser does not have direct pay permit and does not provide direct mail form. — If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection (a) of this section, the seller shall collect the tax according to subdivision (5), subsection (a), section fifteen of this article. Nothing in this subsection (b) shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) Direct pay permit. — If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser may not be required to provide a direct mail form or delivery information to the seller.

§11-15B-18. Multiple points of use of certain products and services.

(a) General. — Notwithstanding the provisions of section fifteen of this article, a business purchaser that is not a holder of a direct pay permit that knows at the time of the business purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with the purchase a “multiple points of use” or “MPU exemption” form disclosing this fact.

(1) Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
(2) A purchaser delivering the MPU exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

(3) The MPU exemption form remains in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the principle of subdivision (2) of this subsection and the facts existing at the time of the sale, until revoked in writing.

(b) *Holders of direct pay permits.* — A holder of a direct pay permit may not be required to deliver a MPU exemption form to the seller. A direct pay permit holder shall follow the provisions of subdivision (2), subsection (a) of this section in apportioning the tax due on a digital good, computer software delivered electronically, or a service that will be concurrently available for use in more than one jurisdiction.

[§11-15B-19 and §11-15B-20 Reserved.]


(a) *General.* — The tax commissioner shall provide sellers with as much advance notice as practicable of a rate change for a tax levied by article fifteen or fifteen-a of this chapter.

(b) *Effective date of rate changes.* — Unless the Legislature expressly provides a different effective date for a rate change, the change shall take effect on the first day of the calendar quarter that begins on or after the effective date of the act of the Legislature that makes the rate change and that is more than sixty days after passage of the bill making the rate change.

(c) *Notification of changes to tax base.* — The tax commissioner shall make reasonable efforts to notify sellers of legisla-
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(1) For a rate increase, the new rate applies to the first billing period starting on or after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date.

§11-15B-23. Enactment of exemptions.

(a) Product-based exemptions. — The Legislature may enact a product-based exemption from the taxes levied by article fifteen and fifteen-a of this chapter without restriction if the streamlined sales and use tax agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, the Legislature may exempt all items included within the definition but may not exempt only part of the items included within the definition, unless the streamlined sales and use tax agreement sets out the exemption for part of the items as an acceptable variation.
(b) *Entity-based or use-based exemption.* — The Legislature may enact an entity-based or use-based exemption from a tax levied by article fifteen or fifteen-a of this chapter without restriction if the streamlined sales and use tax agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, the Legislature may enact an entity-based or use-based exemption that applies to that product, as long as the exemption utilizes the streamline sales and use tax agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, the Legislature may enact an entity-based or use-based exemption for the product without restriction.

(c) *Construction.* — For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.


(a) *General.* — When a purchaser claims an exemption under article fifteen or fifteen-a of this chapter:

(1) A seller registered under the streamlined sales and use tax agreement shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase, as determined by the governing board established pursuant to the agreement. A seller not registered under the agreement shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of purchase, as determined by the tax commissioner.

(2) A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
(3) The seller shall use the standard form for claiming an exemption electronically that is adopted by the governing board administering the streamlined sales and use tax agreement.

(4) The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(5) The tax commissioner may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that is presented to the seller at the time of the sale.

(6) The seller shall maintain proper records of exempt transactions and provide the records to the tax commissioner or the tax commissioner's designee.

(7) The tax commissioner shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.

(8) The tax commissioner shall relieve sellers registered under the streamlined sales and use tax agreement that follow the requirements of this section from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and shall hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.


(a) General. — A seller who registers with this state under the streamlined sales tax agreement is required to file one sales/use tax return with the tax commissioner for each taxing period.
Due date of return. — This return shall be due on the twentieth day of the month following the month in which the transaction subject to tax occurred.

Additional information returns. — The tax commissioner shall allow any Model I, Model II, or Model III seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board administering the streamlined sales and use tax agreement. The tax commissioner may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board administering the streamlined sales and use tax agreement.

The tax commissioner shall allow any seller that is registered with this state under the streamlined sales and use tax agreement, which does not have a legal requirement to register in this state under article twelve of this chapter, and is not a Model I, II, or III seller, to submit its sales and use tax returns as follows:

(1) Upon registration, the tax commissioner shall provide to the seller the returns required by this state.

(2) The tax commissioner may require a seller to file a return anytime within one year of the month of initial registration, and future returns may be required on an annual basis in succeeding years.

(3) In addition to the returns required in subdivision (2) of this subsection, a seller shall submit a return by the twentieth day of the month following any month in which the seller accumulated state and local tax funds for the state in the amount of one thousand dollars or more.
(4) The tax commissioner shall participate with other states that are members of the streamlined sales and use tax agreement in developing a more uniform sales and use tax return that, when completed, is available to all sellers.

(5) All Model I, II, and III sellers shall file returns electronically after the first day of January, two thousand four.


1. (a) General. — Only one remittance is required for each return except as provided in this section.

2. (b) When electronic remittance required. — All remittances from sellers under Models I, II, and III shall be remitted electronically after the thirty-first day of December, two thousand three.

3. (c) Method of remittance. — Electronic payments shall be made using either the ACH credit or ACH debit method.

4. (d) Alternative method. — The tax commission shall provide by rule, which may be an existing rule, an alternative method for making “same day” payments if an electronic funds transfer fails.

5. (e) Format of data accompany remittance. — Any data that accompanies a remittance shall be formatted using uniform tax type and payment type codes approved by the governing board administering the streamlined sales and use tax agreement.


1. (a) General. — A deduction from taxable sales is allowed for bad debts. Any deduction taken that is attributed to bad debts may not include interest or any amount upon which the sales or use tax imposed by this state was not previously paid.
(b) "Bad debt" defined. — The term "bad debt" has the same meaning as when used in the federal definition of "bad debt" in 26 U.S.C. Sec. 166 as the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C. Sec. 166 is adjusted to exclude:

1. Financing charges or interest;
2. Sales or use taxes charged on the purchase price;
3. Uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
4. Expenses incurred in attempting to collect any debt; and
5. Repossessed property.

(c) When deduction may be taken. — Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this section, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(d) Subsequent recovery. — If a deduction is taken for a bad debt and the debt is subsequently collected, in whole or in part, the tax on the amount collected shall be paid and reported on the return filed for the period in which the collection is made.

(e) When bad debt deduction exceeds taxable sales. — When the amount of bad debt exceeds the amount of taxable sales,
sales for the period during which the bad debt is written off, a
refund claim may be filed within the period specified in section
fourteen, article ten of this chapter, for filing a claim for refund
or sales or use tax, except that the statute of limitations shall be
measured from the due date of the return on which the bad debt
could first be claimed.

(f) When certified service provider is used. — Where filing
responsibilities of the seller have been assumed by a certified
service provider, the certified service provider may claim, on
behalf of the seller, any bad debt allowance provided by this
section. The certified service provider shall credit or refund to
the seller the full amount of any bad debt allowance or refund
received under this section.

(g) Reporting of payment received on previously claimed
bad debt. — For the purposes of reporting a payment received
on a previously claimed bad debt, any payments made on a debt
or account is applied first proportionally to the taxable price of
the property or service and the sales tax thereon, and secondly
to interest, service charges, and any other charges.

(h) Allocation. — In situations where the books and records
of the party claiming the bad debt allowance support an
allocation of the bad debts among two or more states that are
members of the streamlined sales and use tax agreement, the
allocation is permitted.

§11-15B-28. Confidentiality and privacy protections under Model
I.

(a) Purpose. — The purpose of this section is to set forth
the policy of this state for the protection of the confidentiality
rights of all participants in the streamlined sales and use tax
administration and collection system and of the privacy
interests of consumers who deal with Model I sellers.
(b) Certain terms defined. — As used in this section:

(1) The term "confidential taxpayer information" means all information that is protected under section five-d, article ten of this chapter;

(2) The term "personally identifiable information" means information that identifies a person; and

(3) The term "anonymous data" means information that does not identify a person.

(c) Certified service providers. — With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) Certification of service providers. — The governing board administering the streamlined sales and use tax agreement may certify a service provider only if that certified service provider certifies that:

(1) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(2) That personally identifiable information is only used and retained to the extent necessary for the administration of Model I with respect to exempt purchasers;

(3) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. This notice is satisfied by a written privacy policy statement accessible by the public on the official web site of the certified service provider;
(4) Its collection, use and retention of personally identifiable information is limited to that required by the states that are members of the streamlined sales and use tax agreement to ensure the validity of exemptions from taxation that are claimed by reason of a consumer’s status or the intended use of the goods or services purchased; and

(5) It provides adequate technical, physical, and administrative safeguards as to protect personally identifiable information from unauthorized access and disclosure.

(e) State notification of privacy policy. — The tax commissioner shall provide public notification to consumers, including their exempt purchasers, of this state’s practices relating to the collection, use and retention of personally identifiable information.

(f) Destruction of confidential information. — When any personally identifiable information that has been collected and retained by the tax commissioner is no longer required for the purposes set forth in subdivision (4), subsection (d) of this section, the information shall no longer be retained by the tax commissioner.

(g) Review and correction by individuals. — When personally identifiable information regarding an individual is retained by or on behalf of the tax commissioner, the commissioner shall provide reasonable access by an individual to his or her own information in the commissioner’s possession and a right to correct any inaccurately recorded information.

(h) Discovery by other persons. — If anyone other than the individual, or a person authorized in writing by the individual, seeks to discover personally identifiable information, the tax commissioner shall make a reasonable and timely effort to notify the individual of the request.
(i) **Enforcement.** — This privacy policy shall be enforced by the tax commissioner or the attorney general of this state.

(j) **Service provider’s confidentiality policy may be more restrictive.** — This privacy policy does not preclude the governing board administering the streamlined sales and use tax agreement from certifying a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the agreement or the laws of this state.


(a) **General.** — The customer refund procedures set forth in this section apply when a purchaser seeks a return of over-collected sales or use taxes from the seller.

(b) **Applicability.** — These customer refund procedures provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

(c) **Presumption of reasonable business practice.** — In connection with a purchaser’s request from a seller of over-collected sales or use taxes, a seller is presumed to have a reasonable business practice, if in the collection of the sales or use taxes, the seller:

(1) Uses either a certified service provider or a certified automated system, including a proprietary system, that is certified by the state; and
(2) Has remitted to the state all taxes collected less any allowable deductions, credits, or collection allowances.

(d) Statute of limitations. — Nothing in this section shall operate to extend any person’s time to seek from the tax commissioner a refund of sales or use taxes collected or remitted by a seller in error.

§11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.

(a) Monetary allowance under Model I. —

(1) The tax commissioner shall provide a monetary allowance to a certified service provider in Model I. This allowance shall be in accordance with the terms of the contract between the governing board of the streamlined sales and use tax agreement and the certified service provider. The details of this monetary allowance shall be developed and provided through the contract process. The contract shall provide that the allowance be funded entirely from money collected in Model I.

(2) The contract between the governing board and the certified service provider may base the monetary allowance to a certified service provider on one or more of the following:

(A) A base rate that applies to taxable transactions processed by the certified service provider; or

(B) For a period not to exceed twenty-four months following a voluntary seller’s registration through the agreement’s central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.
(b) Monetary allowance for Model II sellers. — The monetary allowance to sellers under Model II may be based on the following:

(i) All sellers shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by a seller. The base rate is set by the governing board of the streamlined sales and use tax agreement after the base rate has been established for Model I certified service providers. This allowance is in addition to any vendor or seller discount afforded by each member state at the time.

(2) Following the conclusion of the twenty-four month period, a seller will only be entitled to a vendor discount afforded under each member state’s law at the time the base rate expires.

(c) Monetary allowance for Model III sellers and all other sellers that are not under Models I or II. — A monetary allowance to sellers under Model III and to all other sellers that are not under Models I or II may be allowed based on the following:

(1) For a period not to exceed twenty-four months following a voluntary seller’s registration through the agreement’s central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax; and

(2) Vendor discounts afforded under each member state’s law.

(d) Prohibition on allowance or payment of monetary allowances. — Notwithstanding subsections (a), (b) and (c) of this section, the tax commissioner may not allow any vendor, seller or certified service provider any monetary allowance,
discount or other compensation for collecting and remitting the
taxes levied by articles fifteen and fifteen-a of this chapter, or
for making and filing the periodic reports required by this
article, or articles fifteen and fifteen-a of this chapter, until this
section is amended by the Legislature.

(e) Findings and declarations.—The Legislature finds that
the vendor cost of collection study was not completed for use
by the governing board of the streamlined sales and use tax
agreement or this Legislature before this Legislature was asked
to authorize the tax commissioner to sign the streamlined sales
and use tax agreement. Additionally, no preliminary findings or
conclusions of the study regarding vendor costs of collection
are available upon which the tax commissioner or the Legisla-
ture can reasonably project the effect the payment of the
monetary allowances provided for in subsections (a) through (c)
of this section will have on net sales and use tax collections.
Because the cost of allowing monetary allowances under
collection Models I through IV may reduce net sales and use
tax collections, at least in the early years of the agreement,
because many states including this state are experiencing
revenue shortfalls, and because the Legislature is constitution-
ally required to pass a balanced budget, the Legislature finds
and declares that it is both reasonable and prudent to delay
approving this aspect of the agreement until adequate informa-
tion does become available and the effect the monetary allow-
ances will have on West Virginia sales and use tax collections
can reasonably be quantified. The Legislature declares its
support for the streamlined sales and use tax agreement by
adopting in this enactment all substantive changes in West
Virginia’s sales and use tax laws necessary for West Virginia’s
sales and use tax laws to be in substantial compliance with the
streamlined sales and use tax agreement. Additionally, the
Legislature declares that it can quickly act to reconsider
subsection (d) of this section once the requisite information
becomes available.

(a) Conflict. — If a court of competent jurisdiction finds that the provisions of this article and of article fifteen-a of this chapter conflict and cannot be harmonized, then the provisions of this article shall control.

(b) Severability. — If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision does not affect the validity of the remaining portions of this article or any part thereof.

§11-15B-32. Effective date.

The provisions of this article, as amended or added during the regular legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day, except as otherwise expressly provided in section five of this article.

CHAPTER 147

(Com. Sub. for H. B. 2122 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Amended and Again Passed March 8, 2003, as a Result of the Objections of the Governor; in Effect From Passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eleven-a, chapter four of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; to amend chapter eleven of said code by adding thereto a new article, designated article thirteen-t; to amend and reenact section five, article twelve, chapter twenty-nine of said code; to amend and reenact sections six and fourteen, article twelve-b of said chapter; to further amend said chapter by adding thereto a new article, designated article twelve-c; to amend and reenact section fourteen, article three, chapter thirty of said code; to amend and reenact section twelve-a, article fourteen of said chapter; to amend article two, chapter thirty-three of said code by adding thereto a new section, designated section nine-a; to amend and reenact sections fourteen and fourteen-a of article three of said chapter; to amend and reenact section fifteen-a, article four of said chapter; to amend and reenact sections two and three, article twenty-b of said chapter; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact sections two through eleven, inclusive, article twenty-f of said chapter; to further amend said article by adding thereto a new section, designated section one-a; to amend and reenact section twenty-four, article twenty-five-a of said chapter; to amend and reenact section twenty-six, article twenty-five-d of said chapter; to amend and reenact section four, article ten, chapter thirty-eight of said code; to amend and reenact sections one, two, three, six, seven, eight, nine, and ten, article seven-b, chapter fifty-five of said code; and to further amend said article by adding thereto three new sections, designated sections nine-a, nine-b and nine-c, all relating to medical professional liability generally; transferring funds from board of risk and insurance management and from tobacco settlement medical trust fund; providing a health care provider tax credit for physicians based upon payment of certain medical malpractice liability insurance premiums paid; setting forth legislative findings and purpose; defining terms; creating tax credit and providing eligibility; establishing amount and time period for credit; allowing unused credit to carry forward; providing for the application of the credit; providing for the computation and
application of credit; authorizing tax commissioner to promulgate legislative rules relating to the credit; establishing burden of proof relating to claiming the credit; allowing the board of risk and insurance management to include critical access hospitals as charitable or public service organizations eligible for receiving insurance coverage; authorizing the board of risk and insurance management to issue certain coverage to non-transferred health care providers; terminating authority of board of risk and insurance management to issue certain medical professional liability insurance upon transfer of assets to the physicians' mutual insurance company; creating board to study the feasibility of and propose a mechanism for funding the patient injury compensation fund; establishing term, authority and directives of the board; granting certain duties and conditionally authorizing the board of risk and insurance management to promulgate legislative and emergency rules; requiring the board of medicine and the board of osteopathy to take certain disciplinary actions against physicians in certain circumstances; providing for a limited diversion of premium taxes on certain insurance policies; providing a one-time assessment on all insurance carriers; prohibiting predatory rates and reduced rates designed to gain market share; requiring additional reporting requirements for insurance carriers providing medical malpractice coverage; providing for the creation of a physicians' mutual insurance company and the concomitant novation of certain board of risk and insurance management medical professional liability insurance programs; setting forth additional legislative findings and purpose; providing terms and conditions for transfer of specified assets and moneys to the physicians' mutual; defining terms; prohibiting company from taking certain actions; requiring certain premium taxes to be applied toward restoring West Virginia tobacco medical trust fund; returning premium taxes to originally allocated sources after moneys have been restored to the tobacco settlement medical trust fund; waiver of taxes under certain circumstances; providing for governance and organization
of the company; specifying composition of company's board of directors; creating a special account to receive funds transferred from the tobacco settlement medical trust fund; imposing a one time assessment on certain licensed physicians for the privilege of practicing in West Virginia; exempting certain physicians from assessment; requiring competitive bidding in certain circumstances; exempting company from certain requirements imposed on other mutual insurance companies by the insurance commission; providing for additional reporting requirements and actuarial studies for the company; authorizing transfer of funds from special account and of certain assets, obligations and liabilities of the board of risk and insurance management to the company on a certain date and establishing other terms and conditions associated with the transfer; increasing exemption available to certain physician and surgeon debtors in bankruptcy proceedings; providing additional legislative findings and purposes relating to medical professional liability; defining terms; adding an element of proof in certain malpractice claims; altering notice requirements for malpractice claims; modifying the qualifications for experts who testify in medical professional liability actions; limiting liability for certain noneconomic losses; providing a reversion provision; creating conditional limitations and cap on certain damages; providing for limited severability; eliminating joint, but not several, liability among multiple defendants in medical professional liability actions; prohibiting consideration of certain third parties in malpractice cases; eliminating a cause of action based on ostensible agency in certain circumstances; allowing for reduction in damage awards for certain collateral source payments to plaintiffs; providing mechanism for determining collateral source payments and damages distribution; providing for calculation methodology for determining award payments; altering collection of economic damages upon implementation of patient compensation fund; barring actions against health care providers for certain third party claims; limiting civil liability for designated trauma center care; directing the office of emergency
medical services to designate hospitals as trauma centers and
provisional trauma centers; placing limitations on eligibility for
trauma care caps; requiring the office of emergency medical
services to develop a written protocol containing recognized and
accepted standards for triage and emergency health procedures;
authorizing the secretary of the department of health and human
resources to promulgate legislative and emergency rules; and
establishing effective date, applicable to all causes of action
alleging medical professional liability.

Be it enacted by the Legislature of West Virginia:

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

Chapter

4. The Legislature.
11. Taxation.
29. Miscellaneous Boards and Officers.
30. Professions and Occupations.
33. Insurance.
38. Liens.
55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia tobacco settlement medical trust fund.

(a) The Legislature finds and declares that certain dedicated revenues should be preserved in trust for the purpose of stabilizing the state's health related programs and delivery systems. It further finds and declares that these dedicated revenues should be preserved in trust for the purpose of educating the public about the health risks associated with tobacco usage and establishing a program designed to reduce and stop the use of tobacco by the citizens of this state and in particular by teenagers.

(b) There is hereby created a special account in the state treasury, designated the "West Virginia Tobacco Settlement Medical Trust Fund," which shall be an interest-bearing account and may be invested in the manner permitted by section nine, article six, chapter twelve of this code, with the interest income a proper credit to the fund. Unless contrary to federal
law, fifty percent of all revenues received pursuant to the master settlement agreement shall be deposited in this fund. Funds paid into the account may also be derived from the following sources:

(1) All interest or return on investment accruing to the fund;

(2) Any gifts, grants, bequests, transfers or donations which may be received from any governmental entity or unit or any person, firm, foundation or corporation;

(3) Any appropriations by the Legislature which may be made for this purpose; and

(4) Any funds or accrued interest remaining in the board of risk and insurance management physicians' mutual insurance company account created pursuant to section seven, article twenty-f, chapter thirty-three of this code on or after the first day of July, two thousand four.

(c) The moneys from the principal in the trust fund may not be expended for any purpose, except that on the first day of April, two thousand three, the treasurer shall transfer to the board of risk and insurance management physicians' mutual insurance company account created by section seven, article twenty-f, chapter thirty-three of this code, twenty-four million dollars from the West Virginia tobacco settlement medical trust fund for use as the initial capital and surplus of the physicians' mutual insurance company created pursuant to article twenty-f, chapter thirty-three of this code. The remaining moneys in the trust fund resulting from interest earned on the moneys in the fund and the return on investments of the moneys in the fund shall be available only upon appropriation by the Legislature as part of the state budget and expended in accordance with the provisions of section three of this article.
CHAPTER 11. TAXATION.

ARTICLE 13T. TAX CREDIT FOR COMBINED CLAIMS MADE MEDICAL MALPRACTICE PREMIUMS AND MEDICAL MALPRACTICE LIABILITY TAIL INSURANCE PREMIUMS PAID.

§11-13T-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 and medical malpractice liability tail insurance premium rates will induce retention of physicians practicing in this state.

In order to effectively decrease the cost of medical malpractice liability insurance premiums and medical malpractice liability tail insurance premiums paid in this state on physicians’ services, there is hereby provided a tax credit for certain medical malpractice liability insurance premiums and medical malpractice liability tail 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) "Claims made malpractice insurance policy" means a medical malpractice liability insurance policy that covers claims which:

(A) Are reported during the policy period,

(B) Meet the provisions specified by the policy, and

(C) Are for an incident which occurred during the policy period, or occurred prior to the policy period, as is specified by the policy.

(2) "Combined annual medical liability insurance premiums" means the sum of the actual amount of insurance premiums paid by or on behalf of the taxpayer during the taxable year for medical malpractice insurance coverage under a claims made malpractice insurance policy, plus the actual amount of insurance premiums paid by or on behalf of the taxpayer during the taxable year for tail insurance.

(3) "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.

(4) "Eligible taxpayer organization" means a partnership, limited liability company, or corporation that is an eligible taxpayer.

(5) "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 malprac-
practice insurance premiums or tail insurance premiums or both for
or on behalf of the eligible taxpayer organization.

(6) "Person" means and includes any natural person,
corporation, limited liability company, trust or partnership.

(7) "Physicians' services" means health care provider
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.

(8) "Tail insurance" means insurance which covers an
eligible taxpayer insured once a claims made malpractice
insurance policy is canceled, not renewed or terminated and
which covers claims made or asserted after such cancellation or
termination for acts relating to the provision of physicians'
services by the eligible taxpayer occurring during the period the
prior malpractice insurance was in effect.

(9) "Tail insurance premium" means insurance coverage
premiums paid by an eligible taxpayer or payor during the
taxable year for tail insurance.

(10) "Tail liability" means the medical malpractice liability
of an eligible taxpayer insured that results from a claim asserted
subsequent to cancellation, nonrenewal or termination of a
claims made malpractice insurance policy for acts relating to
the provision of physicians' services by the eligible taxpayer
occurring during the period when the prior malpractice insur-
ance was in effect.

§11-13T-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.

§11-13T-4. Amount of credit allowed.

(a) Allowance. –

(1) The amount of annual credit allowable under this article to an eligible taxpayer shall be:

(A) Ten percent of the combined annual medical liability insurance premiums paid in excess of thirty thousand dollars, or

(B) Twenty percent of combined annual medical liability insurance premiums paid in excess of seventy thousand dollars.

(2) This credit may be taken for combined annual medical liability insurance premiums paid during any taxable year beginning on or after the first day of January, two thousand two, and ending on or before the thirty-first day of December, two thousand three.

(b) Exclusions. — No credit shall be allowed for any combined annual medical liability insurance premiums, or part or component thereof, paid by or on behalf of an eligible taxpayer employed by this state, its agencies or subdivisions. No credit shall be allowed for any combined annual medical liability insurance premiums, or part or component thereof, paid by or on behalf of an eligible taxpayer or an eligible taxpayer organization or a payor pursuant to insurance coverage provided under article twelve, chapter twenty-nine of this code. No credit shall be allowed for any combined annual medical liability insurance premiums, or part or component thereof, paid before the first day of January, two thousand two, or paid after the thirty-first day of December, two thousand three.
§11-13T-5. Unused credit; carryforward; credit forfeiture.

If any credit remains after application of the credit against tax for any taxable year under this article, the amount thereof shall be carried forward to each ensuing tax year until used or until the first day of July, two thousand ten, whichever occurs first. If any unused credit remains after the first day of July, two thousand ten, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of this credit.

§11-13T-6. Application of credit against health care provider tax; 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, for the taxable year in which the combined annual medical liability insurance premiums are paid. To assert credit against the tax payable under section sixteen, article twenty-seven of this chapter, the eligible taxpayer shall prepare and file with the annual tax return filed under article twenty-seven of this chapter, a schedule showing the combined annual medical liability insurance premiums paid for the taxable year, the amount of credit allowed under this article, the tax against which the credit is being applied and other information that the tax commissioner may require. This annual schedule shall set forth the information and be in the form prescribed by the tax commissioner.

(b) An eligible taxpayer may consider the amount of credit allowed under this article when determining the eligible taxpayer’s liability for periodic payments of estimated tax for the taxable year for the tax payable under section sixteen, article twenty-seven of this chapter, in accordance with the procedures and requirements prescribed by the tax commissioner. The annual total tax liability and total tax credit allowed

(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 to reduce the eligible taxpayer’s annual tax liability imposed under section sixteen, article twenty-seven of this chapter, determined after application of the credit allowed under article thirteen-p of this chapter, if any, and after application of all other allowable credits, deductions and exemptions.

(b) Computation of 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.

(1) Qualification for credit. — Combined annual medical liability insurance premiums paid by a payor (as defined in this article) qualify for tax credit under this article, provided that such payments are made to insure against medical malpractice 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, and where such insurance covers the medical malpractice liabilities or tail liabilities of:

(A) The eligible taxpayer organization; or

(B) 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

(C) Any combination thereof.

(2) Application of credit by the payor against health care provider tax on physician’s services. — The annual credit allowable under this article 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 the credit allowed under article thirteen-p of this chapter, if any, and after application of all other allowable credits, deductions 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 the credit allowed under article thirteen-p of this chapter, if any, and after application of all other allowable credits, deductions and exemptions.

(4) Apportionment among multiple eligible taxpayer organizations. — Where a payor described in subdivision (1) of this subsection pays combined annual 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 combined annual 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 payors, eligible taxpayers and eligible taxpayer organizations exceed the credit which would be allowable if the payor had paid all such combined annual 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.

(c) Application of the credit allowed under this article in combination with all other applicable tax credits, exemptions and deductions shall in no event reduce the tax liability below zero, and shall in no circumstances be applied as a refundable tax credit, or result in a refundable tax credit.


1 The tax commissioner shall propose for promulgation rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, as may be necessary to carry out the purposes of this article.


1 The burden of proof is on the person claiming the credit allowed by this article to establish by clear and convincing evidence that the person is entitled to the amount of credit asserted for the taxable year.

CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.

Article
12C. Patient Injury Compensation Plan.

ARTICLE 12. STATE INSURANCE.
§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, a charitable or public service organization, or an emergency medical services agency, the board is authorized to provide property and liability insurance to insure their property, activities and responsibilities. The board is authorized to enter into any necessary contract of insurance to further the intent of this subsection.

The property insurance provided by the board, pursuant to this subsection, may also include insurance on property leased to or loaned to the political subdivision, a charitable or public service organization or an emergency medical services agency which is required to be insured under a written agreement.
The cost of this insurance, as determined by the board, shall be paid by the political subdivision, the charitable or public service organization or the emergency medical services agency and may include administrative expenses. For purposes of this section: Provided, That if an emergency medical services agency is a for-profit entity its claims history may not adversely affect other participant’s rates in the same class. All funds received by the board (including, but not limited to, state agency premiums, mine subsidence premiums, and political subdivision premiums) shall be deposited with the West Virginia investment management board with the interest income and returns on investment a proper credit to such property insurance trust fund or liability insurance trust fund, as applicable.

"Political subdivision" as used in this subsection shall have the same meaning as in section three, article twelve-a of this chapter.

"Charitable" or public service organization as used in this subsection means any hospital in this state which has been certified as a critical access hospital by the federal centers for medicare and medicaid upon the designation of the state office of rural health policy, the office of community and rural health services, the bureau for public health, or the department of health and human resources, and any bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.
“Emergency medical service agency” as used in this subsection shall have the same meaning as in section three, article four-c, chapter sixteen of this code.

(c) (1) The board shall have general supervision and control over the optional medical liability insurance programs providing coverage to health care providers as authorized by the provisions of article twelve-b of this chapter. The board is hereby granted and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article.

(2) The board shall:

(A) Administer the preferred medical liability program and the high risk medical liability program and exercise and perform other powers, duties and functions specified in this article;

(B) Obtain and implement, at least annually, from an independent outside source, such as a medical liability actuary or a rating organization experienced with the medical liability line of insurance, written rating plans for the preferred medical liability program and high risk medical liability program on which premiums shall be based;

(C) Prepare and annually review written underwriting criteria for the preferred medical liability program and the high risk medical liability program. The board may utilize review panels, including, but not limited to, the same specialty review panels to assist in establishing criteria;

(D) Prepare and publish, before each regular session of the Legislature, separate summaries for the preferred medical liability program and high risk medical liability program activity during the preceding fiscal year, each summary to be included in the board of risk and insurance management audited
financial statements as "other financial information", and which shall include a balance sheet, income statement and cash flow statement, an actuarial opinion addressing adequacy of reserves, the highest and lowest premiums assessed, the number of claims filed with the program by provider type, the number of judgments and amounts paid from the program, the number of settlements and amounts paid from the program and the number of dismissals without payment;

(E) Determine and annually review the claims history debit or surcharge for the high risk medical liability program;

(F) Determine and annually review the criteria for transfer from the preferred medical liability program to the high risk medical liability program;

(G) Determine and annually review the role of independent agents, the amount of commission, if any, to be paid therefor, and agent appointment criteria;

(H) Study and annually evaluate the operation of the preferred medical liability program and the high risk medical liability program, and make recommendations to the Legislature, as may be appropriate, to ensure their viability, including, but not limited to, recommendations for civil justice reform with an associated cost-benefit analysis, recommendations on the feasibility and desirability of a plan which would require all health care providers in the state to participate with an associated cost-benefit analysis, recommendations on additional funding of other state run insurance plans with an associated cost-benefit analysis and recommendations on the desirability of ceasing to offer a state plan with an associated analysis of a potential transfer to the private sector with a cost-benefit analysis, including impact on premiums;
(I) Establish a five-year financial plan to ensure an adequate premium base to cover the long tail nature of the claims-made coverage provided by the preferred medical liability program and the high risk medical liability program. The plan shall be designed to meet the program’s estimated total financial requirements, taking into account all revenues projected to be made available to the program, and apportioning necessary costs equitably among participating classes of health care providers. For these purposes, the board shall:

(i) Retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group malpractice plans, to estimate the total financial requirements of the program for each fiscal year and to review and render written professional opinions as to financial plans proposed by the board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the board or the executive director. All reasonable fees and expenses for actuarial services shall be paid by the board. Any financial plan or modifications to a financial plan approved or proposed by the board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the governor and to the Legislature without the actuary’s written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs, including incurred but not reported claims, for the fiscal year for which the plan is proposed. The actuary’s opinion for any fiscal year shall include a requirement for establishment of a reserve fund;

(ii) Submit its final, approved five-year financial plan, after obtaining the necessary actuary’s opinion, to the governor and to the Legislature no later than the first day of January 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 based on generally accepted accounting practices (GAAP) and which shall include allowances for incurred but not reported claims: Provided, That the financial statement and the accrual-based financial plan restatement shall not affect the approved financial plan. The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and 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;
226 (K) To analyze the benefit of and necessity for excess
verdict liability coverage;

228 (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;

232 (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 partici-
pant 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;

239 (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. Notwith-
standing 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 promul-
gated by the board shall become effective upon approval by the
board notwithstanding any provision of this code;

253 (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 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 Legisla-
ture adopts a concurrent resolution authorizing the board to reestablish medical liability insurance programs.

ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFESSIONAL LIABILITY INSURANCE AVAILABILITY ACT.

§29-12B-6. Health care provider professional liability insurance programs.
§29-12B-14. Effective date and termination of authority.

§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.
(l) Nothing in this article shall be construed to preclude a health care provider from obtaining professional liability insurance coverage for claims in excess of the coverage made available by the provisions of this article.

(m) General liability coverage that may be required by a health care provider may be offered as determined by the board.

(n) The board may provide coverage for the run out of, and tail coverage for, any active policy issued pursuant to this article which is not transferred to the physician's mutual insurance company in accordance with section nine, article twenty-f, chapter thirty-three of this code. The board may permit such policy holders to finance, with interest, the tail coverage premium payments therefore, up to a maximum finance period of five years, on such terms as the board may set.

§29-12B-14. Effective date and termination of authority.

Policies written under this article may have an effective date retroactive to the effective date of this article. Except as provided in subsection (n), section six of this article, the authority of the board of risk and insurance management to issue medical liability policies under this article shall cease upon the board's transfer, in accordance with section nine, article twenty-f, chapter thirty-three of this code, of assets, obligations and liabilities to the physicians' mutual insurance company created pursuant to said article, or upon the first day of July, two-thousand four, whichever occurs first. The board shall continue to administer any existing policy of insurance which was issued pursuant to this article, but was not transferred to the physician's mutual insurance company, until the policy expires. Upon the expiration of the policy, the board shall make tail coverage available at an appropriate premium rate to be determined by the board. The board shall continue to administer any tail coverage so provided. On the thirtieth day
of January each year, the board shall report to the legislature’s joint committee on government and finance the amount of any unfunded liability associated with the run out and tail coverage provided by this section.

ARTICLE 12C. PATIENT INJURY COMPENSATION PLAN.

§29-12C-1. Patient injury compensation plan study board created; purpose; study of creation and funding of patient injury compensation fund; developing rules and establishing program; and report to the Legislature.

§29-12C-2. Legislative rules.

§29-12C-1. Patient injury compensation plan study board created; purpose; study of creation and funding of patient injury compensation fund; developing rules and establishing program; and report to the Legislature.

(a) In recognition of the statewide concern over the rising cost of medical malpractice insurance and the difficulty that health care practitioners have in locating affordable medical malpractice insurance, there is hereby created a patient injury compensation fund study board to study the feasibility of establishing a patient injury compensation fund to reimburse claimants in medical malpractice actions for any portion of economic damages awarded which are uncollectible due to statutory limitations on damage awards for trauma care and/or the elimination of joint and several liability of tortfeasor health care providers and health care facilities.

(b) The patient injury compensation fund study board shall consist of the director of the board of risk and insurance management, who shall serve as chairperson, the insurance commissioner and an appointee of the governor. The patient injury compensation fund study board shall utilize the resources of the board of risk and insurance management and the insurance commission to effectuate the study required by this article.
The patient injury compensation fund study board shall meet upon the call of the chair. A simple majority of the patient injury compensation fund study board members constitutes a quorum for the transaction of business.

(c) The patient injury compensation fund study board is authorized to hold hearings, conduct investigations and consider, without limitation, all options for identifying funding methods and for the operation and administration of a patient injury compensation fund within the following guidelines:

(1) The board of risk and insurance management is responsible for implementing, administering and operating any patient injury compensation fund;

(2) The patient injury compensation fund must be actuarially sound and fully funded in accordance with generally accepted accounting principles;

(3) Eligibility for reimbursement from the patient injury compensation fund is limited to claimants who have been awarded damages in a medical malpractice action but have been certified by the board of risk and insurance management to be unable, after exhausting all reasonable means available by law of recovering the award, to collect all or part of the economic damages awarded due to the limitations on awards established in sections nine and nine-c, article seven-b, chapter fifty-five of this code; and

(4) The board of risk and insurance management may invest the moneys in the patient injury compensation fund and use any interest or other return from investments to pay administration expenses and claims granted.

(d) The patient injury compensation fund study board’s report and recommendations shall be completed no later than the first day of December, two thousand three, and shall be
presented to the joint committee of government and finance
during the legislative interim meetings to be held in December,
two thousand three.

29-12C-2. Legislative rules.

(a) The Legislature hereby declares that an emergency
exists necessitating expeditious implementation of a patient
injury compensation fund, if economically feasible, and directs
the patient injury compensation fund study board to propose
emergency legislative rules relating to the establishment,
implementation and operation of the patient injury compensa-
tion fund in conjunction with its report and recommendations
to the Legislature under section one of this article. The rules
proposed by the patient injury compensation fund study board
shall:

(1) Provide the funding mechanism and the methodology
for processing and timely and accurately collect funds;

(2) Assure the actuarial soundness of the patient injury
compensation fund and sufficient moneys to satisfy all foresee-
able claims against the patient injury compensation fund, giving
due consideration to relevant loss or claim experience or trends
and normal costs of operation;

(3) Provide a reasonable reserve fund for unexpected
contingencies, consistent with generally accepted accounting
principles;

(4) Establish appropriate procedures for notification of
payment adjustments prior to any payment periods established
in which a funding adjustment will be in effect, consistent with
generally accepted accounting principles;

(5) Establish procedures for determining eligibility for and
distribution of funds to claimants seeking reimbursement;
(6) Establish the requirements and procedure for certifying that a claimant has been unable to collect a portion of the economic damages recovered;

(7) Establish the process for submitting a claim for payment from the patient injury compensation fund; and

(8) Establish any additional requirements and criteria consistent with and necessary to effectuate the provisions of this article.

(b) If the Legislature accepts, in whole or in part, the recommendations of the patient injury compensation fund study board, enacts legislation establishing a patient injury compensation fund and approves rules governing the initial establishment, implementation and operation of the patient injury compensation fund, those rules shall be filed with the secretary of state as emergency rules.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

Article


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.
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 unfavorable outcomes arising out of medical professional liability. The board shall initiate an investigation if it receives notice that three or more judgments, or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability have been rendered or made against the physician or podiatrist within a five-year period. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

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 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 disci-
plenary procedure and also within sixty days 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, profes-
sional 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 name of the insured; 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 informa-
tion required by the board.

Within thirty days from the entry of an order by a court in
a medical professional liability action or other civil action in
which a physician or podiatrist licensed by the board is deter-
mined to have rendered health care services below the applica-
ble 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 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. The board shall notify any person so assessed of the 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 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 or podiatrist has demonstrated a lack of professional competence to practice with a reasonable degree of skill and safety for patients.

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.

The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

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.

(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 licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:

(1) Attempting to obtain, obtaining, renewing or attempting to renew a license to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation or through known error of the board;
(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates to the practice of medicine. Any plea of nolo contendere is a conviction for the purposes of this subdivision;

(3) False or deceptive advertising;

(4) Aiding, assisting, procuring or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law;

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. The reports and records covered in this subdivision mean only those that are signed in the capacity as a licensed physician or podiatrist;

(6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund, commission, credit or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, 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 purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or
any other medical goods or devices used in connection with medical or other health care services.

As used in this subdivision, "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 relationship for the purpose of engaging a patient in sexual activity;

(9) Making a deceptive, untrue or fraudulent representation 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, including, but not 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 podiatrist or of a third party. Any influence includes, but is not limited to, the promotion or sale of services, goods, appliances or drugs;

(13) Prescribing, dispensing, administering, mixing or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician’s or podiatrist’s professional practice: Provided, That a physician who discharges his or her professional obligation to relieve the pain and suffering and promote the dignity and autonomy of
dying patients in his or her care and, in so doing, exceeds the
average dosage of a pain relieving controlled substance, as
defined in Schedules II and III of the Uniform Controlled
Substance Act, does not violate this article;

(14) Performing any procedure or prescribing any therapy
that, by the accepted standards of medical practice in the
community, would constitute experimentation on human
subjects without first obtaining full, informed and written
consent;

(15) Practicing or offering to practice beyond the scope
permitted by law or accepting and performing professional
responsibilities that the person knows or has reason to know he
or she is not competent to perform;

(16) Delegating professional responsibilities to a person
when the physician or podiatrist delegating the responsibilities
knows or has reason to know that the person is not qualified by
training, experience or licensure to perform them;

(17) Violating any provision of this article or a rule or order
of the board or failing to comply with a subpoena or subpoena
duces tecum issued by the board;

(18) 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 advertis-
ing 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, 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
291 professional incapacity that, if continued, would pose risks of
292 a serious or substantial nature to the physician's or podiatrist's
293 current patients, the investigating body may conduct a limited
294 investigation related to the physician's or podiatrist's current
295 capacity and qualification to practice and may recommend
296 conditions, restrictions or limitations on the physician's or
297 podiatrist's license to practice that it considers necessary for the
298 protection of the public. Any report shall contain recommenda-
299 tions for any necessary disciplinary measures and shall be filed
300 with the board within ninety days of any referral. The recom-
301 mendations shall be considered by the board and the case may
302 be further investigated by the board. The board after full
303 investigation shall take whatever action it considers appropri-
304 ate, as provided in this section.

305 (f) The investigating body, as provided for in subsection (e)
306 of this section, may request and the board under any circum-
307 stances may require a physician or podiatrist or person applying
308 for licensure or other authorization to practice medicine and
309 surgery or podiatry in this state to submit to a physical or
310 mental examination by a physician or physicians approved by
311 the board. A physician or podiatrist submitting to an examina-
312 tion has the right, at his or her expense, to designate another
313 physician to be present at the examination and make an
314 independent report to the investigating body or the board. The
315 expense of the examination shall be paid by the board. Any
316 individual who applies for or accepts the privilege of practicing
317 medicine and surgery or podiatry in this state is considered to
318 have given his or her consent to submit to all examinations
319 when requested to do so in writing by the board and to have
320 waived all objections to the admissibility of the testimony or
321 examination report of any examining physician on the ground
322 that the testimony or report is privileged communication. If a
323 person fails or refuses to submit to an examination under
324 circumstances which the board finds are not beyond his or her
325 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 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 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.

(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 authorization 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 authorization 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.

(I) 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 functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information 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 appropriate sanction as provided in this section. 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 limited 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 reinstatement of his or her license to practice medicine and surgery or podiatry.
(p) In every case considered by the board under this article 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 determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in subsection (c) of this section. If probable cause is found to exist, all proceedings on the charges shall be open to the public who are entitled to all reports, records and nondeliberative materials introduced at the hearing, including the record of the final action taken: Provided, That any medical 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.

(q) If the board receives notice that a physician or podiatrist has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital or a professional society, as defined in subsection (b) of this section, for three or more incidents during a five-year period, the board shall require the physician or podiatrist to practice under the direction of a physician or podiatrist designated by the board for a specified period of time to be established by the board.

(r) 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 that list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from the list 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 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations.

(a) The board may independently initiate suspension or revocation proceedings as well as initiate suspension or revocation proceedings based on information received from any person.

The board shall initiate investigations as to professional incompetence or other reasons for which a licensed osteopathic physician and surgeon may be adjudged unqualified if the board receives notice that three or more judgments or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability have been rendered or made against such osteopathic physician within a five-year period.
(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 osteopathic physician known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject osteopathic physician 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 provided, the subject osteopathic physician has fifteen days to comment on the requested information and such comments must be considered by the board.

After the completion of a hospital’s formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within sixty days the name of any member of the medical staff or any other osteopathic physician 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 osteopathic physician by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

Any professional society in this state comprised primarily of osteopathic physicians or physicians and surgeons of other schools of medicine which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall report in writing to the board within
sixty days of a final decision the name of such member, 
together with all pertinent information relating to such action.

Every person, partnership, corporation, association, 
insurance company, professional society or other organization 
providing professional liability insurance to an osteopathic 
physician in this state shall submit to the board the following 
information within thirty days from any judgment, dismissal or 
settlement of a civil action or of any claim involving the 
insured: The date of any judgment, dismissal 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 such other information required by the 
board.

Within thirty days after a person known to be an osteo-
pathic physician licensed or otherwise lawfully practicing 
medicine and surgery in this state or applying to be 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 such osteopathic 
physician 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 such 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 such violator. The board shall notify anyone assessed of the 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.

Any person may report to the board relevant facts about the conduct of any osteopathic physician in this state which in the opinion of such person amounts to professional malpractice or professional incompetence.

The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

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 osteopathic physicians or physicians and surgeons of other schools of medicine to suspend, restrict or revoke the privileges or membership of such osteopathic physician.

(c) In every case considered by the board under this article regarding suspension, revocation or issuance of a license
whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of cause to suspend, revoke or refuse to issue a license as set forth in subsection (a), section eleven of this article. If such probable cause is found to exist, all proceedings on such charges shall be open to the public who are entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken: Provided, That any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his right to the confidentiality of such records, shall not be open to the public nor is the public entitled to such records. If a finding is made that probable cause does not exist, the public has a right of access to the complaint or other document setting forth the charges, the findings of fact and conclusions supporting such finding that probable cause does not exist, if the subject osteopathic physician consents to such access.

(d) If the board receives notice that an osteopathic physician has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a medical peer review committee, a hospital or professional society, as defined in subsection (b) of this section, for three or more incidents in a five-year period, the board shall require the osteopathic physician to practice under the direction of another osteopathic physician for a specified period to be established by the board.

CHAPTER 33. INSURANCE.

Article
2. Insurance Commissioner.
3. Licensing, Fees and Taxation of Insurers.
20B. Rates and Malpractice Insurance Policies.
ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9a. Imposing a one-time assessment on all insurance carriers.

1 For the purpose of completely novating the physician
2 liability currently borne by the state under the West Virginia
3 health care provider professional liability insurance availability
4 act found in article twelve-b, chapter twenty-nine of this code,
5 and to help capitalize the physicians’ mutual insurance com-
6 pany created pursuant to article twenty-f of this chapter, and for
7 all the reasons set forth in section two of said article, the
8 insurance commissioner shall impose a special one-time
9 assessment of two thousand five hundred dollars on all insurers
10 licensed under this chapter for the privilege of writing insurance
11 in the state of West Virginia, except risk retention groups
12 defined in subsection (f), section four, article thirty-two of this
13 chapter and risk purchasing groups defined in subsection (e),
14 section seventeen of said article. The assessment is due and
15 payable on the first day of July, two thousand three. The
16 commissioner shall transfer funds collected pursuant to this
17 section to the physicians’ mutual insurance company.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by
1 insurer of premium tax, less certain deductions; special revenue
2 fund created.
3
4 §33-3-14a. Additional premium tax.
5
6 §33-3-14. Annual financial statement and premium tax return;
7 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: Provided, That each year, the first one million six hundred sixty-seven thousand dollars of the portion of taxes received by the commissioner from insurance policies for medical liability insurance as defined in section three, article twenty-f of this chapter and from any insurer on its medical malpractice line, shall be temporarily dedicated to replenishing moneys appropriated from the tobacco settlement account pursuant to subsection (c), section two, article eleven-a, chapter four of this code. Upon determination by the commissioner that these moneys have been fully replenished to the tobacco settlement account, the commissioner shall resume depositing
(b) There is created in the state treasury a special revenue fund, administered by the treasurer, designated the “insurance tax fund.” This fund is not part of the general revenue fund of the state. It consists of all amounts deposited in the fund pursuant to subsection (a) of this section, sections fifteen and seventeen of this article, any appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund.

(c) The treasurer shall dedicate and transfer from the insurance tax fund to the regional jail and correctional facility investment fund created under the provisions of section twenty-one, article six, chapter twelve of this code, on or before the tenth day of each month, an amount equal to one twelfth of the projected annual investment earnings to be paid and the capital invested to be returned, as certified to the treasurer by the investment management board: Provided, That the amount dedicated and transferred may not exceed twenty million dollars in any fiscal year. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the regional jail and correctional facility investment fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. Each month a lien on the revenues generated from the insurance premium tax, the annuity tax and the minimum tax, provided in this section and sections fifteen and seventeen of this article, up to a maximum amount equal to one twelfth of the projected annual principal and return is granted to the investment management board to secure the investment made with the regional jail and correctional facility authority pursuant to section twenty, article six, chapter twelve of this code. The treasurer shall, no later than the last business day of each month, transfer amounts the treasurer
determines are not necessary for making refunds under this article to meet the requirements of subsection (d), section twenty-one, article six, chapter twelve of this code, to the credit of the general revenue fund. Commencing on the first day of the month 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.

§33-3-14a. Additional premium tax.

For the purpose of providing additional revenue for the state general revenue fund, there is hereby levied and imposed, in addition to the taxes imposed by section fourteen of this article, an additional premium tax equal to one percent of taxable premiums. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax shall be applicable to the levy, imposition and collection of the additional tax. All moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration, shall be received by the commissioner and shall be paid by him or her into the state treasury for the benefit of the state fund: Provided, That each year, the first eight hundred thirty-three thousand dollars of the portion of taxes received by the commissioner from insurance policies for medical liability insurance as defined in section three, article twenty-f of this chapter and from any insurer on its medical malpractice line, shall be temporarily dedicated to replenishing moneys appropriated from the tobacco settlement account pursuant to subsection (c), section two, article eleven-a of chapter four of this code. Upon determination by the commissioner that these moneys have been fully replenished to the tobacco settlement account, the commissioner shall resume
depositing taxes received from medical malpractice premiums as provided herein.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

(a) For purposes of this section, an “accredited reinsurer” is one which:

(1) Has filed an application for accreditation and received a letter of accreditation from the commissioner;

(2) Is licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia;

(3) Has filed with the application a certified statement that the company submits to this state’s jurisdiction and that the company will comply with the laws and rules of the state of West Virginia;

(4) Has filed with the application a certified statement that the company submits to the examination authority granted the commissioner by section nine, article two of this chapter and will pay all examination costs and fees as required by that section, and the one-time assessment on insurers imposed under section nine-a, article two of this chapter;

(5) Has filed with the application a copy of its most recent annual statement in a form consistent with the requirements of
subdivision (8) of this subsection and a copy of its last audited financial statement;

(6) Has filed any other information the commissioner requests to determine that the company qualifies for accreditation under this section;

(7) Has remitted the applicable processing fee with its application for accreditation;

(8) Files with the commissioner after initial accreditation on or before the first day of March of each year a true statement of its financial condition, transactions and affairs as of the preceding thirty-first day of December. The statement shall be on the appropriate national association of insurance commissioners annual statement blank; shall be prepared in accordance with the national association of insurance commissioners annual statement instructions; and shall follow the accounting practices and procedures prescribed by the national association of insurance commissioners accounting practices and procedures manual as amended. The statement shall be accompanied by the applicable annual statement filing fee. The commissioner may grant extensions of time for filing of this annual statement upon application by the accredited reinsurer; and

(9) Files with the commissioner after initial accreditation by the first day of June of each year a copy of its audited financial statement for the period ending the preceding thirty-first day of December.

(b) If the commissioner determines that the assuming insurer has failed to continue to meet any of these qualifications, he or she may upon written notice and hearing, as prescribed by section thirteen, article two of this chapter, revoke an assuming insurer’s accreditation. Credit shall not be allowed to a ceding insurer if the assuming insurer’s accredita-
tion has been revoked by the commissioner after notice and hearing.

(c) Credit for reinsurance shall be allowed a domestic ceding insurer or any foreign or alien insurer transacting insurance in West Virginia that is domiciled in a jurisdiction that employs standards regarding credit for reinsurance that are not substantially similar to those applicable under this article as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets one of the following requirements:

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state prior to the effective date of the reinsurance contract.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through one of the fifty states of the United States or the District of Columbia and which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute, and the ceding insurer provides evidence suitable to the commissioner that the assuming insurer:

(A) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; Provided, That the requirements of this paragraph do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system;

(B) The ceding insurer provides the commissioner with a certified statement from the assuming insurer that the assuming
insurer submits to the authority of this state to examine its
books and records granted the commissioner by section nine,
article two of this chapter and will pay all examination costs
and fees as required by that section; and

(C) The reinsurer complies with the provisions of subdivi-
sion (6), subsection (c) herein.

(4) Credit shall be allowed when the reinsurance is ceded
to an assuming insurer which maintains a trust fund as required
by subsection (d) herein in a qualified United States financial
institution, as defined by this section, for the payment of the
valid claims of its United States policyholders and ceding
insurers, their assigns and successors in interest, and complies
with the provisions of subdivision (6) herein.

(5) Credit shall be allowed when the reinsurance is ceded
to an assuming insurer not meeting the requirements of subdivi-
sions (1) through (4), inclusive, subsection (c) of this section,
but only with respect to the insurance of risks located in
jurisdictions where such reinsurance is required by applicable
law or regulation of that jurisdiction.

(6) If the assuming insurer is not licensed or accredited to
transact insurance or reinsurance in this state, the credit
permitted by subdivisions (3) and (4) of this subsection shall
not be allowed unless the assuming insurer agrees in the
reinsurance agreements:

(A) That in the event of the failure of the assuming insurer
to perform its obligations under the terms of the reinsurance
agreement, the assuming insurer, at the request of the ceding
insurer, shall submit to the jurisdiction of any court of compe-
tent jurisdiction in any state of the United States, shall comply
with all requirements necessary to give such court jurisdiction
and shall abide by the final decision of such court or of any
appellate court in the event of an appeal; and
(B) To designate the secretary of state as its true and lawful
attorney upon whom may be served any lawful process in any
action, suit or proceeding instituted by or on behalf of the
ceding company. Process shall be served upon the secretary of
state, or accepted by him or her, in the same manner as pro-
vided for service of process upon unlicensed insurers under
section thirteen of this article: Provided, That this provision is
not intended to conflict with or override the obligation of the
parties to a reinsurance agreement to arbitrate their disputes, if
such an obligation is created in the agreement.

(d) Whenever an assuming insurer establishes a trust fund
for the payment of claims pursuant to the provisions of this
section, the following requirements shall apply:

(1) The assuming insurer shall report annually to the
commissioner information substantially the same as that
required to be reported on the national association of insurance
commissioners annual statement form by licensed insurers to
enable the commissioner to determine the sufficiency of the
trust fund. In the case of a single assuming insurer, the trust
shall consist of a trusteeed account representing the assuming
insurer’s liabilities attributable to business written in the United
States and, in addition, the assuming insurer shall maintain a
trusteed surplus of not less than twenty million dollars. In the
case of a group, including incorporated and individual unincor-
porated underwriters, the trust shall consist of a trusteeed
account representing the group’s liabilities attributable to
business written in the United States and, in addition, the group
shall maintain a trusteeed surplus of which one hundred million
dollars shall be held jointly for the benefit of United States
ceding insurers of any member of the group. The incorporated
members of the group shall not be engaged in any business
other than underwriting as a member of the group and shall be
subject to the same level of solvency regulation and control by
the group’s domiciliary regulator as are the unincorporated
The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group’s domiciliary regulator and its independent public accountants.

In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph; which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation; which submits to this state’s authority to examine its books and records and bears the expense of the examination; and which has aggregate policyholders’ surplus of ten billion dollars, the trust shall be in an amount equal to the group’s several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group. The group shall also maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities. Each member of the group shall make available to the commissioner an annual certification of the member’s solvency by the member’s domiciliary regulator and its independent public accountants.

Any trust that is subject to the provisions of this section shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust described herein shall remain in effect for as long as
the assuming insurer shall have outstanding obligations due
under the reinsurance agreements subject to the trust.

(4) No later than the twenty-eighth day of February of each
year the trustees of the trust shall report to the commissioner in
writing setting forth the balance of the trust and listing the
trust’s investments at the preceding year’s end. The trustees
shall certify the date of termination of the trust, if so planned,
or certify that the trust shall not expire prior to the next follow-
ing December thirty-first.

e) A reduction from liability for the reinsurance ceded by
a ceding insurer subject to the requirements of this article to an
assuming insurer not meeting the requirements of subsection (c)
of this section shall be allowed in an amount not exceeding the
liabilities carried by the ceding insurer. The reduction shall be
in the amount of funds held by or on behalf of the ceding
insurer, including funds held in trust for the ceding insurer,
under a reinsurance contract with the assuming insurer as
security for the payment of obligations thereunder: Provided,
That the security is held in the United States subject to with-
drawal solely by, and under the exclusive control of, the ceding
insurer; or, in the case of a trust, held in a qualified United
States financial institution, as defined by this section. The
security may be in the form of:

(1) Cash;

(2) Securities listed by the securities valuation office of the
national association of insurance commissioners and qualifying
as admitted assets; or

(3) Clean, irrevocable, unconditional letters of credit, issued
or confirmed by a qualified United States financial institution,
as defined by this section, no later than the thirty-first day of
December of the year for which filing is being made, and in the
possession of the ceding company on or before the filing date
of its annual statement: Provided, That letters of credit meeting
applicable standards of issuer acceptability as of the dates of
their issuance or confirmation shall, notwithstanding the issuing
or confirming institution's subsequent failure to meet applicable
standards of issuer acceptability, continue to be acceptable as
security until their expiration, extension, renewal, modification
or amendment, whichever first occurs.

(f) For purposes of this section, a "qualified United States
financial institution" means an institution that:

1. Is organized or licensed under the laws of the United
   States or any state thereof;

2. Is regulated, supervised and examined by United States
   federal or state authorities having regulatory authority over
   banks and trust companies; and

3. Has been determined by either the commissioner, or the
   securities valuation office of the national association of
   insurance commissioners, to meet the standards of financial
   condition and standing as are considered necessary and appro-
   priate to regulate the quality of financial institutions whose
   letters of credit will be acceptable to the commissioner.

(g) A "qualified United States financial institution" means,
for purposes of those provisions of this law specifying those
institutions that are eligible to act as a fiduciary of a trust, an
institution that:

1. Is organized or, in the case of a United States branch or
   agency office of a foreign banking organization, licensed under
   the laws of the United States or any state thereof and has been
   granted authority to operate with fiduciary powers; and
(2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(h) The provisions of this section shall apply to all cessions on or after the first day of January, one thousand nine hundred ninety-three.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-2. Ratemaking.

§33-20B-3. Rate filings.

§33-20B-3a. Rate prohibitions.

§33-20B-2. Ratemaking.

Any and all modifications of rates shall be made in accordance with the following provisions:

(a) Due consideration shall be given to the past and prospective loss experience within and outside this state.

(b) Due consideration shall be given to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers and actual past expenses and demonstrable prospective or projected expenses applicable to this state.

(c) Rates shall not be excessive, inadequate, predatory or unfairly discriminatory.

(d) Risks may not be grouped by territorial areas for the establishment of rates and minimum premiums.

(e) An insurer may use guide “A” rates and other nonapproved rates, also known as “consent to rates”: Provided,
That the insurer shall, prior to entering into an agreement with an individual provider or any health care entity, submit guide "A" rates and other nonapproved rates to the commissioner for review and approval: Provided, however, That the commissioner shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, which set forth the standards and procedure for reviewing and approving guide "A" rates and other nonapproved rates. No insurer may require execution of a 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) On or before the first day of July, two thousand four and on the first day of July each year thereafter, or at such other time specified by the commissioner, every insurer offering malpractice insurance in this state shall make a rate filing, in accordance with the provisions of section four, article twenty of this chapter, regardless of whether any increase or decrease is indicated, pursuant to subsection (a), section four, article twenty of this chapter. 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; (iv) the character and
extent of the coverage contemplated; (v) the proposed effective
date of any requested change and (vi) any other relevant factors
required by the commissioner. When a filing is not accompa-
nied 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-
ation 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.

§33-20F-3a. Rate prohibitions.

Reduced rates charged for certain specialties or risks found by the commissioner to be predatory, designed to gain market share or otherwise inadequate are prohibited.

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§33-20F-1a. Scope of article.

This article applies only to the physicians’ mutual insurance company created as a novation of the medical professional liability insurance programs created in article twelve-b, chapter twenty-nine of this code.

§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) Such crises are part of a naturally recurring cycle of a hard market period, when medical professional liability coverage is difficult to obtain, and a soft market period, when coverage is more readily available;

(4) Such crises are particularly acute in this state due to the small size of the insurance market;

(5) During a hard market period, insurers tend to flee this state, creating a crisis for physicians who are left without professional liability coverage;

(6) During the current crisis, physicians in West Virginia find it increasingly difficult, if not impossible, to obtain medical liability insurance either because coverage is unavailable or unaffordable;

(7) The difficulty or impossibility of obtaining medical liability insurance may result in many qualified physicians leaving the state;

(8) Access to quality health care is of utmost importance to the citizens of West Virginia;

(9) A mechanism is needed to provide an enduring solution to this recurring medical liability crisis;

(10) 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;

(11) There is a substantial public interest in creating a method to provide a stable medical liability market in this state;
(12) The state has attempted to temporarily alleviate the current medical crisis by the creation of programs to provide medical liability coverage through the board of risk and insurance management;

(13) The state-run program is a substantial actual and potential liability to the state;

(14) There is substantial public benefit in transferring the actual and potential liability of the state to the private sector and creating a stable self-sufficient entity which will be a source of liability insurance coverage for physicians in this state;

(15) A stable, financially viable insurer in the private sector will provide a continuing source of insurance funds to compensate victims of medical malpractice; and

(16) Because the public will greatly benefit from the formation of a physicians' mutual insurance company, state efforts to encourage and support the formation of such an entity, including providing a low-interest loan for a portion of the entity's initial capital, is in the clear public interest.

(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 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 the physicians’ mutual insurance company created pursuant to the terms of this article.

(e) “Medical liability insurance” means, for the purposes of this article: All policies previously issued by the board of risk and insurance management pursuant to article twelve-b, chapter twenty-nine of this code which are transferred by the board of risk and insurance management to the company, pursuant to subsection (b), section nine of this article and all policies of insurance subsequently issued by the company to physicians, physician corporations, physician-operated clinics and such other individual health care providers as the commissioner may, upon written application of the company, approve.

(f) “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.

(g) “Transfer date” means the date on which the assets, obligations and liabilities resulting from the board of risk and insurance management’s issuance of medical liability policies to physicians, physician corporations and physician-operated clinics pursuant to article twelve-b, chapter twenty-nine of this code are transferred to the company.
§33-20F-4. Authorization for creation of company; requirements and limitations.

(a) Subject to the provisions of this article, a physicians' mutual insurance company may be created as a domestic, private, nonstock, nonprofit corporation. As an incentive for its creation, the company may be eligible for funds from the Legislature in accordance with the provisions of section seven of this article. The 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. The company may not declare any dividend to its policyholders; sell, assign or transfer substantial assets of the company; or write coverage outside this state, except for counties adjoining this state, until after any and all debts owed by the company to the state have been fully paid.

(b) For the duration of its existence, the 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 the 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 the company are not and may not be considered part of the general revenue fund of the state. The debts, claims, obligations, and liabilities of the company are not and may not be considered a debt of the state or a pledge of the credit of the state.

(d) The 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.
(e) (1) All premiums collected by the company are subject to the premium taxes and surcharges contained in sections fourteen and fourteen-a, article three of this chapter: Provided, That while the loan to the company of moneys from the West Virginia tobacco settlement medical trust fund pursuant to section nine of this article remains outstanding, the commissioner may waive the company's premium taxes and surcharges if payment would render the company insolvent or otherwise financially impaired.

(2) On and after the first day of July, two thousand and three, any premium taxes and surcharges paid by the company and by any insurer on its medical malpractice line pursuant to sections fourteen and fourteen-a, article three of this chapter, shall be temporarily applied toward replenishing the moneys appropriated from the West Virginia tobacco settlement medical trust fund pursuant to subsection (c), section two, article eleven-a, chapter four of this code pending repayment of the loan of such moneys by the company.

(3) The state treasurer shall notify the commissioner when the moneys appropriated from the West Virginia tobacco settlement medical trust have been fully replenished, at which time the commissioner shall resume depositing premium taxes and surcharges diverted pursuant to subdivision (2) of this subsection in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

(4) Payments received by the treasurer from the company in repayment of any outstanding loan made pursuant to section nine of this article shall be deposited in the West Virginia tobacco settlement medical trust fund and dedicated to replenishing the moneys appropriated therefrom under subsection (c), section two, article eleven-a, chapter four of this code. Once the moneys appropriated from the West Virginia tobacco settlement medical trust fund have been fully replenished, the treasurer
shall deposit any payments from the company in repayment of any outstanding loan made pursuant to section nine of this article in said fund and transfer a like amount from said fund to the commissioner for disbursement in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

§33-20F-5. Governance and organization.

(a)(1) The board of risk and insurance management shall implement the initial formation and organization of the company as provided by this article.

(2) From the first day of July, two thousand three, until the thirtieth day of June, two thousand four, the company shall be governed by a provisional board of directors consisting of the members of the board of risk and insurance management, the dean of the West Virginia University School of Medicine or a physician representative designated by him or her, and five physician directors, elected by the policyholders whose policies are to be transferred to the company pursuant to section nine of this article.

(3) Only physicians who are licensed to practice medicine in this state pursuant to article three or article fourteen, chapter thirty of this code and who have purchased medical professional liability coverage from the board of risk and insurance management are eligible to serve as physician directors on the provisional board of directors. One of the physician directors shall be selected from a list of three physicians nominated by the West Virginia medical association. The board of risk and insurance management shall develop procedures for the nomination of the remaining physician directors and for the conduct of the election, to be held no later than the first day of June, two thousand three, of all of the physician directors, including, but not limited to, giving notice of the election to the
policyholders. These procedures shall be exempt from the provisions of article three, chapter twenty-nine of this code.

(b) From the first day of July, two thousand four, the company shall be governed by a board of directors consisting of eleven directors, as follows:

(1) Five directors who are physicians licensed to practice medicine in this state by the board of medicine or the board of osteopathy, including at least one general practitioner and one specialist: Provided, That only physicians who have purchased medical professional liability coverage from the board of risk and insurance management are eligible to serve as physician representatives on the company’s first board of directors;

(2) Three directors who have substantial experience as an officer or employee of a company in the insurance industry;

(3) Two directors with general knowledge and experience in business management who are officers and employees of the company and are responsible for the daily management of the company; and

(4) One director who is a dean of a West Virginia school of medicine or osteopathy or his or her designated physician representative. This director’s position shall rotate annually among the dean of the West Virginia University School of Medicine, the dean of the Marshall University Joan C. Edwards School of Medicine and the dean of the West Virginia School of Osteopathic Medicine. This director shall serve until such time as the moneys loaned to the company from the West Virginia tobacco settlement medical trust fund have been replenished as provided in subsection (e), section four of this article. After the moneys have been replenished the West Virginia tobacco settlement medical trust fund, this director
shall be a physician licensed to practice medicine in this state
by the board of medicine or the board of osteopathy.

(c) In addition to the eleven directors required by subsection
(b) of this section, the bylaws of the 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.

(d) The directors and officers of the company are to be
chosen in accordance with the articles of incorporation and
bylaws of the company. The initial board of directors selected
in accordance with the provisions of subdivision (3), subsection
(a) of this section 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 an
additional director is added to the board as provided in subsection (c) of this section, his or her initial term shall be for four
years. No director chosen pursuant to subsection (b) 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 the company.

(a) If it is determined that the services of a third-party
administrator or other firm or company are necessary to
properly administer the affairs of the company prior to the first
day of July, two thousand four, the provisional board of
directors shall avail itself of any existing contracts entered into
by the board of risk and insurance management to manage its
affairs. The terms of the company's participation in the contract
shall be established by the board of risk and insurance management.

(b) The provisional board of directors may enter into a one-year contract with a third-party administrator or other firm or company with suitable qualifications and experience to administer some or all of the affairs of the company from the first day of July, two thousand four, until the thirtieth day of June, two thousand five, 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. Any contract entered into pursuant to this subsection must be awarded by competitive bidding not later than the first day of November, two thousand three.

(c) After the first day of July, two thousand four, if the company’s board of directors determines that the affairs of the 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. All such contracts shall be awarded by competitive bidding.

(d) 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) There is hereby created in the state treasury a special revenue account designated as the "Board of Risk and Insurance
Management Physicians’ Mutual Insurance Company Account” solely for the purpose of receiving moneys transferred from the West Virginia Tobacco Medical Trust Fund pursuant to subsection (c), section two, article eleven-a, chapter four of this code for the company’s use as initial capital and surplus.

(b) On the first day of July, two thousand three, a special one-time assessment, in the amount of one thousand dollars, shall be imposed on every physician licensed by the board of medicine or by the board of osteopathy for the privilege of practicing medicine in this state: Provided, That the following physicians shall be exempt from the assessment:

(1) A faculty physician who meets the criteria for full-time faculty under subsection (f), section one, article eight, chapter eighteen-b of this code, who is a full-time employee of a school of medicine or osteopathic medicine in this state, and who does not maintain a private practice;

(2) A resident physician who is a graduate of a medical school or college of osteopathic medicine enrolled and who is participating in an accredited full-time program of postgraduate medical education in this state;

(3) A physician who has presented suitable proof that he or she is on active duty in armed forces of the United States and who will not be reimbursed by the armed forces for the assessment;

(4) A physician who receives more than fifty percent of his or her practice income from providing services to federally qualified health center as that term is defined in 42 U.S.C. §1396d(l)(2); and

(5) A physician who practices solely under a special volunteer medical license authorized by section ten-a, article three or section twelve-b, article fourteen, chapter thirty of this
The assessment is to be imposed and collected by the board of medicine and the board of osteopathy on forms prescribed by each licensing board.

(c) The entire proceeds of the special assessment collected pursuant to subsection (b) of this section shall be dedicated to the company. The board of medicine and the board of osteopathy shall promptly pay over to the company all amounts collected pursuant to this section to be used as policyholder surplus for the company.

(d) Any physician who applies to purchase insurance from the company and who has not paid the assessment pursuant to subsection (b) of this section shall pay one thousand dollars to the company as a condition of obtaining insurance from the company.

§33-20F-8. Application for license; authority of commissioner.

(a) As soon as practical, the company established pursuant to the provisions of this article shall file its corporate charter and bylaws with the commissioner and apply for a license to transact insurance in this state. Notwithstanding any other provision of this code, the commissioner shall act on the documents within fifteen days of the filing by the company.

(b) In recognition of the medical liability insurance crisis in this state at the time of enactment of this article and the critical need to expedite the initial operation of the company, the Legislature hereby authorizes the commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of section five-b, article three of this chapter. The commissioner has the sole discretion to determine the capital and surplus funds of the company and to monitor the economic viability of the company during its initial
operation and duration on not less than a monthly basis. The
company shall furnish the commissioner with all information
and cooperate in all respects necessary for the commissioner to
perform the duties set forth in this section and in other provi-
sions of this chapter, including annual audited financial
statements required by article thirty-three of this chapter and
fidelity bond coverage for each of the directors of the company.

(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 the company to begin insuring physicians in this state at
the earliest possible date.

(d) Within forty months of the date of the issuance of its
license to transact insurance, the company shall comply with
the capital and surplus requirements set forth in section five-b,
article three of this chapter.

§33-20F-9. Kinds of coverage authorized; transfer of policies
from the state board of risk and insurance man-
agement; risk management practices authorized.

(a) Upon approval by the commissioner for a license to
transact insurance in this state, the 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, the company may
issue other types of casualty or liability insurance as may be
approved by the commissioner.

(b) On the transfer date:

(1) The company shall accept from the board of risk and
insurance management the transfer of any and all medical
liability insurance obligations and risks of existing or in force
contracts of insurance covering physicians, physician corporations and physician-operated clinics issued by the board pursuant to article twelve-b, chapter twenty-nine of this code. The transfer shall not include medical liability insurance obligations and risks of existing or in-force contracts of insurance covering hospitals and non-physician providers;

(2) The company shall assume all responsibility for and defend, indemnify and hold harmless the board of risk and insurance management and the state with respect to any and all liabilities and duties arising from the assets and responsibilities transferred to the company pursuant to article twelve-b, chapter twenty-nine of this code;

(3) The board of risk and insurance management shall disburse and pay to the company any funds attributable to premiums paid for the insurance obligations transferred to the company pursuant to subdivision (1) of this subsection, with earnings thereon, less paid losses and expenses, and deposited in the medical liability fund created by section ten, article twelve-b, chapter twenty-nine of this code as reflected on the ledgers of the board of risk and insurance management;

(4) The board of risk and insurance management shall disburse and pay to the company any funds in the board of risk and insurance management physicians' mutual insurance company account created by section seven of this article. All funds in this account shall be transferred pursuant to terms of a surplus note or other loan arrangement satisfactory to the board of risk and insurance management and the insurance commissioner.

(c) The board of risk and insurance management shall cause an independent actuarial study to be performed to determine the amount of all paid losses, expenses and assets associated with the policies the board has in force pursuant to article twelve-b,
chapter twenty-nine of this code. The actuarial study shall
determine the paid losses, expenses and assets associated with
the policies to be transferred to the company pursuant to
subsection (b) of this section and the paid losses, expenses and
assets associated with those policies retained by the board. The
determination shall not include liabilities created by issuance of
new tail insurance policies for nonphysician providers autho-
rized by subsection (n), section six, article twelve-b, chapter
twenty-nine of this code.

(d) The board of risk and insurance management may enter
into such agreements, including loan agreements, with the
company that are necessary to accomplish the transfers ad-
dressed in this section.

(e) The company shall make policies of insurance available
to physicians in this state, regardless of practice type or
specialty. Policies issued by the company to each class of
physicians are to be essentially uniform in terms and conditions
of coverage.

(f) Notwithstanding the provisions of subsection (b), (c) or
(e) of this section, the 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) Except with respect to policies transferred from the board of risk and insurance management under this section, 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.

(g) The 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 the 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 shall be liberally construed.
under this article. The provisions of this article shall not apply
to an insurer or hospital or medical service corporation licensed
and regulated pursuant to the insurance laws or the hospital or
medical service corporation laws of this state except with
respect to its health maintenance corporation activities autho-
rized and regulated pursuant to this article. The provisions of
this article may not apply to an entity properly licensed by a
reciprocal state to provide health care services to employer
groups, where residents of West Virginia are members of an
employer group, and the employer group contract is entered
into in the reciprocal state. For purposes of this subsection, a
“reciprocal state” means a state which physically borders West
Virginia and which has subscriber or enrollee hold harmless
requirements substantially similar to those set out in section
seven-a of this article.

(b) Factually accurate advertising or solicitation regarding
the range of services provided, the premiums and copayments
charged, the sites of services and hours of operation and any
other quantifiable, nonprofessional aspects of its operation by
a health maintenance organization granted a certificate of
authority, or its representative may not be construed to violate
any provision of law relating to solicitation or advertising by
health professions: Provided, That nothing contained in this
subsection shall be construed as authorizing any solicitation or
advertising which identifies or refers to any individual provider
or makes any qualitative judgment concerning any provider.

(c) Any health maintenance organization authorized under
this article may not be considered to be practicing medicine and
is exempt from the provisions of chapter thirty of this code,
relating to the practice of medicine.

(d) The provisions of sections fifteen and twenty, article
four (general provisions); section nine-a, article two (one-time
assessment); section seventeen, article six (noncomplying
forms); section twenty, article five (borrowing by insurers); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article eight-a (use of clearing corporations and federal reserve book-entry system); article nine (administration of deposits); article twelve (agents, brokers, solicitors and excess line); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-b (uniform health care administration act); section three, article sixteen (required policy provisions); section three-f, article sixteen (treatment of temporomandibular disorder and craniomandibular disorder); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); article sixteen-a (group health insurance conversion); article sixteen-d (marketing and rate practices for small employers); article twenty-five-c (health maintenance organization patient bill of rights); article twenty-seven (insurance holding company systems); article thirty-four-a (standards and commissioner’s authority for companies considered to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); article thirty-nine (disclosure of material transactions); article forty-one (privileges and immunity); and article forty-two (women’s access to health care) shall be applicable to any health maintenance organization granted a certificate of authority under this article. In circumstances where the code provisions made applicable to health maintenance organizations by this section refer to the “insurer”, the “corporation” or words of similar import, the language shall be construed to include health maintenance organizations.
(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION ACT.

§33-25D-26. Scope of provisions; applicability of other laws.

(a) Except as otherwise provided in this article, provisions of the insurance laws, provisions of hospital, medical, dental or health service corporation laws and provisions of health maintenance organization laws are not applicable to any prepaid limited health service organization granted a certificate of authority under this article. The provisions of this article do not apply to an insurer, hospital, medical, dental or health service corporation, or health maintenance organization licensed and regulated pursuant to the insurance laws, hospital, medical, dental or health service corporation laws or health maintenance organization laws of this state except with respect to its prepaid limited health service corporation activities authorized and regulated pursuant to this article. The provisions of this article do not apply to an entity properly licensed by a reciprocal state to provide a limited health care service to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section ten of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation and any other quantifiable, nonprofessional aspects of its operation by
a prepaid limited health service organization granted a certificate of authority, or its representative do not violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained in this subsection authorizes any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.

(c) Any prepaid limited health service organization authorized under this article is not considered to be practicing medicine and is exempt from the provision of chapter thirty of this code relating to the practice of medicine.

(d) The provisions of section nine, article two, examinations; section nine-a, article two, one-time assessment; section thirteen, article two, hearings; sections fifteen and twenty, article four, general provisions; section twenty, article five, borrowing by insurers; section seventeen, article six, noncomplying forms; article six-c, guaranteed loss ratio; article seven, assets and liabilities; article eight, investments; article eight-a, use of clearing corporations and federal reserve book-entry system; article nine, administration of deposits; article ten, rehabilitation and liquidation; article twelve, agents, brokers, solicitors and excess line; section fourteen, article fifteen, individual accident and sickness insurance; section sixteen, article fifteen, coverage of children; section eighteen, article fifteen, equal treatment of state agency; section nineteen, article fifteen, coordination of benefits with medicaid; article fifteen-b, uniform health care administration act; section three, article sixteen, required policy provisions; section eleven, article sixteen, coverage of children; section thirteen, article sixteen, equal treatment of state agency; section fourteen, article sixteen, coordination of benefits with medicaid; article sixteen-a, group health insurance conversion; article sixteen-d, marketing and rate practices for small employers; article twenty-seven, insurance holding company systems; article
thirty-three, annual audited financial report; article thirty-four, administrative supervision; article thirty-four-a, standards and commissioner's authority for companies considered to be in hazardous financial condition; article thirty-five, criminal sanctions for failure to report impairment; article thirty-seven, managing general agents; article thirty-nine, disclosure of material transactions; and article forty-one, privileges and immunity, all of this chapter are applicable to any prepaid limited health service organization granted a certificate of authority under this article. In circumstances where the code provisions made applicable to prepaid limited health service organizations by this section refer to the “insurer”, the “corporation” or words of similar import, the language includes prepaid limited health service organizations.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a prepaid limited health service organization shall comply with the provisions of article fifteen-a of this chapter.

(f) A prepaid limited health service organization granted a certificate of authority under this article is exempt from paying municipal business and occupation taxes on gross income it receives from its enrollees, or from their employers or others on their behalf, for health care items or services provided directly or indirectly by the prepaid limited health service organization.

CHAPTER 38. LIENS.

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

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

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

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

(a) The debtor’s interest, not to exceed 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: Provided, That when the debtor is a physician licensed to practice medicine in this state under article three or article fourteen, chapter thirty of this code, and has commenced a bankruptcy proceeding in part due to a verdict or judgment entered in a medical professional liability action, if the physician has current medical malpractice insurance in the amount of at least one million dollars for each occurrence, the debtor physician’s interest that is exempt under this subsection may exceed twenty-five thousand dollars in value but may not exceed two hundred fifty thousand dollars per household.

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

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

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

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

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

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

(i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(j) The debtor’s right to receive:

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

(2) A veterans’ benefit;

(3) A disability, illness or unemployment benefit;
(4) Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

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

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

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

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

(D) With respect to an individual retirement account, including a simplified employee pension, the amount is subject to the excise tax on excess contributions under Section 4973 and/or Section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether the tax is paid.

(k) The debtor’s right to receive or property that is traceable to:

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

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

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-1. Legislative findings and declaration of purpose.
§55-7B-2. Definitions.
§55-7B-3. Elements of proof.
§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.
§55-7B-7. Testimony of expert witness on standard of care.
§55-7B-8. Limit on liability for noneconomic loss.
§55-7B-9. Several liability.
§55-7B-9a. Reduction in compensatory damages for economic losses for payments from collateral sources the same injury.
§55-7B-9b. Limitations on third-party claims.
§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is admitted to a designated trauma center; exceptions; emergency rules.
§55-7B-10. Effective date; applicability of provisions.
§55-7B-1. Legislative findings and declaration of purpose.

The Legislature hereby finds and declares that the citizens of this state are entitled to the best medical care and facilities available and that health care providers offer an essential and basic service which requires that the public policy of this state encourage and facilitate the provision of such service to our citizens;

That as in every human endeavor the possibility of injury or death from negligent conduct commands that protection of the public served by health care providers be recognized as an important state interest;

That our system of litigation is an essential component of this state’s interest in providing adequate and reasonable compensation to those persons who suffer from injury or death as a result of professional negligence, and any limitation placed on this system must be balanced with and considerate of the need to fairly compensate patients who have been injured as a result of negligent and incompetent acts by health care providers;

That liability insurance is a key part of our system of litigation, affording compensation to the injured while fulfilling the need and fairness of spreading the cost of the risks of injury;

That a further important component of these protections is the capacity and willingness of health care providers to monitor and effectively control their professional competency, so as to protect the public and insure to the extent possible the highest quality of care;

That it is the duty and responsibility of the Legislature to balance the rights of our individual citizens to adequate and reasonable compensation with the broad public interest in the provision of services by qualified health care providers and
health care facilities who can themselves obtain the protection
of reasonably priced and extensive liability coverage;

That in recent years, the cost of insurance coverage has
risen dramatically while the nature and extent of coverage has
diminished, leaving the health care providers, the health care
facilities and the injured without the full benefit of professional
liability insurance coverage;

That many of the factors and reasons contributing to the
increased cost and diminished availability of professional
liability insurance arise from the historic inability of this state
to effectively and fairly regulate the insurance industry so as to
guarantee our citizens that rates are appropriate, that purchasers
of insurance coverage are not treated arbitrarily and that rates
reflect the competency and experience of the insured health
care providers and health care facilities;

That the unpredictable nature of traumatic injury health
care services often result in a greater likelihood of unsatisfac-
tory patient outcomes, a higher degree of patient and patient
family dissatisfaction and frequent malpractice claims, creating
a financial strain on the trauma care system of our state,
increasing costs for all users of the trauma care system and
impacting the availability of these services, requires appropriate
and balanced limitations on the rights of persons asserting
claims against trauma care health care providers, this balance
must guarantee availability of trauma care services while
mandating that these services meet all national standards of
care, to assure that our health care resources are being directed
towards providing the best trauma care available; and

That the cost of liability insurance coverage has continued
to rise dramatically, resulting in the state's loss and threatened
loss of physicians, which, together with other costs and taxation
incurred by health care providers in this state, have created a
competitive disadvantage in attracting and retaining qualified
physicians and other health care providers.

The Legislature further finds that medical liability issues
have reached critical proportions for the state’s long-term
health care facilities, as: (1) Medical liability insurance
premiums for nursing homes in West Virginia continue to
increase and the number of claims per bed has increased
significantly; (2) the cost to the state medicaid program as a
result of such higher premiums has grown considerably in this
period; (3) current medical liability premium costs for some
nursing homes constitute a significant percentage of the amount
of coverage; (4) these high costs are leading some facilities to
consider dropping medical liability insurance coverage alto-
gether; and (5) the medical liability insurance crisis for nursing
homes may soon result in a reduction of the number of beds
available to citizens in need of long-term care.

Therefore, the purpose of this article is to provide for a
comprehensive resolution of the matters and factors which the
Legislature finds must be addressed to accomplish the goals set
forth in this section. In so doing, the Legislature has determined
that reforms in the common law and statutory rights of our
citizens must be enacted together as necessary and mutual
ingredients of the appropriate legislative response relating to:

(1) Compensation for injury and death;

(2) The regulation of rate making and other practices by the
liability insurance industry, including the formation of a
physicians’ mutual insurance company and establishment of a
fund to assure adequate compensation to victims of malprac-
tice; and
The authority of medical licensing boards to effectively regulate and discipline the health care providers under such board.

§55-7B-2. Definitions.

(a) "Board" means the state board of risk and insurance management.

(b) "Collateral source" means a source of benefits or advantages for economic loss that the claimant has received from:

(1) Any federal or state act, public program or insurance which provides payments for medical expenses, disability benefits, including workers' compensation benefits, or other similar benefits. Benefits payable under the Social Security Act are not considered payments from collateral sources except for Social Security disability benefits directly attributable to the medical injury in question;

(2) Any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy or other health care services or provide similar benefits;

(3) Any group accident, sickness or income disability insurance, any casualty or property insurance (including automobile and homeowners' insurance) which provides medical benefits, income replacement or disability coverage, or any other similar insurance benefits, except life insurance, to the extent that someone other than the insured, including the insured's employer, has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or
(4) Any contractual or voluntary wage continuation plan provided by an employer or otherwise, or any other system intended to provide wages during a period of disability.

(c) "Consumer price index" means the most recent consumer price index for all consumers published by the United States department of labor.

(d) "Emergency condition" means any acute traumatic injury or acute medical condition which, according to standardized criteria for triage, involves a significant risk of death or the precipitation of significant complications or disabilities, impairment of bodily functions, or, with respect to a pregnant woman, a significant risk to the health of the unborn child.

(e) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to or on behalf of a patient during the patient’s medical care, treatment or confinement.

(f) "Health care facility" means any clinic, hospital, nursing home, or assisted living facility, including personal care home, residential care community and residential board and care home, or behavioral health care facility or comprehensive community mental health/mental retardation center, in and licensed by the state of West Virginia and any state operated institution or clinic providing health care.

(g) "Health care provider" means a person, partnership, corporation, professional limited liability company, health care 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, psychologist, emergency medical services authority or agency,
or an officer, employee or agent thereof acting in the course and
scope of such officer’s, employee’s or agent’s employment.

(h) “Medical injury” means injury or death to a patient
arising or resulting from the rendering of or failure to render
health care.

(i) “Medical professional liability” means any liability for
damages resulting from the death or injury of a person for any
tort or breach of contract based on health care services ren-
dered, or which should have been rendered, by a health care
provider or health care facility to a patient.

(j) “Medical professional liability insurance” means a
contract of insurance or any actuarially sound self-funding
program that pays for the legal liability of a health care facility
or health care provider arising from a claim of medical profes-
sional liability.

(k) “Noneconomic loss” means losses, including, but not
limited to, pain, suffering, mental anguish and grief.

(l) “Patient” means a natural person who receives or should
have received health care from a licensed health care provider
under a contract, expressed or implied.

(m) “Plaintiff” means a patient or representative of a patient
who brings an action for medical professional liability under
this article.

(n) “Representative” means the spouse, parent, guardian,
trustee, attorney or other legal agent of another.

§55-7B-3. Elements of proof.

(a) The following are necessary elements of proof that an
injury or death resulted from the failure of a health care
provider to follow the accepted standard of care:
(1) The health care provider failed to exercise that degree of care, skill and learning required or expected of a reasonable, prudent health care provider in the profession or class to which the health care provider belongs acting in the same or similar circumstances; and

(2) Such failure was a proximate cause of the injury or death.

(b) If the plaintiff proceeds on the "loss of chance" theory, i.e., that the health care provider's failure to follow the accepted standard of care deprived the patient of a chance of recovery or increased the risk of harm to the patient which was a substantial factor in bringing about the ultimate injury to the patient, the plaintiff must also prove, to a reasonable degree of medical probability, that following the accepted standard of care would have resulted in a greater than twenty-five percent chance that the patient would have had an improved recovery or would have survived.

§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 on each health care provider the claimant will join in litigation. The notice of claim shall include a statement of the theory or theories of liability upon which a cause of action may be based, and a list of all health care providers and health care facilities to whom notices of claim are being sent, together with a screening certificate of merit. The screening
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 of merit 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 15 of the rules of civil procedure.

(c) Notwithstanding any provision of this code, if a claimant or his or her 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 his or her 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 may respond, in writing, to the claimant or his or her counsel within thirty days of receipt of the claim or within thirty days of receipt of the screening certificate of merit if the claimant is proceeding pursuant to the provisions of subsection (d) of this section. The response may state that the health care provider has a bona fide defense and the name of the health care provider’s counsel, if any.

(f) Upon receipt of the notice of claim or of the screening certificate of merit, 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 written demand. 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 filing 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) 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 mail 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 screening certificate of merit and the results of any
mediation conducted pursuant to the provisions of this section
are confidential and are not admissible as evidence in any court
proceeding unless the court, upon hearing, determines that
failure to disclose the contents would cause a miscarriage of
justice.

§55-7B-7. Testimony of expert witness on standard of care.

(a) The applicable standard of care and a defendant’s failure
to meet the standard of care, if at issue, shall be established in
medical professional liability cases by the plaintiff by testimony
of one or more knowledgeable, competent expert witnesses if
required by the court. Expert testimony may only be admitted
in evidence if the foundation therefor is first laid establishing
that: (1) The opinion is actually held by the expert witness; (2)
the opinion can be testified to with reasonable medical proba-
bility; (3) the expert witness possesses professional knowledge
and expertise coupled with knowledge of the applicable
standard of care to which his or her expert opinion testimony is
addressed; (4) the expert witness maintains a current license to
practice medicine with the appropriate licensing authority of
any state of the United States: Provided, That the expert
witness’ license has not been revoked or suspended in the past
year in any state; and (5) the expert witness is engaged or
qualified in a medical field in which the practitioner has
experience and/or training in diagnosing or treating injuries or
conditions similar to those of the patient. If the witness meets
all of these qualifications and devoted, at the time of the
medical injury, sixty percent of his or her professional time
annually to the active clinical practice in his or her medical
field or specialty, or to teaching in his or her medical field or
speciality in an accredited university, there shall be a rebuttable
presumption that the witness is qualified as an expert. The
parties shall have the opportunity to impeach any witness’
qualifications as an expert. Financial records of an expert
witness are not discoverable or relevant to prove the amount of
time the expert witness spends in active practice or teaching in
his or her medical field unless good cause can be shown to the
court.

(b) Nothing contained in this section may be construed to
limit a trial court’s discretion to determine the competency or
lack of competency of a witness on a ground not specifically
enumerated in this section.

§55-7B-8. Limit on liability for noneconomic loss.

(a) In any professional liability action brought against a
health care provider pursuant to this article, the maximum
amount recoverable as compensatory damages for noneconomic
loss shall not exceed two hundred fifty thousand dollars per
occurrence, regardless of the number of plaintiffs or the number
of defendants or, in the case of wrongful death, regardless of
the number of distributees, except as provided in subsection (b)
of this section.
(b) The plaintiff may recover compensatory damages for noneconomic loss in excess of the limitation described in subsection (a) of this section, but not in excess of five hundred thousand dollars for each occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees, where the damages for noneconomic losses suffered by the plaintiff were for: (1) Wrongful death; (2) permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or (3) permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life sustaining activities.

(c) On the first of January, two thousand four, and in each year thereafter, the limitation for compensatory damages contained in subsections (a) and (b) of this section shall increase to account for inflation by an amount equal to the consumer price index published by the United States department of labor, up to fifty percent of the amounts specified in subsections (b) and (c) as a limitation of compensatory noneconomic damages.

(d) The limitations on noneconomic damages contained in subsections (a), (b), (c) and (e) of this section are not available to any defendant in an action pursuant to this article which does not have medical professional liability insurance in the amount of at least one million dollars per occurrence covering the medical injury which is the subject of the action.

(e) If subsection (a) or (b) of this section, as enacted during the regular session of the Legislature, two thousand three, or the application thereof to any person or circumstance, is found by a court of law to be unconstitutional or otherwise invalid, the maximum amount recoverable as damages for noneconomic loss in a professional liability action brought against a health
care provider under this article shall thereafter not exceed one million dollars.

§55-7B-9. Several liability.

(a) In the trial of a medical professional liability action under this article involving multiple defendants, the trier of fact shall report its findings on a form provided by the court which contains each of the possible verdicts as determined by the court. Unless otherwise agreed by all the parties to the action, the jury shall be instructed to answer special interrogatories, or the court, acting without a jury, shall make findings as to:

(1) The total amount of compensatory damages recoverable by the plaintiff;

(2) The portion of the damages that represents damages for noneconomic loss;

(3) The portion of the damages that represents damages for each category of economic loss;

(4) The percentage of fault, if any, attributable to each plaintiff; and

(5) The percentage of fault, if any, attributable to each of the defendants.

(b) In assessing percentages of fault, the trier of fact shall consider only the fault of the parties in the litigation at the time the verdict is rendered and shall not consider the fault of any other person who has settled a claim with the plaintiff arising out of the same medical injury. Provided, That, upon the creation of the patient injury compensation fund provided for in article twelve-c, chapter twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any amount of economic damages awarded by the trier of fact which the
plaintiff has been unable to collect, the trier of fact shall, in assessing percentages of fault, consider the fault of all alleged parties, including the fault of any person who has settled a claim with the plaintiff arising out of the same medical injury.

(c) If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of several, but not joint, liability against each defendant in accordance with the percentage of fault attributed to the defendant by the trier of fact.

(d) To determine the amount of judgment to be entered against each defendant, the court shall first, after adjusting the verdict as provided in section nine-a of this article, reduce the adjusted verdict by the amount of any pre-verdict settlement arising out of the same medical injury. The court shall then, with regard to each defendant, multiply the total amount of damages remaining, with interest, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum recoverable against the defendant.

(e) Upon the creation of the patient injury compensation fund provided for in article twelve-c, chapter twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has been unable to collect, the court shall, in determining the amount of judgment to be entered against each defendant, first multiply the total amount of damages, with interest, recoverable by the plaintiff by the percentage of each defendant’s fault and that amount, together with any post-judgment interest accrued, is the maximum recoverable against said defendant. Prior to the court’s entry of the final judgment order as to each defendant against whom a verdict was rendered, the court shall reduce the total jury verdict by any amounts received by a plaintiff in settlement of
the action. When any defendant’s percentage of the verdict exceeds the remaining amounts due plaintiff after the mandatory reductions, each defendant shall be liable only for the defendant’s pro rata share of the remainder of the verdict as calculated by the court from the remaining defendants to the action. The plaintiff’s total award may never exceed the jury’s verdict less any statutory or court-ordered reductions.

(f) Nothing in this section is meant to eliminate or diminish any defenses or immunities which exist as of the effective date of this section, except as expressly noted in this section.

(g) Nothing in this article is meant to preclude a health care provider from being held responsible for the portion of fault attributed by the trier of fact to any person acting as the health care provider’s agent or servant or to preclude imposition of fault otherwise imputable or attributable to the health care provider under claims of vicarious liability. A health care provider may not be held vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless the alleged agent does not maintain professional liability insurance covering the medical injury which is the subject of the action in the aggregate amount of at least one million dollars.

§55-7B-9a. Reduction in compensatory damages for economic losses for payments from collateral sources the same injury.

(a) In any action arising after the effective date of this section, a defendant who has been found liable to the plaintiff for damages for medical care, rehabilitation services, lost earnings or other economic losses may present to the court, after the trier of fact has rendered a verdict, but before entry of judgment, evidence of payments the plaintiff has received for the same injury from collateral sources.
(b) In any hearing pursuant to subsection (a) of this section, the defendant may present evidence of future payments from collateral sources if the court determines that: (1) There is a preexisting contractual or statutory obligation on the collateral source to pay the benefits; (2) the benefits, to a reasonable degree of certainty, will be paid to the plaintiff for expenses the trier of fact has determined the plaintiff will incur in the future; and (3) the amount of the future expenses is readily reducible to a sum certain.

(c) In the hearing pursuant to subsection (a) of this section, the plaintiff may present evidence of the value of payments or contributions he or she has made to secure the right to the benefits paid by the collateral source.

(d) After hearing the evidence presented by the parties, the court shall make the following findings of fact:

(1) The total amount of damages for economic loss found by the trier of fact;

(2) The total amount of damages for each category of economic loss found by the trier of fact;

(3) The total amount of allowable collateral source payments received or to be received by the plaintiff for the medical injury which was the subject of the verdict in each category of economic loss; and

(4) The total amount of any premiums or contributions paid by the plaintiff in exchange for the collateral source payments in each category of economic loss found by the trier of fact.

(e) The court shall subtract the total premiums the plaintiff was found to have paid in each category of economic loss from the total collateral source benefits the plaintiff received with
regard to that category of economic loss to arrive at the net amount of collateral source payments.

(f) The court shall then subtract the net amount of collateral source payments received or to be received by the plaintiff in each category of economic loss from the total amount of damages awarded the plaintiff by the trier of fact for that category of economic loss to arrive at the adjusted verdict.

(g) The court shall not reduce the verdict rendered by the trier of fact in any category of economic loss to reflect:

(1) Amounts paid to or on behalf of the plaintiff which the collateral source has a right to recover from the plaintiff through subrogation, lien or reimbursement;

(2) Amounts in excess of benefits actually paid or to be paid on behalf of the plaintiff by a collateral source in a category of economic loss;

(3) The proceeds of any individual disability or income replacement insurance paid for entirely by the plaintiff;

(4) The assets of the plaintiff or the members of the plaintiff’s immediate family; or

(5) A settlement between the plaintiff and another tortfeasor.

(h) After determining the amount of the adjusted verdict, the court shall enter judgment in accordance with the provisions of section nine.

§55-7B-9b. Limitations on third-party claims.

An action may not be maintained against a health care provider pursuant to this article by or on behalf of a third-party...
nonpatient for rendering or failing to render health care services
to a patient whose subsequent act is a proximate cause of injury
or death to the third party unless the health care provider
rendered or failed to render health care services in willful and
wanton or reckless disregard of a foreseeable risk of harm to
third persons. Nothing in this section shall be construed to
prevent the personal representative of a deceased patient from
maintaining a wrongful death action on behalf of such patient
pursuant to article seven of this chapter or to prevent a deriva-
tive claim for loss of consortium arising from injury or death to
the patient arising from the negligence of a health care provider
within the meaning of this article.

§55-7B-9c. Limit on liability for treatment of emergency condi-
tions for which patient is admitted to a designated trauma center; exceptions; emergency rules.

(a) In any action brought under this article for injury to or
death of a patient as a result of health care services or assistance
rendered in good faith and necessitated by an emergency
condition for which the patient enters a health care facility
designated by the office of emergency medical services as a
trauma center, including health care services or assistance
rendered in good faith by a licensed EMS agency or an em-
ployee of an licensed EMS agency, the total amount of civil
damages recoverable shall not exceed five hundred thousand
dollars, exclusive of interest computed from the date of
judgment.

(b) The limitation of liability in subsection (a) of this
section also applies to any act or omission of a health care
provider in rendering continued care or assistance in the event
that surgery is required as a result of the emergency condition
within a reasonable time after the patient’s condition is stabi-
lized.
(c) The limitation on liability provided under subsection (a) of this section does not apply to any act or omission in rendering care or assistance which: (1) Occurs after the patient’s condition is stabilized and the patient is capable of receiving medical treatment as a nonemergency patient, or (2) is unrelated to the original emergency condition.

(d) In the event that: (1) A physician provides follow-up care to a patient to whom the physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical condition arises during the course of the follow-up care that is directly related to the original emergency condition for which care or assistance was rendered pursuant to said subsection, there is rebuttable presumption that the medical condition was the result of the original emergency condition and that the limitation on liability provided by said subsection applies with respect to that medical condition.

(e) There is a rebuttable presumption that a medical condition which arises in the course of follow-up care provided by the designated trauma center health care provider who rendered good faith care or assistance for the original emergency condition is directly related to the original emergency condition where the follow-up care is provided within a reasonable time after the patient’s admission to the designated trauma center.

(f) The limitation on liability provided under subsection (a) of this section does not apply where health care or assistance for the emergency condition is rendered:

(1) In willful and wanton or reckless disregard of a risk of harm to the patient; or

(2) In clear violation of established written protocols for triage and emergency health care procedures developed by the
office of emergency medical services in accordance with subsection (e) of this section. In the event that the office of emergency medical services has not developed a written triage or emergency medical protocol by the effective date of this section, the limitation on liability provided under subsection (a) of this section does not apply where health care or assistance is rendered under this section in violation of nationally recognized standards for triage and emergency health care procedures.

(g) The office of emergency medical services shall, prior to the effective date of this section, develop a written protocol specifying recognized and accepted standards for triage and emergency health care procedures for treatment of emergency conditions necessitating admission of the patient to a designated trauma center.

(h) In its discretion, the office of emergency medical services may grant provisional trauma center status for a period of up to one year to a health care facility applying for designated trauma center status. A facility given provisional trauma center status is eligible for the limitation on liability provided in subsection (a) of this section. If, at the end of the provisional period, the facility has not been approved by the office of emergency medical services as a designated trauma center, the facility will no longer be eligible for the limitation on liability provided in subsection (a) of this section.

(i) The commissioner of the bureau for public health may grant an applicant for designated trauma center status a one-time only extension of provisional trauma center status, upon submission by the facility of a written request for extension, accompanied by a detailed explanation and plan of action to fulfill the requirements for a designated trauma center. If, at the end of the six-month period, the facility has not been approved by the office of emergency medical services as a designated trauma center, the facility will no longer have the protection of
the limitation on liability provided in subsection (a) of this section.

(j) If the office of emergency medical services determines that a health care facility no longer meets the requirements for a designated trauma center, it shall revoke the designation, at which time the limitation on liability established by subsection (a) of this section shall cease to apply to that health care facility for services or treatment rendered thereafter.

(k) The Legislature hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent with the provisions of this section, governing the criteria for designation of a facility as a trauma center or provisional trauma center and implementation of a statewide trauma/emergency care system. The Legislature therefore directs the secretary of the department of health and human resources to file, on or before the first day of July, two thousand three, emergency rules specifying the criteria for designation of a facility as a trauma center or provisional trauma center in accordance with nationally accepted and recognized standards and governing the implementation of a statewide trauma/emergency care system. The rules governing the statewide trauma/emergency care system shall include, but not be limited to:

(1) System design, organizational structure and operation, including integration with the existing emergency medical services system;

(2) Regulation of facility designation, categorization and credentialing, including the establishment and collection of reasonable fees for designation; and

(3) System accountability, including medical review and audit to assure system quality. Any medical review committees established to assure system quality shall include all levels of
care, including emergency medical service providers, and both
the review committees and the providers shall qualify for all the
rights and protections established in article three-c, chapter
thirty of this code.

§55-7B-10. Effective date; applicability of provisions.

(a) The provisions of House Bill 149, enacted during the
first extraordinary session of the Legislature, 1986, shall be
effective at the same time that the provisions of Enrolled Senate
Bill 714, enacted during the Regular session, 1986, become
effective, and the provisions of said House Bill 149 shall be
deemed to amend the provisions of Enrolled Senate Bill 714.
The provisions of this article shall not apply to injuries which
occur before the effective date of this said Enrolled Senate Bill
714.

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.

(b) The amendments to this article provided in Enrolled
Committee Substitute for House Bill No. 2122 during the
regular session of the Legislature, two thousand three, apply to
all causes of action alleging medical professional liability
which are filed on or after the first day of July, two thousand
three.
AN ACT to amend and reenact section one-b, article two, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that the joint committee on government and finance be given reports on the Colin Anderson closure and relocation of patients.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-1b. Deinstitutionalization of residents at Colin Anderson.

(a) Notwithstanding any other provisions in this code to the contrary, the secretary of the department of health and human resources shall close the Colin Anderson Center on or before the thirty-first day of December, one thousand nine hundred ninety-six: Provided, That prior to any transfer of any resident from Colin Anderson Center as a result of action taken pursuant to this section, the secretary must design and be able to implement a detailed plan providing for the ongoing appropriate care, placement and transfer of said resident in accordance with subsection (b) of this section.
(b) The plan for providing for the ongoing appropriate care, placement and transfer of each resident at Colin Anderson Center shall be designed in accordance with the criteria set forth in this subsection. Each resident must have a plan of service developed to meet his or her individual medical, physical and emotional needs. The plan of service shall be developed by a team which shall include, but not be limited to, the following persons: The resident; the immediate family of the resident, if the immediate family of the resident is willing to participate; the guardian of the resident, if the guardian is willing to participate; representatives of the Colin Anderson Center; community behavioral health service providers; and such other persons as may be appointed to the team by the secretary of the department. The plan shall not compromise the health, safety and well-being of the resident. The plan will be implemented in a timely manner. However, no plan shall be implemented until the needed services are in place, adequate staff training has been completed and an appropriate transition has been provided. Each resident, or his or her guardian, shall have access to and be informed of the written appeal process which shall be established by the department.

(c) In designing and implementing the placement plan, the secretary of the department of health and human resources shall transfer funds from the hospital services revenue account created pursuant to section fifteen-a, article one, chapter sixteen of this code and the consolidated medical service fund to a special revenue account created in the state treasury, designated the “Colin Anderson Transfer Fund” for the specific purposes of caring for residents in alternative placement settings: Provided, That transfers in excess of a total of ten million dollars in any one fiscal year shall require the prior approval of the governor and shall be reported forthwith to the joint committee on government and finance. Moneys deposited in the “Colin Anderson Transfer Fund” shall be expended directly from the fund for payments related to care of persons affected
46 by the provisions of this section and may be expended by the
47 transfer of moneys from this fund to match the state's share of
48 medicaid payments necessary to effectuate the purposes of this
49 section. The secretary shall prepare a quarterly report of all
50 transfers made from the hospital services revenue account and
51 the consolidated medical service fund explaining the specific
52 reason for the transfer. In submitting a budget to the Legislature
53 for the fiscal year following the closure of Colin Anderson, the
54 secretary shall include funding necessary for the continued care
55 of each resident in the appropriate account and the authority of
56 the secretary to transfer funds pursuant to this section shall be
57 void and of no further effect.

58 (d) All savings accruing to the state as a result of actions
59 taken pursuant to this section shall be deposited in the medical
60 services trust fund established by section two-a, article four-a,
61 chapter nine of this code.

62 (e) The department of health and human resources, the
63 bureau of employment programs, the public employees retire-
64 ment system, the public employees insurance agency, any state
65 agency or local community action agency receiving job training
66 partnership act funds and any other agency of the state involved
67 with benefits or services to the unemployed shall work individ-
68 ually with all employees whose jobs have been terminated by
69 this section in order to recommend benefits, services, training,
70 interagency employment transfer or other employment. The
71 secretary of the department of health and human resources and
72 secretaries of all other state agencies shall use best efforts to
73 employ qualified employees who were employed at the facility
74 immediately prior to its closure: Provided, That notwithstand-
75 ing any other provision of this code to the contrary, in filling
76 vacancies at other facilities or other state agencies, the secretary
77 and the directors of other agencies shall, for a period of twelve
78 months after the closure, give preference over all but existing
79 employees to qualified employees who were permanently
employed at the facility immediately prior to its closure: 

Provided, however, That qualified persons who were permanently employed at Colin Anderson immediately prior to its closure shall not supersede those employees with recall rights in other state agencies. The secretary of the department of health and human resources is directed to encourage vendors providing mental health related services for the department to hire employees who were separated from service as a result of the closure of Colin Anderson.

(f) No later than the thirtieth day of November, one thousand nine hundred ninety-five, the department shall report to the joint committee on government and finance regarding the feasibility of establishing one or more permanent intermediate care facilities for the mentally retarded which would house up to thirty residents which is constructed and/or operated by a private contractor. Prior to preparing the report, the department shall solicit requests for proposals from private contractors who are willing to construct and/or operate such a facility within this state. In formulating the feasibility report, the department shall consider the availability of all necessary equipment at the private facility, the cost to the state of maintaining patients in the private facility and the quality of care available at the privately run facility vis-a-vis the care available at a group home in this state. The department shall also consider, when making its report, the preference of a guardian of any resident at Colin Anderson Center who prefers the more restrictive placement of that resident in an intermediate care facility for the mentally retarded. The department may also consider and report on such other factors which are relevant to the feasibility of permanently maintaining, in this state, one or more intermediate care facilities for the mentally retarded which would house up to an aggregate of thirty residents statewide.

(g) In order to assist the department in completing the transfer of residents at Colin Anderson Center to some other
appropriate placement by the thirty-first day of December, one thousand nine hundred ninety-six, the health care cost review authority is authorized and required to expedite any certificate of need review of group homes or other facilities that are necessitated as a direct result of the required closure of Colin Anderson Center. For the purposes of this subsection only, the health care cost review authority may decrease any time limitations or other requirements set forth in section seven, article two-d, chapter sixteen of this code: Provided, That in no event may the health care cost review authority fail to follow any other provision of said article. The secretary of the department of health and human resources shall provide the health care cost review authority with a list of the applications that are to be expedited under this subsection.

(h) The Legislature shall establish a subcommittee of the joint committee on government and finance to monitor the placement and care of residents transferred from Colin Anderson Center as a result of the provisions of this section. The subcommittee shall monitor both state and federal moneys expended as a result of the implementation of this section. The subcommittee, upon approval by the joint committee and when the terms of the visitation are in compliance with any applicable law or regulation regarding confidentiality and privacy of the residents, may visit any facility or placement location.

CHAPTER 149

(Com. Sub. for S. B. 204 — By Senators Oliverio, Sharpe, Ross, McKenzie and Hunter)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections two and three, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to removing language which precludes incarcerated persons from being subjected to mental hygiene proceedings; and clarifying that licensed independent clinical social workers and advanced nurse practitioners with psychiatric certification may certify persons for purposes of mental health proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. INvoluntary hospitalization.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

1. (a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe that:

2. (1) The individual to be examined is addicted, as defined in section eleven, article one of this chapter; or

3. (2) The individual is mentally ill and, because of his or her mental illness, the individual is likely to cause serious harm to himself or herself or to others if allowed to remain at liberty while awaiting an examination and certification by a physician or psychologist.
Notwithstanding any language in subsection (a) of this section to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application and the application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services for the individual’s mental illness or addiction.

(b) The person making the application shall make the application under oath.

(c) Application for involuntary custody for examination may be made to the circuit court or a mental hygiene commissioner of the county in which the individual resides or of the county in which he or she may be found. When no circuit court judge or mental hygiene commissioner is available for immediate presentation of the application, the application may be made to a magistrate designated by the chief judge of the judicial circuit to accept applications and hold probable cause hearings. A designated magistrate before whom an application or matter is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings unless otherwise ordered by the chief judge of the judicial circuit.

(d) The person making the application shall give information and state facts in the application as may be required by the form provided for this purpose by the supreme court of appeals.

(e) The circuit court, mental hygiene commissioner or designated magistrate may enter an order for the individual named in the application to be detained and taken into custody.
for the purpose of holding a probable cause hearing as provided for in subsection (g) of this section for the purpose of an examination of the individual by a physician, psychologist, a licensed independent clinical social worker practicing in compliance with article thirty, chapter thirty of this code or advanced nurse practitioner with psychiatric certification practicing in compliance with article seven of said chapter: Provided, That a licensed independent clinical social worker or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, said order having found that the licensed independent clinical social worker or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene sufficient to make such determinations as are required by the provisions of this section. The examination is to be provided or arranged by a community mental health center designated by the secretary of the department of health and human resources to serve the county in which the action takes place. The order is to specify that the hearing be held forthwith and is to provide for the appointment of counsel for the individual: Provided, however, That the order may allow the hearing to be held up to twenty-four hours after the person to be examined is taken into custody rather than forthwith if the circuit court of the county in which the person is found has previously entered a standing order which establishes within that jurisdiction a program for placement of persons awaiting a hearing which assures the safety and humane treatment of persons: Provided further, That the time requirements set forth in this subsection shall only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with said time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or in the event of a medical or psychiatric emer-
emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual’s existing medical needs and provide such treatment as the individual requires, including previously prescribed medications. As used in this section, “psychiatric emergency” means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself or others. Where a physician, psychologist, licensed independent clinical social worker or advanced nurse practitioner with psychiatric certification has within the preceding seventy-two hours performed the examination required by the provisions of this subdivision, the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding the provisions of this subsection, subsection (r), section four of this article applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or addicted, or is determined to be mentally ill but not likely to cause harm to himself, herself or others, the individual shall be immediately released without the need for a probable cause hearing and absent a finding of professional negligence such examiner shall not be civilly liable for the rendering of such opinion absent a finding of professional negligence. The examiner shall immediately provide the mental hygiene commissioner, circuit court or designated magistrate before whom the matter is pending the results of the examination on the form provided for this purpose by the supreme court of appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing is to be held before a magistrate designated by the chief judge of the judicial circuit, the mental hygiene commissioner or circuit judge of the county of which the individual is a resident or where he or she was found.
If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed forty-eight hours.

The individual must be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her and to examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the rules of evidence of the supreme court of appeals, except as provided for in section twelve, article one of this chapter. At the conclusion of the hearing, the magistrate, mental hygiene commissioner or circuit court judge shall find and enter an order stating whether or not there is probable cause to believe that the individual, as a result of mental illness, is likely to cause serious harm to himself or herself or to others or is addicted.

(g) The magistrate, mental hygiene commissioner or circuit court judge at a probable cause hearing or at a final commitment hearing held pursuant to the provisions of section four of this article finds that the individual, as a result of mental illness, is likely to cause serious harm to himself, herself or others or is addicted and because of mental illness or addiction requires treatment, the magistrate, mental hygiene commissioner or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. The agreement is to be in writing and approved by the individual, his or her counsel and the magistrate, mental hygiene commissioner or circuit judge. If the magistrate, mental hygiene commissioner or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to
outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness remains likely to cause serious harm to himself, herself or others or remains addicted, the entry of an order requiring admission under involuntary hospitalization pursuant to the provisions of section three of this article may be entered. In the event a person released pursuant to a voluntary treatment agreement is unable to pay for the outpatient treatment and has no applicable insurance coverage, including, but not limited to, private insurance or medicaid, the secretary of health and human resources may transfer funds for the purpose of reimbursing community providers for services provided on an outpatient basis for individuals for whom payment for treatment is the responsibility of the department: Provided, That the department may not authorize payment of outpatient services for an individual subject to a voluntary treatment agreement in an amount in excess of the cost of involuntary hospitalization of the individual. The secretary shall establish and maintain fee schedules for outpatient treatment provided in lieu of involuntary hospitalization. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms
of a voluntary treatment agreement: Provided, however, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section may affect the appellate and habeas corpus rights of any individual subject to any commitment order.

(h) If the certifying physician or psychologist determines that a person requires involuntary hospitalization for an addiction to a substance which, due to the degree of addiction, creates a reasonable likelihood that withdrawal or detoxification from the substance of addiction will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(i) The supreme court of appeals and the secretary of the department of health and human resources shall collect data and report to the Legislature at its regular annual sessions in two
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215 thousand three and two thousand four of the effects of the
216 changes made in the mental hygiene judicial process along with
217 any recommendations which they may deem proper for further
218 revision or implementation in order to improve the administra-
219 tion and functioning of the mental hygiene system utilized in
220 this state, to serve the ends of due process and justice in
221 accordance with the rights and privileges guaranteed to all
222 citizens, to promote a more effective, humane and efficient
223 system and to promote the development of good mental health.
224 The supreme court of appeals and the secretary of the depart-
225 ment of health and human resources shall specifically develop
226 and propose a statewide system for evaluation and adjudication
227 of mental hygiene petitions which shall include payment
228 schedules and recommendations regarding funding sources.
229 Additionally, the secretary of the department of health and
230 human resources shall also immediately seek reciprocal
231 agreements with officials in contiguous states to develop
232 interstate/intergovernmental agreements to provide efficient and
233 efficacious services to out-of-state residents found in West
234 Virginia and who are in need of mental hygiene services.

§27-5-3. Admission under involuntary hospitalization for exami-
nation; hearing; release.

(a) Admission to a mental health facility for examination.
— Any individual may be admitted to a mental health facility
for examination and treatment upon entry of an order finding
probable cause as provided in section two of this article and
upon certification by a physician, psychologist, licensed
independent clinical social worker practicing in compliance
with the provisions of article thirty, chapter thirty of this code
or an advanced nurse practitioner with psychiatric certification
practicing in compliance with article seven of said chapter that
he or she has examined the individual and is of the opinion that
the individual is mentally ill and, because of such mental
illness, is likely to cause serious harm to himself or herself or
to others if not immediately restrained or is addicted. *Provided,*
That the opinions offered by an independent clinical social
worker or an advanced nurse practitioner with psychiatric
certification must be within their particular areas of expertise,
as recognized by the order of the authorizing court.

(b) *Three-day time limitation on examination.* — If said
examination does not take place within three days from the date
the individual is taken into custody, the individual shall be
released. If the examination reveals that the individual is not
mentally ill or addicted, the individual shall be released.

(c) *Three-day time limitation on certification.* — The
certification required in subsection (a) of this section shall be
valid for three days. Any individual with respect to whom such
certification has been issued may not be admitted on the basis
thereof at any time after the expiration of three days from the
date of such examination.

(d) *Findings and conclusions required for certification.* —
A certification under this section must include findings and
conclusions of the mental examination, the date, time and place
thereof and the facts upon which the conclusion that involun-
tary commitment is necessary is based.

(e) *Notice requirements.* — When an individual is admitted
to a mental health facility pursuant to the provisions of this
section, the chief medical officer thereof shall immediately give
notice of the individual’s admission to the individual’s spouse,
if any, and one of the individual’s parents or guardians or if
there be no such spouse, parents or guardians, to one of the
individual’s adult next of kin. *Provided,* That such next of kin
shall not be the applicant. Notice shall also be given to the
community mental health facility, if any, having jurisdiction in
the county of the individual’s residence. Such notices other than
to the community mental health facility shall be in writing and
shall be transmitted to such person or persons at his, her or their 
last known address by certified or registered mail, return receipt 
requested.

(f) Five-day time limitation for examination and certifica-
tion at mental health facility. — After the individual’s admis-
sion to a mental health facility, he or she may not be detained 
more than five days, excluding Sundays and holidays, unless, 
within such period, the individual is examined by a staff 
physician and such physician certifies that in his or her opinion 
the patient is mentally ill and is likely to injure himself or 
herself or others or will remain addicted if allowed to be at 
liberty.

(g) Fifteen-day time limitation for institution of final 
commitment proceedings. — If, in the opinion of the examining 
physician, the patient is mentally ill and because of such mental 
ilness is likely to injure himself or herself or others or will 
continue to abuse a substance to which he or she is addicted if 
allowed to be at liberty, the chief medical officer shall, within 
fifteen days from the date of admission, institute final commit-
ment proceedings as provided in section four of this article. If 
such proceedings are not instituted within such fifteen-day 
period, the patient shall be immediately released. After the 
request for hearing is filed, the hearing shall not be canceled on 
the basis that the individual has become a voluntary patient 
unless the mental hygiene commissioner concurs in the motion 
for cancellation of the hearing.

(h) Thirty-day time limitation for conclusion of all proceed-
ings. — If all proceedings as provided in articles three and four 
of this chapter are not completed within thirty days from the 
date of institution of such proceedings, the patient shall be 
immediately released.
AN ACT to amend and reenact section twenty-three, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to surface coal mining and reclamation; and establishing requirements for bond release.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article three, 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 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-23. Release of bond or deposits; application; notice; duties of secretary; public hearings; final maps on grade release.

(a) The permittee may file a request with the secretary for the release of a bond or deposit. The permittee shall publish an advertisement regarding the request for release in the same manner as is required of advertisements for permit applications. A copy of the advertisement shall be submitted to the secretary as part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed and a
description of the results achieved as they relate to the
permittee’s approved reclamation plan. In addition, as part of
any bond release application, the permittee shall submit copies
of letters which the permittee has sent to adjoining property
owners, local government bodies, planning agencies, sewage
and water treatment authorities or water companies in the
locality in which the surface mining operation is located,
notifying them of the permittee’s intention to seek release from
the bond. Any request for grade release shall also be accompa-
nied by final maps.

(b) Upon receipt of the application for bond release, the
secretary, within thirty days, taking into consideration existing
weather conditions, shall conduct an inspection and evaluation
of the reclamation work involved. The evaluation shall con-
sider, among other things, the degree of difficulty to complete
any remaining reclamation, whether pollution of surface and
subsurface water is occurring, the probability of continuance or
future occurrence of the pollution and the estimated cost of
abating the pollution. The secretary shall notify the permittee in
writing of his or her decision to release or not to release all or
part of the bond or deposit within sixty days from the date of
the initial publication of the advertisement if no public hearing
is requested. If a public hearing is held, the secretary’s decision
shall be issued within thirty days thereafter.

(c) If the secretary is satisfied that reclamation covered by
the bond or deposit or portion thereof has been accomplished as
required by this article, he or she may release the bond or
deposit, in whole or in part, according to the following sched-
ule:

(1) For all operations except those with an approved
variance from approximate original contour:
(A) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with the operator's approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable bonded area: 

*Provided, That a minimum bond of ten thousand dollars shall be retained after grade release;*

(B) Two years after the last augmented seeding, fertilizing, irrigation or other work to ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release of an additional twenty-five percent of the bond or collateral for the applicable bonded area: *Provided, That a minimum bond of ten thousand dollars shall be retained after the release provided for in this subdivision; and*

(C) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section thirteen of this article: *Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan: Provided, however, That the release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.*

(2) For operations with an approved variance from approximate original contour:

(A) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with the operator's approved reclamation plan, the release of fifty percent of the bond or collateral for the applicable bonded area: *Provided, That a minimum bond of ten thousand dollars shall be retained after grade release;*
(B) Two years after the last augmented seeding, fertilizing, irrigation or other work to ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release of an additional ten percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after the release provided for in this subdivision; and

(C) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section thirteen of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan and if applicable the necessary post-mining infrastructure is established and any necessary financing is completed: Provided, however, That the release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section thirteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section nine of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or minor deviation is to be retained for sound future maintenance of the operation, the portion of the
bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the secretary.

Notwithstanding the bond release scheduling provisions of subdivisions (1) and (2) of this subsection, if the operator completes the backfilling and reclamation in accordance with an approved post-mining land use plan that has been approved by the department of environmental protection and accepted by a local or regional economic development or planning agency for the county or region in which the operation is located, provisions for sound future maintenance are assured by the local or regional economic development or planning agency, and the quality of any untreated post-mining water discharge complies with applicable water quality criteria for bond release, the secretary may release the entire amount of the bond or deposit. The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern a bond release pursuant to the terms of this paragraph.

(d) If the secretary disapproves the application for release of the bond or portion thereof, the secretary shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and notifying the operator of the right to a hearing.

(e) When any application for total or partial bond release is filed with the secretary, he or she shall notify the municipality in which a surface-mining operation is located by registered or certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which is or may be adversely affected by release of the bond or the responsible officer or head of any federal, state or local governmental
agency which has jurisdiction by law or special expertise with
respect to any environmental, social or economic impact
involved in the operation, or is authorized to develop and
enforce environmental standards with respect to the operations,
has the right to file written objections to the proposed bond
release and request a hearing with the secretary within thirty
days after the last publication of the permittee’s advertisement.
If written objections are filed and a hearing requested, the
secretary shall inform all of the interested parties of the time
and place of the hearing and shall hold a public hearing in the
locality of the surface-mining operation proposed for bond
release within three weeks after the close of the public comment
period. The date, time and location of the public hearing shall
also be advertised by the secretary in a newspaper of general
circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the
applicant, or the responsibilities of the secretary pursuant to this
section, the secretary may hold an informal conference to
resolve any written objections and satisfy the hearing require-
ments of this section thereby.

(h) For the purpose of the hearing, the secretary has the
authority and is hereby empowered to administer oaths,
subpoena witnesses and written or printed materials, compel the
attendance of witnesses, or production of materials, and take
evidence, including, but not limited to, inspections of the land
affected and other surface-mining operations carried on by the
applicant in the general vicinity. A verbatim record of each
public hearing required by this section shall be made and a
transcript made available on the motion of any party or by order
of the secretary at the cost of the person requesting the tran-
script.
AN ACT to amend and reenact section seven, article one, chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appeals to the environmental quality boards generally; and limiting requirements for stays for appeals under the surface coal mining and reclamation act for unjust hardship.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL POLICY AND PURPOSE.

§22B-1-7. Appeals to boards.

(a) The provisions of this section are applicable to all appeals to the boards, with the modifications or exceptions set forth in this section.

(b) Any person authorized by statute to seek review of an order, permit or official action of the chief of air quality, the chief of water resources, the chief of waste management, the chief of mining and reclamation, the chief of oil and gas, or the secretary may appeal to the air quality board, the environmental quality board or the surface mine board, as appropriate, in accordance with this section. The person so appealing shall be
known as the appellant and the appropriate chief or the secretary shall be known as the appellee.

(c) An appeal filed with a board by a person subject to an order, permit or official action shall be perfected by filing a notice of appeal with the board within thirty days after the date upon which such order, permit or official action was received by such person as demonstrated by the date of receipt of registered or certified mail or of personal service. For parties entitled to appeal other than the person subject to such order, permit or official action, an appeal shall be perfected by filing a notice of appeal with the board within thirty days after the date upon which service was complete. For purposes of this subsection, service is complete upon tendering a copy to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge of the facility or activity involved, or to the permittee; or by tendering a copy by registered or certified mail, return receipt requested to the last known address of the person on record with the agency. Service is not incomplete by refusal to accept. Notice of appeal must be filed in a form prescribed by the rule of the board for such purpose. Persons entitled to appeal may also file a notice of appeal related to the failure or refusal of the appropriate chief or the secretary to act within a specified time on an application for a permit; such notice of appeal shall be filed within a reasonable time.

(d) The filing of the notice of appeal does not stay or suspend the effectiveness or execution of the order, permit or official action appealed from, except that the filing of a notice of appeal regarding a notice of intent to suspend, modify or revoke and reissue a permit, issued pursuant to the provisions of section five, article five, chapter twenty-two of this code, does stay the notice of intent from the date of issuance pending a final decision of the board. If it appears to the appropriate chief, the secretary or the board that an unjust hardship to the
appellant will result from the execution or implementation of a chief's or secretary's order, permit or official action pending determination of the appeal, the appropriate chief, the secretary or the board, as the case may be, may grant a stay or suspension of the order, permit or official action and fix its terms: Provided, That unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or official action for an order issued pursuant to article three, chapter twenty-two of this code. A decision shall be made on any request for a stay within five days of the date of receipt of the request for stay. The notice of appeal shall set forth the terms and conditions of the order, permit or official action complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the appropriate chief or secretary within seven days after the notice of appeal is filed with the board.

(e) Within fourteen days after receipt of a copy of the notice of appeal, the appropriate chief or the secretary as the case may be, shall prepare and certify to the board a complete record of the proceedings out of which the appeal arises including all documents and correspondence in the applicable files relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any person affected by the matter pending before the board may by petition intervene as a party appellant or appellee. In any appeal brought by a third party, the permittee or regulated entity shall be granted intervenor status as a matter of right where issuance of a permit or permit status is the subject of the appeal. The board shall hear the appeal de novo, and evidence may be offered on behalf of the appellant, appellee and by any intervenors. The board may visit the site of the activity or proposed activity which is the subject of the hearing and take such additional evidence as it considers necessary: Provided, That all parties and intervenors are given notice of the visit and are given an opportunity to accompany the board. The appeal
(f) Any such hearing shall be held within thirty days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee or any intervenors for good cause shown. The chief or the secretary, as appropriate, may be represented by counsel. If so represented they shall be represented by the attorney general or with the prior written approval of the attorney general may employ counsel who shall be a special assistant attorney general. At any such hearing the appellant and any intervenor may represent themselves or be represented by an attorney-at-law admitted to practice before the supreme court of appeals.

(g) After such hearing and consideration of all the testimony, evidence and record in the case:

(1) The environmental quality board or the air quality board, as the case may be, shall make and enter a written order affirming, modifying or vacating the order, permit or official action of the chief or secretary, or shall make and enter such order as the chief or secretary should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued; and

(2) The surface mine board shall make and enter a written order affirming the decision appealed from if the board finds that the decision was lawful and reasonable, or if the board finds that the decision was not supported by substantial evidence in the record considered as a whole, it shall make and
(h) In appeals of an order, permit or official action taken pursuant to articles six, eleven, twelve, thirteen, fifteen, chapter twenty-two of this code, the environmental quality board established in article three of this chapter, shall take into consideration, in determining its course of action in accordance with subsection (g) of this section, not only the factors which the appropriate chief or the secretary was authorized to consider in issuing an order, in granting or denying a permit, in fixing the terms and conditions of any permit, or in taking other official action, but also the economic feasibility of treating or controlling, or both, the discharge of solid waste, sewage, industrial wastes or other wastes involved.

(i) An order of a board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(j) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of this chapter. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of this chapter.
AN ACT to amend article two, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to motor carriers for hire and providing for the regulation of intrastate driving hours and duty hours of for-hire carriers which transport passengers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-6. For hire common carriers of passengers; definitions; driving time; rules.

1 (a) When used in this section, the following words and phrases have the following meanings, unless the context clearly indicates a different meaning:

4 (1) "Driving time" means all time spent at the driving controls of a commercial for-hire vehicle designed to transport passengers;
7  (2) “Eight consecutive days” means the period of eight
8  consecutive days beginning on any day at the time designated
9  by the for-hire carrier for a twenty-four-hour period;

10  (3) “On duty time” means all time from the time a driver
11  begins to work or is required to be in readiness to work until the
12  time he or she is relieved from work and all responsibility for
13  performing work; and

14  (4) “Twenty-four-hour period” means any
15  twenty-four-consecutive-hour period beginning at the time
16  designated by the for-hire carrier for the terminal from which
17  the driver is normally dispatched.

18  (b) The provisions of this section apply only to for-hire
19  carriers operated by an on board driver which is designed to
20  transport passengers exclusively on any public highway or road
21  in this state. The provisions of this section apply only to
22  intrastate commerce and do not apply where preempted by
23  federal regulation.

24  (c) Drivers of for-hire carriers may not:

25  (1) Engage in driving time of a for-hire vehicle for more
26  than ten consecutive hours without eight consecutive hours off
27  duty;

28  (2) Engage in driving time of a for-hire vehicle after the
29  driver has on duty time of fifteen hours without eight
30  consecutive hours off duty; or

31  (3) Engage in driving time of a for-hire vehicle after the
32  driver has been on duty for a total of seventy consecutive hours
33  within eight consecutive days.

34  (d) For-hire carrier companies shall keep time records, for
35  six months, indicating the time all for-hire drivers report for
duty, the time of relief from duty, hours driven, hours on duty, and hours off duty. These records shall be made available to the state police and the public service commission.

(e) The public service commission may promulgate rules necessary to implement the provisions of this section.

CHAPTER 153

(Com. Sub. for H. B. 2190 — By Delegates Michael and Warner)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article sixteen, chapter seventeen-c of said code, all relating to exceptions to motor vehicle registration; allowing certain farm use motor vehicles with valid inspection stickers limited use of highways between sunset and sunrise; and providing for the inspection of these farm use motor vehicles.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17C. Traffic Regulations and Laws of the Road.
CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

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

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

(a) Every motor vehicle, trailer, semitrailer, pole trailer and recreational vehicle when driven or moved upon a highway is subject to the registration and certificate of title provisions of this chapter except:

(1) Any vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders or nonresidents or under a temporary registration permit issued by the division as authorized under this chapter;

(2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner of the implement and which is not operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the commissioner of the division of highways from one point of the owner’s land to another part of the owner’s land, irrespective of whether or not the tracts adjoin: Provided, That the distance between the points may not exceed twenty-five miles, or for the purpose of taking it or other fixtures attached to the implement, to and from a repair shop for repairs. The exemption in this subdivision from registration and license requirements also applies to any vehicle described in
this subsection or to any farm trailer owned by the owner or lessee of the farm on which the trailer is used, when the trailer is used by the owner of the trailer for the purpose of moving farm produce and livestock from the farm along a public highway for a distance not to exceed twenty-five miles to a storage house or packing plant, when the use is a seasonal operation:

(A) The exemptions contained in this section also apply to farm machinery and tractors: Provided, That the machinery and tractors may use the highways in going from one tract of land to another tract of land regardless of whether the land is owned by the same or different persons;

(B) Any vehicle exempted under this subsection from the requirements of annual registration certificate and license plates and fees for the registration certificate and license plate may not use the highways between sunset and sunrise unless the vehicle is classified as a Class A motor vehicle with a farm use exemption under the provisions of section one, article ten of this chapter and has a valid and current inspection sticker as required by the provisions of article sixteen, chapter seventeen-c of this code and is traveling from one tract of land to another over a distance of twenty-five miles or less;

(C) Any vehicle exempted under this section from the requirements of annual registration certificate and license plates may use the highways as provided in this section whether the exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle required to be registered;

(D) Any vehicle used as an implement of husbandry exempt under this section shall have the words "farm use" affixed to both sides of the implement in ten inch letters. Any vehicle which would be subject to registration as a Class A or B vehicle if not exempted by this section shall display a farm-use
exemption certificate on the lower driver's side of the windshield:

(i) The farm-use exemption certificate shall be provided by the commissioner and shall be issued annually by the assessor of the applicant's county of residence. The assessor shall issue a farm-use exemption certificate to the applicant upon his or her determination pursuant to an examination of the property books or documentation provided by the applicant that the vehicle has been properly assessed as Class I personal property. The assessor shall charge a fee of two dollars for each certificate, which shall be retained by the assessor;

(ii) A farm-use exemption certificate shall not exempt the applicant from maintaining the security required by chapter seventeen-d of this code on any vehicle being operated on the roads or highways of this state;

(iii) No person charged with the offense of operating a vehicle without a farm-use exemption certificate, if required under this section, may be convicted of the offense if he or she produces in court, or in the office of the arresting officer, a valid farm-use exemption certificate for the vehicle in question within five days;

(3) Any vehicle which is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;

(4) Any vehicle of a type subject to registration which is owned by the government of the United States;

(5) Any wrecked or disabled vehicle towed by a licensed wrecker or dealer on the public highways of this state;

(6) The following recreational vehicles are exempt from the requirements of annual registration, license plates and fees,
unless otherwise specified by law, but are subject to the certificate of title provisions of this chapter regardless of highway use: Motorboats, all-terrain vehicles and snowmobiles; and

(7) Any special mobile equipment as defined in subsection (r), section one, article one of this chapter.

(b) Notwithstanding the provisions of subsection (a) of this section:

(1) Mobile homes or manufactured homes are exempt from the requirements of annual registration, license plates and fees;

(2) House trailers may be registered and licensed; and

(3) Factory-built homes are subject to the certificate of title provisions of this chapter.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-4. Commissioner to require periodical inspection; acceptance of certificate of inspection from another state; suspension of registration of unsafe vehicles.

(a) The commissioner of motor vehicles shall once each year require that every motor vehicle, trailer, semitrailer, and pole trailer registered in this state be inspected and that an official certificate of inspection and approval be obtained for each such vehicle.

Such inspections shall be made and such certificates obtained with respect to the mechanism, brakes, and equipment
of every such vehicle as shall be designated by the commissioner.

The commissioner is hereby authorized to make necessary rules and regulations for the administration and enforcement of this section and to designate any period or periods of time during which owners of any vehicles, subject to this section, shall display upon such vehicles certificates of inspection and approval or shall produce the same upon demand of any officer or employee of the department designated by the commissioner or any police or peace officer when authorized by the commissioner.

(b) The commissioner may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to this chapter and may extend the time within which a certificate shall be obtained by the resident owner of a vehicle which was not in this state during the time an inspection was required.

(c) The commissioner may suspend the registration of any vehicle which he determines is in such unsafe condition as to constitute a menace to safety or which after notice and demand is not equipped as required in this chapter or for which a required certificate has not been obtained.

(d) If requested by the owner thereof, the commissioner shall also cause to be inspected a Class A, farm use, motor vehicle exempt from annual registration certificate and licensing as provided in section two, article three, chapter seventeen-a of this code. If the Class A farm use motor vehicle passes the inspection, the commissioner shall cause to be issued a certificate of inspection for that vehicle.
AN ACT to amend and reenact sections fourteen and twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to original and renewal of registration plates; authorizing the issuance of special motor vehicle license plates for members of the Nemesis Shrine, volunteers and employees of the American Red Cross, individuals who have received the Combat Infantry Badge or Combat Medic Badge, members of the Knights of Columbus, former members of the Legislature, democratic state or county executive committee members, female veterans, West Liberty State College, Harley Owners and Knights of Columbus; prescribing fees; providing that special registration plates may only be issued to those nonprofit charitable and educational organizations authorized by prior law; prohibiting the commissioner of motor vehicles from approving or authorizing additional nonprofit charitable and educational organizations to design or market special registration plates; eliminating the requirement that a certified firefighter produce annual evidence of certification; requiring the West Virginia university fire service extension to notify the division of motor vehicles when a firefighter loses his or her certification; making technical corrections; removing the restriction on the number of plates a volunteer firefighter may obtain and increasing the cost of those plates; prohibiting the division of motor vehicles from beginning the design or production of any license plate based on
membership or affiliation with a private organization until a minimum number of persons have applied and paid for the plate; procedure where minimum number not met by private organization; and providing that the division of protective services may have up to two Class A license plates.

Be it enacted by the Legislature of West Virginia:

That sections fourteen and 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, all 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.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

§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 commissioner. 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 subdivision, 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 commissioner 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 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.

(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 denote that those individuals who are granted this special registration plate are recipients of the purple heart. All letterings shall be in purple where practical.

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

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

(D) A recipient of the purple heart medal may obtain a second purple heart medal 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.

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

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

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise 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 authorized under prior enactment of this subdivision as follows:
(A) Approved nonprofit charitable and educational organizations previously authorized under the prior enactment of this subdivision 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 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.

(D) The commissioner may not approve or authorize any additional nonprofit charitable and educational organizations to design or market 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 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. The firefighter certification department, section or division of the West Virginia university fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subsection.

(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 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.

(12) The division may issue special scenic registration plates as follows:
(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words "Wild Wonderful" as a slogan.

(B) 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 into a special revolving fund to be used in the administration of this chapter.

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

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

(B) The division may charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. 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 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, remarries 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 division 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, bronze star or silver 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 firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia 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 subdivision shall be accompanied by an affidavit signed by the applicant’s fire chief, stating that the applicant is a volunteer firefighter 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.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special one-time initial application fee of ten dollars, 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.

(23) 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.

(24) 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 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.

(27) The division may issue special registration plates to members of the Nemesis Shrine 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. Persons desiring the special registration plate shall offer sufficient proof of membership in Nemesis Shrine.

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

(28) The division may issue volunteers and employees of the American Red Cross special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified volunteer or employee of the American Red Cross a specialized registration plate which bears recognition of the applicant as a volunteer or employee of the American Red Cross 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) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.
(29) The division shall issue special registration plates to individuals who have received either the Combat Infantry Badge or the Combat Medic Badge as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof that they have received either the Combat Infantry Badge or the Combat Medic Badge.

(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.

(30) The division may issue special registration plates to members of the Knights of Columbus as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Columbus.

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

(31) The division may issue special registration plates to former members of the Legislature as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of former service as an elected or appointed member of the West Virginia House of Delegates or the West Virginia Senate.

(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. The design of the plate shall indicate total years of service in the Legislature.

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

(32) Democratic state or county executive committee member special registration plates:

(A) The division shall design and issue special registration plates for use by democratic state or county executive committee members. The design of the plates shall include an insignia of a donkey and shall differentiate by wording on the plate between state and county executive committee members.

(B) An annual fee of twenty-five dollars shall be charged for each democratic state or county executive committee member special registration plate.
member registration plate in addition to all other fees required by this chapter. All annual fees collected for each special plate issued under this subdivision 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.

(D) The division shall not begin production of a plate authorized under the provisions of this subdivision until the division receives at least one hundred completed applications from the state or county executive committee members, including all fees required pursuant to this subdivision.

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

(A) Upon appropriate application, there shall be issued to any female 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 commissioner of the division of motor vehicles to designate the recipient as a woman veteran.

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

(34) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with West Liberty State College to any resident owner of a motor vehicle. Resident owners may apply for the special license plate for any number of Class A vehicles titled in the name of the applicant. The special registration plates shall be designed by the commissioner. Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of fifteen dollars, which is in addition to any other registration or license fee required by this chapter. 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. 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.

(35) The division may issue special registration plates to members of the Harley Owners Group 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. Persons desiring the special registration plate shall offer sufficient proof of membership in the Harley Owners Group.
(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) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(36) The division may issue special registration plates for persons retired from any branch of the armed services of the United States as follows:

(A) Upon appropriate application, there shall be issued to any person who has retired after service in 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 commissioner of the division of motor vehicles to designate the recipient as retired from the armed services of the United States.

(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 a 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 registrants from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouses retired military license plate until the surviving dies, remarries or does not renew the license plate.
(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. The commissioner may not begin the design or production of any license plates for which eligibility is based on membership or affiliation with a particular private organization until at least one hundred persons complete an application and deposit a check to cover the first year's basic registration, one time design and manufacturing costs and to cover the first year additional annual fee. If the organization fails to submit the required number of applications with attached checks within six months of the effective date of the authorizing legislation, the plate will not be produced and will require legislative reauthorization: Provided, That the six month requirement in this subsection does not apply to subdivisions (1) through (26) inclusive, subsection (c) of this section.

(e)(1) Nothing in this section requires 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,
(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 registration 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.

§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 vehicles 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, not to exceed two vehicles operated by the division of
protective services 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. The commissioner is authorized to issue a maximum of two Class A plates to the division of protective services for state owned vehicles used by the division of protective services in fulfilling its mission.

(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 is 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 155

(S. B. 388 — By Senator Ross)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
That section one, article three-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections two and three of said article be amended and reenacted, all to read as follows:

ARTICLE 3A. VEHICLE COMPLIANCE WITH FEDERAL CLEAN AIR STANDARDS AND VEHICLE SAFETY.

§17A-3A-2. Consumer disclosure.

§17A-3A-2. Consumer disclosure.

1 Before a motor vehicle not originally manufactured in accordance with the laws and regulations of the United States Clean Air Act and the Motor Vehicle Safety Act can be sold to a consumer in this state, the seller must provide the purchaser with full written disclosure of all modifications performed to the vehicle. This disclosure consists of a description phrased in terms reasonably understandable to a consumer with no specialized technical training, accompanied by a copy of the technical submissions made to the environmental protection agency and department of transportation in order to obtain certification of compliance. Failure to make this disclosure renders the sale voidable.


(a) Before any imported vehicle which has not previously been titled or registered in the United States may be titled in this state, the applicant must submit: (1) A manufacturer’s certificate of origin issued by the actual vehicle manufacturer together with a notarized translation thereof; or (2) the documents constituting valid proof of ownership by an individual owner or exporter and evidencing a change of such ownership to the applicant, together with a notarized translation of any document; or (3) with regard to vehicles imported from countries which cancel the vehicle registration and title for
export, the documents assigned to such vehicle after the
registration and title have been canceled, together with a
notarized translation thereof, and proof satisfactory to the
division that the motor vehicle complies with the United States
Clean Air Act and the Motor Vehicle Safety Act.

(b) In the event that the documents submitted as required
by subsection (a) of this section do not name as owner the
current applicant for a certificate of title, the applicant must
also submit reliable proof of a chain of title. For those countries
which utilize documents of registration rather than a certificate
of title, proof of a chain of title for purposes of this subsection
shall be accomplished by presenting the change of ownership
certificate referred to in subsection (a) of this section.

CHAPTER 156

(H. B. 2797 — By Delegates Warner and Butcher)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-a, article six, chapter
seventeen-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact section
eight, article one-d, chapter seventeen-b of said code, all relating
to advisory boards to the commissioner of motor vehicles;
authorizing the division of motor vehicles to reimburse members
of the motor vehicle dealer advisory board and members of the
motorcycle safety awareness board for travel and other reasonable
and necessary expenses.

Be it enacted by the Legislature of West Virginia:
That section eighteen-a, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section eight, article one-d, chapter seventeen-b of said code be amended and reenacted, all to read as follows:

Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
17B. Motor Vehicle Driver’s Licenses.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-18a. Motor vehicle dealers advisory board.

(a) There is continued a motor vehicle dealers advisory board to assist and to advise the commissioner on the administration of laws regulating the motor vehicle industry; to work with the commissioner in developing new laws, rules or policies regarding the motor vehicle industry; and to give the commissioner any further advice and assistance as he or she may from time to time require.

The board shall consist of nine members and the commissioner of motor vehicles, or his or her representative, who shall be an ex-officio member. Two members shall represent new motor vehicle dealers, with one of these two members representing dealers that sell less than one hundred new vehicles per year; one member shall represent used motor vehicle dealers; one member shall represent wrecker/dismantler/rebuilders; one member shall represent automobile auctions; one member shall represent recreational dealers; one member shall represent the
West Virginia attorney general's office; and two members shall represent consumers. All of the representatives, except the attorney general representative who shall be designated by the attorney general, shall be appointed by the governor with the advice and consent of the Senate, with no more than five representatives being from the same political party.

The terms of the board members shall be for three years. The attorney general representative shall serve continuously.

The board shall meet at least four times annually and at the call of the commissioner.

(b) The commissioner shall consult with the board before he or she takes any disciplinary action against a dealer, an automobile auction or a license service to revoke, or suspend a license, place the licensee on probation or levy a civil penalty, unless the commissioner determines that the consultation would endanger a criminal investigation.

(c) The commissioner may consult with the board by mail, by facsimile, by telephone or at a meeting of the board, but the commissioner is not bound by the recommendations of the board. The commissioner shall give members seven days from the date of a mailing or other notification to respond to proposed actions, except in those instances when the commissioner determines that the delay in acting creates a serious danger to the public’s health or safety or would unduly compromise the effectiveness of the action.

(d) No action taken by the commissioner is subject to challenge or rendered invalid on account of his or her failure to consult with the board.

(e) The appointed members shall serve without compensation, however, members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged
in legitimate board activities in accordance with the guidelines
of the travel management office of the department of adminis-
tration or its successor agency.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 1D. MOTORCYCLE SAFETY EDUCATION.

§17B-1D-8. Motorcycle safety awareness board continued.

(a) There is continued an eight member motorcycle safety
awareness board consisting of four ex-officio members and four
nongovernmental members. The ex-officio members are the
motorcycle safety program coordinator, as appointed under
section two of this article, or a designee; the superintendent of
the state police or a designee; the commissioner of the bureau
of public health or a designee; and the commissioner of the
division of tourism or a designee. The four nongovernmental
members are a licensed motorcycle operator; a member of
American bikers aimed toward education (ABATE) or the West
Virginia confederation of motorcycle clubs; a licensed insur-
ance agent who has a valid motorcycle endorsement who will
be appointed for an initial term of two years; and, an owner of
a motorcycle dealership or supplier of aftermarket nonfran-
chised motorcycle supplies who will be appointed for an initial
term of three years. The motorcycle safety program coordinator
shall serve as chair of the board. The nongovernmental mem-
ers shall be appointed by the governor with the advice and
consent of the Senate. The terms are for three years, except for
the initial appointments which will be staggered according to
the provisions of this article. Members may be reappointed to
the board. Any nongovernmental member who is absent without
good cause from three consecutive meetings of the board may
be removed from the board and a new member appointed by the
governor.
(b) The board may recommend to the superintendent of the state police types and makes of protective helmets, eye protection devices and equipment offered for sale, purchased or used by any person. The board may make recommendations to the commissioner of motor vehicles regarding the use of the moneys in the motorcycle safety fund created under section seven of this article. The board shall report annually to the Legislature on or before the first day of each regular legislative session.

(c) The appointed members shall serve without compensation, however, members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in legitimate board activities in accordance with the guidelines of the travel management office of the department of administration or successor agency.

CHAPTER 157

(S. B. 342 — By Senator Bailey)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance and renewals of driver’s licenses; and limiting the time a driver’s license may be issued to a person who is not a citizen of the United States to the time the person is authorized to be in the United States.

Be it enacted by the Legislature of West Virginia:
That section twelve, article two, chapter seventeen-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. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

(a) Except as provided in subsection (e) of this section, every driver's license shall expire five years from the date of its issuance.

(b) (1) Every driver's license 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 the following subdivisions and in subsection (e) of this section, no driver's license 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.

(2) Every driver's license 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, except as provided in section three-a of this article.

(3) The driver's license of any person in the armed forces is extended for a period of six months from the date the person is separated under honorable circumstances from active duty in the armed forces.

(4) The commissioner may change the date that a driver's license expires from the last day of the month in those years specified in subdivisions (1) and (2) of this subsection to the
day of the month in which the applicant’s birthday occurs in those years. If the commissioner changes the expiration date, the change may only affect new licenses and renewed licenses.

(c) A person who allows his or her driver’s license to expire may apply to the division for renewal of the license. Application shall be made upon a form furnished by the division and shall be accompanied by payment of the fee required by section eight of this article plus an additional fee of five dollars. The commissioner shall determine whether the person qualifies for a renewed license and may, in the commissioner’s discretion, renew any expired license without examination of the applicant.

(d) Each renewal of a driver’s license shall contain a new color photograph of the licensee. By first class mail to the address last known to the division, the commissioner shall notify each person who holds a valid driver’s license of the expiration date of the license. The notice shall be mailed at least thirty days prior to the expiration date of the license and shall include a renewal application form.

(e) A license issued to a person who is not a citizen of the United States may only be issued for the time the person is legally authorized to be in the United States, not to exceed five years. If the time the person is authorized to be in the United States is extended, the commissioner may renew the license for the time extended, not to exceed five years.

CHAPTER 158

(Com. Sub. for S. B. 162 — By Senator Rowe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section fourteen, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; and expunging motor vehicle license information for nineteen-year-olds when denials, suspensions or revocations of their licenses are due to school attendance.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two, chapter seventeen-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. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-14. Records and indices to be kept by the division.

1 The division shall file every application for a license received by it and shall maintain suitable indices containing, in alphabetical order:

4 (1) All applications denied and on each a notation of the reasons for such denial;

6 (2) All applications granted; and

7 (3) The name of every licensee whose license has been suspended or revoked by the division and after each name a notation of the reasons for the action: Provided, That upon application for a license by an individual eighteen years of age or older, any record of a previous license denial, suspension or revocation related solely to the school attendance of the applicant may not be released to any third party.

14 The division shall also file all abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each
licensee showing the convictions of such licensee shall be readily ascertainable and available for the consideration of the division upon any application for renewal of license and at other suitable times.

CHAPTER 159

(Com. Sub. for H. B. 2814 — By Delegates Butcher, Wright, Hrutkay, Ferrell and Warner)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nine, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to moving traffic regulations generally and increasing the penalty for failure of a driver to yield the right-of-way.

Be it enacted by the Legislature of West Virginia:

That section six, article nine, 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 9. RIGHT-OF-WAY.

§17C-9-6. Misdemeanor to violate provisions of article; penalty.

Any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than three
CHAPTER 160

(H. B. 2763 — By Delegates Warner, Shelton, laquinta and Renner)

[Passed February 24, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to auxiliary lighting on motor vehicles; allowing roof-mounted light bar lighting devices on motor vehicles when used off road; and requiring that the devices be turned off and covered when the motor vehicle is operated on a road or highway.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article fifteen, 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 15. EQUIPMENT.

§17C-15-17. Spot lamps and other auxiliary lamps.

(a) Spot lamps. — Any motor vehicle except a public utility company maintenance vehicle may be equipped with not more than one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle. A public
utility company maintenance vehicle may be equipped with more than one spot lamp but all lighted spot lamps shall be aimed and used in conformity to the requirements of this subsection.

(b) *Fog lamps.* — Any motor vehicle may be equipped with not more than two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes.

(c) *Auxiliary passing lamp.* — Any motor vehicle may be equipped with not more than one auxiliary passing lamp mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands and every auxiliary passing lamp shall meet the requirements and limitations set forth in this article.

(d) *Auxiliary driving lamp.* — Any motor vehicle may be equipped with not more than one auxiliary driving lamp mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands and every such auxiliary driving lamp shall meet the requirements and limitations set forth in this article.

(e) *Roof-mounted off-road light bar lighting device.* — Any motor vehicle may be equipped with a roof-mounted off-road light bar lighting device comprised of multiple lamps: *Provided,* That whenever the vehicle is operated or driven upon any road or highway of this state, the roof-mounted off-road light bar lighting device shall be turned off and covered with an opaque covering that prohibits light from being emitted while
41 the vehicle is being operated on any road or highway of this state.

CHAPTER 161

(S. B. 95 — By Senators Ross, Love and Sharpe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the size, weight and load of vehicles; increasing the maximum length and width of certain vehicles; increasing the maximum length of the combination of certain vehicles coupled together; allowing commissioner to increase combination vehicle length; and mandating that the commissioner annually publish a map designating state highways and various maximum vehicle lengths pertinent thereto.

Be it enacted by the Legislature of West Virginia:

That sections two, three and four, article seventeen, 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 17. SIZE, WEIGHT AND LOAD.

§17C-17-2. Width of vehicles.
§17C-17-3. Projecting loads on passenger vehicles.
§17C-17-4. Height and length of vehicles and loads.

§17C-17-2. Width of vehicles.
(a) The total outside width, exclusive of safety equipment authorized by the United States department of transportation, of any vehicle or the load thereon may not exceed ninety-six inches except as otherwise provided in this article: Provided, that any vehicle with a total outside width of one hundred two inches, exclusive of safety equipment authorized by the United States department of transportation, may be operated on any highway within the state designated by the United States department of transportation or the commissioner of the department of highways or on any highway having a minimum lane width of ten feet.

(b) Motor homes, travel trailers, truck campers, motor buses and trackless trolley coaches with a total outside width of one hundred two inches, excluding safety equipment authorized by the United States department of transportation, may operate on any highway.

§17C-17-3. Projecting loads on passenger vehicles.

(a) No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders of the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(b) A motor home, travel trailer or truck camper may exceed the maximum width prescribed section two of this article, if the excess width is attributable to an appurtenance that does not exceed more than six inches beyond the body of the vehicle.

§17C-17-4. Height and length of vehicles and loads.

(a) A vehicle, including any load thereon, may not exceed a height of thirteen feet six inches, but the owner or owners of such vehicles shall be responsible for damage to any bridge or
highway structure and to municipalities for any damage to
traffic control devices or other highway structures where such
bridges, devices or structures have a vehicle clearance of less
than thirteen feet six inches.

(b) A motor vehicle, including any load thereon, may not
exceed a length of forty feet extreme overall dimension,
inclusive of front and rear bumpers, except that a motor home
may not exceed a length of forty-five feet, exclusive of front
and rear bumpers.

(c) Except as hereinafter provided in this subsection or in
subsection (d) of this section, a combination of vehicles coupled
together may not consist of more than two units and no combi-
nation of vehicles including any load thereon shall have an
overall length, inclusive of front and rear bumpers, in excess of
fifty-five feet except as provided in section eleven-b of this
article and except as otherwise provided in respect to the use of
a pole trailer as authorized in section five of this article. The
limitation that a combination of vehicles coupled together may
not consist of more than two units may not apply to: (1) A
combination of vehicles coupled together by a saddle-mount
device used to transport motor vehicles in a drive-away service
when no more than three saddle mounts are used, if equipment
used in the combination meets the requirements of the safety
regulations of the United States department of transportation
and may not exceed an overall length of more than seventy-five
feet; or (2) a combination of vehicles coupled together, one of
which is a travel trailer or folding camping trailer having an
overall length, exclusive of front and rear bumpers, not exceed-
ing sixty-five feet.

(d) A combination of two vehicles coupled together, one of
which is a motor home, or a combination of vehicles coupled
together, one of which is a travel trailer or folding camping
trailer, may not exceed an overall length, exclusive of front and
rear bumpers of sixty-five feet.

(e) Notwithstanding the provisions of subsections (a), (b),
(c) and (d) of this section, the commissioner may designate,
upon his own motion or upon the petition of an interested party,
a combination vehicle length not to exceed seventy feet.

(f) The length limitations for truck tractor-semitrailer
combinations and truck tractor-semitrailer-trailer combinations
operating on the national system of interstate and defense
highways and those classes of qualifying federal-aid primary
system highways so designated by the United States secretary
of transportation and those highways providing reasonable
access to and from terminals, facilities for food, fuel, repairs
and rest and points of loading and unloading for household
goods carriers from such highways and further, as to other
highways so designated by the West Virginia commissioner of
highways, shall be as follows: The maximum length of a
semitrailer unit operating in a truck tractor-semitrailer combina-
tion shall not exceed forty-eight feet in length except where
semitrailers have an axle spacing of not more than thirty-seven
feet between the rear axle of the truck tractor and the front axle
of the semitrailer, such semitrailer shall be allowed to be not
more than fifty-three feet in length and the maximum length of
any semitrailer or trailer operating in a truck tractor-semitrailer-
trailer combination may not exceed twenty-eight feet in length
and in no event shall any combinations exceed three units,
including the truck tractor: Provided, That nothing herein
contained shall impose an overall length limitation as to
commercial motor vehicles operating in truck trac-
tor-semitrailer or truck tractor-semitrailer-trailer combinations.

(g) The commissioner shall publish annually an official
map designating the highways of the state and the various
maximum vehicle lengths relating thereto.
AN ACT to amend and reenact section thirty-one, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eliminating the requirement of a one hundred dollar bond on out-of-state defendants in automobile accident cases.

_Be it enacted by the Legislature of West Virginia:_

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

**ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.**

§56-3-31. 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.

1 (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
10 nonresident defendant cannot be effected through the secretary
11 of state, as provided by this section, for the purpose only of
12 service of process, the nonresident motorist shall be considered
to have appointed as his or her agent or attorney-in-fact any
14 insurance company which has a contract of automobile or
15 liability insurance with the nonresident defendant.

16 (b) For purposes of service of process as provided in this
17 section, every insurance company shall be considered the agent
or attorney-in-fact of every nonresident motorist insured by that
19 company if the insured nonresident motorist is involved in any
20 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
23 section, the insurance company may, within thirty days, file an
24 answer or other pleading or take any action allowed by law on
25 behalf of the defendant.

26 (c) A nonresident operating a motor vehicle in this state,
either personally or through an agent, is considered to acknowl-
edge 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.

40 Any action or proceeding may be instituted, continued or
41 maintained on behalf of or against the administrator,
42 administratrix, executor or executrix of any nonresident who
(d) 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.

(e) 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.
(f) 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 (d) 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.

(g) 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 context, 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 others, 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-propelled 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 subsequent to an accident or collision and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary 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.

(h) 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.
AN ACT to amend and reenact section eleven, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal fire chiefs; and authorizing retention of rank attained during service as fire chief when tenure as fire chief ends.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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. FIREFIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-11. Qualifications for appointment or promotion to positions in paid fire departments to be ascertained by examination; provisions exclusive as to appointments, etc.; rights of certain chiefs; "appointing officer" defined.

1 (a) All appointments and promotions to all positions in all paid fire departments shall be made only according to qualifica-
3 tions and fitness to be ascertained by examinations, which, so
4 far as practicable, shall be competitive, as hereinafter provided.

(b) No individual may be appointed, promoted, reinstated,
6 removed, discharged, suspended or reduced in rank or pay as a
7 paid member of any paid fire department, regardless of rank or
8 position, in any manner or by any means other than those
9 prescribed in this article: Provided, That in all municipalities in
10 which the office of fire chief of a paid fire department was not
11 covered by the provisions of former article six-a of this chapter
12 on the first day of January, one thousand nine hundred forty-
13 nine, the office in the municipality shall be excepted from the
14 civil service provisions of article fifteen of this chapter, until
15 the time the governing body of the municipality shall, by
16 appropriate ordinance or resolution adopted by a majority of its
17 members, elect to place the office of fire chief under the civil
18 service provisions of this article.

(c) Until the office of fire chief is placed under the civil
19 service provisions of this article by the governing body, the
20 member of any paid fire department now occupying such office
21 or hereafter appointed to such office shall in all cases of
22 removal, except for removal for good cause, retain the status he
23 or she held in the paid fire department at the time of his or her
24 appointment to the office of fire chief or which he or she
25 attained during his or her term as fire chief.

(d) The term “appointing officer” as used in this article
27 shall mean the municipal officer in whom the power of appoint-
28 ment of members of a paid fire department is vested by charter
29 provision or ordinance of the municipality.
AN ACT to amend article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen-a, relating to paid municipal fire departments; providing that a paid municipal fire department with an apprentice program for firefighters must terminate an apprentice after three unsuccessful attempts to pass the final apprenticeship examination; and setting forth effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.


1 Any paid municipal fire department may have an apprenticeship program. If a paid municipal fire department has an apprenticeship program and the program has a final apprentice-
ship examination, an apprentice shall be terminated from employment after three unsuccessful attempts to pass the final apprenticeship examination. The provisions of this section apply to apprentices hired after the last day of March, two thousand three.

CHAPTER 165

(H. B. 2878 — By Delegates Webster, Brown, Walters, Amores, Caputo and Smirl)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-a, relating to civil service for municipal firefighters generally; allowing certain municipalities providing advanced life support ambulance services to examine, train and employ firefighter paramedics; and requiring firefighter paramedics to maintain a paramedic license and complete all required fire service training.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

(a) A municipality with a firefighter’s civil service commission providing an advanced life support ambulance service licensed by the state health department may also administer a special examination for the position of firefighter paramedic.

(b) An applicant for the position of firefighter paramedic shall: (1) Be a certified paramedic; (2) successfully pass the firefighter paramedic examination; and (3) meet the requirements of section seventeen of this article.

(c) Any person employed as a firefighter paramedic under the provisions of this section shall: (1) Maintain paramedic certification; (2) complete all required fire service training; and (3) comply with all other provisions of this article applicable to the continued employment of firefighters.

(d) Every position of firefighter paramedic, unless filled by promotion, reinstatement, reduction or a current firefighter, shall be filled only in the manner specified in section twenty of this article.

CHAPTER 166

(Com. Sub. for H. B. 2972 — By Mr. Speaker, Mr. Kiss, and Delegates Browning and Hall)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

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 policemen’s and firemen’s pension and relief funds; funding options; providing that a municipality may elect normal cost funding
following election to fund at one hundred seven percent of prior
years funding; and conditions upon the election.

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 EMPLOY­
EES OF WATERWORKS SYSTEM, SEWERAGE SYS­
TEM OR COMBINED WATERWORKS AND SEWER­
AGE SYSTEM.


1 The board of trustees for each pension and relief fund shall
2 have regularly scheduled actuarial valuation reports prepared by
3 a qualified actuary. All of the following standards must be met:

4 (a) An actuarial valuation report shall be prepared at least
5 once every three years commencing with the later of: (1) The
6 first day of July, one thousand nine hundred eighty-three; or (2)
7 three years following the most recently prepared actuarial
8 valuation report: Provided, That this most recently prepared
9 actuarial valuation report meets all of the standards of this
10 section.

11 (b) The actuarial valuation report shall consist of, but is not
12 limited to, the following disclosures: (1) The financial objective
13 of the fund and how the objective is to be attained; (2) the
14 progress being made toward realization of the financial objec­
15 tive; (3) recent changes in the nature of the fund, benefits
16 provided, or actuarial assumptions or methods; (4) the fre­
17 quency of actuarial valuation reports and the date of the most
18 recent actuarial valuation report; (5) the method used to value
19 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 reason-
ableness; (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 suffi-
cient 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 contribu-
tion 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 consecu-
tive 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: And provided further, That any municipality which elected the alternative funding method under this section and which has an unfunded actuarial liability of not more than twenty-five percent of fund assets, may, beginning the first day of September, two thousand three, elect to revert back to the standard funding method, which is to contribute to the fund annually an amount which is not less than 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, beginning from the first day of July, one thousand nine hundred ninety-one.

(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
88 actuary shall be designated a fiduciary and shall discharge his
89 or her duties with respect to a fund solely in the interest of the
90 members and member’s beneficiaries of that fund. In order for
91 the standards of this section to be met, the qualified actuary
92 shall certify that the actuarial valuation report is complete and
93 accurate and that in his or her opinion the technique and
94 assumptions used are reasonable and meet the requirements of
95 this section of this article.

96 (e) The cost of the preparation of the actuarial valuation
97 report shall be paid by the fund.

98 (f) Notwithstanding any other provision of this section, for
99 the fiscal year ending the thirtieth day of June, one thousand
100 nine hundred ninety-one, the municipality may calculate its
101 annual contribution based upon the provisions of the supple-
102 mental benefit provided for in this article enacted during the
103 one thousand nine hundred ninety-one regular session of the
104 Legislature.

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CHAPTER 167

(S. B. 634 — By Senators Fanning, Bowman,
Helmick, Love, Ross and White)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter
twenty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact section five,
article two of said chapter, all relating to defining crow as a
gamebird; and setting hunting season for crows.
Be it enacted by the Legislature of West Virginia:

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

Article
1. Organization and Administration.
2. Wildlife Resources.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

"Agency" means any branch, department or unit of the state government, however designated or constituted.

"Alien" means any person not a citizen of the United States.

"Bag limit" or "creel limit" means the maximum number of wildlife which may be taken, caught, killed or possessed by any person.

"Bona fide resident, tenant or lessee" means a person who permanently resides on the land.

"Citizen" means any native born citizen of the United States and foreign born persons who have procured their final naturalization papers.

"Closed season" means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

"Commission" means the natural resources commission.
"Commissioner" means a member of the advisory commission of the natural resources commission.

"Director" means the director of the division of natural resources.

"Fishing" or "to fish" means the taking, by any means, of fish, minnows, frogs or other amphibians, aquatic turtles and other forms of aquatic life used as fish bait.

"Fur-bearing animals" include: (a) The mink; (b) the weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g) the otter; (h) the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the raccoon; and (l) the fisher.

"Game" means game animals, game birds and game fish as herein defined.

"Game animals" include: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d) the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases - red, gray, black or albino; (e) the raccoon; (f) the black bear; and (g) the wild boar.

"Game birds" include: (a) The anatidae, commonly known as swan, geese, brants and river and sea ducks; (b) the rallidae, commonly known as rails, sora, coots, mudhens and gallinales; (c) the limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellow legs and curlews; (d) the galli, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species); (e) the columbidae, commonly known as doves; (f) the icteridae, commonly known as blackbirds, redwings and grackle; and (g) the corvidae, commonly known as crows.
“Game fish” include: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock bass; (n) white bass; (o) white crappie; (p) black crappie; (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t) sauger; and (u) all game fish hybrids.

“Hunt” means to pursue, chase, catch or take any wild birds or wild animals.

“Lands” means land, waters and all other appurtenances connected therewith.

“Migratory birds” means any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the “Migratory Bird Treaty Act” for the protection of migratory birds and game mammals concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of February, one thousand nine hundred thirty-six.

“Nonresident” means any person who is a citizen of the United States and who has not been a domiciled resident of the state of West Virginia for a period of thirty consecutive days immediately prior to the date of his or her application for a license or permit except any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition.

“Open season” means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner and shall include both the first and the last day of the season or period designated by the director.
“Person”, except as otherwise defined elsewhere in this chapter, means the plural “persons” and shall include individuals, partnerships, corporations or other legal entities.

“Preserve” means all duly licensed private game farmlands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons.

“Protected birds” means all wild birds not included within the definition of “game birds” and “unprotected birds”.

“Resident” means any person who is a citizen of the United States and who has been a domiciled resident of the state of West Virginia for a period of thirty consecutive days or more immediately prior to the date of his or her application for license or permit; Provided, That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his or her entry into such service and any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition, shall be considered a resident under the provisions of this chapter.

“Roadside menagerie” means any place of business, other than commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.

“Take” means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so.

“Unprotected birds” shall include: (a) The English sparrow; (b) the European starling; and (c) the cowbird.
“Wild animals” means all mammals native to the state of West Virginia occurring either in a natural state or in captivity, except house mice or rats.

“Wild birds” shall include all birds other than: (a) Domestic poultry - chickens, ducks, geese, guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and parakeets; and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild birds, either: (a) Those occurring in a natural state in West Virginia; or (b) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.

“Wildlife” means wild birds, wild animals, game and fur-bearing animals, fish (including minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive.

“Wildlife refuge” means any land set aside by action of the director as an inviolate refuge or sanctuary for the protection of designated forms of wildlife.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

Except as authorized by the director, it is unlawful at any time for any person to:

1. Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

2. Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den
or place of refuge except as may be authorized by rules promulgated by the director or by law;

(3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it may not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights. No person is guilty of a violation of this subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as authorized by rules promulgated by the director;
(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state, unless he or she has in his or her possession a permit in writing issued to him or her by the director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Have in his or her possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from the first day of July to the thirtieth day of September, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are permissible only from eight-thirty
o'clock postmeridian to five o'clock antemeridian, eastern
standard time: Provided, That the time periods for carrying
unloaded and uncased firearms are extended for one hour after
the postmeridian times and one hour before the antemeridian
times established above if a hunter is preparing to or in the
process of transporting or transferring the firearms to or from
a hunting site, campsite, home or other place of abode;

(10) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement by which wildlife may be taken
after the hour of five o'clock antemeridian on Sunday on private
land without the written consent of the landowner any wild
animals or wild birds except when a big game season opens on
a Monday, the Sunday prior to that opening day will be closed
for any taking of wild animals or birds after five o'clock
antemeridian on that Sunday: Provided, That traps previously
and legally set may be tended after the hour of five o'clock
antemeridian on Sunday and the person so doing may carry
only a twenty-two caliber firearm for the purpose of humanely
dispatching trapped animals. Any person violating the provi-
sions of this subdivision is guilty of a misdemeanor and, upon
conviction thereof, in addition to any fines that may be imposed
by this or other sections of this code, shall be subject to a one
hundred dollar fine;

(11) Hunt with firearms or long bow while under the
influence of intoxicating liquor;

(12) Hunt, catch, take, kill, injure or pursue a wild animal
or bird with the use of a ferret;

(13) Buy raw furs, pelts or skins of fur-bearing animals
unless licensed to do so;

(14) Catch, take, kill or attempt to catch, take or kill any
fish at any time by any means other than by rod, line and hooks
with natural or artificial lures unless otherwise authorized by
law or rules issued by the director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(15) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or rules of the director or the sale of which is prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of February, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act. 16 U. S. C. §703, et seq., and regulations made thereunder;

(17) Kill, take, catch or have in his or her possession, living or dead, any wild bird, other than a game bird; or expose for sale or transport within or without the state any bird except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale except mounted or stuffed plumage, skin, bodies or heads of the birds legally taken and stuffed or mounted, irrespective of whether the bird was captured within or without this state, except the English or European sparrow (passer domesticus), starling (sturnus vulgaris), and cowbird (molothrus ater), which may not be protected and the killing thereof at any time is lawful;
(18) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(24) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands at any time: Provided, however, That nonresidents may
not train dogs in this state at any time except during the legal
small game hunting season: Provided further, That the person
training said dogs does not have firearms or other implements
in his or her possession during the closed season on wild
animals and wild birds, whereby wild animals or wild birds
could be taken or killed;

(25) Conduct or participate in a field trial, shoot-to-retrieve
field trial, water race or wild hunt hereafter referred to as trial:
Provided, That any person, group of persons, club or organiza-
tion may hold such trial at any time of the year upon obtaining
a permit as is provided for in section fifty-six of this article.
The person responsible for obtaining the permit shall prepare
and keep an accurate record of the names and addresses of all
persons participating in said trial and make same readily
available for inspection by any conservation officer upon
request;

(26) Except as provided in section four of this article, hunt,
catch, take, kill or attempt to hunt, catch, take or kill any wild
animal, wild bird or wild fowl except during the open season
established by rule of the director as authorized by subdivision
(6), section seven, article one of this chapter;

(27) Hunting on public lands on Sunday after five o'clock
antemeridian is prohibited; and

(28) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement which wildlife can be taken, on
private lands on Sunday after the hour of five o'clock
antemeridian: Provided, That the provisions of this subdivision
do not apply in any county until the county commission of the
county holds an election on the question of whether the
provisions of this subdivision prohibiting hunting on Sunday
shall apply within the county and the voters approve the
allowance of hunting on Sunday in the county. The election is
determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall hunting on Sunday be authorized in _____ County?

☐ Yes ☐ No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election, or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, no election on the issue may be held for a period of one hundred four weeks. If a majority votes "yes", no election reconsidering the action may be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the
next preceding general election is received by the county
commission of the county in which Sunday hunting is autho-
rized. The petition may be in any number of counterparts. The
election shall take place at the next primary or general election
scheduled more than ninety days following receipt by the
county commission of the petition required by this subsection:
Provided, That the issue may not be placed on the ballot until
all statutory notice requirements have been met. No local law
or regulation providing any penalty, disability, restriction,
regulation or prohibition of Sunday hunting may be enacted and
the provisions of this article preempt all regulations, rules,
ordinances and laws of any county or municipality in conflict
with this subdivision.

CHAPTER 168

(Com. Sub. for H. B. 2512 — By Delegates R. Thompson and Perdue)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five and six, article
one-a, chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, all relating to establishing
a special public land corporation; requirements for leasing
minerals; consultation the office of the attorney general; contract-
ing for consulting services; and accounting for revenues.

Be it enacted by the Legislature of West Virginia:

That sections three, five and six, article one-a, 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 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.


§20-1A-5. Public land corporation to hold public hearing before sale, lease, exchange or transfer of land or minerals.

§20-1A-6. Competitive bidding and notice requirements before the development or extraction of minerals on certain lands; related standards.


(a) The corporation is hereby authorized and empowered to:

(1) Acquire from any persons or the state auditor or any local, state or federal agency, by purchase, lease or other agreement, any lands necessary and required for public use;

(2) Acquire by purchase, condemnation, lease or agreement, receive by gifts and devises, or exchange, rights-of-way, easements, waters and minerals suitable for public use;

(3) Sell or exchange public lands where it is determined that the sale or exchange of such tract meets any or all of the following disposal criteria:

(A) The tract was acquired for a specific purpose and the tract is no longer required for that or any other state purpose;

(B) Disposal of the tract serves important public objectives including, but not limited to, expansion of communities and economic development which cannot be achieved on lands other than public lands and which clearly outweigh other public objectives and values including, but not limited to, recreation and scenic values which would be served by maintaining the tract in state ownership; or

(C) The tract, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another state department or agency.
(4) Sell, purchase or exchange lands or stumpage for the purpose of consolidating lands under state or federal government administration subject to the disposal criteria specified in subdivision (3) of this section;

(5) Negotiate and effect loans or grants from the government of the United States or any agency thereof for acquisition and development of lands as may be authorized by law to be acquired for public use;

(6) Expend the income from the use and development of public lands for the following purposes:

(A) Liquidate obligations incurred in the acquisition, development and administration of lands, until all obligations have been fully discharged;

(B) Purchase, develop, restore and preserve for public use, sites, structures, objects and documents of prehistoric, historical, archaeological, recreational, architectural and cultural significance to the state of West Virginia; and

(C) Obtain grants or matching moneys available from the government of the United States or any of its instrumentalities for prehistoric, historic, archaeological, recreational, architectural and cultural purposes.

(7) Designate lands, to which it has title, for development and administration for the public use including recreation, wildlife stock grazing, agricultural rehabilitation and homesteading or other conservation activities;

(8) Enter into leases as a lessor for the development and extraction of minerals, including coal, oil, gas, sand or gravel, except as otherwise circumscribed herein: Provided, That leases for the development and extraction of minerals shall be made in accordance with the provisions of sections five and six of this
(9) Convey, assign, or allot lands to the title or custody of proper departments or other agencies of state government for administration and control within the functions of departments or other agencies as provided by law;

(10) Make proper lands available for the purpose of cooperating with the government of the United States in the relief of unemployment and hardship or for any other public purpose.

(b) There is hereby created in the state treasury a special public land corporation fund into which shall be paid all proceeds from public land sales and exchanges and rents, royalties and other payments from mineral leases. The corporation may acquire public lands from use of the payments made to the fund, along with any interest accruing to the fund. The corporation shall report annually, just prior to the beginning of the regular session of the Legislature, to the finance committees of the Legislature on the financial condition of the special fund. The corporation shall report annually to the Legislature on its public land holdings and all its leases, its financial condition and its operations and shall make such recommendations to the Legislature concerning the acquisition, leasing, development, disposition and use of public lands.

(c) All state agencies, institutions, divisions and departments shall make an inventory of the public lands of the state as may be by law specifically allocated to and used by each and provide to the corporation a list of such public lands and minerals, including their current use, intended use or best use to which lands and minerals may be put: Provided, That the division of highways need not provide the inventory of public lands allocated to and used by it. The inventory shall identify
those parcels of land which have no present or foreseeable useful purpose to the state of West Virginia. The inventory shall be submitted annually to the corporation by the first day of August. The corporation shall compile the inventory of all public lands and minerals and report annually to the Legislature by no later than the first day of January, on its public lands and minerals and the lands and minerals of the other agencies, institutions, divisions or departments of this state which are required to report their holdings to the corporation as set forth in this subsection, and its financial condition and its operations.

§20-1A-5. Public land corporation to hold public hearing before sale, lease, exchange or transfer of land or minerals.

(a) Prior to any final decision of any state agency to sell, lease as a lessor, exchange or transfer land or minerals title to which is vested in the public land corporation pursuant to section one of this article, the public land corporation shall:

(1) Prepare and reduce to writing the reasons and supporting data regarding the sale, lease, exchange or transfer of land or minerals. The written reasons required under this section shall be available for public inspection at the office of the county clerk at the county courthouse of each county in which the affected lands or minerals are located during the two successive weeks before the date of the public hearing required by this section;

(2) Provide for a public hearing to be held at a reasonable time and place within each county in which the affected lands or minerals are located to allow interested members of the public to attend the hearing without undue hardship. Members of the public may be present, submit statements and testimony and question the corporation’s representative appointed pursuant to this section;
(3) Not less than thirty days prior to the public hearing, provide notice to all members of the Legislature, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands or minerals are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands or minerals are located;

(4) Cause to be published a notice of the required public hearing. The notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be each county in which the affected lands or minerals are located. The public hearing shall be held no earlier than the fourteenth successive day and no later than the twenty-first successive day following the first publication of the notice. The notice shall contain the time and place of the public hearing along with a brief description of the affected lands or minerals;

(5) Cause a copy of the required notice to be posted in a conspicuous place at the affected land for members of the public to observe. The notice shall remain posted for two successive weeks prior to the date of the public hearing;

(6) Appoint a representative of the corporation who shall conduct the required public hearing. The corporation’s representative shall have full knowledge of all the facts and circumstances surrounding the proposed sale, lease, exchange or transfer. The representative of the corporation conducting the public hearing shall make the results of the hearing available to the corporation for its consideration prior to the board making final decisions regarding the affected lands or minerals. The representative of the corporation shall make a report of the public hearing available for inspection by the public or, upon written request of any interested person, provide a written copy
(7) If the evidence at the public hearing establishes by a preponderance that the appraisal provided for in subsection (c), section four of this article does not reflect the true, fair market value, the public land corporation shall cause another appraisal to be made.

(8) If the evidence at the public hearing establishes by a preponderance that the sale or exchange of land does not meet the criteria set forth in subdivision three, subsection (a), section three of this article, the public land corporation may not proceed with the sale or exchange of said land without judicial approval.

(b) The corporation may not sell, lease as lessor, exchange or transfer lands or minerals before the thirtieth successive day following the public hearing required by this section, but in no event may the sale, lease, exchange or transfer of lands or minerals be made prior to fifteen days after the report of the public hearings are made available to the public in general.

(c) If the corporation authorizes the staff to proceed with consideration of the lease or sale under the terms of this article, all requirements of this section shall be completed within one year of date of the authorization by the corporation.

§20-1A-6. Competitive bidding and notice requirements before the development or extraction of minerals on certain lands; related standards.

(a) The corporation may enter into a lease or contract for the development of minerals, including, but not limited to, coal, gas, oil, sand or gravel on or under lands in which the corporation holds any right, title or interest: Provided, That no lease or
contract may be entered into for the extraction and removal of minerals by surface mining or auger mining of coal.

(b) With the exception of deep mining operations which are already in progress and permitted as of the fifth day of July, one thousand nine hundred eighty-nine, the extraction of coal by deep mining methods under state forests or wildlife refuges may be permitted only if the lease or contract provides that no entries, portals, air shafts or other incursions upon and into the land incident to the mining operations may be placed or constructed upon the lands or within three thousand feet of its boundary.

(c) Any lease or contract entered into by the corporation for the development of minerals shall reserve to the state all rights to subjacent surface support with which the state is seized or possessed at the time of such lease or contract.

(d) Notwithstanding any other provisions of the code to the contrary, nothing herein may be construed to permit extraction of minerals by any method from, on or under any state park or state recreation area, nor the extraction of minerals by strip or auger mining upon any state forest or wildlife refuge.

(e) The corporation may enter into a lease or contract for the development of minerals where the lease or contract is not prohibited by any other provisions of this code, only after receiving sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The area for publication shall be each county in which the minerals are located.

(f) The minerals so advertised may be leased or contracted for development at not less than the fair market value, as determined by an appraisal made by an independent person or firm chosen by the corporation, to the highest responsible
37 bidder, who shall give bond for the proper performance of the
38 contract or lease as the corporation designates: Provided, That
39 the corporation may reject any and all bids and to readvertise
40 for bids.

41 (g) If the provisions of this section have been complied
42 with, and no bid equal to or in excess of the fair market value
43 is received, the corporation may, at any time during a period of
44 six months after the opening of the bids, lease or contract for
45 the development of the minerals, but the lease or contract price
46 may not be less than the fair market value.

47 (h) Any lease or contract for the development of minerals
48 entered into after the effective date of this section shall be made
49 in accordance with the provisions of this section and section
50 five of this article.

51 (i) The corporation will consult with the office of the
52 attorney general to assist the corporation in carrying out the
53 provisions of this section.

54 (j) The corporation shall consult with an independent
55 mineral consultant and any other competent third parties with
56 experience and expertise in the leasing of minerals, to assist the
57 corporation in carrying out the provisions of this section,
58 including determining fair market value and negotiating terms
59 and conditions of mineral leases.

60 (k) Once the lessee commences the production of minerals
61 and royalties become due and are paid to the public land
62 corporation, the public land corporation shall hire an independ-
63 ent auditing firm to periodically review the lessee’s books and
64 accounts for compliance of payment of appropriate royalties
65 due the public land corporation for its minerals as produced
66 under the lease agreement.
CHAPTER 169

(S. B. 447 — By Senators Fanning, White, Bowman, Deem, Facemyer, Helmick, Love, Minear, Prezioso, Ross and Smith)

[Passed February 28, 2003; 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 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.

1 Persons in the following categories shall not be required to obtain licenses or permits as indicated:

3 (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.

(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.
AN ACT to amend and reenact sections thirty, thirty-three, thirty-four and forty-three, article two, chapter twenty 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 thirty-three-a, all relating generally to hunting and fishing license applications and fees; statement of eligibility for license; false statement; electronic application for license to apprise applicant of hunters helping the hungry program; voluntary donations; creating subaccount designated "hunters helping the hungry fund"; authorized expenditures; establishing a Class J license for small game preserves; and technical amendments.

Be it enacted by the Legislature of West Virginia:

That sections thirty, thirty-three, thirty-four and forty-three, article two, chapter twenty 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 thirty-three-a, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30. Application and statement of eligibility for licenses; procuring license in violation of chapter.

§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

§20-2-33a. Electronic application to apprise applicant of hunters helping the hungry program; check-off donations; special fund continued; authorized expenditures.
§20-2-30. Application and statement of eligibility for licenses; procuring license in violation of chapter.

(a) Each person who applies for any class of license must state to the issuing agent that he or she is eligible for and has satisfied all prerequisites required by this chapter for that class of license.

(b) It is unlawful for a person to make a false statement when applying for any license issued pursuant to the provisions of this chapter.

§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

(a) The director may appoint, in addition to the clerk of the county commission, agents to issue licenses under the provisions of this article to serve the convenience of the public. Each person appointed shall, before issuing any license, file with the director a bond payable to the state of West Virginia, in the amount to be fixed by the director, conditioned upon the faithful performance of his or her obligation to issue licenses only in conformity with the provisions of this article and to account for all license fees received by him or her. The form of the bond shall be prescribed by the attorney general. No person, other than those designated as issuing agents by the director, may sell licenses or buy the licenses for the purpose of resale.

(b) Except when a license is purchased from a state official, every person making application for a license must pay, in addition to the license fee prescribed in this article, an additional fee of seventy-five cents to any county official issuing the license and all fees collected by county officials must be paid by them into the general fund of the county treasury or, in
the case of an agent issuing the license, an additional fee of one dollar as compensation: Provided, That only one fee of seventy-five cents or one dollar may be collected by county officials or authorized agents, respectively, for issuing two or more licenses at the same time for use by the same person or for issuing combination resident statewide hunting, trapping and fishing licenses: Provided, however, That licenses may be issued electronically in a manner prescribed by the director, and persons purchasing electronically issued licenses may be assessed, in addition to the license fee prescribed in this article, an electronic issuance fee to be prescribed by the director.

(c) In lieu of the license issuance fee prescribed in subsection (b) of this section, the director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, governing the application for and issuance of licenses by telephone and other electronic methods.

§20-2-33a. Electronic application to apprise applicant of hunters helping the hungry program; check-off donations; special fund continued; authorized expenditures.

(a)(1) Every application for electronic license shall include a solicitation for a voluntary donation to the division’s previously established hunters helping the hungry program.

(2) The license applicant will be offered an opportunity to designate a donation in any amount to the hunters helping the hungry program.

(b) There is hereby created a subaccount, designated the “hunters helping the hungry fund”, within the special revenue account established in section thirty-four of this article, into which all donations derived under this section shall be deposited. Moneys in the subaccount shall be expended solely for the purposes set forth in subsection (c) of this section. Funds paid
into the subaccount may also be derived from the following sources: (1) All interest or return on investment accruing to the subaccount; (2) Any gifts, grants, bequests, transfers, appropriations or other donations which may be received from any governmental entity or unit or any person, firm, foundation, or corporation; and (3) any appropriations by the Legislature which may be made for the purposes of this section. Any balance including accrued interest and other earnings at the end of any fiscal year shall not revert to the general fund but shall remain in the fund for the purposes set forth in this section.

(c) The moneys in the fund will be paid out, at the direction of the director, to eligible participants for the butchering of game carcasses and for the expenses related to the acquisition and distribution of food to the needy residents of West Virginia.

(d) For purposes of this section, “eligible participant” means a nonprofit organization that coordinates, with the division of natural resources and other entities, a statewide system for the distribution of meat products derived from the butchering of donated game carcasses by a person licensed under the provisions of article two-b, chapter nineteen of this code.

§20-2-34. Disposition of license fees and donations; reports of agents; special funds and uses.

(a) All persons in this state who receive money for licenses and permits required by this chapter, or as donations for the hunters helping the hungry program, shall, on the first day of each month, pay over to the director all moneys so collected by them during the preceding month. The payment shall be accompanied by a report showing, in the case of license fees and donated money, the name of the county, the class of license sold, the amount of any donation, the names and addresses of the persons paying the license fees and donated moneys, the
date of the receipt, the signature of the person receiving and
remitting the funds, and other information the director deter-
mines necessary.

(b) Except where other provisions of this chapter specifi-
cally require and direct payment of moneys into designated
funds for specific uses and purposes, all license fees received
by the director shall be promptly paid into the state treasury and
credited to the division of natural resources “license
fund—wildlife resources” which shall be used and paid out,
upon order of the director solely for law enforcement and for
other purposes directly relating to the conservation, protection,
propagation and distribution of wildlife in this state pursuant to
the provisions of this chapter.

No funds from the “license fund—wildlife resources” may
be expended for recreational facilities or activities that are used
by or for the benefit of the general public, rather than purchas-
ers of hunting and fishing licenses.

Of the annual license fund income, the director shall retain
ten percent for capital improvements and land purchases
benefiting state wildlife, forty percent shall be budgeted to the
wildlife resources division, forty percent to law enforcement
and ten percent apportioned by the director within provisions of
this section. Any unexpended moneys for capital improvements
and land purchases shall be carried forward.

All interest generated from game and fish license fees after
the thirty-first day of July, one thousand nine hundred ninety-
one, shall be used by the director for the division of natural
resources in the same manner as is provided for the use of
license fees.

(c) Moneys received as donations to the hunters helping the
hungry program shall be deposited in the hunters helping the
hungry fund.
§20-2-43. Class E, Class EE, Class F, Class H and Class J licenses for nonresidents.

The licenses in this section are required of nonresidents to hunt, trap or fish in West Virginia.

(1) A Class E license is a nonresident hunting and trapping license and entitles 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 for the license is one hundred dollars.

(2) A Class EE license is a nonresident bear hunting license and entitles the licensee to hunt bear in all counties of the state, except when additional licenses or permits are required. The fee for the license is one hundred fifty dollars.

(3) A Class F license is a nonresident fishing license and entitles the licensee to fish for all fish in all counties of the state except when additional licenses or permits are required. The fee for the license is thirty dollars. Trout fishing is not permitted with a Class F license unless the license has affixed to it an appropriate trout stamp as prescribed by the division of natural resources.

(4) A Class H license is a nonresident small game hunting license and entitles 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 for the license is twenty dollars. As used in this section, "small game" means all game except bear, deer, wild turkey and wild boar.

(5) A Class J license is a nonresident small game shooting preserve license and entitles the licensee to hunt small game on
CHAPTER 171

(H. B. 2285 — By Delegates Stemple, Varner and Yeager)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-six and thirty-seven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to requiring licensees of hunting and fishing licenses to carry and exhibit for inspection proof of identity and all documents applicable to the nature and location of the licensees' regulated activities.

Be it enacted by the Legislature of West Virginia:

That sections thirty-six and thirty-seven, article two, 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 2. WILDLIFE RESOURCES.

§20-2-36. When license, related documents, and picture identification to be carried; using license of another; transferring license to another.

§20-2-37. Display of license, etc., by persons in possession of hunting, fishing, etc., paraphernalia.

§20-2-36. When license, related documents, and picture identification to be carried; using license of another; transferring license to another.
(a) A person who is required by this article to be licensed may not hunt, take, pursue, trap for, kill, catch or chase for sport any wild animal or wild bird; or fish for, take, kill or catch any fish or amphibians of any kind whatsoever in this state unless he or she shall have on his or her person: (1) A valid license issued to him or her, or other proof that a valid license has been issued to him or her in accordance with this article; (2) all applicable stamps, permits, and written consents required by this article; (3) a driver's license, passport, or picture identification issued to him or her by his or her state of residence; and (4) a certificate of training or other proof of hunter safety education as required by section thirty-a of this article.

As an alternative to the identification required by subsection (a)(3) of this section, the name, address and birthdate of a licensee under the age of fifteen years may be established by the averment of an accompanying licensed adult.

(b) It is unlawful for any person to use at any time any license other than those valid licenses legally issued to him or her in accordance with this article.

(c) Except as expressly provided by this article, it is unlawful for any person to transfer a license to any other person.

§20-2-37. Display of license, etc., by persons in possession of hunting, fishing, etc., paraphernalia.

Any person having in his or her possession in or near the fields or woods, or about the streams of this state, any dog, gun, fishing rod or other hunting, fishing or trapping paraphernalia, shall, upon demand of any officer authorized to enforce the provisions of this chapter, state his or her correct name and address, and shall exhibit for inspection: (a) All applicable licenses and documents set forth in section thirty-six of this
8 article; and (b) all firearms and wildlife which he or she may
9 have in his or her possession.
10 Nothing in this section may be construed as authorizing
11 searches that violate article three, section six of the West
12 Virginia Constitution or the Fourth Amendment to the Constitu-
13 tion of the United States, nor may anything in this section be
14 construed as effecting a waiver of these constitutional provi-
15 sions.

CHAPTER 172

(Com. Sub. for H. B. 2094 — By Delegates Caputo,
Varner, Tucker and Yeager)

[Passed March 5, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section sixty-four,
relating to regulating the release of fish, water animals and other
aquatic organism into the waters of this state.

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 sixty-four, to read as
follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-64. Regulating release of fish, water animal and other
aquatic organisms; stocking permit.
(a) It is unlawful for any person to release any fish, water animal or other aquatic organism, alive or dead, or any part, nest or egg thereof into the waters of this state except as authorized by a stocking permit issued by the director: Provided, That nothing in this subsection shall be construed as restricting the release of fish, water animal or other aquatic organism into the waters of this state from which they were taken by lawful methods: Provided, however, That nothing in this subsection shall be construed as restricting the release of native or established species of fish in privately owned ponds.

(b) A stocking permit is not required for the stocking of trout in waters of the state provided that the trout originate from a source within the state or meet the disease free certification requirements for imported salmondiae set forth in section thirteen of this article.

(c) A stocking permit is not required for the stocking of black bass provided that the division of natural resources is notified prior to stocking and is provided a disease free certification.

CHAPTER 173

(H. B. 2953 — By Delegates Michael, Mezzatesta and Doyle)

[Amended and Again Passed March 16, 2003, as a Result of the Objections of the Governor; in Effect From Passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen,
article eight, chapter thirty-six of said code, all relating to the administration of the prepaid tuition plan of the West Virginia college prepaid tuition and savings program; clarifying how moneys in the prepaid tuition trust fund are processed when the plan is terminated; closing the prepaid tuition plan to new contracts until further legislative authorization; continuing the plan as to current contract owners; providing for accrual of investment earnings; continuing annual evaluation of actuarial soundness of the prepaid tuition trust fund; requiring annual reports by the chairman of the prepaid tuition trust fund; establishing a mechanism to eliminate any actuarially projected unfunded liability in the prepaid tuition trust fund over a fixed period with funds from the unclaimed property trust fund in an amount not to exceed five hundred thousand dollars annually; creating the prepaid tuition trust escrow account and establishing purposes therefor; providing for the investment and use of the money in the prepaid tuition trust escrow account; providing for the transfer of funds in the unclaimed property trust fund to the prepaid tuition trust escrow account and to the general revenue fund; and providing for the disposition of funds in the prepaid tuition trust escrow account upon closure of the prepaid tuition trust fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter 18. Education.

36. Estates and Property.

CHAPTER 18. EDUCATION.
ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-6. West Virginia prepaid tuition trust.

(a) The “Prepaid Tuition Trust Fund” is continued within the accounts held by the state treasurer for administration by the board.

(b) The prepaid tuition trust fund shall continue to receive all payments from account owners on behalf of beneficiaries of prepaid tuition contracts or from any other source, public or private. Earnings derived from the investment of moneys in the prepaid tuition trust fund shall remain in the prepaid tuition trust fund held in trust in the same manner as payments, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the prepaid tuition plan.

(c) The corpus, assets and earnings of the prepaid tuition trust fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the prepaid tuition plan does not constitute a debt of the state, but is solely an obligation of the prepaid tuition trust fund. The state has no obligation to any designated beneficiary or any other person as a result of the prepaid tuition plan. All amounts payable from the prepaid tuition trust fund are limited to amounts available in the prepaid tuition trust fund.

(d) Nothing in this article or in any prepaid tuition contract is a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible educational institution.
(e) The requirements of the provisions of chapter thirty-two of this code do not apply to the sale of a prepaid tuition contract by the board, its employees and agents.

(f) The prepaid tuition plan and the prepaid tuition trust fund shall continue in existence until terminated by the Legislature as it determines or by the board upon determining that continued operation is infeasible. Upon termination of the plan and after payment of all fees, charges, expenses and penalties, the assets of the prepaid tuition trust fund are paid to current account owners, to the extent possible, on a pro rata basis as their interests may appear, and any assets presumed abandoned are reported and remitted to the unclaimed property administrator in accordance with the uniform unclaimed property act in article eight, chapter thirty-six of this code. Any assets then remaining in the prepaid tuition trust fund shall revert to the state general revenue fund.

(g) Effective the eighth day of March, two thousand three, the prepaid tuition plan is closed to new contracts until the Legislature authorizes the plan to reopen. Closing the plan to new contracts shall not mean the prepaid tuition plan is closed and shall not affect any prepaid tuition plan contracts in effect on the eighth day of March, two thousand three. All contract owners shall continue to pay any amounts due, including without limitation monthly installments, penalties and fees. Earnings derived from the investment of moneys in the prepaid tuition trust fund shall continue to accrue to the fund until the fund is closed in accordance with this article.

(h) The board shall continue to have the actuarial soundness of the prepaid tuition trust fund evaluated annually.

(i)(1) On or before the first day of December, two thousand three, and each year thereafter, the chairman of the board shall submit to the governor, the president of the Senate, the speaker
of the House of Delegates, joint committee on government and
finance and the unclaimed property administrator a report
certified by an actuary of the actuarial status of the prepaid
tuition trust fund at the end of the fiscal year immediately
preceding the date of the report. In the event the report for fiscal
year two thousand three states there is a projected unfunded
liability in the prepaid tuition trust fund, the report shall also
state the amount needed for the next fiscal year to eliminate the
projected unfunded liability in equal payments over a period of
ten fiscal years, concluding the thirtieth day of June, two
thousand thirteen. In the event the projected unfunded liability
of the prepaid tuition trust fund increases in subsequent reports,
the actuary shall calculate the amount needed, less any amount
in the prepaid tuition trust escrow account, to eliminate the
projected unfunded liability over a period the actuary deter-
mines is fiscally responsible.

(2) The prepaid tuition trust escrow account is hereby
created in the state treasury to guarantee payment of prepaid
tuition plan contracts. The board shall invest the prepaid tuition
trust escrow account in accordance with the provisions of this
article in fixed income securities, and all earnings of the escrow
account shall remain in the escrow account.

(3) In the event the actuary determines an unfunded liability
exists in the prepaid tuition trust fund, the report shall certify
the amount of money needed for the next fiscal year to elimi-
nate the projected unfunded liability pursuant to the provisions
of subdivision (1) of this subsection. The certified amount may
not exceed five hundred thousand dollars each year. On or
before the fifteenth day of December in which the chairman
submitted a report stating the amount needed for the next fiscal
year to eliminate a projected unfunded liability, the unclaimed
property administrator shall transfer the amount requested, not
to exceed five hundred thousand dollars each year, from the
unclaimed property trust fund to the prepaid tuition trust escrow
account.

In the event the money in the prepaid tuition trust fund
is insufficient to cover the amount of money needed to meet the
current obligations of the prepaid tuition trust fund, the board
may withdraw from the prepaid tuition trust escrow account the
amount of money needed to meet current obligations of the
prepaid tuition trust fund.

Notwithstanding any provision of this code to the
contrary, the governor, after consultation with the budget
section of the finance division of the department of administra-
tion, may request an appropriation to the board in the amount
of the deficiency to meet the current obligations of the prepaid
tuition trust fund, in the budget presented to the next session of
the Legislature for its consideration. The Legislature is not
required to make any appropriation pursuant to this subsection,
and the amount of the deficiency is not a debt or a liability of
the state.

As used in this section, “current obligations of the
prepaid tuition trust fund” means amounts required for the
payment of contract distributions or other obligations of the
prepaid tuition trust fund, the maintenance of the fund, and
operating expenses for the current fiscal year.

Nothing in this subsection creates an obligation of state
general revenue funds or requires any level of funding by the
Legislature.

After the prepaid tuition trust fund has been closed and
all moneys paid in accordance with this section, any moneys
remaining in the prepaid tuition trust escrow account shall be
transferred to the general revenue fund and the account closed.
(j) To fulfill the charitable and public purpose of this article, neither the earnings nor the corpus of the prepaid tuition trust fund is subject to taxation by the state or any of its political subdivisions.

(k) Notwithstanding any provision of this code to the contrary, money in the prepaid tuition trust fund is exempt from creditor process and not subject to attachment, garnishment or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance or charge; and is not subject to seizure, taking, appropriation or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary or successor in interest.

(1) No provision of this section may be construed to interfere with the operation of the savings plan authorized under this article.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-13. Deposit of funds.

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

(b) The unclaimed property fund is continued. The administrator shall deposit all funds received pursuant to this article in the unclaimed property fund, including the proceeds from the sale of abandoned property under section twelve of this article.
12 In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the unclaimed property fund:

15 (1) Expenses of the sale of abandoned property;

16 (2) Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;

19 (3) Reasonable service charge; and

20 (4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.

(c) The unclaimed property trust fund is continued within the state treasury. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in the unclaimed property fund to the unclaimed property trust fund.

(d) On or before the fifteenth day of December of each year and after receipt of a report from the chairman of the board of trustees of the West Virginia college prepaid tuition and savings program stating the amount certified by an actuary in accordance with the provisions of section six, article thirty, chapter eighteen of this code, notwithstanding any provision of this code to the contrary, the administrator shall transfer the sum of money certified by the actuary from the unclaimed property trust fund to the prepaid tuition trust escrow account, the amount transferred not to exceed five hundred thousand dollars annually.

(e) After transferring any money required by subsection (d) of this section, the administrator shall transfer moneys remaining in the unclaimed property trust fund to the general revenue fund.
CHAPTER 174

(S. B. 375 — By Senator Bowman)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and nine, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to contractor licensing generally; and allowing the transfer of a license to a new business entity in which the license holder is the principal owner, partner or officer.

Be it enacted by the Legislature of West Virginia:

That sections seven and nine, 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.

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

§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: Provided, however, That any person issued a contractor’s license by the board pursuant to this subsection may apply to the board for transfer of the license to a new business entity in which the license holder is the principal owner, partner or corporate officer: Provided further, That a license holder may hold a license on behalf of only one business entity during a given time period. The board may transfer the license issued pursuant to this subsection to the new business entity without requiring examination of the license holder.

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

No license may be used for any purpose by any person other than the person to whom the license is issued. No license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use thereof. No license issued pursuant to the provisions of subsection (b), section seven of this article may be assigned, transferred or otherwise disposed of except as provided in said subsection. Any person who violates this section is subject to the penalties imposed in section thirteen of this article.
AN ACT to amend and reenact section one, article three-c, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to peer review organization protection and adding to the definition of “review organization” a health maintenance organization review committee and a hospital, medical, dental and health service corporation review committee.

Be it enacted by the Legislature of West Virginia:

That section one, article three-c, 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 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.

§30-3C-1. Definitions.

1 As used in this article:

2 "Health care professionals" means individuals who are licensed to practice in any health care field;

3 "Peer review" means the procedure for evaluation by health care professionals of the quality and efficiency of services ordered or performed by other health care professionals, including practice analysis, inpatient hospital and extended care
facility utilization review, medical audit, ambulatory care review, and claims review;

"Professional society" includes medical, psychological, nursing, dental, optometric, pharmaceutical, chiropractic and podiatric organizations having as members at least a majority of the eligible licentiates in the area or health care facility or agency served by the particular organization; and

"Review organization" means any committee or organization engaging in peer review, including a hospital utilization review committee, a hospital tissue committee, a medical audit committee, a health insurance review committee, a health maintenance organization review committee, hospital, medical, dental and health service corporation review committee, a hospital plan corporation review committee, a professional health service plan review committee or organization, a dental review committee, a physicians' advisory committee, a podiatry advisory committee, a nursing advisory committee, any committee or organization established pursuant to a medical assistance program, and any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of patients for the purposes of: (i) Evaluating and improving the quality of health care rendered; (ii) reducing morbidity or mortality; or (iii) establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care. It shall also mean any hospital board committee or organization reviewing the professional qualifications or activities of its medical staff or applicants for admission thereto, and any professional standards review organizations established or required under state or federal statutes or regulations.
AN ACT to amend and reenact sections two, six, nine and ten, article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections six-a and six-b, all relating to licenses and permits issued by the board of radiologic technologists; defining podiatric medical assistants; establishing the requirement of a permit to perform podiatric radiographs and eligibility criteria therefor; restricting the scope of practice under such permit; and requiring the promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-2. Definitions.
§30-23-6. Qualifications of applicants; exceptions; applications; fee.
§30-23-6a. Podiatric medical assistants; permit requirements.
§30-23-6b. Scope of practice for podiatric medical assistants.
§30-23-9. Suspension or revocation of license or permits.
§30-23-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "ASPMA" means the American society of podiatric medical assistants.

(b) "Board" means the West Virginia radiologic technology board of examiners.

(c) "License" means a license granted and issued by the board for the practice of radiologic technology.

(d) "Licensed practitioner" means a person licensed to practice medicine, chiropractic, podiatry, osteopathy or dentistry.

(e) "Licensee" means any person holding a license or a temporary permit issued pursuant to the provisions of this article.

(f) "Permitee" means any person holding a podiatric medical assistant permit issued pursuant to the provisions of this article.

(g) "Podiatric medical assistant" means a person who has met the requirements of section six-a and who has been granted a permit by the board for performance of podiatric radiographs.

(h) "Podiatric radiographs" means radiographs confined to the foot and ankle performed on dedicated podiatric X-ray equipment.

(i) "Radiologic technologist" means a person, other than a licensed practitioner, who applies ionizing radiation or assists in the application of ionizing radiation to human beings for
diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

(j) "Radiologic technology" means the application of ionizing radiation or assisting in the application of ionizing radiation to human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

(k) "Radiologist" means a licensed practitioner who specializes in the use of ionizing radiation for the diagnosis or treatment of disease.

(l) "Radiology resident" means a licensed practitioner who is in training to become a radiologist and who uses ionizing radiation in the diagnosis or treatment of disease under the supervision of a radiologist.

(m) "Supervision" means responsibility for and control of quality, radiation safety and technical aspects in the application of ionizing radiation of human beings for diagnostic or therapeutic purposes.

(n) "Technology" hereinafter relates to radiologic technology.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

(a) To be eligible for a license to practice radiologic technology the applicant shall:

(1) Be of good moral character;

(2) Have completed four years of high school education or its equivalent;

(3) Have successfully completed an accredited course in radiologic study technology, as determined by an accreditation
body recognized by the board, from a school of radiologic technology that has been 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.

(e) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine of this code setting forth fees for licenses and permits and the renewals of licenses and permits.

§30-23-6a. Podiatric medical assistants; permit requirements.
(a) No person not otherwise licensed under this article shall perform podiatric radiographs in this state unless he or she has first obtained a permit to do so from the board.

(b) To be eligible for a permit to perform podiatric radiographs in this state, an applicant shall:

1. Be of good moral character;

2. Have completed four years of high school education or its equivalent;

3. Pass a written examination for certification from the American society of podiatric medical assistants (ASPMA);

4. Maintain an active certification in the American society of podiatric medical assistants (ASPMA) and meet all requirements of that organization including the continuing education requirements;

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 the permit, 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; and

6. Pay to the board a permit fee, which fee shall be returned to the applicant if the permit application is denied.

(c) Original permits shall be prominently displayed in public view in the permitee’s primary place of employment. A duplicate permit issued by the board may be displayed in the permitee’s secondary place of employment.
(d) Permits issued pursuant to this section are valid for one year from the date issued and may be renewed every year without examination. Applications for renewal shall be upon a form provided by the board. Upon application for renewal, the permittee shall submit documentation of an active certification in ASPMA and payment of a renewal fee.

§30-23-6b. Scope of practice for podiatric medical assistants.

(a) A podiatric medical assistant granted a permit under section six-a of this article may only use equipment, specifically designed for the performance of foot or ankle podiatric radiographs, that has been approved by the board.

(b) All podiatric radiographs performed by a podiatric medical assistant permittee shall be performed under the supervision of a licensed podiatrist.

§30-23-9. Suspension or revocation of license or permits.

(a) The board may at any time, upon its own motion and shall upon the verified written complaint of any person, conduct an investigation to determine whether there are grounds for suspension or revocation of a license or a permit issued under the provisions of this article.

(b) The board shall suspend or revoke any license or permit when it finds the holder thereof has:

(1) 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 the motion or complaint, which conviction remains unreversed; or 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 he was convicted related to the practice of radiologic technology, which conviction remains unreversed;
16 (2) Obtained a license or permit by means of fraud or deceit;
18 (3) Been incompetent, grossly negligent or guilty of other malpractice as defined by the board by reasonable rules;
20 (4) Failed or refused to comply with the provisions of this article or any reasonable rule promulgated by the board hereunder or any order or final decision of the board; or
23 (5) Except in emergency situations, failed to obtain written authorization from the attending licensed practitioner or from the patient and if the patient is a minor, from a parent or a person having custody of the minor.
27 (c) The board shall also suspend or revoke any license or permit if it finds the existence of any grounds which would justify the denial of an application for such license or permit if application were then being made for it.


1 (a) Whenever the board denies an application for any original or renewal license or permit or suspends or revokes any license or permit, it shall make an interim order to that effect and serve a copy thereof on the applicant or licensee or permittee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or temporary permit suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said copy of said order.
11 (b) Any person adversely affected by any such order is entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" as set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after
receipt of a copy thereof, he or she files with the board a written demand for such hearing.

A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or permit or denying an application for a renewal license or permit. The board may require the person demanding such hearing to give reasonable security for the cost thereof and if such person does not substantially prevail at such hearing such cost shall be assessed against him or her and may be collected by civil action or other proper remedy.

(c) Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

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

(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced as specified in section one, article five, chapter twenty-nine-a of this code, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(f) At any such hearing the person who demanded the same may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon
request by the board, it shall be represented at any such hearing
by the attorney general or his or her assistants without addi-
tional compensation.

(g) After any such hearing and consideration of all testi-
mony, evidence and record in the case, the board shall render its
decision in writing. The written decision of the board shall be
accompanied by findings of fact and conclusions of law as
specified in section three, article five, chapter twenty-nine-a of
this code and a copy of such decision and accompanying
findings and conclusions shall be served by certified mail,
return receipt requested, upon the person demanding such
hearing and his or her attorney of record, if any.

(h) The decision of the board is final unless reversed,
vacated or modified upon judicial review thereof in accordance
with the provisions of section eleven of this article.

CHAPTER 177

(S. B. 414 — By Senators Plymale, Rowe, Jenkins,
Bailey, Ross and McCabe)

[Passed February 26, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article forty, chapter
thirty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to authorizing the West Virginia
real estate commission to enter into license reciprocity agree-
ments with other states.

Be it enacted by the Legislature of West Virginia:
That section seven, article forty, 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 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.


1 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 consider necessary and appropriate to discharge the duties imposed by the provisions of this code;

(c) Shall employ or contract with such other investigators, hearing examiners, attorneys, consultants, clerks and assistants as the commission considers necessary and determine the duties and fix the compensation of such investigators, clerks and assistants subject to the general laws of this state;

(d) Shall have the authority to issue subpoenas and subpoenas duces tecum through any member, its executive director or any duly authorized representative;

(e) Shall prescribe, examine and determine the qualifications of any applicant for a license;

(f) Shall provide for an appropriate examination of any applicant for a license;

(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;

(h) Shall issue, renew, deny, suspend, revoke or reinstate licenses and take disciplinary action against any licensee;

(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;

(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;

(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;

(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.

CHAPTER 178

(H. B. 3089 — By Delegates H. White, Trump, Kominar and Amores)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
modifying the requirement that financial institutions which maintain a trust fund deposit account for real estate brokers notify the real estate commission if any checks drawn against the account are returned for any cause; providing that a financial institution is required to notify the real estate commission if any checks drawn against the trust fund account are returned for insufficient funds; removing criminal and civil penalties applicable to a financial institution if a trust fund account for a real estate broker fails to notify the real estate commission if any check drawn against the account is returned for insufficient funds.

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

That sections eighteen and twenty-two, article forty, 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 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.**


§30-40-22. Penalties for violations.


(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 provided in this section.
(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 insufficient funds and that the financial institution does not require a minimum balance in excess of the amount authorized in subsection (f) of this section.
(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.

(l) The broker shall notify the commission, within ten days, of the establishment of or any change to a trust fund account.

(m) Nothing provided in this section creates any duty or obligation on a financial institution to monitor the activities of a broker designated as trustee of a trust fund account, except for those duties or obligations specifically provided in subsection (g) of this section and subdivision (7), subsection (j) of this section.

§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 confined in the county or regional jail not more than ninety days, or both fined and confined;

(b) Any person convicted of a second or subsequent violation 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 confined;

(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 dollars;

(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;

(h) The penalties provided in this section do not apply to a violation of the duties or obligations of a financial institution under the certification required by subdivision (7), subsection (j), section eighteen of this article by a financial institution providing trust fund account services to a broker.

CHAPTER 179

(S. B. 381 — By Senator Minard)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section one thousand three hundred one, article thirteen, chapter thirty-one-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding professional surveyors to the list of professionals who may organize professional limited liability companies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.


As used in this article:

(1) "Licensing board" means the governing body or agency established under chapter thirty of this code which is responsible for the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide;

(2) "Professional limited liability company" means a limited liability company organized under this chapter for the purpose of rendering a professional service; and

(3) "Professional service" means the services rendered by the following professions: Attorneys-at-law under article two, physicians and podiatrists under article three, dentists under article four, optometrists under article eight, accountants under article nine, veterinarians under article ten, architects under article twelve, engineers under article thirteen, osteopathic physicians and surgeons under article fourteen, chiropractors under article sixteen, psychologists under article twenty-one,
AN ACT to amend and reenact section one, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven-c, all relating to specifying the jurisdiction of the public service commission over, and the application of said chapter twenty-four to, owners or operators of, and persons, corporations or other entities that intend to construct or construct and operate, certain described electric generating facilities, the output of which is not sold directly to retail customers in West Virginia; and requiring persons, corporations and other entities that intend to construct or construct and operate such electric generating facilities, or that intend to make or construct a material modification thereof, to obtain from the public service commission a siting certificate, in lieu of a certificate of public convenience and necessity, for each such facility or material modification thereof pursuant and subject to certain new provisions and requirements which, among other things, allow the public service commission, under specified circumstances, to seek the imposition of civil or criminal penalties, or both such civil and criminal penalties; and providing that the public service commission may promulgate rules relating to siting certificates.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

§24-2-11c. Siting certificates for certain electric generating facilities or material modifications thereof.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission shall extend to all public utilities in this state, and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public service: Provided, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdic-
tion of the commission with regard to the provisions of such 
residential service: Provided, however, That upon request of 
any of the customers of such natural gas producers, the com-
mission may, upon good cause being shown, exercise such 
authority as the commission may deem appropriate over the 
operation, rates and charges of such producer and for such 
length of time as the commission may consider to be proper: 
Provided further, That the jurisdiction the commission may 
exercise over the rates and charges of municipally operated 
public utilities is limited to that authority granted the commis-
sion in section four-b of this article: And provided further, That 
the decision-making authority granted to the commission in 
sections four and four-a of this article shall, in respect to an 
application filed by a public service district, be delegated to a 
single hearing examiner appointed from the commission staff, 
which hearing examiner shall be authorized to carry out all 
decision-making duties assigned to the commission by said 
sections, and to issue orders having the full force and effect of 
orders of the commission.

(b) The commission may, upon application, waive its 
jurisdiction and allow a utility operating in an adjoining state to 
provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and 
economically served by a utility licensed to operate within the 
state of West Virginia;

(2) Said area can be provided with utility service by a utility 
which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated 
by a regulatory agency or commission of the adjoining state;

and

(4) The number of customers to be served is not substantial. 
The rates the out-of-state utility charges West Virginia custo-
ers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(c) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before the first day of July, two thousand three, shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article as if the certificate of public convenience and necessity for such facility were a siting certificate issued under said section eleven-c and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(2) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before the first day of July, two thousand three, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of
section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale, and that had been constructed and had engaged in commercial operation on or before the first day of July, two thousand three, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law:

Provided, That such owner or operator shall be subject to subdivision (5) of this subsection if a material modification of such facility is made or constructed.

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both
such sales at retail and such sales at wholesale, and that had not
been constructed and had not been engaged in commercial
operation on or before the first day of July, two thousand three,
shall, prior to commencement of construction of the facility,
obtain a siting certificate from the commission pursuant to the
provisions of section eleven-c of this article in lieu of a certifi-
cate of public convenience and necessity pursuant to the
provisions of section eleven of this article. An owner or
operator of an electric generating facility as is described in this
subdivision for which a siting certificate has been issued by the
commission shall be subject to subsections (e), (f), (g), (h), (i)
and (j), section eleven-c of this article and shall not otherwise
be subject to the jurisdiction of the commission or to the
provisions of this chapter with respect to such facility except
for the making or constructing of a material modification
thereof as provided in subdivision (5) of this subsection.

(5) An owner or operator of an electric generating facility
described in this subsection shall, before making or construct-
ing a material modification of the facility that is not within the
terms of any certificate of public convenience and necessity or
siting certificate previously issued for the facility or an earlier
material modification thereof, obtain a siting certificate for the
modification from the commission pursuant to the provisions of
section eleven-c of this article in lieu of a certificate of public
convenience and necessity for the modification pursuant to the
provisions of section eleven of this article and, except for the
provisions of section eleven-c of this article, shall not otherwise
be subject to the jurisdiction of the commission or to the
provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a
certificate of public convenience and necessity filed pursuant to
section eleven of this article to construct an electric generating
facility described in this subsection or to make or construct a
material modification of such electric generating facility as an
application for a siting certificate pursuant to section eleven-c of this article if the application for the certificate of public convenience and necessity was filed with the commission prior to the first day of July, two thousand three, and if the commission has not issued a final order thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by, and described in this subsection, shall not be deemed to affect or limit the commission's jurisdiction over contracts or arrangements between the owner or operator of such facility and any affiliated public utility subject to the provisions of this chapter.

§24-2-11c. Siting certificates for certain electric generating facilities or material modifications thereof.

(a) Notice of an application for a siting certificate required under the provisions of subdivisions (1), (2), (3), (4) and (5), subsection (c), section one of this article shall be given as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, with the publication area being each county in which all or a portion of the facility is located or to be located. Such notice shall also be published as a Class I legal advertisement in a newspaper published each weekday in Kanawha County and circulated both within and outside of Kanawha County. If no substantial protest is received within thirty days after the publication of notice, the commission may waive formal hearing on the application.

(b) The commission shall render its decision within three hundred days of the date of filing of an application for a siting certificate or within four hundred days of the filing of an application for a certificate of public convenience and necessity.
pursuant to section eleven of this article if the application is
considered as an application for a siting certificate pursuant to
this section as provided in subdivision (6), subsection (c),
section one of this article. If no decision is rendered within such
time period, the commission shall issue a siting certificate as
applied for.

(c) In deciding whether to issue, refuse to issue, or issue in
part and refuse to issue in part a siting certificate, the commis-
sion shall appraise and balance the interests of the public, the
general interests of the state and local economy, and the
interests of the applicant. The commission may issue a siting
certificate only if it determines that the terms and conditions of
any public funding or any agreement relating to the abatement
of property taxes do not offend the public interest, and the
construction of the facility or material modification of the
facility will result in a substantial positive impact on the local
economy and local employment. The commission shall issue an
order that includes appropriate findings of fact and conclusions
of law that address each factor specified in this subsection. All
material terms, conditions and limitations applicable to the
construction and operation of the proposed facility or material
modification of the facility shall be specifically set forth in the
commission order.

(d) The commission may require an applicant for a siting
certificate to provide such documents and other information as
the commission deems necessary for its consideration of the
application.

(e) If the commission issues the siting certificate, the
commission shall have continuing jurisdiction over the holder
of the siting certificate for the limited purposes of: (1) Consider-
ering future requests by the holder for modifications of or
amendments to the siting certificate; (2) considering and
resolving complaints related to the holder’s compliance with
the material terms and conditions of the commission order issuing the siting certificate, whether or not the complainant was a party to the case in which the siting certificate was issued, which complaints shall be filed, answered, and resolved in accordance with the commission's procedures for resolving formal complaints; and (3) enforcing the material terms and conditions of a commission order as provided in subsection (f) of this section.

(f) If the commission determines, in a proceeding instituted on its own motion or on the motion of any person, that the holder of a siting certificate has failed without reasonable justification to comply with any of the material terms and conditions of a commission order issuing a siting certificate, modifying or amending a siting certificate, or resolving a complaint related to compliance of the holder with the material terms and conditions of a siting certificate, the commission may enforce the material terms and conditions of the commission order: (1) By requiring the holder to show cause why it should not be required so to comply; (2) through a proceeding seeking the imposition of a civil penalty not to exceed five thousand dollars or criminal penalties as provided in section four, article four of this chapter, or both such civil and criminal penalties, and the imposition of either or both such civil penalty and criminal penalties shall be subject to the provisions of section eight, article four, of this chapter; (3) by mandamus or injunction as provided in section two of this article; or (4) prior to the completion of construction of the proposed facility or prior to the completion of construction of a material modification of the facility, by the suspension or revocation of the siting certificate, including the preliminary suspension of the siting certificate under the standards applicable to circuit courts of this state for the issuance of preliminary injunctions.

(g) Any person may seek to compel compliance with the material terms and conditions of a commission order issuing,
modifying or amending a siting certificate, or resolving a
complaint related to the holder's compliance with the material
terms and conditions a siting certificate through appropriate
proceedings in any circuit court having jurisdiction.

(h) The material terms and conditions of a commission
order issuing, modifying or amending a siting certificate or
resolving a complaint related to the holder's compliance with
the material terms and conditions of a commission order issuing
a siting certificate shall continue to apply to any transferee of
the siting certificate or to any transferee of all or a portion of
the ownership interest in an electric generating facility for
which a siting certificate has been issued. In either case, the
transferee or original holder of the siting certificate shall be
subject to the continuing jurisdiction of the commission to the
extent provided in subsections (e) and (f) of this section.

(i) Any party feeling aggrieved by a final order of the
commission under this section may petition for a review thereof
by the supreme court of appeals pursuant to section one, article
five of this chapter.

(j) The commission may prescribe such rules as may be
necessary to carry out the provisions of this section in accor-
dance with the provisions of section seven, article one of this
chapter. Such rules may include and provide for an application
fee to be charged an applicant for a siting certificate, or for a
modification of, or amendment to, a siting certificate previously
issued, under the provisions of this section, which fee shall be
paid into the state treasury and kept in a special fund designated
public service commission fund as established in subsection (a),
section six, article three of this chapter, to be used for the
purposes set forth in that subsection.
AN ACT to amend and reenact section four-b, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to broadening the power of the public service commission to allow an emergency rate for a municipality or a utility cooperative.

Be it enacted by the Legislature of West Virginia:

That section four-b, article two, 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 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipally operated public utilities, except for municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.
(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services. The rates and charges shall be adopted by the electric, natural gas or telephone cooperative’s governing board and in the case of the municipally operated public utility by municipal ordinance to be effective not sooner than forty-five days after adoption:

Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective or the utility shall give its customers, and in the case of a cooperative, its customers, members and stockholders, other reasonable notices as will allow filing of timely objections to the rate change. The rates and charges shall be filed with the commission, together with any information showing the basis of the rates and charges and other information as the commission considers necessary. Any change in the rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section is received and the electric cooperative, natural gas cooperative, telephone cooperative or municipality has failed to file with the commission the rates and charges with information showing the basis of rates and charges and other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred-day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.
(c) The commission shall review and approve or modify the rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing the rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by the municipally operated public utility or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state;

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in the rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. The petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by the change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between customer or group of customers and other customers of the municipal utility. The petition shall be accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated public utility or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state under subdivision (1), subsection (c) of this section shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of one hundred twenty days from the date the rates or charges
would otherwise go into effect or until an order is issued as
provided herein.

(2) Upon sufficient showing of discrimination by customers
outside the municipal boundaries or a customer or a group of
customers within the municipal boundaries under a petition
filed under subdivision (2) or (3), subsection (c) of this section,
the commission shall suspend the adoption of the rate change
contained in the ordinance for a period of one hundred twenty
days from the date the rates or charges would otherwise go into
effect or until an order is issued as provided herein.

(e) The commission shall forthwith appoint a hearing
examiner from its staff to review the grievances raised by the
petitioners. The hearing examiner shall conduct a public
hearing and shall, within one hundred days from the date the
rates or charges would otherwise go into effect, unless other-
wise tolled as provided in subsection (b) of this section, issue
an order approving, disapproving or modifying, in whole or in
part, the rates or charges imposed by the electric, natural gas or
telephone cooperative or by the municipally operated public
utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under
the provisions of subsection (c) of this section, the commission
may exercise the power granted to it under the provisions of
section three of this article. The commission may determine the
method by which the rates are reviewed and may grant and
conduct a de novo hearing on the matter if the customer,
electric, natural gas or telephone cooperative or municipality
requests a hearing.

(g) The commission may, upon petition by a municipality
or electric, natural gas or telephone cooperative, allow an
interim or emergency rate to take effect, subject to refund or
future modification, if it is determined that the interim or
emergency rate is necessary to protect the municipality from financial hardship attributable to the purchase of the utility commodity sold, or the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress. In such cases, the commission may waive the 45-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

(h) Notwithstanding any other provision, the commission has no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the state of West Virginia.

CHAPTER 182

(S. B. 436 — By Senators Hunter, Oliverio, Prezioso, Kessler, Snyder, Caldwell, Dempsey, Love, Bailey, Helmick, McCabe, Rowe, Fanning, Bowman, McKenzie, Ross, White, Jenkins, Minard, Unger and Sharpe)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to directing the public service commission to implement the West Virginia information and referral system in accordance with the recommendations of the public service commissions' appointed task force as reported to the Legislature in two thousand two.

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

ARTICLE 8. 211 INFORMATION AND REFERRAL SYSTEM.

§24-8-1. Legislative findings.

§24-8-2. Rule-making authority.

§24-8-1. Legislative findings.

The Legislature finds that it is in the best interest of the citizens of West Virginia to implement the universally, free access telephone number “211” made available by the federal communications commission for states to develop an information and referral source for human and social services. The “211” system will provide a vital resource to the citizens of West Virginia for social and human service information and referral by providing a critical connection between individuals and families in need and the appropriate community-based organizations and government agencies.

The Legislature further finds that implementing the “211” information and referral system will serve as a centralized resource for human and social service professionals, medical personnel, government agencies and charitable organizations by providing a full spectrum of service options to the citizens of West Virginia. The “211” system will also serve as a centralized point in times of natural disasters or national emergencies by providing access to information for the coordination of relief.

Therefore, the Legislature authorizes and directs the public service commission to implement the “211” information and referral system in accordance with the recommendations of the public service commissions’ appointed task force as reported to the Legislature.
§24-8-2. Rule-making authority.

1. The public service commission shall propose rules for legislative promulgation in accordance with article three, chapter twenty-nine-a of this code regarding the implementation and administration of this system. From the effective date of this section until the date of the promulgation of these rules, the commission may file rules as emergency rules in accordance with the applicable provisions of this code in order to implement and administer this system.

CHAPTER 183

(Com. Sub. for S. B. 412 — By Senators Love, Sharpe, Sprouse and Minear)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service districts; public utility services; providing that unpaid charges for services do not become a lien against the owner of real property nor is the owner liable for the charges unless the owner contracted directly with the provider for the services; modifying deposit; and providing refund of deposit with interest.

Be it enacted by the Legislature of West Virginia:

That section nine, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE, STORMWATER AND GAS SERVICES.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

(a)(1) 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. 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 the 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 under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; 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 fur-
nished. 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.

(2) 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 of the charges. 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. Notwith-
standing the provisions of section eight, article three, chapter
twenty-four of this code to the contrary, all new applicants for
service shall deposit the greater of a sum equal to two twelfths
of the average annual usage of the applicant’s specific customer
class or 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. If a district provides both
water and sewer service, all new applicants for service shall
deposit the greater of a sum equal to two twelfths of the average
annual usage for water service or fifty dollars and the greater of
a sum equal to two twelfths of the average annual usage for
wastewater service of the applicant’s specific customer class or
fifty dollars. 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 deposit equal to the greater of a sum equal to two
twelfths of the average usage for the applicant’s specific
customer class or fifty dollars has been remitted to the district.
After twelve months of prompt payment history, the district
shall return the deposit to the customer or credit the customer’s
account at a rate as the public service commission may pre-
scribe: Provided, That where the customer is a tenant, the
district is not required to return the deposit until the time the
tenant discontinues service with the district.
rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. 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, ten days after the water or gas services become delinquent.

(b) 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 the 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.
(c) 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 division of health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the division of 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 the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the division of 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 the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs 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 the 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 division of health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate
the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the division of health from the house, dwelling or building into the sewer facilities, the district may charge, and the 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, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner’s, tenant’s or occupant’s specific customer class.

(e) Whenever any district has made available a stormwater system to any owner, tenant or occupant of any real property located near the stormwater system and where stormwater from real property affects or drains into the stormwater system, it is hereby found, determined and declared that the owner, tenant or occupant is being served by the stormwater system and it is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge, and the 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.
(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are 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: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) 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.
AN ACT to amend and reenact section twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contracts for the provision of engineering, design or feasibility studies by public service districts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER SEWERAGE AND GAS SERVICES.

§16-13A-25. Borrowing and bond issuance; procedure.

  1 (a) Notwithstanding any other provisions of this article to the contrary, a public service district may not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article, without the prior consent and approval of the public service commission.
(b) The public service commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to: (1) Experience with the same engineering firm; or (2) completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.

(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:

(1) A contract with a public service district that is a Class A utility on the first day of April, two thousand three, or subsequently becomes a Class A utility as defined by commission rule;

(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;

(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or

(4) A contract that does not exceed fifteen thousand dollars.

(d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the public service commission or a party
files an objection to the request. If an objection is filed, the
public service commission shall issue its decision within one
hundred twenty days of the filing date. In the event objection is
received to a request for a waiver, the application shall be
considered a request for waiver as well as a request for approval
in the event a waiver is not appropriate.

(e) Unless the properties to be constructed or acquired
represent ordinary extensions or repairs of existing systems in
the usual course of business, a public service district must first
obtain a certificate of public convenience and necessity from
the public service commission in accordance with the provi-
sions of chapter twenty-four of this code, when a public service
district is seeking to acquire or construct public service prop-
erty.

Thirty days prior to making formal application for the
certificate, the public service district shall prefile with the
public service commission its plans and supporting information
for the project in a manner prescribed by public service
commission rules and regulations.

CHAPTER 185

(H. B. 2534 — By Delegates Doyle, Manuel, Tabb,
Campbell, Duke, Blair and Trump)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighty-five, article
twenty-four, chapter eight of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to the tax
on the privilege of transferring title to real estate; and eliminating the maximum value of the property to which the tax applies.

Be it enacted by the Legislature of West Virginia:

That section eighty-five, 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.

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

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

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

(c) The tax imposed pursuant to this section is to be used exclusively for the purpose of funding farmland preservation.
AN ACT to amend article three, 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 nine; and to amend article three, chapter thirty-six of said code, by adding thereto a new section, designated section five-a, all relating to the description of property required to create an easement or right-of-way by deed or other legal instrument; providing that a description of the easement be filed with the deed or other instrument executing the easement; excludes specified easements and right-of-ways from this requirement; and exempts certain documents from survey and certification filing requirements.

Be it enacted by the Legislature of West Virginia:

That article three, 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 nine; and that article three, chapter thirty-six of said code be amended by adding thereto a new section, designated section five-a, all to read as follows:

Chapter

36. Estates and Property.

CHAPTER 24. PUBLIC SERVICE COMMISSION.
ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-9. Easement and right-of-way.

A public utility may not acquire an easement or right-of-way unless the deed or other instrument granting or reserving the easement or right-of-way describes the property in accordance with the requirements of section five-a, article three, chapter thirty-six of this code.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.

§36-3-5a. Easement and right-of-way; description of property; exception for certain public utility facilities.

(a) Any deed or instrument that initially grants or reserves an easement or right-of-way shall describe the easement or right-of-way by metes and bounds, or by specification of the centerline of the easement or right-of-way, or by station and offset, or by reference to an attached drawing or plat which may not require a survey, or instrument based on the use of the global positioning system which may not require a survey, or by source of title and reference to the most recent deed sufficient to reasonably identify and locate the easement or right-of-way on the property: Provided, That the easement or right-of-way is not invalid because of the failure of the easement or right-of-way to meet the requirements of this subsection.

(b) This section does not apply to the construction of a service extension from a main distribution system of a public utility when such service extension is located entirely on, below, or above the property to which the utility service is to be provided.
(c) The clerk of the county commission of any county in which an easement or right-of-way is recorded pursuant to this section shall only accept for recordation any document that complies with this section and that otherwise complies with the requirements of article one, chapter thirty-nine of this code, without need for a survey or certification under section twelve, article thirteen-a, chapter thirty of this code.

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CHAPTER 187

(H. B. 3062 — By Delegate Michael)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to partition of real estate; and authorizing partition of real estate owned by certain close corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PARTITION.

§37-4-1. Who entitled to partition; jurisdiction; state as party plaintiff.

Tenants in common, joint tenants and coparceners of real property, including minerals, lessees of mineral rights other than lessees of oil and gas minerals and stockholders of a
closely held corporation when there are no more than five
stockholders and the only substantial asset of the corporation is
real estate, shall be compelled to make partition, and the circuit
court of the county wherein the land or estate, or any part
thereof, may be, has jurisdiction, in cases of partition, and in the
exercise of that jurisdiction, may take cognizance of all
questions of law affecting the legal title, that may arise in any
proceedings.

The state hereafter shall, whenever it is an owner of an
undivided interest in any land or real estate, together with other
persons, become a party plaintiff in any proceedings by any
person entitled to demand partition under the first sentence of
this section. Before instituting suit for partition the person
entitled to demand it shall notify the proper official who has
supervision of the state land and thereafter they shall proceed
as they determine best. In all cases resulting in partition or sale
the costs of suit shall come from the proceeds of sale. No state
official in charge of state lands may refuse to perform his duty
in any case where any person is entitled to demand a partition,
or sale under this article.

CHAPTER 188

(Com. Sub. for H. B. 2239 — By Delegates Boggs and Kuhn)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one thousand five hundred
one, article fifteen, chapter thirty-one-d of the code of West
Virginia, one thousand nine hundred thirty-one, as amended; to
amend and reenact section one thousand four hundred one, article
fourteen, chapter thirty-one-e of said code; and to amend and reenact section two, article sixteen, chapter forty-seven of said code, all relating to the reporting procedures of collection agencies; providing that certain entities collecting debts originally owed them is not defined as a collection agency; and providing that a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state, if their business is defined as a collection agency.

Be it enacted by the Legislature of West Virginia:

That section one thousand five hundred one, article fifteen, chapter thirty-one-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one thousand four hundred one, article fourteen, chapter thirty-one-e of said code be amended and reenacted; and that section two, article sixteen, chapter forty-seven of said code be amended and reenacted, all to read as follows:

Chapter

31D. West Virginia Business Corporation Act.
31E. West Virginia Nonprofit Corporation Act.
47. Regulation of Trade.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 15. FOREIGN CORPORATIONS.


1 (a) A foreign corporation may not conduct affairs in this state until it obtains a certificate of authority from the secretary of state.

4 (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: Provided, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;

(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.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1401. Authority to conduct affairs required.

(a) A foreign corporation may not conduct affairs in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (a) of this section:

(1) Maintaining, defending, or settling any proceeding;

(2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(3) Maintaining bank accounts;

(4) Selling through independent contractors;

(5) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(6) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property: Provided, That this exemption does not include debts collected by collection
19 agencies as defined in subdivision (b), section two, article sixteen, chapter forty-seven of this code;

20 (7) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

21 (8) Owning, without more, real or personal property;

22 (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;

23 (10) Conducting affairs in interstate commerce;

24 (11) Granting funds or other gifts;

25 (12) Distributing information to its shareholders or members;

26 (13) Effecting sales through independent contractors;

27 (14) The acquisition by purchase of lands secured by mortgage or deeds;

28 (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

29 (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.

30 (c) The list of activities in subsection (b) of this section is not exhaustive.

31 (d) A foreign corporation is to be deemed to be conducting affairs in this state if:
(1) The corporation makes a contract to be performed, in whole or in part, by any party thereto, in this state;

(2) The corporation commits a tort, in whole or in part, in this state; or

(3) The corporation manufactures, sells, offers for sale or supplies any product in a defective condition and that product causes injury to any person or property within this state notwithstanding the fact that the corporation had no agents, servants or employees or contacts within this state at the time of the injury.

(e) A foreign corporation's making of a contract, the committing of a manufacture or sale, offer of sale or supply of defective product as described in subsection (d) of this section is deemed to be the agreement of that foreign corporation that any notice or process served upon, or accepted by, the secretary of state in a proceeding against that foreign corporation arising from, or growing out of, contract, tort, or manufacture or sale, offer of sale or supply of the defective product has the same legal force and validity as process duly served on that corporation in this state.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 16. COLLECTION AGENCIES.

§47-16-2. Definitions.

1 The following words and terms as used in this article shall be construed as follows:

(a) “Claim” means any obligation for the payment of money due or asserted to be due to another person, firm, corporation or association.
(b) "Collection agency" means and includes all persons, firms, corporations and associations: (1) Directly or indirectly engaged in the business of soliciting from or collecting for others any account, bill or indebtedness originally due or asserted to be owed or due another and all persons, firms, corporations and associations directly or indirectly engaged in asserting, enforcing or prosecuting those claims; (2) which, in attempting to collect or in collecting his or her or its own accounts or claims uses a fictitious name or names other than his or her or its own name; (3) which attempts to or does give away or sell to others any system or series of letters or forms for use in the collection of accounts or claims which assert or indicate directly or indirectly that the claims or accounts are being asserted or collected by any person, firm, corporation or association other than the creditor or owner of the claim or account; or (4) directly or indirectly engaged in the business of soliciting, or who holds himself or herself out as engaged in the business of soliciting, debts of any kind owed or due, or asserted to be owed or due, to any solicited person, firm, corporation or association for fee, commission or other compensation.

The term "collection agency" shall not mean or include: (1) Regular employees of a single creditor or of a collection agency licensed hereunder; (2) banks; (3) trust companies; (4) savings and loan associations; (5) building and loan associations; (6) industrial loan companies; (7) small loan companies; (8) abstract companies doing an escrow business; (9) duly licensed real estate brokers or agents when the claims or accounts being handled by such broker or agent are related to or in connection with such brokers' or agents' regular real estate business; (10) express and telegraph companies subject to public regulation and supervision; (11) attorneys-at-law handling claims and collections in their own names and not operating a collection agency under the management of a layman; (12) any person, firm, corporation or association acting under the order of any
court of competent jurisdiction; or (13) any person collecting a
debt owed to another person only where: (A) Both persons are
related by wholly-owned, common ownership or affiliated by
wholly-owned corporate control; (B) the person collecting the
debt acts only on behalf of persons related as described in
paragraph (A) of this subdivision; and (C) debt collection is not
the principal business of the person collecting the debt.

(c) "Commissioner" means the state tax commissioner or
his or her agent.

(d) "Customer" means any person, firm, corporation or
association who has filed, assigned or sold any claim or chose
in action with or to a collection agency for collection.

(e) "Licensee" means any person holding a business
franchise registration certificate under section two, article
twelve, chapter eleven of this code and under the provisions of
this article.

(f) "Trust account" means a special account established by
a collection agency with a banking institution in this state,
wherein funds collected on behalf of a customer shall be
deposited.

CHAPTER 189

(Com. Sub. for S. B. 455 — By Senators Minard and Unger)

[Passed March 7, 2003; in effect from passage. Approved by the Governor.]
AN ACT to amend article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen-b, relating to authorizing service credit toward retirement to public employees for public employment in another state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-15b. Credit for public employment in another state.

(a) Any member of the retirement system who has previously been employed in public employment in any other state of the United States is entitled to receive credited service for the time of public employment in that state, not to exceed five years, if the member substantiates by appropriate documentation or evidence his or her public employment in another state and makes contributions as required: Provided, That the employee is not entitled to receive the credited service if the employee is vested or entitled to be vested in a retirement system of the state in which the employment credit was earned and the employee is entitled to service credit in that retirement system for the employment period for which the applicant seeks credited service in West Virginia: Provided, however, That the service credit from the other state may not be used to meet West Virginia's eligibility requirements for retirement or vesting.

Employees entitled to out-of-state service credit under the provisions of this section shall make additional contribution to the retirement system equal to the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the employee and the employer, had the
(b) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of trustees has the final power to determine this period.

CHAPTER 190

(H. B. 2975 — By Delegate Kominar)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a time period a member of the public employees retirement system has to repurchase service credit previously forfeited.

Be it enacted by the Legislature of West Virginia:

That section eighteen, 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.

§5-10-18. Termination of membership; reentry.

(a) When a member of the retirement system retires or dies, he or she ceases to be a member. When a member leaves the employ of a participating public employer for any other reason, he or she ceases to be a member and forfeits service credited to him or her at that time. If he or she becomes reemployed by a
participating public employer he or she shall be reinstated as a member of the retirement system and his or her credited service last forfeited by him or her shall be restored to his or her credit: Provided, That he or she must be reemployed for a period of one year or longer to have the service restored: Provided, however, That he or she returns to the members' deposit fund the amount, if any, he or she withdrew from the fund, together with regular interest on the withdrawn amount from the date of withdrawal to the date of repayment, and that the repayment begins within two years of the return to employment and that the full amount is repaid within five years of the return to employment.

(b) The Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center, and their successors in interest, shall provide for their employees a pension plan in lieu of the public employees retirement system during the existence of the named mental health centers and their successors in interest.

(c) The administrative bodies of the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center shall, on or before the first day of May, one thousand nine hundred ninety-seven, give written notice to each employee who is a member of the public employees retirement system of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member's options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures in support of the explanation regarding the individual member's current account balance, vested and nonvested, and his or her projected return upon remaining in the public employees retirement system until retirement, disability or death, in comparison with the projected
return upon withdrawing from the public employees retirement system and joining a private pension plan provided by the community mental health center and remaining therein until retirement, disability or death. The administrative bodies shall keep in their respective records a permanent record of each employee’s signature confirming receipt of the notice.

(d) Effective the first day of March, two thousand three, and ending the thirty-first day of December, two thousand four, any member may purchase credited service previously forfeited by him or her and the credited service shall be restored to his or her credit: Provided, That he or she returns to the members’ deposit fund the amount, if any, he or she withdrew from the fund, together with interest on the withdrawn amount from the date of withdrawal to the date of repayment at a rate to be determined by the board. The repayment under this section may be made by lump sum or repaid over a period of time not to exceed sixty months. Where the member elects to repay the required amount other than by lump sum, the member is required to pay interest at the rate determined by the board until all sums are fully repaid.

CHAPTER 191

(H. B. 2118 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 8, 2003; in effect July 1, 2003. Approved by the Governor.]

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 the rights of members of the
West Virginia state police retirement system and increasing certain benefits to dependents of a state trooper who dies in performance of his duties.

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 loses 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 is 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, is 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 (1) An amount equal to nine 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 ten thousand dollars.

In addition thereto, the surviving spouse is entitled to receive and there shall be paid to that person one hundred fifty 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 third 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 is, in addition to any other benefits due under this or other sections of this article, 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 any rules the board provides 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.

CHAPTER 192

(H. B. 2984 — By Delegate H. White)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state teachers retirement system; increasing the amount of service credit a teacher off work on workers' compensation may purchase; setting forth a window for the purchase and providing that a teacher receive increment credit for each year purchased.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14b. Members' option to make contributions for periods of temporary total disability.
Any member who was absent from work while receiving temporary total disability benefits pursuant to the provisions of chapter twenty-three of this code as a result of a compensable injury received in the course of and as a result of his or her employment with the covered employer during the time period beginning the first day of January, one thousand nine hundred eighty-eight and the thirty-first day of December, one thousand nine hundred ninety-eight, may purchase credited service for that time period or those time periods the member was absent from work as a result of a compensable injury and receiving temporary total disability benefits: Provided, That the member returned to work with his or her covered employer within one year following the cessation of temporary total disability benefits. The member desiring to purchase such credited service may do so only by lump sum payment from personal funds: Provided, however, That the purchase of service credit pursuant to the provisions of this section shall be completed between the time period beginning the first day of July, two thousand three and ending the thirtieth day of June, two thousand four: Provided further, That in order to purchase such service credit, the member shall pay to the board his or her regular contribution and an equal amount that represents the employer's contribution, based on the salary the member was receiving immediately prior to having sustained such compensable injury: And provided further, That the member purchasing service credit under the provisions of this section may not be charged interest. The maximum number of years of service credit that may be purchased under this section shall not exceed five: And provided further, That each year purchased under this section shall count as a year of experience for purposes of the increment set forth in section two, article four, chapter eighteen-a of this code.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers’ service; qualified military service.

§18-7A-34. Loans to members.

§18-7A-17. Statement and computation of teachers’ service; qualified military service.

1 (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 retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the teachers retirement system during the period of his or her membership in the public employees retirement system plus interest at a rate to be determined by the board 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 contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: And provided further, That a member utilizing the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.

(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 retirement: 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.

§18-7A-34. Loans to members.

A member of the retirement system upon written application may borrow from his or her individual account in the teachers accumulation fund, subject to these restrictions:
(1) Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being eight thousand dollars: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans shall not exceed the lesser of the following: (a) Fifty thousand dollars reduced by the excess (if any) of the highest outstanding balance of loans during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the date on which the loan is made; or (b) fifty percent of the member’s contributions to his or her individual account in the teachers accumulations fund: Provided, however, That if the total amount of loaned money outstanding exceeds forty million dollars, the maximum shall not exceed three thousand dollars until the retirement board determines that loans outstanding have been reduced to an extent that additional loan amounts are again authorized.

(2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the retirement board: Provided, That interest charged shall be commercially reasonable in accordance with the provisions of section 72(p)(2) of the Internal Revenue Code, and the federal regulations issued thereunder. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(3) No member shall be eligible for more than one outstanding loan at any time.

(4) If a refund is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the balance due with interest to date shall be deducted from such refund.
(5) From his or her monthly salary as a teacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer shall be responsible for making such salary deductions and reporting them to the retirement board. At the option of the retirement board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower decides to make loan payments while not paid for service as a teacher, the retirement board must accept such payments.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the retirement board, become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (A) Any payment of principal and accrued interest on a loan remains unpaid after the same becomes due and payable under the terms of the loan or after such grace period as may be established in the discretion of the retirement board; (B) the borrowing member attempts to make an assignment for the benefit of creditors of his or her refund or benefit under the retirement system; or (C) any other event of default set forth in rules promulgated by the retirement board in accordance with the authority granted pursuant to section one, article ten-d, chapter five of this code: Provided, That any refund or offset of an unpaid loan balance shall be made only at the time the member is entitled to receive a distribution under the retirement system.

(7) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the retirement board may determine.
(8) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of section 72(p)(2) and section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, and accordingly, the retirement board is authorized to: (a) apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of section 72(p)(2) and section 401 of the Internal Revenue Code and the federal regulations issued thereunder; (b) adopt plan loan policies or procedures consistent with these federal law provisions; and (c) take such actions as it deems necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The retirement board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of section 72(p)(2) or section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, notwithstanding any provision in this article to the contrary.

CHAPTER 194
(Com. Sub. for H. B. 3109 — By Delegate Warner)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]  

AN ACT to amend and reenact section eleven, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the teachers' defined contribution retirement system; providing for service credit for members
while serving in the Legislature; member contributions; employer contributions; effective dates; and option of member.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-11. Termination of membership.

Any member whose employment with a participating employer terminates after the completion of six complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution from the member’s annuity account, in an amount equal to the member’s contribution plus one third of the employer contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of nine complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution from the member’s annuity account, in an amount equal to the member’s contribution plus two thirds of the employer’s contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of twelve complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution of all funds contributed and accumulated in his or her annuity account. Any member whose employment with a participating employer terminates prior to the completion of six complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution from the member’s annuity account, in an amount equal to the member’s contribution plus any earnings thereon: Provided, That on the death or permanent, total disability of any member,
that member shall be eligible to terminate his or her annuity account and receive all funds contributed to or accumulated in his or her annuity account.

The remaining balance, if any, in the member’s account after the distribution shall be remitted and paid into a suspension account, hereby created, to be administered by the board. The board shall promulgate rules regarding the distribution of any balance in the special account created by this section: Provided, That any funds in the account shall be used solely for the purpose of reducing employer contributions in future years.

Any account balances remitted to the suspension account herein shall be maintained by the board in said suspension account in the name of the terminated employee for a period of five years following initial remittance to the suspension account. For each said terminated employee at the culmination of the aforesaid five-year period, the board shall certify in writing to each contributing employer the amount of the account balances plus earnings thereon attributable to each separate contributing employers previously terminated employees’ accounts which have been irrevocably forfeited due to the elapse of a five-year period since termination pursuant to section sixteen of this article.

Upon certification to the several contributing employers of the aggregate account balances plus earnings thereon which have been irrevocably forfeited pursuant to this section, the several contributing employers shall be permitted in the next succeeding fiscal year or years to reduce their total aggregate contribution requirements pursuant to section seventeen of this article, for the then current fiscal year by an amount equal to the aggregate amounts irrevocably forfeited and certified as such to each contributing employer.
Upon the utilization of the amounts irrevocably forfeited to any contributing employer as a reduction in the then current fiscal year contribution obligation and upon notification provided by the several contributing employers to the board of their intention to utilize irrevocably forfeited amounts, the board shall direct the distribution of said irrevocably forfeited amounts from the suspension account to be deposited on behalf of the contributing employer to the member annuity accounts of its then current employees pursuant to section seventeen of this article: Provided, That 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, nonteaching 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, regardless when this time was served: Provided, however, 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 further, 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 July, two thousand three: And 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.
CHAPTER 195

(Com. Sub. for S. B. 404 — By Senators Facemyer, Smith, Minard, Sharpe, Edgell, Boley, Deem and Kessler)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the blue and gray intermodal highway authority; functions; members; appointment; powers and duties; officers; bylaws; rules; compensation; and authority as corporate body.

Be it enacted by the Legislature of West Virginia:

BLUE AND GRAY INTERMODAL HIGHWAY AUTHORITY.

§1. Intermodal highway authority created; functions.

There is created a blue and gray intermodal highway authority, to promote and advance the construction of a modern highway which would connect Interstate 79 and Interstate 77. The highway must travel through Jackson, Roane, Calhoun, Gilmer, Braxton and Lewis counties. The authority shall coordinate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of the blue and gray intermodal highway for the benefit of the region and all West Virginians.

§2. Members; appointment; officers; bylaws; rules; compensation.
(a) The authority shall consist of twelve voting members and two ex-officio nonvoting members. All members shall be appointed before the first day of July, two thousand three.

(b) Each of the county commissions of the counties of Jackson, Roane, Calhoun, Gilmer, Braxton and Lewis shall appoint two voting members to the commission. The terms of the voting members initially appointed by a county commission are as follows: One member from each county shall be appointed for two years and the other member appointed from each county shall be appointed for four years. All successive appointments are for terms of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The two ex-officio nonvoting members are the commissioner of highways or his or her designee and the executive director of the West Virginia development office or his or her designee. All terms of ex-officio nonvoting members are for four years.

(d) If a vacancy occurs, the person appointed to fill the vacancy shall serve only for the unexpired portion of the term. All members are eligible for reappointment.

(e) The authority shall meet annually on the third Monday in July and at other times that the authority designates in its bylaws. A special meeting may be called by the president, the secretary or any four members of the authority and may be held only after all members are given notice of the meeting in writing. The presence of seven voting members constitutes a quorum for all meetings. At each annual meeting of the authority, the members shall elect a president, secretary and treasurer. The authority shall adopt bylaws and rules that are necessary for its operation and management.

§3. Powers of authority.
The authority, as a public corporation and governmental instrumentality exercising public powers of the state, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power to:

(1) Acquire, own, hold and dispose of property, real and personal, tangible and intangible;

(2) Lease property, whether as lessee or lessor, and to acquire or grant through easement, license or other appropriate legal form the right to develop and use property and open it to the use of the public;

(3) Sue and be sued;

(4) Adopt, use and alter a corporate seal;

(5) Promote economic development and tourism along the blue and gray intermodal highway;

(6) Advocate actions consistent with its plan of economic development and tourism or its provisions to or before any governmental entity or any private person or entity;

(7) Otherwise act in an advisory capacity with regard to any aspects of the blue and gray intermodal highway at the request of or without the request of any governmental entity or private person or entity;

(8) Zone property adjacent to the intermodal highway;

(9) Regulate advertising along the intermodal highway; and

(10) Regulate the speed limit on the intermodal highway.

The authority may own any of the real estate or real property described in this section for development and is
28 responsible for operating or maintaining the blue and gray
29 intermodal highway.

30 Each voting member of the authority shall be compensated
31 monthly by the governing body that appointed him or her in an
32 amount to be fixed by the governing body.


1 The authority created in this article is a public corporation
2 with all the powers and duties of a public corporation.

CHAPTER 196

(H. B. 3104 — By Delegate Warner)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-a, chapter seventeen of the code of
West Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section twenty-three,
relating to the commissioner of highways generally; providing for
commercial work orders for vehicle and equipment repair;
establishing criteria for commercial vehicle and equipment repair
vendors; and requiring a cost effectiveness analysis for issuing
commercial work orders.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter seventeen 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, to read as follows:
ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-23. Administration of commercial vehicle and equipment related work orders.

In order to promote cost effective vehicle and equipment repair work efficiently and effectively and in order to provide for repair work to be done in a safe and timely manner when in-house repair is determined not to be cost effective or practical under the circumstances, the commissioner of highways may establish a cost effective analysis for determining the reasonableness and effectiveness of obtaining repair of vehicles and equipment by certain certified vendors.

The commissioner may issue a commercial work order to certified vendors for repair of vehicles and equipment when the commissioner determines that the repairs would extend the life of the equipment or vehicle a minimum of five years and that the expenditure would be the safest cost effective alternative to purchase of new vehicles and equipment or in-house repair.

Any commercial vendor of vehicle and equipment repair may apply to the commissioner for certification as a certified repair vendor under the provisions of this section. In order to qualify, the vendor must provide proof that it has the trained personnel, the required tools, equipment and facilities to provide the work. The commissioner shall inspect or cause to be inspected the facilities and shall review the qualifications of personnel of vendors applying for certification. If approved by the commissioner, the vendor may be certified as a qualified vendor for the type of repair work the commissioner determines the vendor is qualified to provide.

Prior to issuing a commercial work order with a certified vendor, the commissioner must determine the cost of repair of the vehicle or equipment. If on site inspection is required, the
commissioner may issue a work order to provide for the inspection and estimate.

Preference for issuing vehicle and equipment repair work orders shall be given to in-state licensed qualified vendors: Provided, That a vendor failing to guarantee its work for five years or failing to complete any work order in the time and to the specifications of the work order shall be decertified for a period of five years.

Nothing herein requires the commissioner of highways to issue a work order to any particular commercial vendor.

The commissioner of highways shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code regarding certification of qualified vendors and awarding work orders. The legislative rule may include provisions for deviations from the standard cost principles in special situations and circumstances.

CHAPTER 197

(Com. Sub. for S. B. 651 — By Senators Prezioso, Unger, Boley, Edgell, Ross, Rowe, Sharpe, Smith and Weeks)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article one-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter five-b of said code by adding thereto a new article, designated article two-c, relating to creation of the West Virginia academy of science and technology; declaring legislative
purpose; establishing the academy council; defining the qualifications and selection of members; establishing terms of members; providing that members shall not be entitled to compensation; executive director of the council; duties of the council and the executive director; nomination of fellows of the academy and their participation in working groups of the academy; requiring periodic reports; continuation; and providing for confidentiality of trade secrets.

Be it enacted by the Legislature of West Virginia:

That article one-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter five-b of said code be amended by adding thereto a new article, designated article two-c, to read as follows:

ARTICLE 2C. WEST VIRGINIA ACADEMY OF SCIENCE AND TECHNOLOGY.

§5B-2C-1. Legislative purpose.
§5B-2C-2. West Virginia academy of science and technology; composition; creation of council, appointment and terms; expenses; selection of chairperson; quorum; meetings.
§5B-2C-3. Executive director; powers and duties; compensation; expenses.
§5B-2C-4. Powers and duties of the council of the academy of science and technology.
§5B-2C-5. Fellows of the academy of science and technology.
§5B-2C-6. Periodic reports.
§5B-2C-7. Confidentiality of contributed material.
§5B-2C-8. Continuation of the academy.

§5B-2C-1. Legislative purpose.

(a) The Legislature hereby finds that educational and economic development require an integrated program of support for research and development, assistance in the transfer of technological innovations and discoveries to public and private enterprises and facilitation of the commercialization of
6 intellectual property. To that end, the state recognizes the need
7 for:

8 (1) Informed analysis of the status of science and technol-
9 ogy research, development and commercialization capabilities,
10 infrastructure and activities within West Virginia and the
11 development of innovative options that build upon and expand
12 them with the goal of increasing the gross state product;

13 (2) Coordination of efforts to attract private and federal
14 assistance for research, development and commercialization in
15 those fields most likely to maximize the gross state product;

16 (3) Increased collaboration between all of the federal, state
17 and private research and development and technology commer-
18 cialization organizations in the state;

19 (4) Strengthening the leadership and support of the West
20 Virginia experimental program to stimulate competitive
21 research; and

22 (5) Leadership in science and technology policy.

23 (b) The Legislature therefore declares that creation of a
24 West Virginia academy of science and technology will promote
25 and foster the educational and economic development of the
26 state.

§5B-2C-2. West Virginia academy of science and technology;
composition; creation of council, appointment and
terms; expenses; selection of chairperson; quo-
rum; meetings.

1 (a) There is hereby created, within the West Virginia
2 development office, a West Virginia academy of science and
3 technology. The academy consists of a standing council of nine
4 members and such ad hoc working groups as may be necessary
5 to review a particular field of study. A working group may
include both members of the council and also such individuals
having expertise within their profession or discipline who can
be appointed fellows of the academy.

(b) Members of the academy council shall be selected for
their demonstrated ability in innovative thinking, management
skills, broad technical knowledge and a record of working to
improve the science and technology base of the state. The
objective of the process of selection shall be to create a council
that, in its composition, represents a broad cross-section of
those involved throughout the state’s science and technology
enterprises. Members of the council shall be selected and
appointed as follows:

(1) The governor shall appoint to the council, with the
advice and consent of the Senate, three members experienced
with, or serving in, federal agencies that promote and utilize
research, development and commercialization, from a list of six
persons recommended by a nominating committee. The
nominating committee will be organized and lead by a repre-
sentative from the national energy technology laboratory and
may consist of representatives of United States government
agencies, including, but not limited to, the federal departments
of energy, transportation, agriculture, defense and homeland
security, the national science foundation and the national
aeronautics and space administration;

(2) The governor shall appoint to the council, with the
advice and consent of the Senate, three members with experi-
eince and expertise in private enterprise, research and develop-
ment and commercialization from a list of six persons recom-
manded by a nominating committee. The nominating committee
will be organized and lead by a representative from the council
for community and economic development and may consist of
representatives from labor and industry, including, but not
limited to, the economic development authority, the infrastruc-
ture council, the West Virginia high technology consortium and
the West Virginia American federation of labor - congress of
industrial organizations; and

(3) The governor shall appoint to the council, with the
advice and consent of the Senate, three members with experi-
ence and expertise in stimulating competitive research and
development from a list of six persons recommended by a
nominating committee. The nominating committee shall be
organized and lead by a representative of the higher education
policy commission and may consist of representatives from the
state institutions of higher education.

(c) The terms of the council members taking office on or
after the effective date of this legislation shall expire as
designated by the governor at the time of their appointment,
with one term in each of the three categories in subsection (b)
of this section expiring at the end of the second year, one term
in each category expiring at the end of the fourth year and one
term in each category expiring at the end of the sixth year. As
the original appointments expire, each subsequent appointment
will be for a full six-year term. Any member whose term has
expired may serve until a successor has been duly appointed
and qualified. For any vacancy in the office of a member
occurring prior to the expiration of that term, the vacancy may
be filled by the governor from a list of three qualified persons
recommended by the remaining members of the council. Any
person appointed to fill a vacancy shall serve for only the
unexpired term unless reappointed by the governor for an
additional term. Any member may be appointed to successive
terms not to exceed two full terms.

(d) Members of the council are not entitled to compensation
for service on the council but may be reimbursed by the West
Virginia development office for all reasonable and necessary
expenses actually incurred in the performance of their duties in
(e) The governor will select and appoint a member of the council to serve as chairperson for a term of two years to run concurrently with the term of office of the member designated as chair.

(f) A majority of members constitutes a quorum for the purpose of conducting business.

(g) The council shall meet at least once each quarter of the year and shall conduct all meetings in accordance with the open governmental meetings proceedings act pursuant to article nine-a, chapter six of this code.

§5B-2C-3. Executive director; powers and duties; compensation; expenses.

(a) The governor is authorized and directed to request and negotiate the loan of a federal executive employee, pursuant to the provisions of the federal intergovernmental personnel act, to serve as the initial executive director of the council. This person is expected to serve as executive director of the academy for a period of not less than one year. He or she must have training and experience in science, technology research, development and commercialization and demonstrable skills in managing new programs. The executive director shall serve at the will and pleasure of the academy council and is not entitled to compensation but may be reimbursed by the West Virginia development office for all reasonable and necessary expenses actually incurred in the performance of his or her duties in a manner consistent with guidelines of the travel management office of the department of administration or its successor.
(b) Subsequent executive directors may be selected by the council in consultation with the director of the West Virginia development office.

(c) In addition to assisting the council and its working groups in the exercise of their duties, the executive director shall:

1. Facilitate and oversee the process for the initial nomination and appointment of council members;
2. Provide and obtain scientific, technical, economic, programmatic information and market research to support the work of the academy;
3. Foster and maintain relationships between agencies of this state, other states, the federal government, educational institutions, nonprofit organizations and private enterprises for the advancement of research, development and commercialization;
4. Organize, prepare and lead presentations on science, technology research and development and commercialization for business executives, state legislative leaders and committees, and federal agencies; and
5. Develop yearly work plans for the academy.

(d) The executive director will be available to the governor, the speaker of the House of Delegates and the president of the Senate to analyze and comment upon proposed legislation and rules that relate to or materially affect state scientific, technical and commercialization issues.

§5B-2C-4. Powers and duties of the council of the academy of science and technology.
(a) The council may seek and accept public and private research grants and contracts, matching funds and procurement arrangements from the state and federal government, private industry and other agencies, in furtherance of and consistent with its mission and programs: Provided, That members of the council may not violate the West Virginia ethics act, pursuant to the provisions of chapter six-b of this code.

(b) The council may, through the West Virginia development office, receive and accept gifts or grants from private foundations, corporations, individuals, devises and bequests or from other lawful sources. All moneys collected shall be deposited in a special account in the state treasury to be known as the “West Virginia academy of science and technology fund”. Expenditures from the fund shall be made by the West Virginia development office on the request of the council 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: Provided, That for the fiscal year ending the thirtieth day of June, two thousand four, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(c) The council may select and appoint fellows of the council pursuant to the provision of section five of this article.

(d) The council may make recommendations to the governor, the speaker of the House of Delegates, the president of the Senate and the joint commission on economic development concerning strategic and specific policies to foster research and development within this state.
(e) The council may recommend legislation to facilitate improved coordination between state agencies, educational institutions, industries and research laboratories.

(f) The council may develop and produce written or electronic information to assist researchers in educational institutions or private enterprise in identifying, applying for and obtaining grants, stipends or other financial support for research, development, technology transfer or commercialization of intellectual property.

(g) The council may convene public meetings to gather information or receive public comments regarding the administration and coordination of research and development efforts within this state.

(h) The council may, through the West Virginia development office, enter into contracts or joint venture agreements with federal and state agencies, corporations, partnerships and other organizations that conduct research, make grants, improve educational programs and work for the scientific, educational or economic development of this state. The director of the West Virginia development office and the council must, by majority vote, approve all contracts and joint venture agreements.

(i) The council may enter into contractual agreements for consideration with entities that are funded from sources other than the state: Provided, That members of the council may not violate the West Virginia ethics act pursuant to the provisions of chapter six-b of this code.

(j) Members of the academy may be appointed to serve on boards of directors of any contracting private nonprofit corporation, foundation or firm: Provided, That members of the council may not violate the West Virginia ethics act pursuant to the provisions of chapter six-b of this code.
§5B-2C-5. Fellows of the academy of science and technology.

(a) In order to address the specific opportunities and needs of any particular field of science and technology, the council may establish working groups composed of a member or members of the council with expertise in that field or discipline and additional individuals, to be known as fellows of the academy of science and technology. Any working group so created may conduct business, research and meetings by telephone, electronic mail or in person and shall not require a quorum to conduct its business. The committee or working group shall submit a report or reports of its findings and recommendations to the council for incorporation in policy recommendations and the annual report of the academy.

(b) Selection of a fellow of the academy will be made on the basis of the designated individual’s experience and expertise in the field to be addressed by the working group and must be by a majority vote of the council. The term of a fellow of the academy is one year and a term may be renewed by the council as needed.

§5B-2C-6. Periodic reports.

(a) The academy will prepare and produce an annual report on the state of science and technology in West Virginia and submit it to the governor, the speaker of the House of Delegates, the president of the Senate and the joint commission on economic development or before the first day of July of each year. The report shall address all aspects of research, development and commercialization that the academy council deems material, including, but not limited to:

(1) Strengths, weaknesses, opportunities and threats to West Virginia’s research, development and commercialization environment and establishments;
(2) Options for actions by the Legislature and the governor to maximize the ability of the state to attract investment, grants and infrastructure development to support growth of science and technology research, development and commercialization in the state;

(3) The status of, and options to improve, scientific and technological entrepreneurship in West Virginia; and

(4) The status of, and options to improve, the collaboration of institutions of higher education in obtaining competitive research awards and grants.

(b) In preparing its annual report, the council may utilize the technical support available to it through the West Virginia development office, the West Virginia department for education and arts, the West Virginia experimental program to stimulate competitive research (EPSCoR), the West Virginia higher education system, federal and state agencies and other entities that have an interest in fostering science and technology research, development and commercialization in this state.

(c) Each month, an academy representative shall meet with legislative and executive leaders to provide updates and information concerning opportunities, issues and progress of science, technology and commercialization in the state.

§5B-2C-7. Confidentiality of contributed material.

Any documentary material, data or other writing made or received by the West Virginia academy of science and technology for the purpose of developing state summaries or policy options concerning the capabilities, performance or plans of individual businesses or organizations is deemed to be confidential trade secrets which are exempt from disclosure under the provisions of section four, article one, chapter twenty-nine-b
§5B-2C-8. Continuation of the academy.

The academy of science and technology hereby created shall continue to exist, pursuant to article ten, chapter four of this code until the first day of July, two thousand six, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 198

(H.B. 3195 — By Delegates Beane, Kuhn, Butcher, Martin, Perdue, Leggett and Azinger)

[Passed March 8, 2003; 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. THE WEST VIRGINIA SUNSET LAW.
§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a full performance evaluation has been conducted upon the agency:

(1) On the first day of July, two thousand four: Division of personnel; division of rehabilitation services; division of labor; division of motor vehicles; department of environmental protection; department of health and human resources; division of natural resources; purchasing division within the department of administration; school building authority; state police; consolidated public retirement board; and workers' compensation.

(2) 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; investment management board; and tourism functions within the development office.

(3) On the first day of July, two thousand seven: Office of health facilities licensure and certification within the department of health and human resources.

(4) On the first day of July, two thousand nine: Office of judges in workers' compensation.
§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a full performance evaluation:

On the first day of July, two thousand five: Division of culture and history.

§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: advisory council on public health; governors' office of fiscal risk analysis and management.
(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 function of the division of natural resources; office of water resources of the department of environmental protection; division of protective services; state rail authority; care home advisory board; steel advisory commission and steel futures program; children’s health insurance board; capitol building commission; public defender services; public employees insurance agency finance board; office of explosives and blasting; workers’ compensation appeal board; records management and preservation board; public energy authority and public energy authority board; waste tire fund; 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; manufactured housing construction and safety board; environmental quality board; commission for the deaf and hard-of-hearing; public employees insurance agency; oral health program; 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; personal
assistance services program; contractor licensing board; and soil conservation committee.

(9) On the first day of July, two thousand seven: Human rights commission; office of coalfield community development; and state geological and economic survey.

(10) On the first day of July, two thousand eight: Ethics commission; public service commission; and marketing and development division of department of agriculture.

(11) On the first day of July, two thousand nine: Driver’s licensing advisory board; West Virginia commission for national and community service; membership in the southern regional education board; bureau of senior services; oil and gas inspector’s examining board; and commission on holocaust education.

§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 four: Office of the environmental advocate; and veterans’ council.

(3) 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.

1. (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.

2. (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 four: Board of examiners of land surveyors; board of landscape architects; board of architects; real estate appraiser licensing and certification board; and board of registration for foresters.

   (2) On the first day of July, two thousand five: Board of social work examiners; board of accountancy; board of veterinary medicine; board of dental examiners; acupuncture board; and board of medicine.

   (3) On the first day of July, two thousand six: Board of examiners in counseling; board of osteopathy; and board of licensed dietitians.

   (4) 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.
(5) On the first day of July, two thousand eight: Nursing home administrators board; board of hearing aid dealers; board of pharmacy; and board of barbers and cosmetologists.

(6) On the first day of July, two thousand nine: Board of physical therapy; board of chiropractic examiners; and board of occupational therapy.

(7) 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.

(8) On the first day of July, two thousand twelve: Board of examiners of psychologists.

(9) On the first day of July, two thousand fifteen: Massage therapy licensure board.

CHAPTER 199

(S. B. 417 — By Senators Bowman, Bailey, Caldwell, Jenkins, Minard, Rowe, White, Minear and Smith)

[Passed February 26, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia commission for the deaf and hard-of-hearing.
Be it enacted by the Legislature of West Virginia:

That section twelve, article fourteen, 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 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-12. Continuation of the West Virginia commission for the deaf and hard-of-hearing.

1 The West Virginia commission for the deaf and hard-of-hearing shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 200

(H. B. 2486 — By Delegates Beane, Kuhn, Yeager, Iaquinta, Talbott, Leggett and Frich)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section 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.

Be it enacted by the Legislature of West Virginia:
That section 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.

§5-16-27. Continuation.

1 The public employees insurance agency shall continue to
2 exist, pursuant to article ten, chapter four of this code, until the
3 first day of July, two thousand five, unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 201

(S. B. 165 — By Senators Bowman, Bailey, Boley, Caldwell, Minard, Minear, Rowe, Smith, Weeks and White)

[Passed February 25, 2003: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-six-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia commission for national and community service.

Be it enacted by the Legislature of West Virginia:

That section six, article twenty-six-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 26A. WEST VIRGINIA COMMISSION FOR NATIONAL AND COMMUNITY SERVICE.
§5-26A-6. Continuation date.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia commission for national and community service shall continue to exist until the first day of July, two thousand nine.

CHAPTER 202

(H. B. 2879 — By Delegates Beane, Kuhn, Manuel, Martin, Yost, Leggett and Frich)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-eight, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia commission on holocaust education.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-eight, 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 28. COMMISSION ON HOLOCAUST EDUCATION.

§5-28-4. Continuation of the commission.

1 The West Virginia commission on holocaust education shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two
CHAPTER 203

(S. B. 284 — By Senators Bowman, Bailey, Caldwell, Jenkins, Rowe, White, Boley, Minear, Smith and Weeks)

[Passed March 3, 2003; 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 four, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section fifteen-a, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the records management and preservation board.

Be it enacted by the Legislature of West Virginia:

That section fifteen-a, article eight, 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 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15a. Continuation of board.

1 The records management and preservation board shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, 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 and reenact section thirteen, article two-a, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the office of coalfield community development.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article two-a, 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 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-13. Continuation of office.

1 The office of coalfield community development shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Continuation of the department of health and human resources.

The department of health and human resources shall be charged with the administration of this chapter. The department of health and human resources shall continue to exist pursuant to the provisions of article ten, chapter four of this code, 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 and reenact section twenty, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of 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.

1 The West Virginia investment management board shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section fifty, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-50. Continuation date.

1 The West Virginia state police shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, 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, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to continuation of the office of health facility licensure and certification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-13a. Continuation of the office of health facility licensure and certification.

1 The office of health facility licensure and certification shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section fifteen, article five-p, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the bureau of senior services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5P. SENIOR SERVICES.

§16-5P-15. Continuation of bureau.

1 The bureau of senior services shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
CHAPTER 211

(S. B. 282 — By Senators Bowman, Bailey, Caldwell, Jenkins, Rowe, White, Boley, Minear, Smith and Weeks)

[Passed February 24, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of motor vehicles.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article two, 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 2. DIVISION OF MOTOR VEHICLES.


1 The division of motor vehicles shall continue to exist until
2 the first day of July, two thousand four, pursuant to the provi-
3 sions of article ten, chapter four of this code unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.
AN ACT to amend and reenact section seven-a, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the driver’s licensing advisory board.

Be it enacted by the Legislature of West Virginia:

That section seven-a, article two, chapter seventeen-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. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7a. Driver’s licensing advisory board.

1 The driver’s licensing advisory board is hereby continued.
2 The board shall consist of five members to be appointed by the governor, by and with the advice and consent of the Senate, for terms of three years, except that as to the members first appointed, two shall be appointed for a term of three years, two shall be appointed for a term of two years and one shall be appointed for a term of one year, all from the first day of July, one thousand nine hundred seventy-four. All vacancies occurring on the board shall be filled by the governor, by and with the advice and consent of the Senate. One member of the board shall be an optometrist duly registered to practice optometry in this state and the other four members of the board shall be
13 physicians or surgeons duly licensed to practice medicine or surgery in this state. The governor shall appoint persons qualified to serve on the board who, in his opinion, will best serve the work and function of the board.

17 The board shall advise the commissioner of motor vehicles as to vision standards and all other medical criteria of whatever kind or nature relevant to the licensing of persons to operate motor vehicles under the provisions of this chapter. The board shall, upon request, advise the commissioner of motor vehicles as to the mental or physical fitness of an applicant for, or the holder of, a license to operate a motor vehicle. The board shall furnish the commissioner with all such medical standards, statistics, data, professional information and advice as he may reasonably request.

27 The members of the board shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law, for each day or substantial portion thereof engaged in the performance of official duties.

34 Pursuant to the provisions of article ten, chapter four of this code, the driver’s licensing advisory board shall continue to exist until the first day of July, two thousand nine.
AN ACT to amend and reenact section eight, article ten-I, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the personal assistance services program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-8. Continuation of program.

1 The personal assistance services program shall continue to
2 exist, pursuant to the provisions of article ten, chapter four of
3 this code, until the first day of July, two thousand six, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.

CHAPTER 214

(H. B. 2554 — By Delegates Beane, Kuhn, Butcher,
Manuel, Spencer, Leggett and Schoen)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three-b, all
relating to the continuation of the marketing and development division of the department of agriculture.

Be it enacted by the Legislature of West Virginia:

That section three-a, article one, 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 three-b, all to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3a. Marketing and development division; duties.

§19-1-3b. Continuation of division.

§19-1-3a. Marketing and development division; duties.

In recognition that article ten, chapter four of this code requires a preliminary performance review of the rural resource division of the department of agriculture and that performance standards must be stated before such audit can be performed, the rural resources division is hereby formally established and renamed the marketing and development division in the department of agriculture. The duties of the division are to establish marketing, promotional and development programs to advance West Virginia agriculture in the domestic and international markets; to provide grading, inspection and market news services to the various elements of the West Virginia agricultural industry; and to regulate and license individuals involved in the marketing of agricultural products.

§19-1-3b. Continuation of division.

The marketing and development division of the department of agriculture shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of
AN ACT to amend and reenact section twenty-one, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article one, 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 1. ORGANIZATION AND ADMINISTRATION.

§20-1-21. Continuation of the division of natural resources.

1 The division of natural 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 four, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
CHAPTER 216

(S. B. 470 — By Senators Bowman, Bailey, Caldwell, McCabe, Minard, Rowe, White, Boley, Minear, Smith and Weeks)

[Passed March 3, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia board of manufactured housing construction and safety.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article nine, 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 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-13. Continuation of the board of manufactured housing construction and safety.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia board of manufactured housing construction and safety shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished by act of the Legislature.
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 continuation of 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 to exist pursuant to the provisions of article ten, chapter four of this code until the first day of July, two thousand six, unless sooner terminated, continued or reestablished pursuant to that article.
CHAPTER 218

(S. B. 281 — By Senators Bowman, Bailey, Caldwell, Jenkins, Rowe, White, Boley, Minear and Weeks)

[Passed February 19, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of environmental protection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-4. Department of environmental protection continued.

1 Pursuant to the provisions of article ten, chapter four of this code, the department of environmental protection shall continue to exist until the first day of July, two thousand four, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section eleven, article three-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the office of explosives and blasting.

Be it enacted by the Legislature of West Virginia:

That section eleven, article three-a, 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 3A. OFFICE OF EXPLOSIVES AND BLASTING.

§22-3A-11. Continuation of office.

The office of explosives and blasting shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, 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 and reenact section five, article three, chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the environmental quality board.

Be it enacted by the Legislature of West Virginia:

That section five, article three, chapter twenty-two-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. ENVIRONMENTAL QUALITY BOARD.

§22B-3-5. Continuation of the board.

1 The environmental quality board shall continue to exist pursuant to the provisions of article ten, chapter four of this code until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to that article.
CHAPTER 221

(S. B. 166 — By Senators Bowman, Bailey, Boley, Caldwell, Minard, Minear, Rowe, Smith, Weeks and White)

[Passed February 26, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the oil and gas inspectors’ examining board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ENVIRONMENTAL RESOURCES.

§22C-7-4. Continuation of oil and gas inspectors’ examining board.

1 The oil and gas inspectors’ examining board shall continue to exist pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section ten, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public service commission.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, 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 1. GENERAL PROVISIONS.

§24-1-10. Continuation of commission.

The public service commission shall continue to exist until the first day of July, two thousand eight, pursuant to the provisions of article ten, chapter four of this code unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section one-b, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of culture and history.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1b. Continuation date.

1 The division of culture and history, together with its citizen’s commissions, shall continue to exist pursuant to the provisions of article ten, chapter four of this code, 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 ten, article two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state geological and economic survey.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GEODETIC AND GEOLOGICAL SURVEY.

§29-2-10. Continuation.

1 The state geological and economic survey shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
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 twenty-five, relating to continuation of the West Virginia board of pharmacy.

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 twenty-five, to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-25. Continuation of the board.

1 The West Virginia board of pharmacy will continue to exist until the first day of July, two thousand eight, pursuant to the provisions of article ten, chapter four of this code unless sooner terminated, continued or reestablished pursuant to the provisions of the article.
AN ACT to amend article fourteen, chapter thirty 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 continuation of the board of osteopathy.

Be it enacted by the Legislature of West Virginia:

That article fourteen, 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 sixteen, to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-16. Continuation of board.

1 The West Virginia board of osteopathy shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand six, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
CHAPTER 227

(H. B. 2889 — By Delegates Beane, Kuhn, Hatfield, Manchin, Leggett, Blair and Caruth)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-one, chapter thirty 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 continuation of the board of examiners of psychologists.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, 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 sixteen, to read as follows:

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-16. Continuation of board.

1 The board of examiners of psychologists shall continue to exist pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand twelve, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to continuation of the board of barbers and cosmetologists.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-17. Continuation of board.

1 The board of barbers and cosmetologists shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section twelve, article thirty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the massage therapy licensure board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-12. Continuation of board.

1 The massage therapy licensure board shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand fifteen, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section three, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, four, five and six, article six-b of said chapter, all relating to property tax designations and homestead exemptions from property taxes, and permitting certain homeowners to retain a homestead exemption and Class II property designation for certain property while they are residing with family members or resident of a nursing home or other facility as a result of illness, accident or infirmity and changing due dates and response deadlines to exemption requests.

Be it enacted by the Legislature of West Virginia:

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

Article
  4. Assessment of Real Property.
  6B. Homestead Property Tax Exemption.

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-3. Definitions.
For the purpose of giving effect to the “Tax Limitations Amendment,” this chapter shall be interpreted in accordance with the following definitions, unless the context clearly requires a different meaning:

“Owner” means the person, as defined in section ten, article two, chapter two of this code, who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is considered the owner until the mortgagee or trustee takes possession, after which the mortgagee or trustee shall be considered the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title is also considered the owner.

“Used and occupied by the owner thereof exclusively for residential purpose” means actual habitation by the owner or the owner’s spouse of all or a portion of a parcel of real property as a primary place of abode to the exclusion of any commercial use: Provided, That if the parcel of real property was unoccupied at the time of assessment and either: (a) Was used and occupied by the owner thereof exclusively for residential purposes on the first day of July of the previous year assessment date; (b) was unimproved on the first of July of the previous year but a building improvement for residential purposes was subsequently constructed thereon between that date and the time of assessment; or (c) is retained by the property owner for noncommercial purposes and was most recently used and occupied by the owner or the owner’s spouse as a residence, and the owner, as a result of illness, accident or infirmity, is residing with a family member or is a resident in a nursing home, personal care home, rehabilitation center or similar facility, then the property shall be considered “used and occupied by the owner thereof exclusively for residential purpose”: Provided, however, That nothing herein contained
shall permit an unoccupied or unimproved property to be considered "used and occupied by the owner thereof exclusively for residential purposes" for more than one year unless the owner, as a result of illness, accident or infirmity, is residing with a family member or is a resident of a nursing home, personal care home, rehabilitation center or similar facility. If a license is required for an activity on the premises or if an activity is conducted thereon which involves the use of equipment of a character not commonly employed solely for domestic as distinguished from commercial purposes, the use may not be considered to be exclusively residential.

"Family member" means a person who is related by common ancestry, adoption or marriage including, but not limited to, persons related by lineal and collateral consanguinity.

"Farm" means a tract or contiguous tracts of land used for agriculture, horticulture or grazing and includes all real property designated as "wetlands" by the United States army corps of engineers or the United States fish and wildlife service.

"Occupied and cultivated" means subjected as a unit to farm purposes, whether used for habitation or not, and although parts may be lying fallow, in timber or in wastelands.

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-2. Definitions.
§11-6B-4. Claim for exemption; renewals; waiver of exemption.
§11-6B-5. Determination; notice of denial of claim or exemption.

§11-6B-2. Definitions.

For purposes of this article, the term:

(1) "Assessed value" means the value of property as determined under article three of this chapter.
(2) "Claimant" means a person who is age sixty-five or older or who is certified as being permanently and totally disabled, and who owns a homestead that is used and occupied by the owner thereof exclusively for residential purposes: Provided, That: (1) If the property was most recently used and occupied by the owner or the owner's spouse thereof exclusively for residential purposes; (2) the owner, as a result of illness, accident or infirmity, is residing with a family member or is a resident of a nursing home, personal care home, rehabilitation center or similar facility; and (3) the property is retained by the owner for noncommercial purposes, then the owner of that property may continue to claim a homestead property tax exemption on the property.

(3) "Family member" means a person who is related by common ancestry, adoption or marriage including, but not limited to, persons related by lineal and collateral consanguinity.

(4) "Homestead" means a single family residential house, including a mobile or manufactured or modular home, and the land surrounding such structure; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactured or modular home is situated is owned or leased.

(5) "Owner" means the person who is possessed of the homestead, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust shall be considered the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title shall also be considered the owner. Personal property mortgaged or pledged shall, for the purpose of taxation, be considered the property of the party in possession.
(6) "Permanently and totally disabled" means a person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental condition which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(7) "Sixty-five years of age or older" includes a person who attains the age of sixty-five on or before the thirtieth day of June following the July first assessment day.

(8) "Used and occupied exclusively for residential purposes" means that the property is used as an abode, dwelling or habitat for more than six consecutive months of the calendar year prior to the date of application by the owner thereof; and that the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use: Provided, That failure to satisfy this six-month period shall not prevent allowance of a homestead exemption to a former resident in accordance with section three of this article.

(9) "Tax year" means the calendar year following the July first assessment day.

(10) "Resident of this state" means an individual who is domiciled in this state for more than six months of the calendar year.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

(a) General. — No exemption shall be allowed under this article unless a claim of exemption is filed with the assessor of the county in which the homestead is located, on or before the first day of December following the July first assessment day. In the case of sickness, absence or other disability of the claimant, the claim may be filed by the claimant or his or her duly authorized agent.
(b) *Claims for disability exemption.* — Each claim for exemption based on the owner being permanently and totally disabled shall include one of the following forms of documentation in support of said claim: (1) A written certification by a doctor of medicine or doctor of osteopathy licensed to practice their particular profession in this state that the claimant is permanently and totally disabled; (2) a written certification by the social security administration that the claimant is currently receiving benefits for permanent and total disability; (3) a copy of the letter from the social security administration originally awarding benefits to the claimant for permanent and total disability and a copy of a current check for such benefits, marked void; (4) a current social security health insurance (medicare) card in the name of the claimant and a copy of a current check to the claimant, marked void, for benefits from the social security administration for permanent and total disability; (5) a written certification signed by the veterans administration certifying that a person is totally and permanently disabled; (6) any lawfully recognized workers’ compensation documentation certifying that a person is totally and permanently disabled; (7) any lawfully recognized pneumoconiosis documentation certifying that a person is totally and permanently disabled; or (8) any other lawfully recognized documentation certifying that a person is totally and permanently disabled.

(c) *Renewals.* —

(1) *Senior citizens.* — If the claimant is age sixty-five or older, then after the claimant has filed for the exemption once with his or her assessor, there shall be no need for that claimant to refile unless the claimant moves to a new homestead.

(2) *Disabled.* — If the claimant is permanently and totally disabled, then after the claimant has filed for the exemption once with his or her assessor, and signed a statement certifying
that he or she will notify the assessor if he or she is no longer eligible for an exemption on the basis of being permanently and totally disabled and that the claimant will notify the assessor within thirty days of the discontinuance of the receipt of benefits for permanent and total disability, if the claimant originally claimed receipt of said benefits to document his or her claim for exemption, there shall be no need for that claimant to refile, unless the claimant moves to a new homestead.

(3) **Waiver of exemption.** — Any person not filing his or her claim for exemption on or before the first day of December shall be determined to have waived his or her right to exemption for the next tax year.

(4) **Residential care exception.** — For purposes of this section, an otherwise qualified claimant who, as a result of illness, accident or infirmity, resides with a family member or is a resident at a nursing home, personal care home, rehabilitation center or similar facility is not considered to have moved to a new homestead.

§11-6B-5. Determination; notice of denial of claim or exemption.

(a) The assessor shall, as soon as practicable after a claim for exemption is filed, review that claim and either approve or deny it. If the exemption is denied, the assessor shall promptly, but not later than the first day of January, serve the claimant with written notice explaining why the exemption was denied and furnish a form for filing with the county commission should the claimant desire to take an appeal. The notice required or authorized by this section shall be served on the claimant or his or her authorized representative either by personal service or by certified mail.

(b) In the event that the assessor shall have information sufficient to form a reasonable belief that a claimant, after having been originally granted an exemption, is not eligible for
14 said exemption, he or she shall deny the exemption on the next
15 assessment date and shall promptly, but no later than the first
day of January, serve the claimant with written notice explain-
ing the reasons for the denial and furnish a form for filing with
the county commission should the claimant desire to take an
appeal.

§11-6B-6. Appeals procedure.

1 (a) Notice of appeal; thirty days. — Any claimant ag-
grieved by the denial of his or her claim for exemption or the
subsequent denial of his or her exemption may appeal to the
county commission within thirty days after receipt of written
notice explaining why the exemption was denied.

6 (b) Review; determination; appeal. — The county commis-
sion shall complete its review and issue its determination as
soon as practicable after receipt of the notice of appeal, but in
no event later than the twenty-eighth day of February of the tax
year for which the exemption is first applied. In conducting its
review, the county commission may hold a hearing on the
claim. The assessor or the claimant may apply to the circuit
court of the county for review of the determination of the
county commission in the same manner as is provided for
appeals from the county commission in section twenty-five,
article three of this chapter.

CHAPTER 231

(S. B. 655 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso,
Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley,
Minear, Facemyer, Guills and Sprouse)

[Passed March 8, 2003; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact section twenty-six, article six, chapter eleven 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; and to amend and reenact section seventeen, article six-g of said chapter, all relating to creating the public utilities tax loss restoration fund; and providing additional funds to counties, districts and municipalities that have lost public utilities-assessed value.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article six, 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 a new section, designated section twenty-seven; and that section seventeen, article six-g of said chapter be amended and reenacted, all to read as follows:

Article 6. Assessment of Public Service Businesses.

6G. Assessment of Interstate Corporation Motor Vehicle Business Registered Under a Proportional Registration Agreement.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-26. Operating fund for public utilities division in auditor’s office.
§11-6-27. Public utilities tax loss restoration fund.

§11-6-26. Operating fund for public utilities division in auditor’s office.

1 The auditor shall establish a special operating fund in the state treasury for the public utilities division in his or her office.
2 The auditor shall pay into the fund one and three eighths percent of the gross receipts of all moneys collected as provided for in this article. Up to one percent of the gross receipts shall be transferred from the operating fund to the tax loss restoration fund created in section twenty-seven of this article. From the operating fund, the auditor shall reimburse the department of tax and revenue for the actual operating expenses incurred in
the performance of its duties required by this article the
reimbursement to the tax department from the fund shall not
exceed fifty percent of three eighths of one percent of the
annual deposits to the fund. Any moneys remaining in the
special operating fund after reimbursement to the tax depart-
ment shall be used by the auditor for funding the operation of
the public utilities division located in his or her office. On the
thirty-first day of July in each fiscal year, if the balance in the
operating fund exceeds one percent of gross revenues plus fifty
thousand dollars, the excess shall be withdrawn from the special
fund and deposited in the general fund of the state.

§11-6-27. Public utilities tax loss restoration fund.

The auditor shall establish a special revenue fund in the
state treasury entitled the “Public Utilities Tax Loss Restoration
Fund”. The auditor shall pay into the fund up to one percent of
the gross receipts deposited in the public utilities operating fund
created in section twenty-six of this article and up to one
percent of the gross receipts deposited in the operating fund of
the interstate commerce division created in section seventeen,
article six-g of this chapter. The proceeds of the tax loss
restoration fund shall be distributed quarterly on a proportional
basis to counties, districts and municipalities that have lost
assessed value from the prior year’s assessment and the method
of distribution is based upon the county, district or municipal-
ity’s percentage loss compared to the total loss of all counties,
districts and municipalities that have lost assessed value from
the prior year’s assessment: Provided, That the calculation to
the adjustments shall exclude loss in tax revenue attributed to
the school current levy, as set forth in section six-c, article
eight, chapter eleven of this code: Provided, however, That the
proceeds received by any county, district or municipality shall
not be greater than the loss of tax revenue caused by the
decrease in assessed value.
ARTICLE 6G. ASSESSMENT OF INTERSTATE CORPORATION MOTOR VEHICLE BUSINESS REGISTERED UNDER A PROPORTIONAL REGISTRATION AGREEMENT.

§11-6G-17. Operating fund for interstate commerce disclosure division in auditor’s office.

1 The auditor shall establish a special operating fund in the state treasury for the interstate commerce disclosure division in his or her office. The auditor shall pay into the fund two percent of the gross receipts of all moneys collected as provided for in this article. Up to one percent of the gross receipts shall be transferred to the public utilities tax loss restoration fund created in section twenty-seven, article six of this chapter. From the fund, the auditor shall reimburse the tax division and the division of motor vehicles for the actual operating expenses incurred in the performance of its duties required by this article. The reimbursements to the tax division and division of motor vehicles from the fund shall not exceed one third of one percent of the annual deposits to the fund per agency. Any moneys remaining in the special operating fund after reimbursement to the tax division and the division of motor vehicles shall be used by the auditor for funding the operation of the interstate commerce disclosure division located in his or her office.

18 The interstate commerce disclosure division is hereby granted authority and required to share any and all information obtained by the division in the implementation of this article with the state auditor, tax commissioner and the commissioner of motor vehicles to effectuate the collection of taxes and fees under this article. The commissioner of motor vehicles is hereby authorized and required to share any and all information obtained by the division of motor vehicles in the implementation of this article. The commissioner of motor vehicles will supply to the interstate commerce disclosure division the names of, location or locations of and amount or amounts paid by West Virginia owners or operators of interstate motor vehicles
30 registered under the terms of any proportional registration agreement. The tax commissioner is hereby authorized and required to share any and all information obtained by the department of tax and revenue. The state auditor and the interstate commerce disclosure division is hereby authorized and required to share any and all information obtained by the auditor or the division.

CHAPTER 232

(Com. Sub. for S. B. 496 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and fourteen, article ten of said chapter; to amend article fourteen of said chapter by adding thereto a new section, designated section thirty-one; to amend and reenact sections two, three, five, nine and eleven, article fourteen-a of said chapter; to amend and reenact section two, article fourteen-b of said chapter; to further amend said chapter by adding thereto a new article, designated article fourteen-c; to amend and reenact section eighteen, article fifteen of said chapter; to further amend said article fifteen by adding thereto a new section, designated section eighteen-b; to amend and reenact section thirteen, article fifteen-a of said chapter; and to further amend said article fifteen-a by adding thereto a new section, designated section thirteen-a, all relating generally to the levy, collection and administration of West
Virginia motor fuels excise tax; making tax crimes and penalties act applicable to West Virginia motor fuels excise tax as of specified date; making West Virginia tax procedure and administration act applicable to West Virginia motor fuels excise tax effective as of specified date; applying overpayments, credits and refunds to West Virginia motor fuels excise tax effective as of effective date; replacing gasoline and special fuel excise tax with motor fuel excise tax as of specified date, after which gasoline and special fuel excise tax is repealed; defining certain motor carrier road tax terms; requiring motor carrier road tax to be equal to the motor fuel excise tax; changing frequency for filing motor carrier road tax reports; providing credit against motor carrier road tax for payment of motor fuels excise tax; authorizing refunds of the motor fuels tax; defining certain terms in interstate fuel tax agreement; enacting motor fuels excise tax; defining terms; authorizing promulgation of rules and forms; authorizing exchange of information; levying motor fuels excise tax; establishing rate of motor fuels excise tax; establishing points at which the tax is imposed; imposing tax on unaccounted for motor fuel losses; imposing back-up tax on taxable use of untaxed fuel; establishing exemptions from tax; designating persons to be licensed; establishing license application procedure; authorizing permissive supplier to collect tax; establishing bond requirements; grounds for issuance and for denial of license; requiring notice of discontinuance of business; providing for permitting license cancellation under certain circumstances; records of license applicants and licensees; specifying when tax returns and tax payments are due; requiring remittance of tax by suppliers and permissive suppliers; providing for notice of cancellation and reissuance of license; identifying information required on tax return; specifying deductions and discounts allowed to suppliers and permissive suppliers; specifying duties of suppliers and permissive suppliers as trustee; requiring returns and allowing discounts to importers; requiring information returns by terminal operators; requiring information returns by motor fuel transport-
ers; requiring return by exporters; identifying information required on returns; authorizing refund of taxes erroneously collected or for gallonage exported or lost through casualty or evaporation; providing method for claiming and paying refunds; incorporating provisions of tax crimes and penalties act and West Virginia tax procedure and administration act into motor fuels excise tax; specifying information required on shipping documents; requiring import confirmation number; prohibiting improper sale or use of untaxed motor fuels; providing remedy for refusal to allow inspection or taking of fuel sample; prohibiting engaging in business without a license; prohibiting certain persons from obtaining license; providing civil remedy for filing false returns and for failure to file returns; providing criminal penalties for willful commission of prohibited acts; imposing penalties for unlawful importing, transportation, delivery, storage or sale of motor fuel; providing for enforcement of assessment; imposing record-keeping requirements; providing for inspection of records; providing commissioner authority to inspect; specifying marking requirements for dyed diesel fuel storage facilities; providing for disposition of tax collected; and specifying that sections pertaining to sales and use taxes on gasoline and special fuel are, after a specified date, repealed and replaced by new sections continuing sales and use taxes on motor fuel and harmonizing these taxes with new motor fuel excise tax.

Be it enacted by the Legislature of West Virginia:

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

Article
10. Procedure and Administration.
14A. Motor Carrier Road Tax.
14B. International Fuel Tax Agreement.
14C. Motor Fuel Excise Tax.
15. Consumers Sales Tax.
15A. Use Tax.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

1 (a) The provisions of this article apply to the following taxes imposed by this chapter: (1) The inheritance and transfer taxes and estate taxes imposed by article eleven of this chapter; (2) the business registration tax imposed by article twelve of this chapter; (3) the minimum severance tax on coal imposed by article twelve-b of this chapter; (4) the corporate license tax imposed by article twelve-c of this chapter; (5) the business and occupation tax imposed by article thirteen of this chapter; (6) the severance tax imposed by article thirteen-a of this chapter; (7) the telecommunications tax imposed by article thirteen-b of this chapter; (8) the gasoline and special fuels excise tax imposed by article fourteen of this chapter; (9) the motor fuel excise tax imposed by article fourteen-c of this chapter; (10) the motor carrier road tax imposed by article fourteen-a of this chapter; (11) the interstate fuel tax agreement authorized by
article fourteen-b of this chapter; (12) the consumers sales and
service tax imposed by article fifteen of this chapter; (13) the
use tax imposed by article fifteen-a of this chapter; (14) the
tobacco products excise tax imposed by article seventeen of this
chapter; (15) the soft drinks tax imposed by article nineteen of
this chapter; (16) the personal income tax imposed by article
twenty-one of this chapter; (17) the business franchise tax
imposed by article twenty-three of this chapter; (18) the
corporation net income tax imposed by article twenty-four of
this chapter; and (19) the health care provider tax imposed by
article twenty-seventy of this chapter.

(b) The provisions of this article also apply to the West
Virginia tax procedure and administration act in article ten of
this chapter, and to any other articles of this chapter when
application is expressly provided for by the Legislature.

(c) The provisions of this article also apply to the charitable
bingo fee imposed by sections six and six-a, article twenty,
chapter forty-seven of this code; the charitable raffle fee
imposed by section seven, article twenty-one of said chapter;
and the charitable raffle boards and games fees imposed by
section three, article twenty-three of said chapter.

(d) Each and every provision of this article applies to the
articles of this chapter listed in subsections (a), (b) and (c) of
this section, with like effect, as if the provisions of this article
were applicable only to the tax and were set forth in extenso in
this article.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

§11-10-14. Overpayments; credits; refunds and limitations.

§11-10-3. Application of this article.
(a) The provisions of this article apply to the inheritance and transfer taxes, the estate tax, and interstate compromise and arbitration of inheritance and death taxes, the business registration tax, the annual tax on incomes of certain carriers, the minimum severance tax on coal, the corporate license tax, the business and occupation tax, the severance tax, the telecommunications tax, the interstate fuel tax, the consumers sales and service tax, the use tax, the tobacco products excise tax, the soft drinks tax, the personal income tax, the business franchise tax, the corporation net income tax, the gasoline and special fuel excise tax, the motor fuel excise tax, the motor carrier road tax, the health care provider tax, and the tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property or any other tax not listed in this section, except that in the case of ad valorem taxes on real and personal property, when any return, claim, statement or other document is required to be filed, or any payment is required to be made within a prescribed period or before a prescribed date, and the applicable law requires delivery to the office of the sheriff of a county of this state, the methods prescribed in section five-f of this article for timely filing and payment to the tax commissioner or state tax department are the same methods utilized for timely filing and payment with the sheriff.

(b) The provisions of this article apply to the beer barrel tax levied by article sixteen of this chapter and to the wine liter tax levied by section four, article eight, chapter sixty of this code.

(c) The provisions of this article also apply to any other article of this chapter when the application is expressly provided for by the Legislature.

§11-10-14. Overpayments; credits; refunds and limitations.
(a) **Refunds or 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, section nine or eleven, article fourteen-a of this
chapter, or of motor fuel excise tax under section nine, article
fourteen-c 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:
*Provided,* That claims for refund or credit of the motor fuel
excise tax under section nine, article fourteen-c, of this chapter
are subject to the ninety-day time period provided in subsection
(d) of this section: *Provided, however,* That claims for refund
or credit of the motor fuel excise tax under section nine, article
fourteen-c of this chapter made by the United States govern-
ment or unit or agency thereof, any municipal government or
any agency thereof, or any county board of education made
pursuant to subdivisions one, two, three, four, five and six,
subsection (c), section nine, article fourteen-c of this chapter
will be subject to a thirty-day time period.

(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 commis-
sioner 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 commis-
sioner’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 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 office of tax appeal’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 is required of the taxpayer. An appeal from the adminis-
trative 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 commis-
sioner 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 trea-
surer 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 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
constitutes 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
constitutes a claim for refund or credit.
(i) **Remedy exclusive.** — The procedure provided by this section constitutes the sole method of obtaining any refund, 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 is 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 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,
130 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.

135 (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 shall not exceed two years. The period agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before expiration of the period previously agreed upon.

143 (3) Special rule where agreement to extend time for making an assessment. — Notwithstanding the provisions of subdivisions (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 overpayment of the same tax made during the periods subject to assessment under the extension agreement are also extended for the period of the extension agreement plus ninety days.

152 (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 overpayment 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 shall 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, motor fuel excise tax and motor carrier road tax. — This subsection does not apply to refunds or credits of gasoline and special fuel excise tax, motor carrier road tax, or motor fuel excise tax sought under the provisions of article fourteen, fourteen-a or fourteen-c of this chapter.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-31. Repeal of article.

Each and every provision of this article is repealed for all tax periods beginning on and after the first day of January, two thousand four: Provided, That tax liabilities arising for taxable periods ending before the first day of January, two thousand four, are determined, paid, administered, assessed and collected as if the tax imposed by this article had not been repealed, and the rights and duties of the taxpayer and the state of West Virginia are fully and completely preserved.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-3. Imposition of tax; amount; tax in addition to all other taxes.
§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.
§11-14A-9. Credits against tax.
§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.
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1 For purposes of this article:

2 (1) "Commissioner" or "tax commissioner" means the tax
3 commissioner of the state of West Virginia or his or her duly
4 authorized agent.

5 (2) "Gallon" means two hundred thirty-one cubic inches of
6 liquid measurement, by volume: Provided, That the commis-
7 sioner may by rule prescribe other measurement or definition of
8 gallon.

9 (3) "Gasoline" means any product commonly or commer-
10 cially known as gasoline, regardless of classification, suitable
11 for use as fuel in an internal combustion engine, except special
12 fuel as hereinafter defined: Provided, That effective the first
13 day of January, two thousand four, "gasoline" shall have the
14 same meaning as in article fourteen-c of this chapter.

15 (4) "Highway" means every way or place of whatever
16 nature open to the use of the public as a matter of right for the
17 purpose of vehicular travel, which is maintained by this state or
18 some taxing subdivision or unit thereof or the federal govern-
19 ment or any of its agencies.

20 (5) "Identification marker" means the decal issued by the
21 commissioner for display upon a particular motor carrier and
22 authorizing a person to operate or cause to be operated a motor
23 carrier upon any highway of the state.

24 (6) "Lease" means any oral or written contract for valuable
25 consideration granting the use of a motor carrier.

26 (7) "Motor carrier" means any vehicle used, designed or
27 maintained for the transportation of persons or property and
28 having two axles and a gross vehicle weight exceeding twenty-
29 six thousand pounds or having three or more axles regardless of
30 weight or is used in combination when the weight of the
combination exceeds twenty-six thousand pounds or registered gross vehicle weight: Provided, That the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds. The term motor carrier does not include any type of recreational vehicle.

(8) “Motor fuel” means motor fuel as defined in article fourteen-c of this chapter effective the first day of January, two thousand four.

(9) “Operation” means any operation of any motor carrier, whether loaded or empty, whether for compensation or not, and whether owned by or leased to the person who operates or causes to be operated any motor carrier.

(10) “Person” means and includes any individual, firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, and means and includes the officers, directors, trustees or members of any firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(11) “Pool operation” means any operation whereby two or more taxpayers combine to operate or cause to be operated a motor carrier or motor carriers upon any highway in this state.

(12) “Purchase” means and includes any acquisition of ownership of property or of a security interest for a consideration.

(13) “Recreational vehicles” means vehicles such as motor homes, pickup trucks with attached campers and buses, when
used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

(14) “Road tractor” means every motor carrier designed and used for drawing other vehicles and not constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

(15) “Sale” means any transfer, exchange, gift, barter or other disposition of any property or security interest for a consideration.

(16) “Special fuel” means any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term “special fuel” includes products commonly known as natural or casinghead gasoline but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practically suited for use as fuel in an internal combustion engine: Provided, That effective the first day of January, two thousand four, “special fuel” has the same meaning as in article fourteen-c of this chapter.

(17) “Tax” includes, within its meaning, interest, additions to tax and penalties, unless the intention to give it a more limited meaning is disclosed by the context.

(18) “Taxpayer” means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article.

(19) “Tractor truck” means every motor carrier designed and used primarily for drawing other vehicles and not constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
(20) "Truck" means every motor carrier designed, used or maintained primarily for the transportation of property and having more than two axles.

§11-14A-3. Imposition of tax; amount; tax in addition to all other taxes.

Every person who operates or causes to be operated on any highway in this state any motor carrier shall pay a road tax on each motor carrier equivalent to the amount of tax per gallon of gasoline or special fuel imposed by article fourteen of this chapter, calculated on each gallon of gasoline or special fuel used as fuel in each motor carrier's operations in this state: Provided, That effective the first day of January, two thousand four, the tax imposed by this section shall be equal to the amount of the flat rate of tax per gallon of motor fuel imposed by article fourteen-c of this chapter and calculated on each gallon of motor fuel used as fuel in each motor carrier's operations in this state.

The tax imposed by this article is in addition to all other taxes of whatever character imposed upon any person by any other provisions of law.

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

(a) Every taxpayer subject to the tax imposed by this article, or by article fourteen-c of this chapter, except as provided in subsections (b) and (c) of this section, shall on or before the twenty-fifth day of January, April, July and October of every calendar year make to the commissioner reports of its operations during the quarter ending the last day of the preceding month as the commissioner requires and other reports from time to time as the commissioner considers necessary. For good cause shown, the commissioner may extend the time for filing the reports for a period not exceeding thirty days.
(b) Every motor carrier which operates exclusively in this state during a fiscal year that begins on the first day of July of one calendar year and ends on the thirtieth day of June of the next succeeding calendar year and during the fiscal year consumes in its operation only gasoline or special fuel upon which the tax imposed by article fourteen of this chapter has been paid shall, in lieu of filing the quarterly reports required by subsection (a), file an annual report for the fiscal year on or before the last day of July each calendar year: Provided, That effective the first day of January, two thousand four, every motor carrier which operates exclusively in this state during a fiscal year that begins on the first day of July of one calendar year and ends on the thirtieth day of June of the next succeeding calendar year and during the fiscal year consumes in its operation only motor fuel upon which the tax imposed by article fourteen-c of this chapter has been paid shall, in lieu of filing the quarterly reports required by subsection (a), file an annual report for the fiscal year on or before the last day of July of each calendar year. For good cause shown, the commissioner may extend the time for filing the report for a period of thirty days.

(c) Two or more taxpayers regularly engaged in the transportation of passengers on through buses on through tickets in pool operation may, at their option and upon proper notice to the commissioner, make joint reports of their entire operations in this state in lieu of the separate reports required by subsection (a) of this section. The taxes imposed by this article are calculated on the basis of the joint reports as though the taxpayers were a single taxpayer; and the taxpayers making the reports are jointly and severally liable for the taxes shown to be due. The joint reports shall show the total number of highway miles traveled in this state and the total number of gallons of gasoline or special fuel purchased in this state by the reporting taxpayers. Credits to which the taxpayers making a joint return are entitled are not allowed as credits to any other taxpayer; but
taxpayers filing joint reports shall permit all taxpayers engaged
in this state in pool operations with them to join in filing joint
reports.

(d) A taxpayer shall keep records necessary to verify the
highway miles traveled within and without the state of West
Virginia, the number of gallons of gasoline and special fuel
used and purchased within and without West Virginia and any
other records which the commissioner by regulation may
prescribe.

(e) In addition to the tax commissioner’s powers set forth
in sections five-a and five-b, article ten of this chapter, the
commissioner may inspect or examine the records, books,
papers, storage tanks, meters and any equipment records or
records of highway miles traveled within and without West
Virginia and the records of any other person to verify the truth
and accuracy of any statement or report to ascertain whether the
tax imposed by this article has been properly paid.

(f) In addition to the tax commissioner’s powers set forth in
sections five-a and five-b, article ten of this chapter, and as a
further means of obtaining the records, books and papers of a
taxpayer or any other person and ascertaining the amount of
taxes and reports due under this article, the commissioner has
the power to examine witnesses under oath; and if any witness
shall fail or refuse at the request of the commissioner to grant
access to the books, records and papers, the commissioner shall
certify the facts and names to the circuit court of the county
having jurisdiction of the party and the court shall thereupon
issue a subpoena duces tecum to the party to appear before the
commissioner, at a place designated within the jurisdiction of
the court, on a day fixed.

§11-14A-9. Credits against tax.
Every taxpayer subject to the road tax herein imposed is entitled to a credit on the tax equivalent to the amount of tax per gallon of gasoline or special fuel imposed by article fourteen of this chapter on all gasoline or special fuel purchased by the taxpayer for fuel in each motor carrier which it operates or causes to be operated within this state, and upon which gasoline or special fuel the tax imposed by the laws of this state has been paid: Provided, That the credit is not allowed for any gasoline or special fuel taxes for which any taxpayer has applied or received a refund of gasoline or special fuel tax under article fourteen of this chapter: Provided, however, That effective the first day of January, two thousand four, every taxpayer subject to the road tax herein imposed is entitled to a credit against the tax equivalent to the amount of the flat rate of tax per gallon of motor fuel imposed by article fourteen-c of this chapter on all motor fuel purchased by the taxpayer and used as motor fuel in motor carriers which it operates or causes to be operated within this state, and upon which the motor fuel tax imposed by the laws of this state has been paid: Provided further, That no credit is allowed for any motor fuel taxes for which the taxpayer has applied or received a refund of motor fuel tax under article fourteen-c of this chapter. Evidence of the payment of the tax in the form as required by the commissioner shall be furnished by the taxpayer claiming the credit allowed in this section. When the amount of the credit provided for in this section exceeds the amount of the tax for which the taxpayer is liable in the same quarter, the excess shall, upon written request by the taxpayer, be allowed as a credit on the tax for which the taxpayer would be otherwise liable for any of the four succeeding quarters.

§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.

(a) The commissioner is hereby authorized to refund from the funds collected under the provisions of this article and
article fourteen of this chapter, the amount of the credit accrued for gallons of gasoline or special fuel purchased in this state but consumed outside of this state, if the taxpayer by duly filed claim requests the commissioner to issue a refund and if the commissioner is satisfied that the taxpayer is entitled to the refund and that the taxpayer has not applied for a refund of the tax imposed by article fourteen of this chapter: Provided, That effective the first day of January, two thousand four, the refunds authorized in this section shall be made from the funds collected under the provisions of this article and from the flat rate of tax imposed under section five, article fourteen-c of this chapter: Provided, however, That the commissioner shall not approve a claim for refund when the claim for a refund is filed after thirteen months from the close of the quarter in which the tax was paid or the credit, as provided for in section nine of this article, was allowed: Provided further, That the refund shall not be made until after audit of the claimant’s records by the commissioner or until after a continuous surety bond or cash bond has been furnished by the claimant, as hereinafter provided, in an amount fixed by the commissioner, conditioned to pay all road taxes due hereunder: And provided further, That the credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a taxpayer below the amount due as tax on gasoline or special fuel used as fuel in this state as provided by article fourteen of this chapter: And provided further, That effective the first day of January, two thousand four, the credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a taxpayer below the amount due as tax on motor fuel used in this state as provided by article fourteen-c of this chapter. The right to receive any refund under the provisions of this article is not assignable and any attempt at assignment thereof is void and of no effect. The claim for refund or credit shall also be subject to the provisions of section fourteen, article ten of this chapter.
A taxpayer shall furnish a continuous surety bond or a cash bond in an amount fixed by the commissioner, but the amount shall not be less than the total refunds due or to be paid within one year: Provided, That if a continuous surety bond is filed, an annual notice of renewal shall be filed thereafter: Provided, however, That if the continuous surety bond includes the requirement that the commissioner is to be notified of cancellation at least sixty days prior to the surety bond being canceled, an annual notice of renewal is not required. The bond, whether a continuous surety bond or a cash bond, is conditioned upon compliance with the requirements of this article and shall be payable to this state in the form required by the commissioner.

(b) The surety must be authorized to engage in business within this state. The cash bond or the continuous surety bond is conditioned upon faithful compliance with the provisions of this article, including the filing of the returns and payment of all tax prescribed by this article. The cash bond or the continuous surety bond shall be approved by the commissioner as to sufficiency and form, and shall indemnify the state against any loss arising from the failure of the taxpayer to pay for any cause whatever the motor carrier road tax or the motor fuel excise tax imposed by article fourteen-c of this chapter.

Any surety on a continuous surety bond furnished hereunder shall be relieved, released and discharged from all liability accruing on the bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner a written request to be discharged. Discharge from a continuous surety bond shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any surety seeks discharge as provided in this section, it is the duty of the principal of the bond to supply the commissioner with another continuous surety bond or a cash bond prior to the expiration of the original bond. Failure to provide such other bond results in no refund being paid until
after completion of an audit of the taxpayer’s records as provided in subsection (a) of this section and the commissioner may cancel any registration card and identification marker previously issued to the person.

(c) Any taxpayer that has furnished a cash bond shall be relieved, released and discharged from all liability accruing on the cash bond after the expiration of sixty days from the date the taxpayer shall have lodged, by certified mail, with the commissioner a written request to be discharged and the amount of the cash bond refunded: Provided, That the commissioner may retain all or part of the bond until the commissioner may perform an audit of the taxpayer’s business or three years, whichever first occurs. Discharge from the cash bond shall not relieve, release or discharge the taxpayer from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any taxpayer seeks discharge as provided in this section, it is the duty of the taxpayer to provide the commissioner with another cash bond or a continuous surety bond prior to the expiration of the original cash bond. Failure to provide another bond results in no refund being paid until after completion of an audit of the taxpayer’s records as provided in subsection (a) of this section.

ARTICLE 14B. INTERNATIONAL FUEL TAX AGREEMENT.


(a) “Commercial motor vehicle”: (1) As used with respect to the international registration plan, has the meaning the term “apportionable vehicle” has under that plan; and (2) as used with respect to the international fuel tax agreement, has the meaning the term “qualified motor vehicle” has under that agreement.

(b) “Fuel use tax” means a tax imposed on or measured by the consumption of fuel in a motor vehicle.
(c) "Gasoline" has the same meaning as the term is defined in article fourteen-c of this chapter.

(d) "International fuel tax agreement" means the international agreement for the collection and distribution of fuel use taxes paid by motor carriers, developed under the auspices of the national governors' association.

(e) "International registration plan" means the interstate agreement for the apportionment of vehicle registration fees paid by motor carriers developed by the American association of motor vehicle administrators.

(f) "Motor fuel use taxes imposed by this state" means the aggregate amount of taxes, expressed in cents per gallon, imposed by this state, under articles fourteen-a and fifteen-a of this chapter, on gasoline or special fuel consumed in this state by a motor carrier.

(g) "Special fuel" has the same meaning as the term is defined in article fourteen-c of this chapter.

(h) "State" means any of the forty-eight contiguous states and the District of Columbia, and any other jurisdiction which imposes a motor fuel use tax and is a member of the international fuel tax agreement.

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-1. Short title; nature of tax.
§11-14C-2. Definitions.
§11-14C-3. Rules, forms.
§11-14C-4. Exchange of information; criminal penalty for unauthorized disclosure.
§11-14C-5. Taxes levied; rate.
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§11-14C-8. Backup tax; liability.
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§11-14C-38. Engaging in business without a license; civil penalty.
§11-14C-39. Preventing a person from obtaining a license; civil penalty.
§11-14C-40. Filing a false return; failure to file return; civil penalty.
§11-14C-41. Willful commission of prohibited acts; criminal penalties.
§11-14C-42. Unlawful importing, transportation, delivery, storage or sale of motor fuel; sale to enforce assessment.
§11-14C-43. Record-keeping requirements.
§11-14C-44. Inspection of records.
§11-14C-45. Authority to inspect.
PART 1. GENERAL PROVISIONS.

§11-14C-1. Short title; nature of tax.

(a) This article shall be known and may be cited as the “West Virginia Motor Fuels Excise Tax Act”.

(b) All taxes levied under this article, or imposed under any other article of this chapter but collected under this article, are imposed upon the ultimate consumer but are precollected as prescribed in this article. The levies and assessments imposed on licensees as provided in this article are imposed on them as agents of this state for the precollection of the tax. The taxes levied under this article shall be collected and paid at those times, in the manner, and by those persons specified in this article.

§11-14C-2. Definitions.

As used in this article and unless the context requires otherwise, the following terms have the meaning ascribed herein.

(1) “Agricultural purposes” means the activities of:

(A) Cultivating the soil, including the planting and harvesting of crops, for the commercial production of food, fiber, and ornamental woodland products;

(B) Using land for breeding and management of farm livestock, including dairy, apiary, equine or poultry husbandry; and

(C) Using land for the practice of horticulture including the growing of Christmas trees, orchards and nursery stock:
Provided, That agricultural purposes shall not include commercial forestry, growing of timber for commercial purposes, or any other activity that normally would not be included in subdivision (A), (B) or (C) of this definition.

(2) “Aircraft” includes any airplane or helicopter.

(3) “Alcohol” means motor fuel grade ethanol or a mixture of motor fuel-grade ethanol and methanol, excluding denaturant and water that is a minimum of ninety-eight percent ethanol or methanol by volume.

(4) “Article” or “this article” means article fourteen-c, chapter eleven of this code.

(5) “Assessment” means a written determination by the commissioner of the amount of taxes owed by a taxpayer.

(6) “Aviation fuel” means aviation gasoline or aviation jet fuel.

(7) “Aviation gasoline” means motor fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.

(8) “Aviation jet fuel” means motor fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

(9) “Biodiesel fuel” means any motor fuel or mixture of motor fuels that is derived, in whole or in part, from agricultural products or animal fats, or the wastes of such products or fats, and is advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion engine.

(10) “Blended fuel” means a mixture composed of gasoline or diesel fuel and another liquid, including, but not limited to,
gasoline blend stocks, gasohol, ethanol, methanol, fuel grade alcohol, diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

(11) "Blender" means a person who produces blended motor fuel outside the bulk transfer/terminal system.

(12) "Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil in the production of lubricating oils and greases.

(13) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(14) "Bulk transfer" means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within a bulk transfer/terminal system, including, but not limited to, all of the following:

(A) A marine vessel movement of motor fuel from a refinery or terminal to a terminal;

(B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

(C) Book transfer of motor fuel within a terminal between licensed suppliers prior to completion of removal across the rack; and
(D) Two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

(15) "Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored motor fuel to operate a motor vehicle, watercraft or aircraft.

(16) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. Motor fuel in a refinery, a pipeline, a terminal, or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of any engine or motor vehicle, in a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

(17) "Carrier" means any operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

(18) "Code" means the code of West Virginia of one thousand nine hundred thirty-one, as amended.

(19) "Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire, or any other trade or business.

(20) "Commissioner" or "tax commissioner" means the West Virginia state tax commissioner, or his or her delegate.
(21) "Compressed natural gas" means natural gas that has been compressed and dispensed into motor fuel storage containers and is advertised as, offered for sale as, suitable for use as, or used as an engine motor fuel.

(22) "Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership, or member of a limited liability company, who as an officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

(23) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel storage tank because the motor fuel is below the mouth of the draw pipe. The amount of motor fuel in dead storage is two hundred gallons for a tank with a capacity of less than ten thousand gallons and four hundred gallons for a tank with a capacity of ten thousand gallons or more.

(24) "Denaturants" means and includes gasoline, natural gasoline, gasoline components, or toxic or noxious materials added to motor fuel grade ethanol to make it unsuitable for beverage use, but not unsuitable for automotive use.

(25) "Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the commissioner to be used as a motor fuel inspection site.

(26) "Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use. The term shall not include a tribal reservation of any recognized native American tribe.
(27) "Diesel fuel" means any liquid that is advertised as, offered for sale as, sold for use as, suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene, but shall not include gasoline or aviation fuel.

(28) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier, or from another licensed distributor for subsequent sale or use.

(29) "Diversion" means transporting motor fuel outside a reasonably direct route from the source to the destination state.

(30) "Division" or "state tax division" means the tax division of the West Virginia department of tax and revenue.

(31) "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed.

(32) "End seller" means the person who sells motor fuel to the ultimate user of the motor fuel.

(33) "Export" means to obtain motor fuel in West Virginia for sale or other distribution in another state, territory, or foreign country.

(34) "Exporter" means a person that exports motor fuel from this state. The seller is the exporter of motor fuel delivered out-of-state by or for the seller, and the purchaser is the exporter of motor fuel delivered out-of-state by or for the purchaser.

(35) "Fuel" means motor fuel.

(36) "Fuel alcohol" means methanol or motor fuel grade ethanol.
(37) "Fuel grade ethanol" means the ASTM standard in effect on the effective date of this article as the D-4806 specification for denatured motor fuel grade ethanol for blending with gasoline.

(38) "Fuel supply tank" means any receptacle on a motor vehicle from which motor fuel is supplied for the propulsion of the motor vehicle.

(39) "Gallon" means a unit of liquid measure as customarily used in the United States containing 231 cubic inches by volume.

(40) "Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

(41) "Gasoline" means any product commonly or commercially known as gasoline, regardless of classification, that is advertised as, offered for sale as, sold for use as, suitable for use as or used as motor fuel in an internal combustion engine, including gasohol, but does not include special fuel as defined in this section.

(42) "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, listed in Treas. Reg. §48.4081-1(c)(3) that can be blended for use in a motor fuel. However, the term does not include any substance that will be ultimately used for consumer nonmotor fuel use and is sold or removed in drum quantities of fifty-five gallons or less at the time of the removal or sale.

(43) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations or deductions, in U.S. gallons.

(44) "Governmental entity" means this state or any political subdivision thereof or the United States or its commissioners, agencies and instrumentalities.
(45) "Heating oil" means any combustible liquid, including, but not limited, to #1 fuel oil, #2 dyed fuel oil and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial processing purposes.

(46) "Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state, including the streets and alleys in towns and cities.

(47) "Highway vehicle" means any self-propelled vehicle, trailer or semitrailer that is designed or used for transporting persons or property over the public highway, and includes all vehicles subject to registration under article three, chapter seventeen-a of this code.

(48) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline, or any other means. However, import does not include bringing motor fuel into this state in the motor fuel supply tank of a motor vehicle, if the motor fuel is used to power that motor vehicle.

(49) "Importer" means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller, and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(50) "Import verification number" means the number assigned by the commissioner with respect to a single transport vehicle delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying taxable motor fuel into this state for the account of an importer.
(51) “In this state” means the area within the borders of West Virginia, including all territory within the borders of West Virginia that is owned by the United States of America.

(52) “Invoiced gallons” means the gallons actually billed on an invoice for payment.

(53) “Licensee” means any person licensed by the commissioner pursuant to section ten of this article.

(54) “Liquid” means any substance that is liquid above its freezing point.

(55) “Liquefied natural gas” means natural gas that has been liquefied at -126.1 degrees centigrade and stored in insulated cryogenic tanks for use as an engine motor fuel.

(56) “Motor carrier” means any vehicle used, designated or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding twenty-six thousand pounds or having three or more axles regardless of weight or is used in combination when the weight of the combination exceeds twenty-six thousand pounds or registered gross vehicle weight, and any aircraft, barge or other watercraft or railroad locomotive transporting passengers or freight in or through this state: Provided, That the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds. The term motor carrier does not include any type of recreational vehicle.

(57) “Motor fuel” means gasoline, blended fuel, aviation fuel and any special fuel.

(58) “Motor fuel transporter” means a person who transports motor fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car, or a marine vessel.
(59) "Motor vehicle" means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of motor fuel.

(60) "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of sixty degrees fahrenheit and a pressure of fourteen and seven-tenths pounds pressure per square inch.

(61) "Permissive supplier" is a person who may not be subject to the taxing jurisdiction of this state, but who meets both of the following requirements: (A) Is registered under section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system; and (B) a position holder in motor fuel only located in another state or a person who receives motor fuel only in another state pursuant to a two-party exchange: Provided, That a person is classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent (by whatever name called) operating within this state under the authority of the supplier or its subsidiary.

(62) "Person" means any individual; firm; cooperative; association; corporation; limited liability corporation; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public body, including, but not limited to, this state, any other state, and any agency, commissioner, institution, political subdivision or instrumentality of this state or any other state.

(63) "Position holder" means the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract
with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

(64) “Principal” means:

(A) If a partnership, all its partners;

(B) If a corporation, all its officers, directors, and controlling direct or indirect owners;

(C) If a limited liability company, all its members; or

(D) An individual.

(65) “Rack” means a mechanism for delivering motor fuel from a refinery, terminal, marine vessel, or bulk plant into a transport vehicle, railroad tank car, or other means of transfer that is outside the bulk transfer/terminal system.

(66) “Railroad locomotive” means any diesel-powered equipment or machinery that rides on railroad rails, and includes a switching engine.

(67) “Receive” means any acquisition of ownership or possession of motor fuel.

(68) “Refiner” means any person who owns, operates or otherwise controls a refinery.

(69) “Refinery” means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

(70) “Removal” means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a
Transport vehicle or other means of conveyance outside the bulk transfer/terminal system is complete upon delivery into the means of conveyance.

(71) "Retailer" means a person who sells motor fuel at retail or dispenses motor fuel at a retail location.

(72) "Special fuel" means any gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance, and includes products commonly known as natural or casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, and all forms of motor fuel commonly or commercially known or sold as butane, propane, liquefied natural gas, liquefied petroleum gas, compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product. "Special fuel" does not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine.

(73) "State" or "this state" means the state of West Virginia.

(74) "Supplier" means a person that is:

(A) Subject to the general taxing jurisdiction of this state;

(B) Registered under section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal distribution system; and

(C) One of the following:
(i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently also be a position holder in motor fuel in another state; or

(ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

A terminal operator shall not be considered a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

(75) “Tax” or “this tax” is the motor fuel excise tax imposed by this article fourteen-c and includes within its meaning interest, additions to tax and penalties, unless the context requires a more limited meaning.

(76) “Taxpayer” means any person required to file a return for the tax imposed by this article or any person liable for payment of the tax imposed by this article.

(77) “Terminal” means a motor fuel storage and distribution facility to which a terminal control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

(78) “Terminal operator” means a person who owns, operates or otherwise controls a terminal.

(79) “Transmix” means: (A) The buffer or interface between two different products in a pipeline shipment; or (B) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

(80) “Transport vehicle” means a vehicle designed or used to carry motor fuel over the highway and includes a straight
truck, a straight truck/trailer combination and a semitrailer combination rig.

(81) "Trustee" means a person who is licensed as a supplier or a permissive supplier and receives tax payments from and on behalf of another pursuant to section twenty-four of this article.

(82) "Two-party exchange" means a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier pursuant to an exchange agreement, and:

(A) Includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator;

(B) Is completed prior to removal of the product from the terminal by the receiving exchange partner; and

(C) Is recorded on the terminal operator's books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

(83) "Use" means the actual consumption or receipt of motor fuel by any person into a motor vehicle, aircraft, or watercraft.

(84) "Watercraft" means any vehicle used on waterways.

§11-14C-3. Rules; forms.

The commissioner may promulgate rules in accordance with article three, chapter twenty-nine-a of this code that are necessary to effectuate and enforce this article. The commissioner may also prescribe forms necessary to effectuate and enforce this article, and provide other necessary guidelines on the administration of this article.
§11-14C-4. Exchange of information; criminal penalty for unauthorized disclosure.

(a) The commissioner may enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, the exchange of information relating to taxes administered by the commissioner pursuant to this article, and providing information relative to the production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment by any person of motor fuel.

(b) The commissioner may divulge tax information to the commissioner of the division of highways: Provided, That the information disclosure requirements of section five-d, article ten of this chapter are satisfied.

(c) The commissioner may provide to any person a list of licensees. The list shall state the name, business address and, if available, telephone number of each licensee on the list.

(d) Any person to whom tax information is divulged pursuant to this section is subject to the prohibitions and penalties prescribed in article ten of this chapter as though that person was an employee of the state tax division.

PART 2. MOTOR FUEL TAX; LIABILITY.

§11-14C-5. Taxes levied; rate.

(a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to twenty and one-half cents per invoiced gallon plus a variable component comprised of either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable: Provided, That the motor fuel excise tax shall take effect the first day of January, two thousand four: Provided, however, That on and after the first
day of August, two thousand seven, the flat rate portion of the motor fuel excise tax shall be fifteen and one-half cents per gallon: Provided further, That the variable component shall be equal to five percent of the average wholesale price of the motor fuel: And provided further, That the average wholesale price shall be no less than ninety-seven cents per invoiced gallon and is computed as hereinafter prescribed in this section.

(b) Determination of average wholesale price. –

(1) To simplify determining the average wholesale price of all motor fuel, the tax commissioner shall, effective with the period beginning the first day of the month of the effective date of this section and each first day of January thereafter, determine the average wholesale price of motor fuel for each annual period on the basis of sales data gathered for the preceding period of the first day of July through the thirty-first day of October. Notification of the average wholesale price of motor fuel shall be given by the tax commissioner at least thirty days in advance of each first day of January by filing notice of the average wholesale price in the state register, and by any other means as the tax commissioner considers reasonable: Provided, That notice of the average wholesale price of motor fuel for the first period shall be timely given if filed in the state register on the effective date of this section.

(2) The “average wholesale price” means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of motor fuel, as determined by the tax commissioner from information furnished by suppliers, importers and distributors of motor fuel in this state, or other information regarding wholesale selling prices as the tax commissioner may gather, or a combination of information: Provided, That in no event shall the average wholesale price be
(3) All actions of the tax commissioner in acquiring data necessary to establish and determine the average wholesale price of motor fuel, in providing notification of his or her determination prior to the effective date of any change in rate, and in establishing and determining the average wholesale price of motor fuel, may be made by the tax commissioner without compliance with the provisions of article three, chapter twenty-nine-a of this code.

(4) In any administrative or court proceeding brought to challenge the average wholesale price of motor fuel as determined by the tax commissioner, his or her determination is presumed to be correct and shall not be set aside unless it is clearly erroneous.

(c) There is hereby levied a floorstocks tax on motor fuel held in storage outside the bulk transfer/terminal system as of the close of the business day preceding the first day of January, two thousand four, and upon which the tax levied by this section has not been paid. For the purposes of this section, “close of the business day” means the time at which the last transaction has occurred for that day. The floorstocks tax is payable by the person in possession of the motor fuel on the first day of January, two thousand four. The amount of the floorstocks tax on motor fuel is equal to the sum of the tax rate specified in subsection (a) of this section multiplied by the gallons in storage as of the close of the business day preceding the first day of January, two thousand four.

(1) Persons in possession of taxable motor fuel in storage outside the bulk transfer/terminal system as of the close of the business day preceding the first day of January, two thousand four, shall:
(A) Take an inventory at the close of the business day preceding the first day of January, two thousand four, to determine the gallons in storage for purposes of determining the floorstocks tax;

(B) Report no later than the thirty-first day of January, two thousand four, the gallons on forms provided by the commissioner; and

(C) Remit the tax levied under this section no later than the first day of June, two thousand four.

(2) In the event the tax due is paid to the commissioner on or before the thirty-first day of January, two thousand four, the person remitting the tax may deduct from their remittance five percent of the tax liability due.

(3) In the event the tax due is paid to the commissioner after the first day of June, two thousand four, the person remitting the tax shall pay, in addition to the tax, a penalty in the amount of five percent of the tax liability due.

(4) In determining the amount of floorstocks tax due under this section, the amount of motor fuel in dead storage may be excluded. There are two methods for calculating the amount of motor fuel in dead storage:

(A) If the tank has a capacity of less than ten thousand gallons, the amount of motor fuel in dead storage is two hundred gallons and if the tank has a capacity of ten thousand gallons or more, the amount of motor fuel in dead storage is four hundred gallons; or

(B) Use the manufacturer's conversion table for the tank after measuring the number of inches between the bottom of the tank and the bottom of the mouth of the drainpipe: Provided, That the distance between the bottom of the tank and the
bottom of the mouth of the draw pipe is presumed to be six inches.

(d) Every licensee who, on the effective date of any rate change, has in inventory any motor fuel upon which the tax or any portion thereof has been previously paid shall take a physical inventory and file a report thereof with the commissioner, in the format as required by the commissioner, within thirty days after the effective date of the rate change, and shall pay to the commissioner at the time of filing the report any additional tax due under the increased rate.

§11-14C-6. Point of imposition of motor fuels tax.

(a) The tax levied pursuant to section five of this article is imposed at the time motor fuel is imported into this state, other than by a bulk transfer, is measured by invoiced gallons received outside this state at a refinery, terminal or bulk plant for delivery to a destination in this state and is payable by the person importing the motor fuel unless otherwise specified in this section.

(b) Except as provided in subsection (a) of this section, the tax levied pursuant to section five of this article is measured by invoiced gallons of motor fuel removed, other than by a bulk transfer:

(1) From the bulk transfer/terminal system within this state;

(2) From the bulk transfer/terminal system outside this state for delivery to a location in this state as represented on the shipping papers: Provided, That the supplier imports the motor fuel for the account of the supplier; and

(3) Upon sale or transfer in a terminal or refinery in this state to any person not holding a supplier’s license and payable by the person selling or transferring the motor fuel.
(c) The tax levied pursuant to section five of this article upon motor fuel removed from a refinery or terminal in this state shall be collected by the supplier, as shown in the records of the terminal operator, acting as trustee, from the person removing the motor fuel from the facility.

(d) The tax levied pursuant to section five of this article shall not apply to motor fuel imported into this state in the motor fuel supply tank or tanks of a motor vehicle, other than in the motor fuel supply tank of a vehicle being hauled: Provided, That the person owning or operating as a motor carrier is not relieved of any taxes imposed by article fourteen-a of this chapter.

(e) The tax imposed pursuant to section five of this article at the point that blended motor fuel is made in West Virginia outside the bulk transfer/terminal system is payable by the blender. The number of gallons of blended motor fuel on which the tax is payable is the difference, if any, between the number of gallons of blended motor fuel made and the number of gallons of previously taxed motor fuel used to make the blended motor fuel.

(f) The terminal operator of a terminal in this state is jointly and severally liable with the supplier for the tax levied pursuant to section five of this article and shall remit payment to this state at the same time and on the same basis as a supplier under section twenty-two of this article upon:

(1) The removal of motor fuel from the terminal on account of any supplier who is not licensed in this state: Provided, That the terminal operator is relieved of liability if the terminal operator establishes all of the following:

(A) The terminal operator has a valid terminal operator’s license issued for the facility from which the motor fuel is withdrawn;
(B) The terminal operator has a copy of a valid license from the supplier as required by the commissioner; and

(C) The terminal operator has no reason to believe that any information is false; or

(2) The removal of motor fuel that is not dyed and marked in accordance with Internal Revenue Service requirements, if the terminal operator provides any person with any bill of lading, shipping paper, or similar document indicating that the motor fuel is dyed and marked in accordance with the Internal Revenue Service requirements.

§11-14C-7. Tax on unaccounted for motor fuel losses; liability.

(a) There is hereby annually levied a tax at the rate specified by section five of this article on taxable unaccounted for motor fuel losses at a terminal in this state. “Taxable unaccounted for motor fuel losses” means the number of net gallons of unaccounted for motor fuel losses that exceed one half of one percent of the number of net gallons removed from the terminal during the year by a bulk transfer or at the terminal rack. “Unaccounted for motor fuel losses” means the difference between: (1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year; and (2) the amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year. Accounted for motor fuel losses which have been approved by the commissioner or motor fuel losses constituting part of a transmix shall not constitute unaccounted for motor fuel losses.

(b) The terminal operator whose motor fuel is unaccounted for is liable for the tax levied by this section. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the commis-
sioner as having been removed from the terminal is presumed
to be unaccounted for motor fuel losses. A terminal operator
may rebut this presumption by establishing that motor fuel
received at a terminal, but not shown on an informational return
as having been removed from the terminal, was an accounted
for loss or constitutes part of a transmix.

§11-14C-8. Backup tax; liability.

1 (a) The tax levied pursuant to section five of this article is
levied on the following:

2 (1) Dyed diesel fuel that is used to operate a highway
vehicle for a taxable use other than a use exempt under 26
U.S.C. §4082;

3 (2) Motor fuel that was allowed an exemption from the
motor fuel tax and was then used or consumed on a highway;
and

4 (3) Motor fuel that is used to operate a highway vehicle
after an application for a refund of tax paid on the motor fuel is
made or allowed on the basis that the motor fuel was used for
an off-highway purpose.

(b) The operator of a highway vehicle that uses untaxed or
refunded motor fuel that is taxable under this section is liable
for the tax. If the highway vehicle that uses the motor fuel is
owned by or leased to a motor carrier, the operator of the
highway vehicle and the motor carrier are jointly and severally
liable for the tax. If the end seller of motor fuel taxable under
this section knew or had reason to know that the motor fuel
would be used for a purpose that is taxable under this section,
the operator of the highway vehicle and the end seller are
jointly and severally liable for the tax.

(c) The tax liability levied by this section is in addition to
any other penalty imposed pursuant to this article.
§11-14C-9. Exemptions from tax; claiming refunds of tax.

(a) **Per se exemptions for flat rate.** — Sales of motor fuel to the following, or as otherwise stated in this subsection, is exempt per se from the flat rate of the tax levied by section five of this article and the flat rate shall not be paid at the rack:

(1) All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation: Provided, however, That this exemption shall not apply to any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(2) Sales of aircraft fuel;

(3) All sales of dyed special fuel; and

(4) Sales of propane.

(b) **Per se exemptions for variable component.** — Sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component shall not be paid at the rack:

All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation: Provided, however, That this exemption shall not apply to any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(c) **Refundable exemptions for flat rate.** — Any person having a right or claim to any of the following exemptions to the flat rate of the tax levied by section five of this article that
is set forth in this subsection shall first pay the tax levied by this article and then apply to the tax commissioner for a refund:

(1) The United States or any agency thereof;

(2) Any county government or unit or agency thereof;

(3) Any municipal government or any agency thereof;

(4) Any county boards of education;

(5) Any urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(6) Any municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to any person on whom is imposed a requirement to maintain an inventory of motor fuel for the purpose of the program: Provided, That motor fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the tax commissioner certifying his or her right to the exemption: Provided, however, That in order for this exemption to apply, motor fuel sold under subdivisions (1) through (6) of this subsection shall be used in vehicles or equipment owned and operated by the respective government entity or government agency or authority and purchased for delivery in bulk quantities of five hundred gallons or more;

(7) All gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund: Provided, however, That a refund shall not be granted on any motor fuel which is transported and
delivered outside this state in the motor fuel supply tank of a highway vehicle;

(8) All gallons of motor fuel used and consumed in station-ary off-highway turbine engines;

(9) All gallons of special fuel used for heating any public or private dwelling, building or other premises;

(10) All gallons of special fuel used for boilers;

(11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial solvent;

(12) All gallons of motor fuel used as lubricants, ingredients or components of any manufactured product or compound;

(13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;

(14) All gallons of special fuel sold for use or consumed in railroad diesel locomotives;

(15) All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use as a motor fuel for internal combustion engines not operated upon highways of this state;

(16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor, the person claiming the refund may present to the tax commissioner a statement of his or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article paid on all motor fuel used in such a truck;
(17) Motor fuel used by any person regularly operating any
vehicle under a certificate of public convenience and necessity
or under a contract carrier permit for transportation of persons,
when purchased in an amount of twenty-five gallons or more:
Provided, That the amount refunded is equal to six cents per
gallon: Provided, however, That the gallons of motor fuel shall
have been consumed in the operation of urban and suburban bus
lines, and the majority of passengers use the bus for traveling
a distance not exceeding forty miles, measured one way, on the
same day between their places of abode and their places of
work, shopping areas or schools; and

(18) All gallons of motor fuel that are not otherwise exempt
under subsection (a) of this section and that are purchased and
used by any bona fide volunteer fire department, nonprofit
ambulance service or emergency rescue service that has been
certified by the municipality or county wherein the bona fide
volunteer fire department, nonprofit ambulance service or
emergency rescue service is located.

(d) Refundable exemptions for variable rate. — Any of the
following persons may claim an exemption to the variable rate
of the tax levied by section five of this article on the purchase
and use of motor fuel by first paying the tax levied by this
article and then applying to the tax commissioner for a refund.

(1) The United States or any agency thereof;

(2) This state and its institutions;

(3) Any county government or unit or agency thereof;

(4) Any municipal government or any agency thereof;

(5) Any county boards of education;
(6) Any urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(7) Any municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to any person on whom is imposed a requirement to maintain an inventory of motor fuel for the purpose of the program: Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the tax commissioner certifying his or her right to the exemption;

(8) Any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located; or

(9) All gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund: Provided, however, That a refund shall not be granted on any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor shall not apply to sales of motor fuel under this article.

PART 3. MOTOR FUEL LICENSING.
§11-14C-10. Persons required to be licensed.

(a) A person shall obtain the appropriate license or licenses issued by the commissioner before conducting the activities of:

1. A supplier which includes a refiner;
2. A permissive supplier;
3. An importer;
4. An exporter;
5. A terminal operator;
6. A blender;
7. A motor fuel transporter; or
8. A distributor.

(b) A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as otherwise determined by the commissioner.

§11-14C-11. License application procedure.

(a) To obtain a license under this article, an applicant shall file an application with the commissioner on a form provided by the commissioner. The application shall include the applicant’s name, address, federal employer identification number, and any other information required by the commissioner.

(b) An applicant for a license as a supplier, permissive supplier, terminal operator, importer, blender, or distributor, shall satisfy the following requirements:
(1) If the applicant is a corporation, the applicant shall either be incorporated in this state or authorized to transact business in this state;

(2) If the applicant is a limited liability company, the applicant shall either be organized in this state or authorized to transact business in this state;

(3) If the applicant is a limited liability partnership, the applicant shall either be formed in this state or authorized to transact business in this state; and

(4) If the applicant is an individual or a general partnership, the applicant shall designate an agent for service of process and provide the agent's name and address.

(c) An applicant for a license as a supplier, permissive supplier, terminal operator, or blender shall have a federal certificate of registry issued under 26 U.S.C. §4101 that authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal certificate of registry shall include the registration number of the certificate on the application for a license under this section. An applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C. §4101 shall include the registration number of the certificate on the application for a license under this section.

(d) An applicant for a license as an importer or distributor shall list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant’s license or registration number of that state. A licensee who intends to import motor fuel from a state not listed on its application for an importer’s license or a distributor’s license shall provide the
commissioner written notice of the action before importing motor fuel from that state. The notice shall include the information that is required on the license application.

(e) An applicant for a license as an exporter shall designate an agent located in West Virginia for service of process and provide the agent’s name and address. An applicant for a license as an exporter or distributor shall list on the application each state to which the applicant intends to export motor fuel received in West Virginia by means of a transfer that is outside the terminal transfer system and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant’s license or registration number of that state. A licensee who intends to export motor fuel to a state not listed on its application for an exporter’s license or a distributor’s license shall provide the commissioner written notice of the action before exporting motor fuel to that state. The notice shall include the information required on the license application.

(f) An applicant for a license as a motor fuel transporter shall list on the application each state from which and to which the applicant intends to transport motor fuel and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant’s license or registration number of that state. A licensee who intends to transport motor fuel from or to a state not listed on its application for a motor fuel transporter’s license shall provide the commissioner written notice of the action before transporting motor fuel from or to that state. The notice shall include the information that is required on the license application.

§11-14C-12. Permissive supplier requirements on out-of-state removals.
(a) A person may elect to obtain a permissive supplier license to collect the tax levied by section five of this article for motor fuel that is removed at a terminal in another state and has West Virginia as the destination state.

(b) A licensed permissive supplier shall comply with all of the following requirements with respect to motor fuel that is removed by that licensed permissive supplier at a terminal located in another state and has West Virginia as the destination state:

1. Collect the tax due this state on the motor fuel;

2. Waive any defense that this state lacks jurisdiction to require the supplier to collect the tax due this state on the motor fuel under this article;

3. Report and pay the tax due on the motor fuel in the same manner as if the removal had occurred at a terminal located in West Virginia;

4. Keep records of the removal of the motor fuel and submit to audits concerning the motor fuel as if the removal had occurred at a terminal located in West Virginia; and

5. Report sales by the supplier not engaged in business in this state to a person who is not licensed in the state where the removal occurred if the destination state is West Virginia.

(c) A licensed permissive supplier acknowledges that this state imposes the requirements listed in subsection (b) of this section under its general police power and submits to the jurisdiction of this state only for purposes related to the administration of this article.

§11-14C-13. Bond requirements.
(a) There shall be filed with an application for a license required by section eleven of this article either a cash bond or a continuous surety bond in the amount or amounts specified in this section: Provided, That if a continuous surety bond is filed, an annual notice of renewal shall be filed thereafter: Provided, however, That if the continuous surety bond includes the requirements that the commissioner is to be notified of cancellation at least sixty days prior to the continuous surety bond being canceled, an annual notice of renewal is not required. The bond, whether a cash bond or a continuous surety bond, shall be conditioned upon compliance with the requirements of this article, be payable to this state, and be in the form required by the commissioner. The amount of the bond is as follows:

(1) For a supplier license, the amount shall be no less than one hundred thousand dollars nor greater than two million dollars;

(2) For a permissive supplier license, the amount shall be no less than one hundred thousand dollars nor greater than two million dollars;

(3) For a terminal operator license, the amount shall be no less than one hundred thousand dollars nor greater than two million dollars;

(4) For an importer license for a person, other than a supplier, that imports by transport vehicle or another means of transfer outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported does not require the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state’s rate or the rate of the destination state; and (B) the seller of the motor fuel is not a permissive supplier, the amount shall be no less than one hundred thousand dollars nor greater than two million dollars;
(5) For an importer license for a person that imports by transport vehicle or another means outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported requires the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state’s rate or the rate of the destination state; or (B) the seller of the motor fuel is a permissive supplier, the amount shall be a minimum of two thousand dollars or an amount equal to three months tax liability, whichever is greater: Provided, That the amount shall not exceed three hundred thousand dollars: Provided, however, That when required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(6) For a license as both a distributor and an importer as described in subdivision (4) of this subsection, the amount shall be no less than one hundred thousand dollars nor greater than two million dollars;

(7) For a license as both a distributor and an importer as described in subdivision (5) of this subsection, the amount shall be a minimum of two thousand dollars or an amount equal to three months tax liability, whichever is greater: Provided, That the amount shall not exceed three hundred thousand dollars: Provided, however, That when required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(8) For an exporter license, the amount shall be a minimum of two thousand dollars or an amount equal to three months tax liability, whichever is greater: Provided, That the amount shall not exceed three hundred thousand dollars: Provided, however, That when required by the commissioner to file a cash bond or
66 a continuous surety bond in an additional amount, the licensee
67 shall comply with the commissioner's notification within thirty
days after receiving that notification;

69 (9) For a blender license, the amount shall be a minimum
70 of two thousand dollars or an amount equal to three months tax
71 liability, whichever is greater: Provided, That the amount shall
72 not exceed three hundred thousand dollars: Provided, however,
73 That when required by the commissioner to file a cash bond or
74 a continuous surety bond in an additional amount, the licensee
75 shall comply with the commissioner's notification within thirty
days after receiving that notification;

77 (10) For a distributor license, the amount shall be a mini-
78 mum of two thousand dollars or an amount equal to three
79 months tax liability, whichever is greater: Provided, That the
80 amount shall not exceed three hundred thousand dollars: 
81 Provided, however, That when required by the commissioner to
82 file a cash bond or a continuous surety bond in an additional
83 amount, the licensee shall comply with the commissioner's
84 notification within thirty days after receiving that notification;

85 (11) For a motor fuel transporter license, there shall be no
86 bond; and

87 (12) An applicant for a licensed activity listed under
88 subdivisions (1) through (10) of this subsection may in lieu of
89 posting either the cash bond or continuous surety bond required
90 by this subsection (a) provide proof of financial responsibility
91 acceptable to the commissioner: Provided, That the proof of
92 financial responsibility shall demonstrate the absence of
93 circumstances indicating risk with the collection of taxes from
94 the applicant: Provided, however, That the following shall
95 constitute proof of financial responsibility:
(A) Proof of five million dollars net worth shall constitute evidence of financial responsibility in lieu of posting the required bond;

(B) Proof of two million five hundred thousand dollars net worth constitutes financial responsibility in lieu of posting fifty per cent of the required bond; and

(C) Proof of one million two hundred fifty thousand dollars net worth constitutes financial responsibility in lieu of posting twenty-five per cent of the required bond. Net worth is calculated on a business, not individual basis.

(13) In lieu of providing either cash bond, a continuance surety bond or proof of financial responsibility acceptable to the commissioner, an applicant for a licensed activity listed under this subsection that has established with the state tax division a good filing record that is accurate, complete and timely for the preceding eighteen months shall be granted a waiver of the requirement to file either a cash bond or continuance surety bond: Provided, That when a licensee that has been granted a waiver of the requirement to file a bond violates a provision of this article, the licensee shall file the applicable bond as stated in this subsection.

(14) Any licensee who disagrees with the commissioner’s decision requiring new or additional security may seek a hearing by filing a petition with the office of tax appeals in accordance with the provisions of section nine, article ten-a of this chapter: Provided, That the hearing shall be provided within thirty days after receipt by the office of tax appeals of the petition for the hearing.

(b) The surety must be authorized to engage in business within this state. The cash bond and the continuous surety bond are conditioned upon faithful compliance with the provisions of this article, including the filing of the returns and payment of all
tax prescribed by this article. The cash bond and the continuous surety bond shall be approved by the commissioner as to sufficiency and form, and shall indemnify the state against any loss arising from the failure of the taxpayer to pay for any cause whatever the motor fuel excise tax levied by this article.

(c) Any surety on a continuous surety bond furnished hereunder shall be relieved, released and discharged from all liability accruing on the bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner a written request to be discharged. Discharge from the continuous surety bond shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any surety seeks discharge as herein provided, it is the duty of the principal of the bond to supply the commissioner with another continuous surety bond or a cash bond prior to the expiration of the original bond. Failure to provide a new continuous surety bond or a cash bond shall result in the commissioner canceling each license and registration previously issued to the person.

(d) Any taxpayer that has furnished a cash bond hereunder shall be relieved, released and discharged from all liability accruing on the cash bond after the expiration of sixty days from the date the taxpayer shall have lodged, by certified mail, with the commissioner a written request to be discharged and the amount of the cash bond refunded: Provided, That the commissioner may retain all or part of the cash bond until such time as the commissioner may perform an audit of the taxpayer's business or three years, whichever first occurs. Discharge from the cash bond shall not relieve, release or discharge the taxpayer from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any taxpayer seeks discharge as herein provided, it is the duty of the taxpayer to provide the commissioner with another cash
bond or a continuous surety bond prior to the expiration of the
original cash bond. Failure to provide either a new cash bond or
a continuous surety bond shall result in the commissioner
canceling each license and registration previously issued to the
taxpayer.

§11-14C-14. Grounds for denial of license.

(a) The commissioner may refuse to issue a license under
this article if the applicant or any principal of the applicant that
is a business entity has:

(1) Had a license or registration issued under prior law or
this article canceled by the commissioner for cause;

(2) Had a motor fuel license or registration issued by
another state canceled for cause;

(3) Had a federal certificate of registry issued under section
4101 of the Internal Revenue Code, or a similar federal
authorization, revoked;

(4) Been convicted of any offense involving fraud or
misrepresentation; or

(5) Been convicted of any other offense that indicates that
the applicant may not comply with this article if issued a
license.

§11-14C-15. Issuance of license.

Upon approval of an application, the commissioner shall
issue to the applicant the appropriate license or licenses for
each place of business of the applicant. Each licensee shall
display the license issued under this article in a conspicuous
place at each of the licensee’s places of business. A license is
not transferable and remains in effect until surrendered or
canceled.
§11-14C-16. Notice of discontinuance, sale or transfer of business.

(a) A licensee who discontinues the business for which was issued a license authorized by this article shall notify the commissioner in writing within fifteen days of discontinuance and shall surrender the license to the commissioner. The notice shall state the effective date of the discontinuance and, if the licensee has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the commissioner.

(b) All taxes for which the licensee is liable under this article but are not yet due are due on the date of the discontinuance. If the licensee has transferred the business to another person and does not give the notice required by this section, the person to whom the business was transferred is jointly and severally liable for the amount of any tax owed by the licensee to this state on the date the business was transferred. The liability of the person to whom the business was transferred shall not exceed the value of the property acquired from the licensee.

§11-14C-17. License cancellation.

(a) The commissioner may cancel the license of any person licensed under this article, upon written notice sent by registered mail to the licensee's last known address, or to the licensee's designated agent for service of process, appearing in the commissioner's files, for any of the following reasons:

(i) Filing by the licensee of a false report of the data or information required by this article;

(ii) Failure, refusal, or neglect of the licensee to file a report or information required by this article;
(3) Failure of the licensee to pay the full amount of the tax due or pay any penalties or interest due as required by this article;

(4) Failure of the licensee to keep accurate records of the quantities of motor fuel received, produced, refined, manufactured, compounded, sold, or used in West Virginia;

(5) Failure to file a new or additional cash bond or continuous surety bond upon request of the commissioner pursuant to section thirteen of this article;

(6) Conviction of the licensee or a principal of the licensee for any act prohibited under this article;

(7) Failure, refusal, or neglect of a licensee to comply with any other provision of this article or any rule promulgated pursuant to this article; or

(8) A change in the ownership or control of the business.

(b) Upon cancellation of any license for any cause listed in subsection (a) of this section, the tax levied under this article becomes due and payable on all untaxed motor fuel held in storage or otherwise in the possession of the licensee and all motor fuel sold, delivered, or used prior to the cancellation on which the tax has not been paid.

(c) The commissioner may cancel any license upon the written request of the licensee.

(d) Upon cancellation of any license and payment by the licensee of all taxes due, including all penalties accruing due to any failure by the licensee to comply with the provisions of this article, the commissioner shall cancel and surrender the bond, filed by the licensee: Provided, That the requirements of section thirteen of this article are satisfied.
§11-14C-18. Records and lists of license applicants and licensees.

(a) The Commissioner shall maintain a record of:

1. All applicants for a license under this article;
2. All persons to whom a license has been issued under this article; and
3. All persons holding a current license issued under this article, by license category.

(b) The commissioner shall provide a list of licensees to any person who requests a copy. The list shall state the name, business address, and, if available, telephone number of each licensee on the list and may include other information determined appropriate by the commissioner.

PART 4. PAYMENT AND REPORTING OF TAX ON MOTOR FUEL.

§11-14C-19. When tax return and payment are due.

(a) The tax levied by this article shall be paid by each taxpayer on or before the last day of the calendar month by check, bank draft, or money order payable to the commissioner for the amount of tax due, if any, for the preceding month: Provided, That the commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the commissioner shall accompany the payment of tax: Provided, however, That if no tax is due, the return required by the commissioner shall be completed and filed before the last day of the calendar month for the preceding month.

(b) The following shall file a monthly return as required by this section:

1. A terminal operator;
§11-14C-20. Remittance of tax to supplier or permissive supplier.

(a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, of the motor fuel the tax levied by section five of this article and due on motor fuel removed at a terminal rack: Provided, That at the election of a licensed distributor or licensed importer, the supplier or permissive supplier shall not require the licensed distributor or licensed importer to pay tax levied by section five of this article until two days before the date the supplier or permissive supplier is required to pay the tax to this state: Provided, however, That an election under this subsection is subject to the condition that remittances by the licensed distributor or licensed importer of all tax due to the supplier or permissive supplier shall be paid by electronic funds transfer two days before the date of the remittance by the supplier or permissive supplier to the commissioner. An election under this subsection may be terminated by the supplier or permissive supplier if the licensed distributor or licensed importer does not make timely payments to the supplier or permissive supplier as required by this subsection.
(b) A licensed exporter shall remit tax due on motor fuel removed at a terminal rack to the supplier of the motor fuel. The date by which an exporter shall remit tax is governed by the law of the destination state of the exported motor fuel: Provided, That if the laws of the destination state prohibit the collection of the destination state's tax, the tax levied by section five of this article shall be collected.

(c) All tax payments received by a supplier or permissive supplier shall be held in trust by the supplier or permissive supplier until the supplier or permissive supplier remits the tax payment to this state or to another state, and the supplier or permissive supplier shall constitute the trustee for the tax payments.

(d) The license of a licensed distributor, exporter or importer who fails to pay the full amount of tax required by this article is subject to cancellation.

§11-14C-21. Notice of cancellation or reissuance of licenses; effect of notice.

(a) If the commissioner cancels the license of a distributor or importer, the commissioner shall notify all suppliers and permissive suppliers of the cancellation. If the commissioner issues a license to a distributor or importer whose license was previously canceled, the commissioner shall notify all suppliers and permissive suppliers of the issuance.

(b) A supplier or permissive supplier who sells motor fuel to a distributor or importer after receiving notice from the commissioner that the commissioner has canceled the distributor's or importer's license is jointly and severally liable with the distributor or importer for any tax due on motor fuel sold to the distributor or importer subsequent to receipt of the notice: Provided, That the supplier or permissive supplier is not liable for tax due on motor fuel sold to a previously unlicensed
distributor or importer after the supplier or permissive supplier
receives notice from the commissioner that the commissioner
has issued another license to the distributor or importer.

(c) If the commissioner cancels the license of a supplier or
permissive supplier, the commissioner shall notify all licensed
distributors, exporters and importers of the cancellation. If the
commissioner issues a license to a supplier or permissive
supplier whose license was previously canceled, the commis-
sioner shall notify all licensed distributors, exporters, and
importers of the issuance.

(d) A licensed distributor, exporter or importer who
purchases motor fuel from a supplier or permissive supplier
after receiving notice from the commissioner that the commis-
sioner has canceled the supplier’s or permissive supplier’s
license is jointly and severally liable with the supplier or
permissive supplier for any tax due on motor fuel purchased
from the supplier or permissive supplier after receiving the
notice: Provided, That a licensed distributor that purchases
motor fuel from a supplier or permissive supplier whose license
has been canceled shall file a tax return on or before the last day
of the month following the month in which the purchase
occurred. The return shall include the following information
and any other information required by the commissioner:

(1) The number of invoiced gallons of tax paid motor fuel,
sorted by type of motor fuel, terminal code, name of seller,
point of origin and carrier; and

(2) The number of invoiced gallons of untaxed motor fuel,
sorted by type of motor fuel, terminal code, name of seller,
point of origin and carrier.

The licensed distributor, exporter or importer is not liable
for tax due on motor fuel purchased from a previously unli-
censed supplier or permissive supplier after the licensee
§11-14C-22. Information required on return filed by supplier or permissive supplier.

The return of each supplier and permissive supplier shall list all of the following information and any other information required by the commissioner:

(a) The number of gross gallons of tax-paid motor fuel received by the supplier or permissive supplier during the month, sorted by type of motor fuel, seller, point of origin, destination state, and carrier;

(b) The number of gross gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of motor fuel, person receiving the motor fuel, terminal code, and carrier;

(c) The number of gross gallons of motor fuel removed during the month for export, sorted by type of motor fuel, person receiving the motor fuel, terminal code, destination state, and carrier;

(d) The number of gross gallons of motor fuel removed during the month from a terminal located in another state for conveyance to West Virginia, as indicated on the shipping document for the motor fuel, sorted by type of motor fuel, person receiving the motor fuel, terminal code, and carrier;

(e) The number of gross gallons of motor fuel the supplier or permissive supplier sold during the month to a governmental entity whose use of motor fuel is exempt from the tax, sorted by type of motor fuel, carrier, and governmental entity receiving the motor fuel, terminal code.
§11-14C-23. Deductions and discounts allowed a supplier and a permissive supplier when filing a return.

(a) The supplier or permissive supplier may deduct from the next monthly return those tax payments that were not remitted for the previous month to the supplier or permissive supplier by any licensed distributor or any licensed importer who removed motor fuel on which the tax is due from the supplier’s or permissive supplier’s terminal. The licensed supplier or permissive supplier is eligible to take this deduction if the licensed supplier or permissive supplier notifies the state within ten business days after a return is due of any licensed distributor or importer who did not pay to the supplier or permissive supplier the tax due by the time the supplier or permissive supplier filed the monthly return: Provided, That when a licensed distributor or licensed importer fails to remit the tax to the licensed supplier or permissive supplier, the licensed supplier or permissive supplier is not eligible to take the deduction for any tax payments that accrue after the ten business day period referenced above for delinquent distributors or importers. The notice shall be transmitted to the state in the form required by the commissioner. A supplier or permissive supplier is not liable for the tax a licensee owes but fails to pay. If a licensee pays to a supplier or permissive supplier the tax owed, but the payment occurs after the supplier or permissive supplier has deducted the amount of the tax on a return, the supplier or permissive supplier shall remit the payment to the commissioner with the next monthly return filed subsequent to receipt of the tax.

(b) A supplier or permissive supplier who timely files a return with the payment due may deduct, from the amount of tax payable with the return, an administrative discount of one tenth of one percent of the amount of tax payable to this state, not to exceed five thousand dollars per month.
(c) For sales from permissive suppliers or suppliers to licensed distributors, a supplier or permissive supplier shall deduct three fourths of one percent of the tax due from the licensed distributor as a discount to that licensed distributor. The discount given to the licensed distributor shall be reported on the supplier or the permissive supplier’s next monthly return. This discount only applies to sales from permissive suppliers and suppliers to licensed distributors, and shall not apply to any other transactions, including, but not limited to, licensed distributor to licensed distributor transactions: Provided, That if the permissive supplier and/or supplier is also a licensed distributor, this discount shall not apply.

§11-14C-24. Duties of supplier or permissive supplier as trustee.

(a) All tax payments due to this state that are received by a supplier or permissive supplier shall be held by the supplier or permissive supplier as trustee in trust for this state, and the supplier or permissive supplier has a fiduciary duty to remit to the commissioner the amount of tax received. A supplier or permissive supplier is liable for the taxes paid to it.

(b) A supplier or permissive supplier shall notify a licensed distributor, licensed exporter, or licensed importer who received motor fuel from the supplier or permissive supplier during a reporting period of the number of taxable gallons received. The supplier or permissive supplier shall give this notice after the end of each reporting period and before the licensee is required to remit the amount of tax due on the motor fuel.

(c) A supplier or permissive supplier of motor fuel at a terminal shall notify the commissioner within the time period established by the commissioner of any licensed distributors, licensed exporters, or licensed importers who did not pay the tax due when the supplier or permissive supplier filed its return. The notice shall be transmitted to the commissioner in the form required by the commissioner.
(d) A supplier or permissive supplier who receives a payment of tax shall not apply the payment of tax to a debt that the person making the payment owes for motor fuel purchased from the supplier or permissive supplier.

§11-14C-25. Returns and discounts of importers.

(a) The monthly return of an importer shall contain the following information for the period covered by the return and any other information required by the commissioner:

(1) The number of gross gallons of imported motor fuel acquired from a supplier or permissive supplier who collected the tax due this state on the motor fuel;

(2) The number of gross gallons of imported motor fuel acquired from a person who did not collect the tax due this state on the motor fuel, listed by type of motor fuel, source state, person, and terminal;

(3) The number of gross gallons of imported motor fuel acquired from a bulk plant outside this state, listed by bulk plant name, address and type of motor fuel; and

(4) The import confirmation number, as may be required under section thirty-five of this article, of each import that is reported under subdivision (2) or subdivision (3) of this subsection, as applicable, and was removed from a terminal or bulk plant.

(b) An importer that imports by transport vehicle or another means of transfer outside the terminal transfer system motor fuel removed from a terminal located in another state in which:

(1) The state from which the motor fuel is imported does not require the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state's rate or the rate of the destination state; and (2) the seller of the motor fuel is not a
licensed supplier or permissive supplier, who timely files a 
return with the payment due may deduct, from the amount of 
tax payable with the return, an administrative discount of one 
tenth of one percent of the amount of tax payable by the 
importer to this state, not to exceed five thousand dollars per 
month.

§11-14C-26. Informational returns of terminal operators.

(a) A terminal operator shall file with the commissioner a 
monthly information return showing the amount of motor fuel 
received and removed from the terminal during the month. The 
return is due by the last day of the month following the month 
covered by the return. The return shall contain the following 
information and any other information required by the commis-
sioner:

(1) The beginning and ending inventory which pertains to 
the applicable reporting month;

(2) The number of gross gallons of motor fuel received in 
inventory at the terminal during the month and each position 
holder for the motor fuel;

(3) The number of gross gallons of motor fuel removed 
from inventory at the terminal during the month and, for each 
removal, the position holder for the motor fuel and the destina-
tion state of the motor fuel; and

(4) The number of gross gallons of motor fuel gained or lost 
at the terminal during the month.

(b) The tax commissioner may accept the Federal 
ExSTARS terminal operator report provided to the Internal 
Revenue Service in lieu of the required state terminal operator 
report.
§11-14C-27. Informational returns of motor fuel transporters.

(a) A person who transports by marine vessel, railroad tank car, or transport vehicle, motor fuel that is imported into West Virginia or exported from West Virginia shall file a monthly information return with the commissioner that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor who is not required to be licensed as a motor fuel transporter.

(b) The return required by this section is due by the last day of the month following the month covered by the return. The return shall contain the following information and any other information required by the commissioner:

(1) The name, address and terminal control number of each person or terminal from whom the transporter received motor fuel outside West Virginia for delivery in West Virginia, the invoiced gallons of motor fuel received, the date the motor fuel was received, and the name and address of the purchaser of the motor fuel; and

(2) The name, address and terminal control number of each person or terminal from whom the transporter received motor fuel in West Virginia for delivery outside West Virginia, the invoiced gallons of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the motor fuel.


(a) A person who exports motor fuel from West Virginia shall file a monthly return with the commissioner identifying the exports. The return is due by the last day of the month following the month covered by the return. The return shall serve as a claim for a refund for tax paid to this state on exported motor fuel.
(b) The return shall contain the following information and any other information required by the commissioner:

1. The number of invoiced gallons of motor fuel exported during the month;
2. The destination state of the motor fuel exported during the month; and
3. A certification that the tax has been paid to the destination state of the motor fuel exported during the month.

§11-14C-29. Identifying information required on return.

When a transaction with a person licensed under this article is required to be reported on a return, the return must state the licensee's name, address, and, if available, license number and telephone number as stated on the lists compiled by the commissioner under section nineteen of this article.

PART 5. REFUNDS.

§11-14C-30. Refund of taxes erroneously collected, etc.; refund for gallonage exported or lost through casualty or evaporation; change of rate; petition for refund.

(a) The commissioner is hereby authorized to refund from the funds collected under the provisions of this article any tax, interest, additions to tax or penalties which have been erroneously collected from any person.

(b) Any supplier, distributor, producer, retail dealer, exporter or importer, while the owner of motor fuel in this state, that loses any gallons of motor fuel through fire, lightning, breakage, flood or other casualty, which gallons having been previously included in the tax by or for that person, may claim a refund of a sum equal to the amount of the flat rate of the tax levied by section five of this article paid upon the gallons lost.
(c) Any dealer as defined in section two, article eleven-c, chapter forty-seven of the code, and any bulk plant in this state that purchases or receives motor fuel in this state upon which the tax levied by section five of this article has been paid, is entitled to an annual refund of the flat rate of the tax levied by section five of this article for gallons lost through evaporation: Provided, That only the owner of the bulk plant that is also the owner of the fuel in the bulk plant may claim this refund for gallons lost through evaporation. The refund is computed at the flat rate of tax levied per gallon under this article on all gallons of motor fuel actually lost due to evaporation, not exceeding one half of one percent of the adjusted total accountable gallons, computed as determined by the commissioner.

(d) Every supplier, distributor or producer, retail dealer, exporter or importer is entitled to a refund of the flat rate of the tax levied by section five of this article from this state of the amount resulting from a change of rate decreasing the tax under the provisions of this article on motor fuel on hand and in inventory on the effective date of the rate change, which motor fuel has been included in any previous computation by which the tax levied by this article has been paid.

§11-14C-31. Claiming refunds.

(a) Any person seeking a refund pursuant to subsection (b), section nine of this article shall present to the commissioner a petition accompanied by the original or duplicate original sales slip or invoice from the distributor or producer or retail dealer, as the case may be, showing the amount of the purchases, together with evidence of payment thereof, and a statement stating how the motor fuel was used: Provided, That sales slips or invoices marked "duplicate" are not acceptable: Provided, however, That certified copies of sales slips or invoices are acceptable: Provided further, That copies of sales slips and invoices may be used with any application for refund made under authority of subdivision (9), subsection (c), section nine
of this article when the gasoline is used to operate tractors and
gas engines or threshing machines for agricultural purposes.

(b) Any person claiming a refund pursuant to section thirty
of this article shall file a petition in writing with the commis-
sioner. The petition shall be in the form and with supporting
records as required by the commissioner and made under the
penalty of perjury.

(c) The right to receive any refund under the provisions of
this section is not assignable and any assignment thereof is void
and of no effect. No payment of any refund may be made to any
person other than the original person entitled. The commis-
sioner shall cause a refund to be made under the authority of
this section only when the claim for refund is filed with the
commissioner within the following time periods:

(1) A petition for refund under section thirty of this article,
other than for evaporation loss, shall be filed with the commis-
sioner within three years from the end of the month in which
the tax was erroneously or illegally paid or the gallons were
exported or lost by casualty, or in which a change of rate took
effect;

(2) A petition for refund under section thirty of this article
for evaporation loss shall be filed within three years from the
end of the year in which the evaporation occurred;

(3) A petition for refund under subsection (c), section nine
of this article shall be filed with the commissioner within six
months from the month of purchase or delivery of the motor
fuel: Provided, That any application for refund made under
authority of subdivision (9), subsection (c), section nine of this
article when the gasoline is used to operate tractors and gas
engines or threshing machines for agricultural purposes shall be
filed within twelve months from the month of purchase or
delivery of the motor fuel: Provided, however, That all persons
authorized to claim a refund under the authority of subdivision (12), subsection (c), section nine of this article to claim a refundable exemption shall do so no later than the thirty-first day of August for the purchases of motor fuel made during the preceding fiscal year ending the thirtieth day of June.

(d) Any petition for a refund not timely filed is not construed to be or constitute a moral obligation of the state of West Virginia for payment. Every petition for refund is subject to the provisions of section fourteen, article ten of this chapter.

(e) The commissioner may make any investigation considered necessary before refunding to a person the tax levied by section five of this article. The commissioner may also subject to audit the records related to a refund of the tax levied by section five of this article.

§11-14C-32. Payment of refund.

Whenever it appears to the satisfaction of the commissioner that any person is entitled to a refund for taxes paid pursuant to section five of this article, the commissioner shall forthwith certify the amount of the refund.

PART 6. ENFORCEMENT AND ADMINISTRATION.

§11-14C-33. General procedure and administration; crimes and penalties.

(a) Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter applies to the taxes levied by this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes levied by this article and were set forth in extenso in this article.

(b) Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this
chapter applies to the taxes levied by this article with like effect
as if that act were applicable only to the taxes levied by this
article and were set forth in extenso in this article.

(c) To the extent that any provision of this article is in
conflict with either article nine or article ten of this chapter, the
provision of this article shall control.

§11-14C-34. Shipping documents; transportation of motor fuel by
barge, watercraft, railroad tank car or transport
truck; civil penalty.

(a) A person shall not transport in this state any motor fuel
by barge, watercraft, railroad tank car or transport vehicle
unless the person has a shipping document for the motor fuel
that complies with this section. A terminal operator or operator
of a bulk plant shall give a shipping document to the person
who operates the barge, watercraft, railroad tank car or trans-
port vehicle into which motor fuel is loaded at the terminal rack
or bulk plant rack.

(b) The shipping document issued by the terminal operator
or operator of a bulk plant shall contain the following informa-
tion and any other information required by the commissioner:

(1) Identification, including address, of the terminal or bulk
plant from which the motor fuel was received;

(2) Date the motor fuel was loaded;

(3) Invoiced gallons loaded;

(4) Destination state of the motor fuel, as represented by the
purchaser of the motor fuel or the purchaser’s agent;

(5) In the case of aviation jet fuel, the shipping document
shall be marked with the phrase “Aviation Jet Fuel, Not for On-
road Use” or a similar phrase;
(6) In the case of dyed diesel fuel, the shipping document shall be marked with the phrase "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase; and

(7) If the document is issued by a terminal operator, the gross gallons loaded and a statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the represented destination state.

(d) A person to whom a shipping document was issued shall:

(1) Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;

(2) Show the shipping document upon request to any law-enforcement officer, representative of the commissioner and any other authorized individual when transporting the motor fuel described;

(3) Deliver motor fuel to the destination state printed on the shipping document unless the person:

(A) Notifies the commissioner before transporting the motor fuel into a state other than the printed destination state that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;
(B) Receives from the commissioner a confirmation number authorizing the diversion; and

(C) Writes on the shipping document the change in destination state and the confirmation number for the diversion; and

(4) Gives a copy of the shipping document to the person to whom the motor fuel is delivered.

(e) The person to whom motor fuel is delivered by barge, watercraft, railroad tank car or transport vehicle shall not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than West Virginia: Provided, That delivery may be accepted if the destination state is other than West Virginia if the document contains a diversion number authorized by the commissioner. The person to whom the motor fuel is delivered shall examine the shipping document to determine that West Virginia is the destination state, and shall retain a copy of the shipping document: (1) At the place of business where the motor fuel was delivered for ninety days following the date of delivery; and (2) at the place or another place for at least three years following the date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to section five of this article is jointly and severally liable for any tax due on the motor fuel.

(f) Any person who transports motor fuel in a barge, watercraft, railroad tank car or transport vehicle without a shipping document or with a false or an incomplete shipping document, or delivers motor fuel to a destination state other than the destination state shown on the shipping document, is subject to the following civil penalty.
(1) If the motor fuel is transported in a barge, watercraft or transport vehicle, the civil penalty shall be payable by the person in whose name the means of conveyance is registered.

(2) If the motor fuel is transported in a railroad tank car, the civil penalty shall be payable by the person responsible for shipping the motor fuel in the railroad tank car.

(3) The amount of the civil penalty for a first violation is five thousand dollars.

(4) The amount of the civil penalty for each subsequent violation is ten thousand dollars.

(5) Civil penalties prescribed under this section are assessed, collected and paid in the same manner as the motor fuel excise tax imposed by this article.

§11-14C-35. Import confirmation number; civil penalty.

(a) The commissioner may require an importer who acquires motor fuel for import from a person who is not a supplier or a permissive supplier to obtain an import confirmation number from the commissioner before importing the motor fuel. The importer shall write the import confirmation number on the shipping document issued for the motor fuel. If required by the commissioner, the importer shall obtain a separate import confirmation number for each delivery of motor fuel into West Virginia.

(b) An importer who does not obtain an import confirmation number when required by this section is subject to the following civil penalty.

(1) For the first violation, the amount is five thousand dollars.
15 (2) For each subsequent violation the amount is ten thousand dollars.

17 (c) The civil penalty is payable by the person in whose name the transport vehicle is registered.

19 (d) Civil penalties prescribed under this section are assessed, collected and paid in the same manner as the motor fuel excise tax imposed by this article.

§11-14C-36. Improper sale or use of untaxed motor fuel; civil penalty.

1 (a) Any person who commits any of the following violations is subject to the civil penalty specified in subsection (b) of this section:

4 (1) Sells or stores any dyed diesel fuel for use in a highway vehicle that is licensed or required to be licensed as such, unless that use is allowed under the authority of 26 U.S.C. §4082;

7 (2) Willfully alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel fuel;

9 (3) Uses dyed diesel fuel in a highway vehicle unless that use is allowed under the authority of 26 U.S.C. §4082;

11 (4) Acquires, sells or stores any motor fuel for use in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by section five of this article has been paid; or

15 (5) Uses any motor fuel in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by section five of this article has been paid.

18 (b) The amount of the civil penalty for the first two violations of this section in a calendar year, as described in
subsection (a) of this section, is ten dollars per gallon of motor fuel based upon the maximum capacity of the motor fuel storage tank, container or storage tank of the highway vehicle, watercraft or aircraft in which the motor fuel is found or one thousand dollars, whichever is greater: Provided, That for each subsequent violation in the same calendar year, the penalty is fifteen dollars per gallon based upon the maximum capacity of the motor fuel storage tank, container or storage tank of the highway vehicle, watercraft or aircraft in which the motor fuel is found or two thousand dollars, whichever is greater.

(c) Each violation is subject to a separate civil penalty.

(d) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.

§11-14C-37. Refusal to allow inspection or taking of fuel sample; civil penalty.

(a) Any person who refuses to allow an inspection authorized by section forty-seven of this article or to allow the taking of a fuel sample authorized by section forty-seven of this article is subject to a civil penalty of five thousand dollars for each refusal. If the refusal is for a sample to be taken from a vehicle, the person operating the vehicle and the owner of the vehicle are jointly and severally liable for payment of the civil penalty. If the refusal is for a sample to be taken from any other storage tank or container, the owner of the storage tank or container and the owner of the motor fuel in the storage tank or container, if different from the owner of the storage tank or container, are jointly and severally liable for payment of the civil penalty.

(b) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.
§11-14C-38. Engaging in business without a license; civil penalty.

(a) Any person who engages in any business activity for which a license is required by this article without having first obtained and subsequently retained such a valid license is subject to the following civil penalty.

(1) For the first violation the amount is five thousand dollars.

(2) For each subsequent violation the amount is ten thousand dollars.

(b) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.

§11-14C-39. Preventing a person from obtaining a license; civil penalty.

(a) Any terminal operator, supplier, or position holder in a terminal who, by use of coercion, threat, intimidation or any other means of interference, intentionally prevents any person from applying for or obtaining a license issued under this article is subject to the following civil penalty.

(1) For the first violation the amount is five thousand dollars.

(2) For each subsequent violation the amount is ten thousand dollars.

(b) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.

§11-14C-40. Filing a false return; failure to file return; civil penalty.
(a) Any person liable for a tax levied under this article who files a false return, report or document under the provisions of this article with the intent to evade the tax levied by section five of this article is subject to a civil penalty equal to the total amount of tax evaded, or not collected, by the filing of a return, report or document. The civil penalty is in addition to the amount of the tax evaded or not collected.

(b) Any person liable for a tax levied under this article who fails to file, even if no tax is due, within thirty days after it is due any return required by this article is subject to a civil penalty of fifty dollars for each month, or part thereof, the return is not filed. The civil penalty is in addition to the amount of tax not correctly returned.

(c) Any person required to file a return under this article who fails to file within thirty days after it is due is subject to a civil penalty of fifty dollars for each month, or part thereof, the return is not filed.

(d) Civil penalties prescribed under this section shall be assessed, collected and paid in the same manner as the motor fuel tax.

§11-14C-41. Willful commission of prohibited acts; criminal penalties.

(a) Any person who willfully commits any of the following offenses is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five thousand dollars nor more than twenty-five thousand dollars, or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned:

(1) Fails to obtain a license required by this article prior to performing an act for which the license is required;
(2) Fails to pay to this state no more than thirty days after
the date the tax is due the tax levied by this article;

(3) Makes a false statement in an application, return, ticket,
invoice, statement, or any other document required under this
article;

(4) Fails to file no more than thirty days after it is due any
return required by this article;

(5) Fails to maintain any record required by this article;

(6) Makes a false statement in an application for a refund;

(7) Refuses to allow the commissioner to examine the
person's books and records concerning motor fuel;

(8) Fails to make a required disclosure of the correct
amount of fuel sold or used in this state;

(9) Fails to file a replacement or additional cash bond or
continuous surety bond as required under this article;

(10) Fails to show or give a shipping document as required
under this article;

(11) Refuses to allow a licensed distributor, licensed
exporter, or licensed importer to defer payment of tax to the
licensed supplier or permissive supplier, as required by section
twenty of this article;

(12) Uses, delivers, or sells any aviation fuel for use or
intended for use in highway vehicles or watercraft;

(13) Interferes with or refuses to permit seizures authorized
under section forty-two of this article;
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(14) Delivers motor fuel from a transport vehicle to the fuel supply tank of a highway vehicle;

(15) Dispenses into the supply tank of a highway vehicle, watercraft or aircraft any motor fuel on which tax levied by section five of this article has not been paid;

(16) Allows to be dispensed into the supply tank of a highway vehicle, watercraft or aircraft any motor fuel on which tax levied by section five of this article has not been paid;

(17) Purchases motor fuel from an unlicensed distributor, unlicensed importer or unlicensed supplier; or

(18) Uses twenty-five or less gallons of dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of the motor fuel, or sells twenty-five or less gallons of dyed diesel fuel to a person who the seller knows or has reason to know will use the motor fuel for a taxable purpose.

(b) Any person who willfully commits any of the following offenses with the intent either to evade or circumvent the tax levied by section five of this article or to assist any other person in efforts to evade or circumvent the tax levied by section five of this article is guilty of a felony, and upon conviction thereof, shall be fined not less than twenty-five thousand dollars nor more than fifty thousand dollars, or imprisoned in a state correctional facility not less than one nor more than five years, or both fined and imprisoned:

(1) Alters, manipulates, replaces, or in any other manner tampers or interferes with, or causes to be altered, manipulated, replaced, tampered or interfered with, a totalizer attached to motor fuel pumps to measure the dispensing of motor fuel;

(2) Fails to pay motor fuels taxes and diverts the tax proceeds for other purposes;
(3) As a licensee or the agent or representative of a licensee, converts or attempts to convert motor fuel tax proceeds for the use of the licensee or the licensee's agent or representative, with the intent to defraud this state;

(4) Collects motor fuel taxes when not authorized or licensed by the commissioner to do so;

(5) Imports motor fuel into this state in contravention of this article;

(6) Conspires with any other person or persons to engage in an act, plan, or scheme to defraud this state of motor fuels tax proceeds;

(7) Uses in excess of twenty-five gallons of any dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of the motor fuel, or sells in excess of twenty-five gallons of any dyed diesel fuel to a person who the seller knows or has reason to know will use the motor fuel for a taxable purpose;

(8) Alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel fuel intended to be used for a taxable purpose; or

(9) Fails to remit to the commissioner any tax levied pursuant to this article, if the person has added, or represented that he or she has added, the tax to the sales price for the motor fuel and has collected the amount of the tax.

(c) Each offense is subject to a separate criminal penalty.

§11-14C-42. Unlawful importing, transportation, delivery, storage or sale of motor fuel; sale to enforce assessment.
(a) Upon the discovery of any motor fuel illegally imported into, or illegally transported, delivered, stored or sold in, this state, the commissioner shall order the tank or other storage receptacle in which the motor fuel is located to be seized and locked or sealed until the tax, interest, penalties and additions levied under this article are assessed and paid.

(b) If the assessment for the tax is not paid within thirty days, the commissioner is hereby authorized, in addition to the other remedies authorized in this article, to sell the motor fuel and use the proceeds of the sale to satisfy the assessment due, with any funds that exceed the assessment and costs of the sale being returned to the owner of the motor fuel: Provided, That the sale of seized property be conducted in accordance with the requirements established in article ten of this chapter.

(c) All motor fuel and any property, tangible or intangible, which is found upon the person or in any vehicle which the person is using, including the vehicle itself, to aid the person in the transportation or sale of illegally transported, delivered, stored, sold, imported or acquired motor fuel, and any property found in the immediate vicinity of any place where the illegally transported, delivered, stored, sold, imported or acquired motor fuel is located, including motor vehicles, tanks, and other storage devices, used to aid in the illegal transportation or sale of motor fuel, is considered contraband and shall be forfeited to this state.

§11-14C-43. Record-keeping requirements.

(a) Each person required to be licensed under section ten of this article and each bulk user and retailer shall keep and maintain all records pertaining to motor fuel received, produced, manufactured, refined, compounded, used, sold or delivered, together with delivery tickets, invoices, bills of lading, and other pertinent records and papers as required by the commissioner for the reasonable administration of this article.
(b) The records required by this section to be retained shall be kept and maintained for a period to include the commissioner's current calendar year and the previous three calendar years.

§11-14C-44. Inspection of records.

(a) The commissioner may, during the usual business hours of the day, examine records, books, papers, storage tanks and any other equipment of any person required to maintain records for the purpose of ascertaining the quantity of motor fuel received, produced, manufactured, refilled, compounded, used, sold, shipped, or delivered, to verify the truth and accuracy of any statement, report or return or to ascertain whether or not the tax levied by this article has been paid.

(b) If a person required to maintain records is open for business during hours which the commissioner may not consider usual business hours, the commissioner may examine the person's books and records during the person's normal business hours, which are those hours when the person is open for business at any of the person's places of business. If the person does not maintain the books and records on the premises, the commissioner may inspect the books and records where they are maintained, irrespective of the working hours at the location, as long as one of the person's places of business maintains hours at the time of day during which the commissioner asserts his or her inspection powers.

(c) While performing inspections authorized by section forty-five of this article, the commissioner may also inspect the books and records kept to determine any motor fuel tax liability under this article.

§11-14C-45. Authority to inspect.
(a) The commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to enter any place and to conduct inspections in accordance with this section. Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be inspected.

(b) Inspections may be conducted at any place where taxable motor fuel or motor fuel dyes or markers are, or may be, produced, altered, or stored, or at any site where evidence of production, alteration, or storage is discovered.

(c) The commissioner may physically inspect, examine, and otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of motor fuel, motor fuel dyes or markers. Inspection may also be made of any equipment used for, or in connection with, the production, storage, or transportation of motor fuel, motor fuel dyes or markers, including equipment used for the dyeing or marking of motor fuel.

(d) The commissioner may stop, inspect and issue citations to operators of motor vehicles for violations of this article at sites where motor fuel is, or may be, produced, stored, or loaded into or consumed by motor vehicles. The commissioner may enter into agreements with other agencies of this state to provide assistance in stopping and inspecting motor vehicles for violations of this article.

(e) Inspections may occur at any terminal, motor fuel storage facility that is not a terminal, retail motor fuel facility, highway rest stop, and designated inspection site.

(f) The commissioner may, on the premises or at a designated inspection site, take and remove samples of motor fuel in
reasonable quantities as necessary to determine the composition of the motor fuel.

(g) Nothing contained in this section is construed to prohibit the issuance of a citation for the violation of the provisions of this article on the open highway or other than the spot check areas where the violation of this article is discovered when the motor vehicle is lawfully stopped for any other criminal violation of the laws of this state.

§11-14C-46. Marking requirements for dyed diesel fuel storage facilities.

(a) A person who is a retailer of dyed diesel fuel or who stores dyed diesel fuel for use by that person or another person shall mark each visible storage tank and each dispensing device with the phrase "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use," or a similar phrase that clearly indicates that the diesel fuel is not to be used to operate a highway vehicle.

(b) The marking requirements of this section shall not apply to a storage facility that contains fuel used only in a heating, crop-drying, or manufacturing process, and is installed in a manner that makes use of the fuel for any other purpose improbable.

§11-14C-47. Disposition of tax collected.

(a) The commissioner, for the administration, auditing and enforcement of this article, is authorized to retain and expend one half of one percent of the tax collected pursuant to the provisions of this article: Provided, That in any fiscal year in which the tax collected pursuant to the provisions of this article exceed three hundred million dollars, the commissioner is authorized to retain and expend for the administration, auditing and enforcement of this article an additional one per cent of the
(b) All remaining tax collected under the provisions of this article after deducting the amount of any refunds lawfully paid shall be paid into the state road fund and used only for the purpose of construction, reconstruction, maintenance and repair of highways, matching of federal moneys available for highway purposes and payment of the interest and sinking fund obligations on state bonds issued for highway purposes.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) General. — All sales of gasoline or special fuel by distributors or importers, except when to another distributor for resale in this state, when delivery is made in this state, is subject to the tax imposed by this article, notwithstanding any provision of this article to the contrary. Sales of gasoline or special fuel by a person who paid the tax imposed by this article on his or her purchases of fuel, shall not thereafter be again taxed under the provisions of this article. This section is construed so that all gallons of gasoline or special fuel sold and delivered, or delivered, in this state are taxed one time.

(b) Measure of tax. — The measure of tax on sales of gasoline or special fuel by distributors or importers is the average wholesale price as defined and determined in subsection (c), section thirteen, article fifteen-a of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on gasoline and special fuel is imposed on the average
wholesale price of gasoline and special fuel; in no case, for the purposes of taxation under this article, shall the average wholesale price be considered to be less than ninety-seven cents per gallon of gasoline or special fuel for all gallons of gasoline and special fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

(c) Definitions. — For purposes of this section:

(1) “Aircraft” includes any airplane or helicopter that lands in this state on a regular or routine basis, and transports passengers or freight.

(2) “Aircraft fuel” means gasoline and special fuel suitable for use in any aircraft engine.

(3) “Distributor” means and includes every person:

(A) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this state for use or for sale;

(B) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or

(C) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for use or sale by the person.

(4) “Gasoline” means and includes any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as defined in this section, including any product obtained by blending together any one or more products, with or without other products, if the resultant product is capable of the same use.

(5) “Importer” means and includes every person, resident or nonresident, other than a distributor, who receives gasoline or special fuel outside this state for use, sale or consumption
within this state, but shall not include the fuel in the supply tank of a motor vehicle that is not a motor carrier.

(6) "Motor carrier" means and includes: (A) Any passenger vehicle which has seats for more than nine passengers in addition to the driver, any road tractor, tractor truck or any truck having more than two axles, which is operated or caused to be operated, by any person on any highway in this state using gasoline or special fuel; and (B) any aircraft, barge or other watercraft or locomotive transporting passengers or freight in or through this state.

(7) "Motor vehicle" means and includes automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of gasoline or special fuel.

(8) "Retail dealer of gasoline or special fuel" means and includes any person not a distributor, who sells gasoline or special fuel from a fixed location in this state to users.

(9) "Special fuel" means and includes any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" includes products commonly known as natural or casinghead gasoline and includes gasoline and special fuel for heating any private residential dwelling, building or other premises; but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practically suited for use as fuel in an internal combustion engine.

(10) "Supply tank" means any receptacle on a motor vehicle from which gasoline or special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any
auxiliary tank or receptacle of any kind or cargo tank, from which gasoline or special fuel is supplied for the propulsion of the vehicle, whether or not the tank or receptacle is directly connected to the fuel supply line of the vehicle.

(11) "Tank wagon" means and includes any motor vehicle or vessel with a cargo tank or cargo tanks ordinarily used for making deliveries of gasoline or special fuel, or both, for sale or use.

(12) "Taxpayer" means any person liable for the tax imposed by this article.

(13) "User" means any person who purchases gasoline or special fuel for use or consumption.

(d) Tax due. — The tax on sales of gasoline and special fuel shall be paid by each taxpayer on or before the twenty-fifth day of each month, by check, bank draft, certified check or money order, payable to the tax commissioner for the amount of tax due for the preceding month, notwithstanding any provision of this article to the contrary.

(e) Monthly return. — On or before the twenty-fifth day of each month, the taxpayer shall make and file a return for the preceding month showing the information as the tax commissioner requires, notwithstanding any provision of this article to the contrary.

(f) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner may require distributors, importers and other persons liable for the tax imposed by this article on sales of gasoline or special fuel, to file a combined return and make a combined payment of the tax due under this article on sales of gasoline and special fuel, and the tax due under article fourteen of this chapter, on gasoline and special fuel. In order to encourage use of a combined return
each month and the making of a single payment each month for
both taxes, the due date of the return and tax due under article
fourteen of this chapter is hereby changed from the last day of
each month to the twenty-fifth day of each month, notwith-
standing any provision in article fourteen of this chapter to the
contrary.

(g) Dedication of tax to highways. — All tax collected
under the provisions of this section after deducting the amount
of any refunds lawfully paid, shall be deposited in the "road
fund" in the state treasurer’s office, and used only for the
purpose of construction, reconstruction, maintenance and repair
of highways, and payment of principal and interest on state
bonds issued for highway purposes: Provided, That notwith-
standing any provision to the contrary, any tax collected on the
sale of aircraft fuel shall be deposited in the state treasurer’s
office and transferred to the state aeronautical commission to be
used for the purpose of matching federal funds available for the
reconstruction, maintenance and repair of public airports and
airport runways.

(h) Construction. — This section is not construed as taxing
any sale of gasoline or special fuel which this state is prohibited
from taxing under the constitution of this state or the constitu-
tion or laws of the United States.

(i) Effective date. — This section shall have no force or effect after the thirty-
first day of December, two thousand three: Provided, That tax
liabilities arising for periods ending before the first day of
January, two thousand four, shall be determined, paid, adminis-
tered, assessed and collected as if this section had not been
repealed, and the rights and duties of the taxpayer and the state
of West Virginia are fully and completely preserved.

(a) General. — Effective the first day of January, two thousand four, all sales of motor fuel subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter is subject to the tax imposed by this article which shall comprise the variable component of the tax imposed by section five, article fourteen-c of this chapter, and be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is remitted. Sales of motor fuel upon which the tax imposed by this article has been paid shall not thereafter be again taxed under the provisions of this article. This section is construed so that all gallons of motor fuel sold and delivered, or delivered, in this state are taxed one time.

(b) Measure of tax. — The measure of tax imposed by this article on sales of motor fuel is the average wholesale price as defined and determined in section five, article fourteen-c of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on motor fuel herein is imposed on the average wholesale price of the motor fuel; in no case, for the purposes of taxation under this article, shall the average wholesale price be determined to be less than ninety-seven cents per gallon of motor fuel for all gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

(c) Definitions. — For purposes of this article, the terms “gasoline” and “special fuel” are defined as provided in section two, article fourteen-c of this chapter. Other terms used in this section have the same meaning as when used in a similar context in article fourteen-c of the chapter.

(d) Tax return and tax due. — The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer on or before the last day of the calendar month by check, bank
draft, certified check or money order payable to the tax commissioner for the amount of tax due for the preceding month, notwithstanding any provision of this article to the contrary: Provided, That the commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the commissioner shall accompany the payment of tax: Provided, however, That if no tax is due, the return required by the commissioner shall be completed and filed on or before the last day of the month.

(e) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner shall require persons liable for the tax imposed by this article on sales of motor fuel to file a combined return and make a combined payment of the tax due under this article on sales of motor fuel, and the tax due under article fourteen-c of this chapter, on motor fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under article fourteen-c of this chapter is the last day of each month, notwithstanding any provision in article fourteen-c of this chapter to the contrary.

(f) Dedication of tax to highways. — All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid, shall be deposited in the "road fund" in the state treasurer's office, and used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes: Provided, That notwithstanding any provision to the contrary, any tax collected on the sale of aviation fuel shall be deposited in the state treasurer's office and transferred to the state aeronautical commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.
(g) *Construction.* — This section is not construed as taxing any sale of motor fuel which this state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

(h) *Effective date.* — The provisions of this section take effect on the first day of January, two thousand four.

**ARTICLE 15A. USE TAX.**


(a) *Imposition of tax.* —

1. **(1) On deliveries in this state.** — Gasoline or special fuel furnished or delivered within this state to consumers or users is subject to tax at the rate imposed by section two of this article: *Provided,* That the amount of tax due under section two shall in no event be less than five percent of the average wholesale price of gasoline and special fuel and with the price to, in no case, be determined to be less than ninety-seven cents per gallon for all gallons of gasoline and special fuel taxable under section two of this article.

2. **(2) On purchases out-of-state.** — An excise tax is hereby imposed on the use or consumption in this state of gasoline or special fuel purchased outside this state at the rate of five percent of the average wholesale price of gasoline or special fuel, as determined under subsection (c), notwithstanding any provision of this article to the contrary: *Provided,* That gasoline or special fuel contained in the supply tank of a motor vehicle that is not a motor carrier is not taxable, except that gasoline or special fuel imported in the supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance
equipment or other similar equipment, is taxed in the same
manner as that in the supply tank of a motor carrier.

(b) Definitions. — Terms used in this section have the same
meaning as when used in a comparable context in section
eighteen, article fifteen of this chapter.

(c) Determination of average wholesale price. —

(1) To simplify determining the average wholesale price of
all gasoline and special fuel, the tax commissioner shall,
effective with the period beginning the first day of the month of
the effective date of this section and each first day of January,
annually, thereafter, determine the average wholesale price of
gasoline and special fuel for each annual period, on the basis of
sales data gathered for the preceding period of the first day of
July through the thirty-first day of October. Notification of the
average wholesale price of gasoline and special fuel shall be
given by the tax commissioner at least thirty days in advance of
each first day of January, annual period, by filing notice of the
average wholesale price in the state register, and by other
means as the tax commissioner considers reasonable: Provided,
that notice of the average wholesale price of gasoline and
special fuel for the first period shall be timely given if filed in
the state register on the effective date of this section.

(2) The “average wholesale price” means the single,
statewide average per gallon wholesale price, rounded to the
third decimal (thousandth of a cent), exclusive of state and
federal excise taxes on each gallon of gasoline or diesel fuel, as
determined by the tax commissioner from information fur-
nished by distributors of gasoline or special fuel in this state, or
any other information regarding wholesale selling prices as the
tax commissioner may gather, or a combination of information:
Provided, That in no event shall the average wholesale price be
determined to be less than ninety-seven cents per gallon of
gasoline or special fuel.
(3) All actions of the tax commissioner in acquiring data necessary to establish and determine the average wholesale price of gasoline and special fuel, in providing notification of his or her determination prior to the effective date of any change in rate, and in establishing and determining the average wholesale price of fuel, may be made by the tax commissioner without compliance with the provisions of article three, chapter twenty-nine-a of this code.

(4) In any administrative or court proceeding brought to challenge the average wholesale price of gasoline and special fuel as determined by the tax commissioner, his or her determination is presumed to be correct and shall not be set aside unless it is clearly erroneous.

(d) Computation of tax due from motor carriers. — Every person who operates or causes to be operated a motor carrier in this state shall pay the tax imposed by this section on the average wholesale price of all gallons of gasoline or special fuel used in the operation of any motor carrier within this state, under the following rules:

(1) The total amount of gasoline or special fuel used in the operation of the motor carrier within this state is that proportion of the total amount of gasoline and special fuel used in any motor carrier's operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

(2) A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under subsection (c) of this section, of all gasoline and special fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.
(3) Next, the taxpayer shall determine the total tax paid under article fifteen of this chapter on all gasoline and special fuel purchased in this state for use in the operation of the motor carrier.

(4) The difference between (2) and (3) is the amount of tax due under this article when (2) is greater than (3), or the amount to be refunded or credited to the motor carrier when (3) is greater than (2), which refund or credit is allowed in the same manner and under the same conditions as a refund or credit is allowed for the tax imposed by article fourteen-a of this chapter.

(e) Return and payment of tax. — Tax due under this article on the uses or consumption in this state of gasoline or special fuel shall be paid by each taxpayer on or before the twenty-fifth day of January, April, July and October of each year, notwithstanding any provision of this article to the contrary, by check, bank draft, certified check or money order, payable to the tax commissioner, for the amount of tax due for the preceding quarter. Every taxpayer shall make and file with his or her remittance, a return showing the information the tax commissioner requires.

(f) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner may require motor carriers liable for the taxes imposed by this article on the use of gasoline or special fuel in the operation of motor carriers within this state, and the tax imposed by article fourteen-a of this chapter on gallons of fuel, to file a combined return and make a combined payment of the tax due under this article and article fourteen-a of this chapter on the fuel. In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under article fourteen-a of this chapter is hereby changed from the last day of January, April, July and October
of each calendar year, to the twenty-fifth day of each of those
months, notwithstanding any provisions in article fourteen-a of
this chapter to the contrary.

(g) Dedication of tax to highways. — All tax collected
under the provisions of this section after deducting the amount
of any refunds lawfully paid shall be deposited in the “road
fund” in the state treasurer’s office, and used only for the
purpose of construction, reconstruction, maintenance and repair
of highways, and payment of principal and interest on state
bonds issued for highway purposes.

(h) Construction. — The tax imposed by this article on the
use of gasoline or special fuel in this state is not construed as
taxing any gasoline or special fuel which the state is prohibited
from taxing under the constitution of this state or the constitu-
tion or laws of the United States.

(i) Effective date. —
This section shall have no force or effect after the thirty-
first day of December, two thousand three: Provided, That tax
liabilities arising for periods ending before the first day of
January, two thousand four, shall be determined, paid, adminis-
tered, assessed and collected as if this section had not been
repealed, and the rights and duties of the taxpayer and the state
of West Virginia are fully and completely preserved.

(j) Validation. — Inasmuch as there is currently litigation
challenging the lawfulness of this section in the situation where
a motor carrier purchases gasoline or special fuel in another
state paying to that other state a sales tax thereon and then
consumes that gasoline or special fuel in its operation of a
motor carrier in this state, without being statutorily allowed a
credit for the sales tax against the tax imposed by this article
with respect to the gallonage of tax paid fuel consumed in this
state; and inasmuch as section ten-a of this article reestablishes
the allowance of a credit and makes the allowance effectively retroactive and applicable to gasoline and special fuel consumed in this state after the thirtieth day of June, one thousand nine hundred eighty-five, the purported constitutional infirmity is cured. To avoid any question about whether this section was in effect subsequent to the thirtieth day of June, one thousand nine hundred eighty-five, this section is reenacted and expressly made retroactive to the first day of July, one thousand nine hundred eighty-five, and the tax commissioner shall not refund or credit any tax previously paid under this section due to a claim that the tax was not lawfully imposed subsequent to the thirtieth day of June, one thousand nine hundred eighty-five.


(a) Imposition of tax. —

(1) On deliveries in this state. — Effective the first day of January, two thousand four, all motor fuel furnished or delivered within this state which is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter is subject to the tax imposed by this article which shall comprise the variable component of the tax imposed by the said section five, article fourteen-c, and shall be collected and remitted at the time the tax imposed by the said section five, article fourteen-c is remitted: Provided, That the amount of tax due under this article shall in no event be less than five percent of the average wholesale price of motor fuel as determined in accordance with said section five, article fourteen-c.

(2) On purchases out-of-state subject to motor fuel tax. — Effective the first day of January, two thousand four, an excise tax is hereby imposed on the importation into this state of motor fuel purchased outside this state when the purchase is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter: Provided, That the rate of the tax due
under this article shall in no event be less than five percent of
the average wholesale price of the motor fuel, as determined in
accordance with said section five, article fourteen-c: Provided,
however, That the motor fuel subject to the tax imposed by this
article shall comprise the variable component of the tax
imposed by the said section five, article fourteen-c, and shall be
collected and remitted by the seller at the time the seller remits
the tax imposed by the said section five, article fourteen-c.

(3) On other purchases out-of-state. — An excise tax is
hereby imposed on the use or consumption in this state of motor
fuel purchased outside this state at the rate of five percent of the
average wholesale price of the motor fuel, as determined in
accordance with section five, article fourteen-c of this chapter:
Provided, That motor fuel contained in the fuel supply tank of
a motor vehicle that is not a motor carrier shall not be taxable,
except that motor fuel imported in the fuel supply tank or
auxiliary tank of construction equipment, mining equipment,
track maintenance equipment or other similar equipment, shall
be taxed in the same manner as that in the fuel supply tank of
a motor carrier.

(b) Definitions. — For purposes of this article, the terms
“gasoline” and “special fuel” are defined as provided in section
two, article fourteen-c of this chapter. Other terms used in this
section have the same meaning as when used in a similar
context in article fourteen-c of this chapter.

(c) Computation of tax due from motor carriers. — Every
person who operates or causes to be operated a motor carrier in
this state shall pay the tax imposed by this section on the
average wholesale price of all gallons of motor fuel used in the
operation of any motor carrier within this state, under the
following rules:
(1) The total amount of motor fuel used in the operation of the motor carrier within this state is that proportion of the total amount of motor fuel used in any motor carrier's operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

(2) A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under section five, article fourteen-c of this chapter, of all motor fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.

(3) Next, the taxpayer shall determine the total tax paid under article fifteen of this chapter on all motor fuel purchased in this state for use in the operation of the motor carrier.

(4) The difference between (2) and (3) is the amount of tax due under this article when (2) is greater than (3), or the amount to be refunded or credited to the motor carrier when (3) is greater than (2), which refund or credit is allowed in the same manner and under the same conditions as a refund or credit is allowed for the tax imposed by article fourteen-a of this chapter.

(d) Return and payment of tax. — Tax due under this article on the uses or consumption in this state of motor fuel shall be paid by each taxpayer on or before the twenty-fifth day of January, April, July and October of each year, notwithstanding any provision of this article to the contrary, by check, bank draft, certified check or money order, payable to the tax commissioner, for the amount of tax due for the preceding quarter: Provided, That the tax due under this article that comprises the variable component of the tax due under article fourteen-c of this chapter is due on the last day of the month.
Every taxpayer shall make and file with his or her remittance, a return showing the information the tax commissioner requires.

(e) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner shall require motor carriers liable for the taxes imposed by this article on the use of motor fuel in the operation of motor carriers within this state, and the tax imposed by article fourteen-a of this chapter on such gallons of motor fuel, to file a combined return and make a combined payment of the tax due under this article and article fourteen-a of this chapter on the fuel. In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under article fourteen-a of this chapter is the last day of January, April, July and October of each calendar year.

(f) Dedication of tax to highways. — All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid shall be deposited in the “road fund” in the state treasurer’s office, and used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes.

(g) Construction. — The tax imposed by this article on the use of motor fuel in this state is not construed as taxing any motor fuel which the state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

(h) Effective date. — The provisions of this section take effect the first day of January, two thousand four.
CHAPTER 233

(Com. Sub. for H. B. 2733 — By Delegates Craig, Morgan, Campbell, Amores and Stalnaker)

[Passed March 7, 2003; in effect July 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal investigation and special audits divisions of state tax division; and increasing amount of unencumbered funds in special revenue account for those divisions that is not transferred to general fund at end of fiscal year.

Be it enacted by the Legislature of West Virginia:

That section two-a, article nine, 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 9. CRIMES AND PENALTIES.

§11-9-2a. Criminal investigation division established; funding of same.

1 (a) Criminal investigation division. — A criminal investigation division consisting of no more than twelve investigators, of which one investigator shall serve as division director, plus necessary support staff, all of whom are exempt from the classified service, is hereby established in the state tax division for the purpose of assuring compliance with laws and rules pertaining to the taxes, fees or credits administered under article
ten of this chapter, including, but not limited to, the provisions of articles twenty, twenty-one and twenty-three, chapter forty-seven of this code, but not including income taxes, imposed on individuals by article twenty-one of this chapter.

(b) *Special audits division.* — A special audits division consisting of no more than eight tax examiners, plus necessary support staff, all of whom are covered by the classified service, is hereby established in the auditing section of the state tax division for purposes of assuring compliance with laws and rules pertaining to taxes, fees or credits administered under article ten of this chapter, including, but not limited to, the provisions of articles twenty, twenty-one and twenty-three, chapter forty-seven of this code, but not including income taxes imposed on individuals by article twenty-one of this chapter.

(c) The Legislature hereby finds that the enforcement of the laws and rules pertaining to the taxes, fees or credits administered under article ten of this chapter, as are applicable to persons whose residence or principal place of business is outside of the state of West Virginia, requires greater efforts and investigation than required for resident persons subject thereto, and does further find that there is a greater rate of noncompliance with said laws and rules by nonresident persons. Therefore, the criminal investigation division and the special audits division created in subsections (a) and (b) of this section are hereby directed to expend a significant amount of their efforts to ensure compliance with the laws and rules pertaining to taxes, fees or credits administered under article ten of this chapter in accordance with the authority provided in this section, by persons whose residence or principal place of business is located outside the state of West Virginia.

(d) *Deposits of certain fees.* — Charitable bingo fees imposed by article twenty, chapter forty-seven of this code; charitable raffle fees imposed by article twenty-one of said
chapter; and charitable raffle boards and games fees imposed by
article twenty-three of said chapter in an amount not to exceed
the amount appropriated by the Legislature in any fiscal year
shall be deposited in a special revenue account established in
the office of the treasurer. The special revenue account shall be
used to support compliance expenditures relating to the
establishment, operation, maintenance and support of the
criminal investigation division established in subsection (a) of
this section and the special audits division established in
subsection (b) of this section. The expenditures may include,
but shall not be limited to, employee compensation, equipment,
office supplies and travel expenses. On the last day of each
fiscal year, unencumbered funds in the special revenue account
in excess of one hundred fifty thousand dollars shall be trans-
erred to the general revenue fund.

(e) Investigators. — Investigators employed in the criminal
investigation division shall have a background in accounting or
law enforcement or related fields pursuant to article twenty-
nine, chapter thirty of this code, or its equivalent. Any investi-
gator designated by the tax commissioner shall have all the
lawful powers delegated to members of the division of public
safety except the power to carry firearms and shall have the
authority to enforce the provisions of this article and the
criminal provisions of any other article of this code to which
this article applies, in any county or municipality of this state.
The tax commissioner shall establish additional standards as he
or she considers applicable or necessary. Any employee shall,
before entering upon the discharge of his or her duties, execute
a bond with security in the sum of three thousand five hundred
dollars, payable to the state of West Virginia, conditioned for
the faithful performance of the employee’s duties and the bond
shall be approved as to form by the attorney general and shall
be filed with the secretary of state for preservation in that
office. The division of public safety, any county sheriff or
deputy sheriff and any municipal police officer upon request by
the tax commissioner is hereby authorized to assist the tax
commissioner in enforcing the provisions of this article and any
criminal penalty provision of any article of this code to which
this article applies.

(f) **Class A license plates.** — Notwithstanding the provi-
sions of article three, chapter seventeen-a of this code, upon
application by the tax commissioner and payment of fees, the
commissioner of motor vehicles shall issue a maximum of
twenty Class A license plates to be used on state owned or
leased vehicles assigned to investigators employed in the
criminal investigation division.

(g) **Reports.** — On the first day of July of each year,
beginning in the year one thousand nine hundred ninety-four,
the tax commissioner shall present a written report to the joint
committee on government operations on the division’s compli-
ance with the provisions of this section, including, but not
limited to, activities of the divisions created by this section and
disbursement of funding.

**CHAPTER 234**

(H. B. 3095 — By Delegates Craig, Foster, Amores,
Kominar, Morgan, Smirl and Pino)

[Passed March 6, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section five-v, relating
to disclosure of certain tax information by tax commissioner to state treasurer for purpose of disposing of abandoned, unclaimed
or uncashed tax refund checks; specifying that information so disclosed shall be used by treasurer only for purpose of administering and implementing return, recovery and disposition of abandoned or unclaimed property; specifying that treasurer shall treat information so obtained as records of abandoned property; specifying to whom and how certain information may be disclosed by treasurer; and specifying that tax information disclosed to treasurer remains otherwise confidential in accordance with state law.

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

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

**ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

§11-10-5v. Disclosure of tax information to the treasurer for return, recovery and disposition of unclaimed and abandoned property.

(a) Notwithstanding any provision of this code to the contrary, if the information resides in tax division databases, the tax commissioner shall disclose to the state treasurer the name, last known address and social security number, or federal employer identification number, as applicable, of persons or businesses, including joint or combined filers, to which tax refund checks have been issued by this state, which checks have gone unclaimed or uncashed for a period of more than six months after the issuance date of the check. Notwithstanding any provision of this code to the contrary, if the information is included in a tax division database, the tax commissioner shall disclose to the state treasurer the date, check number, warrant number, transaction identification number, invoice number, and amount of any such unclaimed or uncashed refund check, and the tax commissioner's confirmation or denial of confirmation,
as applicable, that the tax refund is currently due and payable to the payee or payees to whom the unclaimed or uncashed check was originally issued.

(b) Disclosure of this information shall begin as soon as practicable after the effective date of this section on such schedule and under such arrangements as the treasurer and the tax commissioner may agree. Information so disclosed shall be used by the treasurer only for the purpose of administering and implementing the return, recovery and disposition of abandoned or unclaimed property in accordance with the provisions of article eight, chapter thirty-six of this code.

(c) The treasurer as administrator for unclaimed property shall treat information obtained in accordance with this section as records of abandoned property in accordance with article eight, chapter thirty-six of this code, and shall use the information to facilitate locating owners of unclaimed tax refunds. Notwithstanding any provision of this code to the contrary, the treasurer may disclose any or all of the information to an owner, his or her personal representative, next of kin, attorney at law or a person entitled to inherit from the owner.

(d) Of the information received by the treasurer under this section, only the name, city and state of the last known address of the payee or payees to whom the unclaimed or uncashed check was originally issued may be published by the treasurer, and only for the purpose of returning, recovering or disposing of unclaimed tax refunds. Tax information disclosed pursuant to this section to the treasurer shall remain confidential as provided by section five-d of this article, except to the extent disclosure is allowed under this section. The provisions of this section may not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code.
AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-w, relating to confidentiality and disclosure of information set forth in oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a, of said chapter eleven; setting forth exceptions to confidentiality; providing that confidentiality of such information does not prohibit publication or release of summary statistical information derived from oil and gas combined reporting forms; authorizing disclosure of oil and gas combined reporting form information to county assessors, department of environmental protection and public service commission; relating to the confidentiality and nondisclosure of other information reported under article thirteen-a of said chapter eleven; and, establishing criminal penalties for the unlawful disclosure of confidential information obtained from the oil and gas combined reporting form.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.
§11-10-5w. Confidentiality and disclosure of information set forth in the oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a of this chapter to county assessors, the department of environmental protection and to the public service commission; offenses; penalties.

(a) Confidentiality of certain information reported on the oil and gas combined reporting form, exception. — The following information provided by or on behalf of any person or entity on the oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a of this chapter is confidential:

1. The natural resources account number (NRA);
2. Total gross revenue for oil or gas or both;
3. Working interest revenue for oil or gas or both;
4. The name and address of the owner of a working interest or override royalty interest in the well;
5. The ownership interest held by the owner of a working interest or override royalty interest in the well, expressed as a percentage or decimal equivalent, of total ownership of each listed owner; and
6. The income of any owner.

Such information is exempt from disclosure under section four, article one, chapter twenty-nine-b of this code, and shall be kept, held and maintained as confidential except to the extent the information is disclosable under subsections (b) and (c) of this section.

(b) Disclosure to county assessors, department of environmental protection and public service commission authorized.
—Notwithstanding the provisions of section five-d, article ten of this chapter to the contrary, and notwithstanding any other provision of this code to the contrary, the tax commissioner may disclose the oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a of this chapter, and information set forth thereon to county assessors, the department of environmental protection and the public service commission for the purpose of administering and implementing the assessment, administrative, oversight and regulatory functions and responsibilities with which they are charged by law.

(c) Release and publication of information. —

(1) Statistical and aggregate information. — This section shall not be construed to prohibit the publication or release of summary statistical information derived from the oil and gas combined reporting form, including summary statistical information derived from the items specified in subsection (a) of this section. Publication or release of such summary statistical information is authorized in the form of aggregated statistics, maps, articles, reports or professional talks, or in other forms, provided it is presented in accordance with generally accepted practices and in a manner so as to preclude the identification of particular oil and gas combined report filers and to preclude derivation or determination of information specified in subsection (a) of this section about particular oil and gas combined report filers.

(2) Release and publication of certain information. — Notwithstanding the provisions of this section to the contrary and notwithstanding any other provision of this code to the contrary, the tax commissioner, county assessors, the department of environmental protection, and the public service commission may publish or publicly release information provided by or on behalf of any person or entity in the oil and
gas combined reporting form except for the information specified as confidential in subsection (a) of this section.

(d) Penalty of unlawful disclosure. — Any state, county or governmental subdivision employee or representative (including, but not limited to, any county assessor or any employee or representative of the West Virginia department of environmental protection or the West Virginia public service commission), who violates this section by making an unlawful or unauthorized disclosure of confidential information that is reported on the oil and gas combined reporting form 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, county or governmental subdivision employee or representative" includes, but is not limited to, any current or former state, county or municipal employee, officer, or commission or board member, and any state, county or municipal agency, institution, organization, contractor or subcontractor and any principal, officer, agent or employee thereof.

CHAPTER 236

(H. B. 3027—By Delegates Pethtel, Stemple, Amores, Varner, Kominar and Craig)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]
to authorizing the tax commissioner to waive tax, interest and penalties in specified circumstances which are otherwise imposed on uncompensated members of the governing board or board of directors of certain tax exempt organizations that result from liabilities of the tax exempt organization being attributed to those members; specifying manner and forum for appeals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5x. Waiver of derivative tax, interest and penalty imposed on board members or directors of charitable and tax exempt organizations imposed on innocent governing board resulting from defaults or delinquencies of the organization.

(a) Notwithstanding any provision of this code to the contrary, the tax commissioner may waive imposition of derivative tax liabilities and associated interest and penalties on one or more uncompensated members of the governing board or of the board of directors on an organization qualified and classified as a tax exempt organization under section 501 (c) (3) or section 501 (c) (4) of the Internal Revenue Code of 1986, as amended.

(b)(1) For purposes of this section, the term “derivative liabilities” means liabilities of the tax exempt organization for any tax administered under this article, including, but not limited to, employee personal income tax withholding trust fund tax remittance liabilities and consumers sales and service tax trust fund tax remittance liabilities, that are attributed by law to one or more members of the governing board or board of
directors of the tax exempt organization so as to become personal liabilities of that member or members.

(2) For purposes of this section a member is uncompensated if the member is not paid or otherwise remunerated directly or indirectly:

(A) For service on the governing board or board of directors;

(B) For any other service rendered to the tax exempt organization;

(C) For service to any entity affiliated with the tax exempt organization; or

(D) For any sale of real or tangible personal property or intangible personal property during the preceding calendar year to the tax exempt organization or to any person, entity or organization affiliated with the tax exempt organization.

(3) Reimbursement of actual expenses incurred to carry out the duties and responsibilities of board membership shall not be treated as compensation.

(4) Compensation paid to a person or organization having a relationship to the member that is specified in section 267(b) of the Internal Revenue Code of 1986, as amended, constitutes compensation to the member for purposes of this section.

(c) The tax commissioner may only issue the waiver authorized by this section if the tax commissioner determines that:

(1) The board member or members were mislead, defrauded or deceived as to the accrual or existence of unpaid tax liabili-
ties owed by the tax exempt organization, and had no reason to know of the accrual or existence of the liabilities owed;

(2) The board member or members took no active role in the day-to-day management of the tax exempt organization and the tax liability resulted from a computational or clerical error or good faith reliance on erroneous professional advice which the member or members could not have reasonably discovered through the exercise of due diligence; or

(3) The board member or members reasonably believed that the tax had been paid or accumulated for payment and the amounts believed to have been so paid or accumulated were in fact lost, stolen, destroyed or otherwise rendered irretrievable, without the acquiescence or consent of the member or members.

(d) The petition for a waiver under this section shall be made in writing and filed with the tax commissioner in that form and pursuant to those procedures as the tax commissioner may prescribe.

(e) Any controversy arising pursuant to this section shall be resolved through an appeal to the office of tax appeals in accordance with the provisions of article ten-a of this chapter. The issuance of a waiver under this section is within the discretion of the tax commissioner and the tax commissioner’s determination shall not be overturned absent a showing of abuse of discretion.

(f) This section shall not be interpreted as restricting the authority of the tax commissioner to otherwise compromise, assess, correct, adjust or reassess any amount of tax, interest or penalty determined to be due under this article.
AN ACT to amend and reenact section eleven, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia tax procedure and administration act; and authorizing tax commissioner to enter into agreements with Internal Revenue Service for offsetting tax refunds against tax liabilities.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.


(a) General. — The tax commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable. In addition to all other remedies available for the collection of debts due this state, the tax commissioner may proceed by foreclosure of the lien provided in section twelve, or by levy and distraint under section thirteen.
(b) **Prerequisite to final settlement of contracts with nonresident contractor; user personally liable.**

1. Any person contracting with a nonresident contractor subject to the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter, shall withhold payment, in the final settlement of the contract, of a sufficient amount, not exceeding six percent of the contract price, as will in the person's opinion be sufficient to cover the taxes, until the receipt of a certificate from the tax commissioner to the effect that the above referred taxes imposed against the nonresident contractor have been paid or provided for.

2. If any person shall fail to withhold as provided in subdivision (1) of this subsection, that person is personally liable for the payment of all taxes attributable to the contract, not to exceed six percent of the contract price. The taxes attributable shall be recoverable by the tax commissioner by appropriate legal proceedings, which may include issuance of an assessment under this article.

(c) **Prerequisite for issuance of certificate of dissolution or withdrawal of corporation.** — The secretary of state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the tax commissioner to the effect that every tax administered under this article imposed against any corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

(d) **Prerequisite to final settlement of contract with this state or political subdivision; penalty.** — All state, county, district and municipal officers and agents making contracts on behalf of this state or any political subdivision thereof shall
withhold payment, in the final settlement of any contract, until
the receipt of a certificate from the tax commissioner to the
effect that the taxes imposed by articles thirteen, twenty-one
and twenty-four of this chapter against the contractor have been
paid or provided for. If the transaction embodied in the contract
or the subject matter of the contract is subject to county or
municipal business and occupation tax, then the payment shall
also be withheld until receipt of a release from the county or
municipality to the effect that all county or municipal business
and occupation taxes levied or accrued against the contractor
have been paid. Any official violating this section is subject to
a civil penalty of one thousand dollars, recoverable as a debt in
a civil action brought by the tax commissioner.

(e) Limited effect of tax commissioner's certificates.—The
certificates of the tax commissioner provided for in subsections
(b), (c) and (d) of this section shall not bar subsequent investi-
gations, assessments, refunds and credits with respect to the
taxpayer.

(f) Payment when person sells out or quits business;
liability of successor; lien.

(1) If any person subject to any tax administered under this
article sells out his, her or its business or stock of goods, or
ceases doing business, any tax, additions to tax, penalties and
interest imposed by this article or any of the other articles of
this chapter to which this article is applicable shall become due
and payable immediately and that person shall, within thirty
days after selling out his, her or its business or stock of goods
or ceasing to do business, make a final return or returns and pay
any tax or taxes which are due. The unpaid amount of any tax
is a lien upon the property of that person.

(2) The successor in business of any person who sells out
his, her or its business or stock of goods, or ceases doing
business, is personally liable for the payments of tax, additions
to tax, penalties and interest unpaid after expiration of the
thirty-day period allowed for payment: Provided, That if the
business is purchased in an arms-length transaction, and if the
purchaser withholds so much of the consideration for the
purchase as will satisfy any tax, additions to tax, penalties and
interest which may be due until the seller produces a receipt
from the tax commissioner evidencing the payment thereof, the
purchaser is not personally liable for any taxes attributable to
the former owner of the business unless the contract of sale
provides for the purchaser to be liable for some or all of the
taxes. The amount of tax, additions to tax, penalties and interest
for which the successor is liable is a lien on the property of the
successor, which shall be enforced by the tax commissioner as
provided in this article.

(g) **Priority in distribution of estate or property in receivership; personal liability of fiduciary.** — All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, in priority to all claims, except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any trustee, receiver, administrator, executor or person charged with the administration of an estate who violates the provisions of this section is personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.

(h) **Injunction.** — If the taxpayer fails for a period of more than sixty days to fully comply with any of the provisions of this article or of any other article of this chapter to which this article is applicable, the tax commissioner may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in this state until the taxpayer fully complies
with the provisions of this article or any other articles. No bond
is required of the tax commissioner in any action instituted
under this subsection.

(i) Costs. — In any proceeding under this section, upon
judgment or decree for the tax commissioner, he or she shall be
awarded his or her costs.

(j) Refunds; credits; right to offset.

(1) Whenever a taxpayer has a refund or credit due it for an
overpayment of any tax administered under this article, the tax
commissioner may reduce the amount of the refund or credit by
the amount of any tax administered under this article, whether
it be the same tax or any other tax, which is owed by the same
taxpayer, and collectible as provided in subsection (a) of this
section.

(2) The tax commissioner may enter into agreements with
the Internal Revenue Service that provide for offsetting state tax
refunds against federal tax liabilities; offsetting federal tax
refunds against state tax liabilities; and establishing the amount
of the offset fee per transaction which both agencies may
charge each other: Provided, That offsets under subdivision (1)
of this subsection shall occur prior to offset under this subdivi-
sion. At the times moneys are received as a result of an offset
of a taxpayer's federal tax refund under the provisions of
section 6402(e) of the Internal Revenue Code, the taxpayer is
given credit against state tax liability for the amount of the
offset less a deduction for the offset fee imposed by the Internal
Revenue Service.

(k) Spouse relieved of liability in certain cases.

(1) In general. — Under regulations prescribed by the tax
commissioner, if:
(A) A joint personal income tax return has been made for a taxable year;

(B) On the return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse;

(C) The other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was a substantial understatement; and

(D) Taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement, then the other spouse is relieved of any liability for tax, including interest, additions to tax, and other amounts for the taxable year to the extent the liability is attributable to the substantial understatement.

(2) Grossly erroneous items. — For purposes of this subsection, the term “grossly erroneous items” means, with respect to any spouse:

(A) Any item of gross income attributable to a spouse which is omitted from gross income; and

(B) Any claim of a deduction, credit, or basis by a spouse in an amount for which there is no basis in fact or law.

(3) Substantial understatement. — For purposes of this subsection, the term “substantial understatement” means any understatement, as defined in regulations prescribed by the tax commissioner which exceed five hundred dollars.

(4) Understatement must exceed specified percentage of spouse’s income.
(A) Adjusted gross income of $20,000 or less. — If the spouse’s adjusted gross income for the preadjustment year is twenty thousand dollars or less, this subsection applies only if the liability described in paragraph (1) of this subsection is greater than ten percent of the adjusted gross income.

(B) Adjusted gross income of more than twenty thousand dollars. — If the spouse’s adjusted gross income for the preadjustment year is more than twenty thousand dollars, subparagraph (A) of this subdivision is applied by substituting “twenty-five percent” for “ten percent.”

(C) Preadjustment year. — For purposes of this paragraph, the term “preadjustment year” means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) Computation of spouse’s adjusted gross income. — If the spouse is married to another spouse at the close of the preadjustment year, the spouse’s adjusted gross income shall include the income of the new spouse whether or not they file a joint return.

(E) Exception for omissions from gross income. — This paragraph shall not apply to any liability attributable to the omission of an item from gross income.

(5) Adjusted gross income. — For purposes of this subsection, the term “adjusted gross income” means the West Virginia adjusted gross income of the taxpayer, determined under article twenty-one of this chapter.
AN ACT to amend and reenact sections two and nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the consumers sales and service tax; clarifying that payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer, distributor or other third-party marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement are excepted from the tax; providing an expansion of the current exemption for casual and occasional sales by volunteer fire departments and volunteer school support groups from six to eighteen sales per year; and providing an exemption for certain lodging franchise assessed fees from the consumers sales and service tax.

Be it enacted by the Legislature of West Virginia:

That sections two and nine, article fifteen, 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 15. CONSUMERS SALES AND SERVICE TAX.


(a) General. — When used in this article and article fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. —

(1) “Business” includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) “Communication” means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and includes commercial broadcast radio, commercial broadcast television and cable television.

(3) “Contracting”:

(A) In general. — “Contracting” means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor, subcontractor or construction manager) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any

*CLERK’S NOTE: This section was also amended by HB 3014 (Chapter 146), which passed prior to this act.*
part thereof, or for the alteration, improvement or development
of real property. Contracting also includes services provided by
a construction manager so long as the project for which the
construction manager provides the services results in a capital
improvement to a building or structure or to real property.

(B) *Form of contract not controlling.* — An activity that
falls within the scope of the definition of contracting constitutes
contracting regardless of whether the contract governing the
activity is written or verbal and regardless of whether it is in
substance or form a lump sum contract, a cost-plus contract, a
time and materials contract, whether or not open-ended, or any
other kind of construction contract.

(C) *Special rules.* — For purposes of this definition:

(i) The term "structure" includes, but is not limited to,
everything built up or composed of parts joined together in
some definite manner and attached or affixed to real property
or which adds utility to real property or any part thereof or
which adds utility to a particular parcel of property and is
intended to remain there for an indefinite period of time;

(ii) The term "alteration" means, and is limited to, alter-
atations which are capital improvements to a building or structure
or to real property;

(iii) The term "repair" means, and is limited to, repairs
which are capital improvements to a building or structure or to
real property;

(iv) The term "decoration" means, and is limited to,
decorations which are capital improvements to a building or
structure or to real property;
(v) The term “improvement” means, and is limited to, improvements which are capital improvements to a building or structure or to real property;

(vi) The term “capital improvement” means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property, or any part thereof, and that last or are intended to be relatively permanent. As used herein, “relatively permanent” means lasting at least a year in duration without the necessity for regularly scheduled recurring service to maintain the capital improvement. “Regular recurring service” means regularly scheduled service intervals of less than one year;

(vii) Contracting does not include the furnishing of work, or both materials and work, in the nature of hookup, connection, installation or other services if the service is incidental to the retail sale of tangible personal property from the service provider’s inventory: Provided, That the hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant to this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free-standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if the repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or
90 intends to allow the real property or thing permanently attached
91 thereto to remain in service for a year or longer; and

92 (viii) The term "construction manager" means a person who
93 enters into an agreement to employ, direct, coordinate or
94 manage design professionals and contractors who are hired and
95 paid directly by the owner or the construction manager. The
96 business activities of a "construction manager" as defined in
97 this subdivision constitute contracting, so long as the project for
98 which the construction manager provides the services results in
99 a capital improvement to a building or structure or to real
100 property.

101 (4) "Directly used or consumed" in the activities of
102 manufacturing, transportation, transmission, communication or
103 the production of natural resources means used or consumed in
104 those activities or operations which constitute an integral and
105 essential part of the activities, as contrasted with and distin-
106 guished from those activities or operations which are simply
107 incidental, convenient or remote to the activities.

108 (A) Uses of property or consumption of services which
109 constitute direct use or consumption in the activities of manu-
110 facturing, transportation, transmission, communication or the
111 production of natural resources include only:

112 (i) In the case of tangible personal property, physical
113 incorporation of property into a finished product resulting from
114 manufacturing production or the production of natural re-
115 sources;

116 (ii) Causing a direct physical, chemical or other change
117 upon property undergoing manufacturing production or
118 production of natural resources;
(iii) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(iv) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(v) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(vi) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(vii) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(viii) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(ix) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(x) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;
(xi) Maintaining or repairing of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xii) Storing, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(xiii) Engaging in pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(xiv) Otherwise using as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(B) Uses of property or services which do not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;
(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

(5) "Directly used or consumed" in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential part of those activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include only:

(i) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(ii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the transmission or distribution of gas,
water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and these vehicles and their equipment as are specifically designed and equipped for those purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(iii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and repair parts used to keep in operation exempt storage devices;

(iv) Tangible personal property, custom software or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business;

(v) Tangible personal property, custom software or services used immediately in pollution control or environmental quality or protection activity or community safety or security directly relating to the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business.

(B) Uses of property or services which would not constitute direct use or consumption in the activities of gas storage, generation or production or sale of electric power, the provision
of a public utility service or the operation of a utility business include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to the activities of gas storage, generation or production or sale of electric power, the provision of public utility service or the operation of a utility business.

(6) “Gas storage” means the injection of gas into a storage reservoir or the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir engaged in by businesses subject to the business and occupation tax imposed by sections two and two-e, article thirteen of this chapter.

(7) “Generating or producing or selling of electric power” means the generation, production or sale of electric power engaged in by businesses subject to the business and occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

(8) “Gross proceeds” means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other
expenses whatsoever. Losses may not be deducted, but any
credit or refund made for goods returned may be deducted.

(9) "Includes" and "including", when used in a definition
contained in this article, does not exclude other things otherwise
within the meaning of the term being defined.

(10) "Manufacturing" means a systematic operation or
integrated series of systematic operations engaged in as a
business or segment of a business which transforms or converts
tangible personal property by physical, chemical or other means
into a different form, composition or character from that in
which it originally existed.

(11) "Person" means any individual, partnership, associa-
tion, corporation, limited liability company, limited liability
partnership or any other legal entity, including this state or its
political subdivisions or an agency of either, or the guardian,
trustee, committee, executor or administrator of any person.

(12) "Personal service" includes those: (A) Compensated
by the payment of wages in the ordinary course of employment;
and (B) Rendered to the person of an individual without, at the
same time, selling tangible personal property, such as nursing,
barbering, shoe shining, manicuring and similar services.

(13) Production of natural resources.

(A) "Production of natural resources" means, except for oil
and gas, the performance, by either the owner of the natural
resources or another, of the act or process of exploring, devel-
oping, severing, extracting, reducing to possession and loading
for shipment and shipment for sale, profit or commercial use of
any natural resource products and any reclamation, waste
disposal or environmental activities associated therewith and
the construction, installation or fabrication of ventilation
structures, mine shafts, slopes, boreholes, dewatering structures,
including associated facilities and apparatus, by the producer or others, including contractors and subcontractors, at a coal mine or coal production facility.

(B) For the natural resources oil and gas, "production of natural resources" means the performance, by either the owner of the natural resources, a contractor or a subcontractor, of the act or process of exploring, developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-completion activities such as the installation of the casing, tubing and other machinery and equipment and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work performed on the well or well site after production of the well has initially commenced.

(C) All work performed to install or maintain facilities up to the point of sale for severance tax purposes is included in the "production of natural resources" and subject to the direct use concept.

(D) "Production of natural resources" does not include the performance or furnishing of work, or materials or work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, by persons other than those otherwise directly engaged in the activities specifically set forth in this subdivision (13) as "production of natural resources".

(14) "Providing a public service or the operating of a utility business" means the providing of a public service or the operating of a utility by businesses subject to the business and
occupation tax imposed by sections two and two-d, article thirteen of this chapter.

(15) "Purchaser" means a person who purchases tangible personal property, custom software or a service taxed by this article.

(16) "Sale", "sales" or "selling" includes any transfer of the possession or ownership of tangible personal property or custom software for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his or her agent for consumption or use or any other purpose. "Sale" also includes the furnishing of a service for consideration.

(17) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property or custom software, but does not include contracting, personal services or the services rendered by an employee to his or her employer or any service rendered for resale: Provided, That the term "service" or "selected service" does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer's, distributor's or other third-party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a "service" or "selected service" rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(18) "Streamlined sales and use tax agreement" or "agreement", when used in this article, shall have the same meaning
as when used in article fifteen-b of this chapter, except when
the context in which the word “agreement” is used clearly
indicates that a different meaning is intended by the Legisla-
ture.

(19) “Tax” includes all taxes, additions to tax, interest and
penalties levied under this article or article ten of this chapter.

(20) “Tax commissioner” means the state tax commissioner
or his or her delegate. The term “delegate” in the phrase “or his
or her delegate”, when used in reference to the tax commis-
ioner, means any officer or employee of the state tax division
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 or rules
promulgated for this article.

(21) “Taxpayer” means any person liable for the tax
imposed by this article or additions to tax, penalties and interest
imposed by article ten of this chapter.

(22) “Transmission” means the act or process of causing
liquid, natural gas or electricity to pass or be conveyed from
one place or geographical location to another place or geo-
ographical location through a pipeline or other medium for
commercial purposes.

(23) “Transportation” means the act or process of convey-
ing, as a commercial enterprise, passengers or goods from one
place or geographical location to another place or geographical
location.

(24) “Ultimate consumer” or “consumer” means a person
who uses or consumes services or personal property.

(25) “Vendor” means any person engaged in this state in
furnishing services taxed by this article or making sales of
392 tangible personal property or custom software. "Vendor" and
393 "seller" are used interchangeably in this article.

394 (c) Additional definitions. — Other terms used in this article
395 are defined in article fifteen-b of this chapter, which definitions
396 are incorporated by reference into article fifteen of this chapter.
397 Additionally, other sections of this article may define terms
398 primarily used in the section in which the term is defined.


(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 exemption
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 fundraisers, 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 fundraisers 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;
TAXATION

(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 fundraisers 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 fundraisers 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: Provided, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than eighty-four consecutive hours at a time, which are held no more than eighteen times in a twelve-month period for the purposes of this subdivision are considered “casual and
occasional sales not conducted in a repeated manner or in the
ordinary course of repetitive and successive transactions of a
like character”; 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 provi-
sions 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 promul-
gated 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 process-
ing 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 govern-
mental 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 out 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 libraries at academic institutions or by libraries at institutions of higher learning;

(38) Commissions received after the thirtieth day of June, one thousand nine hundred ninety-seven, by a manufacturer's representative;

(39) Sales of primary opinion research services after the thirtieth day of June, one thousand nine hundred ninety-seven, when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term "primary opinion research" means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly used for quantitative and qualitative opinion research studies;
(40) Sales of property or services after the thirtieth day of June, one thousand nine hundred ninety-seven, to persons within the state when those sales are for the purposes of the production of value-added products: Provided. That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use: For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;
(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked or frozen product;

(41) After the thirtieth day of June, one thousand nine hundred ninety-seven, sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in 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 mem-
bers for newsletters prepared by the association or organization
for distribution primarily to its members, charges to members
for continuing education seminars, workshops, conventions,
lectures or courses put on or sponsored by the association or
organization, including charges for related course materials
prepared by the association or organization or by the speaker or
speakers for use during the continuing education seminar,
workshop, convention, lecture or course, but not including any
separate charge or separately stated charge for meals, lodging,
entertainment or transportation taxable under this article:
Provided, That the association or organization pays the tax
imposed by this article on its purchases of meals, lodging,
entertainment or transportation taxable under this article for
which a separate or separately stated charge is not made. A
membership association or organization which is exempt from
paying federal income taxes under Section 501(c)(3) or (c)(6)
of the Internal Revenue Code of 1986, as amended, may elect
to pay the tax imposed under this article on the purchases for
which a separate charge or separately stated charge could apply
and not charge its members the tax imposed by this article or
the association or organization may avail itself of the exemption
set forth in subdivision (9) of this subsection relating to
purchases of tangible personal property for resale and then
collect the tax imposed by this article on those items from its
member;

(43) Sales of governmental services or governmental
materials after the thirtieth day of June, one thousand nine
hundred ninety-seven, by county assessors, county sheriffs,
county clerks or circuit clerks in the normal course of local
government operations;

(44) Direct or subscription sales by the division of natural
resources of the magazine currently entitled "Wonderful West
Virginia" and by the division of culture and history of the
magazine currently entitled "Goldenseal" and the journal
currently entitled "West Virginia History";

(45) Sales of soap to be used at car wash facilities;

(46) Commissions received by a travel agency from an
out-of-state vendor;

(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;

(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;

(49) Lodging franchise fees, including royalties, marketing fees, reservation system fees or other fees assessed after the first day of December, one thousand nine hundred ninety-seven, that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

(50) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) Refundable exemptions. — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility
business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are taxable;

(4) Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.

CHAPTER 239

(S. B. 107 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section nine-g, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumers sales and service tax; and creating exemption for purchases of back-to-school clothing and school supplies by consumers during three-day period in August, two thousand three.

Be it enacted by the Legislature of West Virginia:

That section nine-g, 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.

§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand three.

(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:

(1) The sales price of the article or school supply, except for a computer or computer accessory, is less than one hundred dollars;

(2) The sales price of a computer is less than seven hundred fifty dollars after credit for any manufacturer’s rebate or computer accessory is less than one hundred dollars after credit for any manufacturer’s rebate; and

(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 three, and ending at 12 midnight eastern daylight time on the following Sunday in August, two thousand three.
(b) This section does not apply to:

(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 240

(S. B. 462 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 26, 2003; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and updating 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 on or after the fifteenth day of March, two thousand two, but prior to the first day of January, two thousand three, 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 three, 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
(d) Effective date. — The amendments to this section enacted in the year two thousand three are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began 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.

(e) For purposes of the refundable credit allowed to a low income senior citizen for property tax paid on his or her homestead in this state, the term “laws of the United States” as used in subsection (a) of this section means and includes the term “low income” as defined in subsection (b), section twenty-one of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U. S. department of health and human services under the authority of 42 U. S. C. 9902(2).
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 on or after the fifteenth day of March, two thousand two, but prior to the first day of January, two thousand three, 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 three, 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 three are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began 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 242

(Com. Sub. for S. B. 534 — By Senators Minard, Jenkins, Sharpe, Minear and Ross)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article forty-six, relating to third-party administrators; requiring licensing of third-party administrators; requiring all third-party administrators to obtain certificates of authority; defining terms; disposition of premiums and claim payments received by the administrator; requiring administrator to maintain certain information; requiring advertising be ap-
proved; setting forth responsibilities of the insurer; providing for
the collection of premiums and payment of claims; administrator
compensation; notices and disclosures; nonresident and home
state certificate of authority; denial, suspension or revocation of
certificate of authority; authority to propose rules; requiring third-
party administrators to have written contracts with their insurers;
and requiring third-party administrators to provide the commis-
sion with certain disclosures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 46. THIRD-PARTY ADMINISTRATOR ACT.

§33-46-1. Short title.
§33-46-3. Written agreement necessary.
§33-46-4. Payment to administrator.
§33-46-6. Approval of advertising.
§33-46-7. Responsibilities of the insurer.
§33-46-8. Premium collection and payment of claims.
§33-46-10. Notice to covered individuals; disclosure of charges and fees.
§33-46-11. Delivery of materials to covered individuals.
§33-46-12. Home state certificate of authority or license.
§33-46-17. Grounds for denial, suspension or revocation of license.

§33-46-1. Short title.

This article may be cited as the "Third-Party Administrator
Act".

(a) "Administrator" or "third-party administrator" means a person who directly or indirectly underwrites or collects charges or premiums from, or adjusts or settles claims on residents of this state, in connection with life, annuity or accident and sickness coverage offered or provided by an insurer, except any of the following:

(1) An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer;

(2) A union on behalf of its members;

(3) An insurer that is licensed to transact insurance in this state with respect to a policy lawfully issued and delivered in and pursuant to the laws of this state or another state including:

(A) A health service corporation licensed under article twenty-four of this chapter;

(B) A health care corporation licensed under article twenty-five of this chapter;

(C) A health maintenance organization licensed under article twenty-five-a of this chapter; and

(D) A prepaid limited health service organization licensed under article twenty-five-d of this chapter.

(4) An insurance producer licensed to sell life, annuities or health coverage in this state whose activities are limited exclusively to the sale of insurance;

(5) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
(6) A trust and its trustees, agents and employees acting pursuant to the trust established in conformity with 29 U. S. C. Section 186;

(7) A trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which meets the requirements of Section 401(f) of the Internal Revenue Code;

(8) A credit union or a financial institution that is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent they collect and remit premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments;

(9) A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection;

(10) A person who adjusts or settles claims in the normal course of that person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life, annuity or accident and sickness coverage;

(11) An adjuster licensed by this state whose activities are limited to adjustment of claims;

(12) A person licensed as a managing general agent in this state whose activities are limited exclusively to the scope of activities conveyed under that license; or

(13) An administrator who is affiliated with an insurer and who only performs the contractual duties, between the administrator and the insurer, of an administrator for the direct and
assumed business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator’s books and records to the insurance commissioner, upon a request from the insurance commissioner. For purposes of this subdivision, “insurer” means a licensed insurance company, prepaid hospital or medical care plan, health maintenance organization or a health care corporation.

(b) “Affiliate or affiliated” means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(c) “Commissioner” means the insurance commissioner of this state.

(d) “Control”, “controlling”, “controlled by” and “under common control with” mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by the West Virginia insurance holding company systems act that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.
(e) "GAAP" means United States generally accepted accounting principles consistently applied.

(f) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated, nor the state in which it maintains its principal place of business has adopted the national association of insurance commissioners’ model third party administrator act or a substantially similar law governing administrators, the administrator may declare another state, in which it conducts business, to be its "home state".

(g) "Insurance producer" means a person who sells, solicits or negotiates a contract of insurance as those terms are defined in this article.

(h) "Insurer" means a person undertaking to provide life, annuity or accident and sickness coverage or self-funded coverage under a governmental plan or church plan in this state. For the purposes of this article, insurer includes an employer, a licensed insurance company, a prepaid hospital or medical care plan, health maintenance organization or a health care corporation.

(i) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(j) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator’s home state.
(k) "Person" means an individual or a business entity.

(l) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(m) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(n) "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan; and the overall planning and coordinating of a benefits program.

(o) "Uniform application" means the current version of the national association of insurance commissioners uniform application for third-party administrators.

§33-46-3. Written agreement necessary.

(a) No administrator may act as such without a written agreement between the administrator and the insurer and the written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and for ten years thereafter. The agreement shall contain all provisions required by this statute, except insofar as those requirements do not apply to the functions performed by the administrator.

(b) The written agreement shall include a statement of duties that the administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance which the administrator is to be authorized to administer. The agreement shall make provision with respect to underwriting or other standards pertaining to the business underwritten by the insurer.
(c) The insurer or administrator may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the administrator during the pendency of any dispute regarding the cause for termination of the written agreement. The insurer shall fulfill any lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the administrator.

§33-46-4. Payment to administrator.

If an insurer uses the services of an administrator, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured party shall be considered to have been received by the insurer and the payment of return premiums or claim payments forwarded by the insurer to the administrator shall not be considered to have been paid to the insured party or claimant until the payments are received by the insured party or claimant. Nothing in this section limits any right of the insurer against the administrator resulting from the failure of the administrator to make payments to the insurer, insured parties or claimants.


(a) An administrator shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance recordkeeping and shall be maintained for a period of not less than ten years from the date of their creation.

(b) The commissioner shall have access to books and records maintained by an administrator for the purposes of examination, audit and inspection. Any documents, materials or other information in the possession or control of the commissioner that is furnished by an administrator, insurer, insurance...
producer or an employee or agent thereof acting on behalf of
the administrator, insurer or insurance producer, or obtained by
the commissioner in an investigation is confidential by law and
privileged, is not subject to chapter twenty-nine-b of this code,
is not subject to subpoena and is not subject to discovery or
admissible as evidence in any private civil action. However, the
commissioner may use the documents, materials or other
information in the furtherance of any regulatory or legal action
brought as a part of the commissioner’s official duties.

(c) Neither the commissioner nor any person who received
documents, materials or other information while acting under
the authority of the commissioner shall be permitted or required
to testify in any private civil action concerning any confidential
documents, materials or information subject to subsection (b)
of this section.

(d) In order to assist in the performance of his or her duties,
the commissioner may:

(1) Share documents, materials or other information,
including the confidential and privileged documents, materials
or information subject to subsection (b) of this section, with
other state, federal and international regulatory agencies, with
the national association of insurance commissioners, its
affiliates or subsidiaries and with state, federal and international
law-enforcement authorities, provided that the recipient agrees
to maintain the confidentiality and privileged status of the
document, material or other information;

(2) Receive documents, materials or information, including
otherwise confidential and privileged documents, materials or
information, from the national association of insurance com-
missioners, its affiliates or subsidiaries and from regulatory and
law-enforcement officials of other foreign or domestic jurisdic-
tions and shall maintain as confidential or privileged any
document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) Enter into agreements governing the sharing and use of information consistent with this subsection.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (d) of this section.

(f) Nothing in this article prohibits the commissioner from releasing final, adjudicated actions, including for cause terminations, that are open to public inspection pursuant to chapter twenty-nine-b of this code to a database or other clearinghouse service maintained by the national association of insurance commissioners, its affiliates or subsidiaries.

(g) The insurer owns the records generated by the administrator pertaining to the insurer; however, the administrator shall retain the right to continuing access to books and records to permit the administrator to fulfill all of its contractual obligations to insured parties, claimants and the insurer.

(h) In the event the insurer and the administrator cancel their agreement, the administrator may, by written agreement with the insurer, transfer all records to a new administrator rather than retain them for ten years notwithstanding the provisions of subsection (a) of this section. In those cases, the new administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior administrator as required in subsection (a) of this section.

§33-46-6. Approval of advertising.
An administrator may use only advertising pertaining to the business underwritten by an insurer that has been approved in writing by the insurer in advance of its use.

§33-46-7. Responsibilities of the insurer.

(a) If an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, underwriting criteria and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in the written agreement between the administrator and the insurer.

(b) It is the sole responsibility of the insurer to provide for competent administration of its programs.

(c) In cases where an administrator administers benefits for more than one hundred certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one review shall be an on-site audit of the operations of the administrator.

(d) For purposes of this section, "insurer" means a licensed insurance company, prepaid hospital or medical care plan, health maintenance organization or a health care corporation.

§33-46-8. Premium collection and payment of claims.

(a) All insurance charges or premiums collected by an administrator on behalf of or for an insurer, and the return of premiums received from that insurer, shall be held by the administrator in a fiduciary capacity. The funds shall be immediately remitted to the person entitled to them or shall be
deposited promptly in a fiduciary account established and
maintained by the administrator in a federally or state-insured
financial institution. The written agreement between the
administrator and the insurer shall provide for the administrator
to periodically render an accounting to the insurer detailing all
transactions performed by the administrator pertaining to the
business underwritten by the insurer.

(b) If charges or premiums deposited in a fiduciary account
have been collected on behalf of or for one or more insurers, the
administrator shall keep records clearly recording the deposits
in and withdrawals from the account on behalf of each insurer.
The administrator shall keep copies of all the records and, upon
request of an insurer, shall furnish the insurer with copies of the
records pertaining to the deposits and withdrawals.

(c) The administrator shall not pay any claim by withdraw-
als from a fiduciary account in which premiums or charges are
deposited. Withdrawals from the account shall be made as
provided in the written agreement between the administrator
and the insurer. The written agreement shall address, but not be
limited to, the following:

(1) Remittance to an insurer entitled to remittance;

(2) Deposit in an account maintained in the name of the
insurer;

(3) Transfer to and deposit in a claims-paying account, with
claims to be paid as provided for in subsection (d) of this
section;

(4) Payment to a group policyholder for remittance to the
insurer entitled to the remittance;

(5) Payment to the administrator of its commissions, fees
or charges; and
(6) Remittance of return premium to the person or persons entitled to the return premium.

(d) All claims paid by the administrator from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of and as authorized by the insurer.


(a) An administrator may not enter into an agreement or understanding with an insurer in which the effect is to make the amount of the administrator's commissions, fees or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the insurer's obligations. This provision shall not prohibit an administrator from receiving performance-based compensation for providing hospital or other auditing services.

(b) This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or the number of claims paid or processed.

§33-46-10. Notice to covered individuals; disclosure of charges and fees.

(a) When the services of an administrator are used, the administrator shall provide a written notice approved by the insurer to covered individuals advising them of the identity of, and relationship among, the administrator, the policyholder and the insurer.

(b) When an administrator collects funds, the reason for collection of each item shall be identified to the insured party and each item shall be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the insurer.
(c) The administrator shall disclose to the insurer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance.

§33-46-11. Delivery of materials to covered individuals.

Any policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the administrator for delivery to insured parties or covered individuals shall be delivered by the administrator promptly after receipt of instructions from the insurer to deliver them.

§33-46-12. Home state certificate of authority or license.

(a) Prior to conducting business in West Virginia an administrator or third-party administrator must be licensed in accordance with the requirements of this article.

(b) If West Virginia is a person's home state, then the person may apply for licensure in this state by filing a uniform application with the insurance commissioner. The application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to the documents;

(2) The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

(3) National association of insurance commissioners' biographical affidavits for the individuals who are responsible for the conduct of affairs of the applicant, including all mem-
bers of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholders or member holding directly or indirectly ten percent or more of the voting stock, voting securities or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant;

(4) Audited annual financial statements or reports for the two most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which the financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:

(A) Amounts shown on the consolidated audited financial report;

(B) Amounts for each entity stated separately; and

(C) Explanations of consolidating and eliminating entries.

The applicant shall also include any other information required by the commissioner in order to review the current financial condition of the applicant;

(5) A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth the applicant’s capability for providing a sufficient number of
experienced and qualified personnel in the areas of claims processing, recordkeeping and underwriting; and

(6) Any other pertinent information required by the commissioner.

(c) An administrator licensed or applying for licensure under this section shall make available for inspection by the commissioner copies of all contracts with insurers or other persons using the services of the administrator.

(d) An administrator licensed or applying for licensure under this section shall produce its accounts, records and files for examination and make its officers available to give information with respect to its affairs as often as reasonably required by the commissioner.

(e) The commissioner may refuse to issue a certificate of authority or license if the commissioner determines that the administrator, or any individual responsible for the conduct of affairs of the administrator, is not competent, trustworthy, financially responsible or of good personal and business reputation or has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if the commissioner determines that any of the grounds set forth in section seventeen of this article exists with respect to the administrator.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended or revoked by the commissioner, for as long as the administrator continues in business in this state and remains in compliance with this article.

(g) An administrator licensed or applying for licensure under this section shall immediately notify the commissioner of any material change in its ownership, control or other fact or
circumstance affecting its qualification for a certificate of authority or license in this state.

(h) An administrator licensed or applying for a home state certificate of authority/license that administers or will administer governmental or church self-insured plans in its home state or any other state shall maintain a surety bond for the use and benefit of the home state commissioner and the insurance regulatory authority of any additional state in which the administrator is authorized to conduct business and cover individuals and persons who have remitted premiums or insurance charges or other moneys to the administrator in the course of the administrator's business in the lesser of the following amounts:

(1) One hundred thousand dollars; or

(2) Ten percent of the aggregate total amount of self-funded coverage under church plans or governmental plans handled in the administrator’s home state and all additional states in which the administrator is authorized to conduct business.


A person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, in connection with life, annuity or accident and sickness coverage provided by a self-funded plan other than a governmental or church plan shall register with the commissioner annually, verifying its status as in this article described.


(a) Unless an administrator has obtained a home state license in this state under section twelve of this article, any administrator who performs administrator duties in this state
shall obtain a nonresident administrator license in accordance with this section by filing with the commissioner the uniform application, accompanied by a letter of certification. In lieu of requiring an administrator to file a letter of certification with the uniform application, the commissioner may verify the nonresident administrator’s home state certificate of authority or license status through an electronic database maintained by the national association of insurance commissioners, its affiliates or subsidiaries.

(b) An administrator is not eligible for a nonresident administrator license under this section if it does not hold a certificate of authority or license as a resident in a home state that has adopted the national association of insurance commissioners’ model third-party administrator act or a substantially similar law governing administrators.

(c) Except as provided in subsections (b) and (h) of this section, the commissioner shall issue to the administrator a nonresident administrator license promptly upon receipt of a complete application and the application fee.

(d) Unless notified by the commissioner that the commissioner is able to verify the nonresident administrator’s home state certificate of authority or license status through an electronic database maintained by the national association of insurance commissioners, its affiliates or subsidiaries, each nonresident administrator shall annually file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year.

(e) At the time of filing the statement required under subsection (d) of this section or, if the commissioner has notified the nonresident administrator that the commissioner is able to verify the nonresident administrator’s home state
certificate of authority or license status through an electronic
database, on or before the first day of October, the nonresident
administrator shall pay the fee set forth in section fifteen of this
article.

(f) An administrator licensed or applying for licensure
under this section shall produce its accounts, records and files
for examination and make its officers available to give informa-
tion with respect to its affairs as often as reasonably required by
the commissioner.

(g) A nonresident administrator is not required to hold a
nonresident administrator license in this state if the administra-
tor’s duties in this state are limited to the administration of a
group policy or plan of insurance and no more than a total of
one hundred lives for all plans reside in this state. This subsec-
tion applies only to multistate administrators. The administrator
must be licensed in its home state regardless of the number of
lives under a group policy or plan.

(h) The commissioner may refuse to issue a nonresident
administrator license, or may delay the issuance of a nonresi-
dent administrator license, if the commissioner determines that,
due to events or information obtained subsequent to the home
state’s licensure of the administrator, the nonresident adminis-
trator cannot satisfy the requirements of this article or that
grounds exist for the home state’s revocation or suspension of
the administrator’s home state certificate of authority or license.
In that event, the commissioner shall give written notice of its
determination to the commissioner of the home state and the
commissioner may delay the issuance of a nonresident adminis-
trator license to the nonresident administrator until such time,
if at all, that the commissioner determines that the administrator
can satisfy the requirements of this article and that no grounds
exist for the home state’s revocation or suspension of the
administrator’s home state certificate of authority or license.

1 Except where it is otherwise specially provided, the
2 commissioner shall assess third-party administrators the
3 following fees: For annual fee for each license, two
4 hundred dollars; for receiving and filing annual reports,
5 one hundred dollars; for filing a certified copy of articles
6 of incorporation, fifty dollars; for filing a copy of its
7 charter, fifty dollars; for filing statements preliminary to
8 admission, one hundred dollars; for filing any additional
9 paper required by law or furnishing copies of the additional
10 paper, one dollar; and for every copy of a report or certifi-
11 cate of condition of administrator to be filed in any other
12 state, twenty-five dollars. The commissioner may by rule
13 set reasonable charges for printed forms for the annual
14 statements required by law. He or she may sell at cost
15 publications purchased by, or printed on behalf of the
16 commissioner. All fees and moneys collected shall be used
17 for the purposes set forth in section thirteen, article three of
18 this chapter.


1 (a) Each administrator licensed under section twelve of this
2 article shall file an annual report for the preceding calendar year
3 with the commissioner on or before the first day of July of each
4 year or within an extension of time granted by the commis-
5 sioner for good cause. The annual report shall include an
6 audited financial statement performed by an independent
7 certified public accountant. An audited financial/annual report
8 prepared on a consolidated basis shall include a columnar
9 consolidating or combining worksheet that shall be filed with
10 the report and include the following:
(1) Amounts shown on the consolidated audited financial report;

(2) Amounts for each entity stated separately; and

(3) Explanations of consolidating and eliminating entries.

The report shall be in the form and contain any matters prescribed by the commissioner and shall be verified by at least two officers of the administrator.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay the filing fee provided in section fifteen of this article.

(d) The commissioner shall review the most recently filed annual report of each administrator on or before the first day of September of each year. Upon completion of its review, the commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in that annual report and financial statements; or

(2) Update any electronic database maintained by the national association of insurance commissioners, its affiliates or subsidiaries, indicating the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report.
§33-46-17. Grounds for denial, suspension or revocation of license.

(a) The license of an administrator shall be denied, suspended or revoked if the commissioner finds that the administrator:

1. Is in an unsound financial condition;

2. Is using methods or practices in the conduct of its business that render its further transaction of business in this state hazardous or injurious to insured persons or the public; or

3. Has failed to pay any judgment rendered against it in this state within sixty days after the judgment has become final.

(b) The commissioner may deny, suspend or revoke the license of an administrator if the commissioner finds that the administrator:

1. Has violated any lawful rule or order of the commissioner or any provision of the insurance laws of this state;

2. Has refused to be examined or to produce its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the administrator, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership or the partners or members in the case of a partnership or the partners or members of a limited liability company; any shareholder or member holding directly or indirectly ten percent or more of the voting stock, voting securities or voting interest of the administrator; and any other person who exercises control or influence over the affairs of the administrator; has refused to give information with respect to its affairs; or has refused to perform any other legal obligation as to an examination, when required by the commissioner;
(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the administrator to secure full payment or settlement of their claims;

(4) At any time fails to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities or voting interest; and any other person who exercises control or influence over its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether the adjudication was withheld;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to section sixteen of this article, if a resident administrator, or its statement and filing fee, as applicable, pursuant to subsections (d) and (e), section fourteen of this article if a nonresident administrator.

(c) The commissioner may, in his or her discretion and without advance notice or hearing, immediately suspend the license of an administrator if the commissioner finds that one or more of the following circumstances exist:

Programs supervised by the department of health and human resources, pursuant to chapter nine of this code; the public employees insurance agency, pursuant to articles sixteen and sixteen-c, chapter five of this code; and the department of administration, pursuant to article sixteen-b, chapter five of this code, are exempted from the provisions of this article. Third-party administrators who administer the above-referenced
programs are exempt from the provisions of this article with respect to these specific programs only.


The unauthorized conduct of the business of an administrator shall be treated as unauthorized insurance business and shall be subject to the same criminal and civil penalties as provided in article forty-four for violation of the unauthorized insurers act.


The insurance commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code that are necessary to effectuate this article.

CHAPTER 243

(S. B. 105 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed March 7, 2003; in effect May 1, 2003. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the tax on tobacco products; and increasing the rate of the tax on cigarettes from seventeen cents to fifty-five cents.

Be it enacted by the Legislature of West Virginia:
That sections three and four, article seventeen, 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 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; ratio; dedication of proceeds.
§11-17-4. Effect of rate changes; tobacco products on hand or in inventory; report; discount.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

(a) Tax on cigarettes. — For the purpose of providing revenue for the general revenue fund of the state, an excise tax is hereby levied and imposed on sales of cigarettes at the rate of fifty-five cents on each twenty cigarettes or in like ratio on any part thereof. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(b) Tax on tobacco products other than cigarettes. — Effective the first day of January, two thousand two, an excise tax is hereby levied and imposed on the sale or use of, other than cigarettes, tobacco products at a rate equal to seven percent of the wholesale price of each article or item of tobacco product other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in computing the amount of tax due under this subsection. Revenues received from this tax shall be deposited into the general revenue fund.

(c) Effective date. — The changes set forth herein to this section and section four of this article shall become effective the first day of May, two thousand three.

§11-17-4. Effect of rate changes; tobacco products on hand or in inventory; report; discount.
(a) Notwithstanding other provisions of this article, it is hereby declared to be the intent of the Legislature that one rate of excise tax is applicable to all quantities of cigarettes and another rate of excise tax is applicable to all tobacco products other than cigarettes in this state on and after the first day of July, two thousand one, under the provisions of this article. Any tobacco products, on hand or in inventory, on the effective date of any rate change are hereby considered to have been purchased or received on the effective date of the change in rate.

(b) Every wholesaler, subjobber, subjobber dealer, retail dealer and vending machine operator who, on the effective date of any rate change, has, on hand or in inventory, any tobacco products or cigarette tax stamps, upon which the tax or any portion of the tax has been previously paid, shall take a physical inventory and shall file a report of the inventory with the tax commissioner, in the format required by the tax commissioner, within thirty days after the inventory and shall pay to the tax commissioner any additional tax due under an increased rate in accordance with the following schedule:

   (1) One-third at the time of filing the report;

   (2) One-third not later than sixty days after the effective date of the rate change; and

   (3) One-third not later than ninety days after the effective date of the rate change.

A discount of four percent shall be allowed on all tax due for persons who pay additional tax under this section.

(c) Imposition of the tax on tobacco products other than cigarettes shall be treated as a change in rate on the effective date of the tax.
AN ACT to amend and reenact section three, article nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four, all relating generally to implementation of master tobacco settlement agreement; providing allocable share cap on payments by non-participating manufacturers and as to such providing special severability rule and date for implementation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9B. IMPLEMENTING TOBACCO MASTER SETTLEMENT AGREEMENT.

§16-9B-3. Requirements.
§16-9B-4. Special severability rule; implementation date.

§16-9B-3. Requirements.

1 Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries)
after the date of enactment of this article shall do one of the following:

(a) Become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or

(b) (1) Place into a qualified escrow fund by the fifteenth day of April of the year following the year in question the following amounts, adjusted for inflation:

   (A) For the year one thousand nine hundred ninety-nine: $.0094241 per unit sold after the date of enactment of this article;

   (B) For the year two thousand: $.0104712 per unit sold;

   (C) For each of the years two thousand one and two thousand two: $.0136125 per unit sold;

   (D) For each of the years two thousand three through two thousand six: $.0167539 per unit sold; and

   (E) For the year two thousand seven or each year thereafter: $.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

   (A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this paragraph: (i) In the
order in which they were placed into escrow; and (ii) only to the
extent and at the time necessary to make payments required
under such judgment or settlement;

(B) To the extent that a tobacco product manufacturer
establishes that the amount it was required to place into escrow
on account of units sold in the state in a particular year was
greater than the master tobacco settlement agreement payments,
as determined pursuant to section IX(i) of that agreement,
including after final determination of all adjustments, that such
manufacturer would have been required to make on account of
such units sold had it been a participating manufacturer, the
excess shall be released from escrow and revert back to such
tobacco product manufacturer; or

(C) To the extent not released from escrow under paragraph
(A) or (B) of this subdivision, funds shall be released from
escrow and revert back to the tobacco product manufacturer
twenty-five years after the date on which they were placed into
escrow.

(3) Each tobacco product manufacturer that elects to place
funds into escrow pursuant to this subsection shall annually
certify to the attorney general that it is in compliance with this
subsection. The attorney general may bring a civil action on
behalf of the state against any tobacco product manufacturer
that fails to place into escrow the funds required under this
section. Any tobacco product manufacturer that fails in any year
to place into escrow the funds required under this section shall:

(A) Be required within fifteen days to place such funds into
escrow as shall bring it into compliance with this section. The
court, upon a finding of a violation of this subsection, may
impose a civil penalty, to be paid to the general fund of the
state, in an amount not to exceed five percent of the amount
improperly withheld from escrow per day of the violation and
in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

§16-9B-4. Special severability rule; implementation date.

(a) Section three severability rule. —

(1) If the act amending section three of this article in the year two thousand three, or any portion of the amendment to paragraph (B), subdivision (2), subsection (b), section three of this article, made by that act, is held by a court of competent jurisdiction to be unconstitutional, then such paragraph (B) shall be deemed to be repealed in its entirety.

(2) If after application of subsection (a) of this section, a court of competent jurisdiction thereafter holds subdivision (2), subsection (b) of said section three to be unconstitutional, then section three as amended in the year two thousand three shall be deleted in its entirety and section three as enacted in the year
one thousand nine hundred ninety-nine, shall be restored as if no amendments had been made to section three in the year two thousand three. Neither any holding of unconstitutionality nor the repeal of paragraph (B), subdivision (2), subsection (b), section three of this article shall affect, impair or invalidate any other portion of section three, or the application of section three to any other person or circumstance, and such remaining portions of section three shall at all times continue in full force and effect.

(b) Implementation date. — The amendments to section three of this article in the year two thousand three shall not take effect until thirty days after the earlier of:

(1) All states that share a common border with this state enacting similar amendments to their laws implementing the master tobacco settlement agreement; or

(2) Thirty three states, including this state, enacting similar amendments to their laws implementing the master tobacco settlement agreement.

CHAPTER 245

(Com. Sub. for H. B. 3046 — By Mr. Speaker, Mr. Kiss)

[Passed March 7, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine-d, all relating generally to facilitating and enforcing compliance with tobacco master
settlement agreement and with laws implementing that agreement; imposing civil and criminal penalties for failure to comply; and specifying internal effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9D. ENFORCEMENT OF STATUTES IMPLEMENTING TOBACCO MASTER SETTLEMENT AGREEMENT.

§16-9D-1. Findings and purpose.

The Legislature finds that violations of article nine-b of this chapter threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health. The Legislature finds that enacting procedural enhancements will help prevent violations and aid enforcement of article nine-b of this chapter and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health.

§16-9D-2. Definitions.

(a) "Brand Family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not
limited to, "menthol," "lights," "kings," and "100s" and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(b) "Cigarette" has the same meaning as in section two, article nine-b of this chapter.

(c) "Commissioner" means the duly appointed head of the agency responsible for collection of the excise tax on cigarettes.

(d) "Distributor" means a person, wherever resident or located, who purchases nontax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes.

(e) "Master tobacco settlement agreement" has the same meaning as that term is defined in section two, article nine-b of this chapter.

(f) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(g) "Participating manufacturer" has the meaning given that term in section II(jj) of the master settlement agreement and all amendments to the master settlement.

(h) "Qualified escrow fund" has the same meaning as that term is defined in section two, article nine-b of this chapter.

(i) "Stamping agent" includes any distributor or other person that is authorized to affix tax stamps to packages or other containers of cigarettes under article seventeen, chapter eleven of this code, or any person that is required to pay the excise tax imposed on cigarettes pursuant to article seventeen of said chapter eleven.
(j) "Tobacco product manufacturer" has the same meaning as that term is defined in section two, article nine-b of this chapter.

(k) "Units sold" has the same meaning as that term is defined in section two, article nine-b of this chapter.

§16-9D-3. Certifications; directory; tax stamps.

(a) Certification. – Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the commissioner a certification to the commissioner and the attorney general, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with article nine-b of this chapter, including payment of all quarterly installment payments required by section six of this article.

(1) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the commissioner and the attorney general.

(2) A nonparticipating manufacturer shall include in its certification:

(A) A list of all of its brand families and the number of units sold for each brand family that were sold in this state during the preceding calendar year;

(B) A list of all of its brand families that have been sold in this state at any time during the current calendar year, indicat-
ing, by an asterisk, any brand family sold in this state during the preceding calendar year that is no longer being sold in this state as of the date of the certification; and

(C) Identification, by name and address, of any other manufacturer of the brand families in the preceding calendar year. The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the commissioner and the attorney general.

(3) In the case of a nonparticipating manufacturer, the certification shall further certify:

(A) That the nonparticipating manufacturer is registered to do business in this state or has appointed a resident agent for service of process and provided notice thereof as required by section four of this article;

(B) That the nonparticipating manufacturer has: (i) Established and continues to maintain a qualified escrow fund; and (ii) has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(C) That the nonparticipating manufacturer is in full compliance with article nine-b of this chapter and this article, and any rules promulgated pursuant to either article; and

(D) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by article nine-b of this chapter and all rules promulgated thereto, and:

(i) The account number of the qualified escrow fund and sub-account number for the state of West Virginia;
(ii) The amount the nonparticipating manufacturer placed in escrow fund for cigarettes sold in this state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification considered necessary by the attorney general to confirm the information certified under this paragraph; and

(iii) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to article nine-b of this chapter and all rules promulgated thereto.

(4) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement, and

(B) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of article nine-b of this chapter. Nothing in this section shall be construed as limiting or otherwise affecting this state’s right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of article nine-b of this chapter.

(5) Tobacco product manufacturers shall maintain all invoices and documentation of sales and any other information relied upon for the certification for a period of five years, unless
otherwise required by law to maintain them for a greater period
of time.

(b) Directory of cigarettes approved for stamping and sale.
- The commissioner shall develop and publish on the tax
division's website a directory listing all tobacco product
manufacturers that have provided current and accurate certifica-
tions conforming to the requirements of subsection (a) of this
section and all brand families that are listed in the certifications,
except as provided in subdivisions (1) and (2) of this subsec-
tion.

(1) The commissioner shall not include or retain in the
directory the name or brand families of any nonparticipating
manufacturer that has failed to provide the required certification
or whose certification the commissioner or the attorney general
determines is not in compliance with subdivisions (2) and (3),
subsection (a) of this section, unless the commissioner has
determined that the violation has been cured to the satisfaction
of the commissioner and the attorney general.

(2) Neither a tobacco product manufacturer nor brand
family shall be included or retained in the directory if the
attorney general concludes in the case of a nonparticipating
manufacturer, that:

(A) Any escrow payment required pursuant to article nine-b
of this chapter for any period for any brand family, whether or
not listed by the nonparticipating manufacturer, has not been
fully paid into a qualified escrow fund governed by a qualified
escrow agreement that has been approved by the attorney
general of this state, or

(B) Any outstanding final judgment, including interest on
the judgment, for violations of article nine-b of this chapter has
not been fully satisfied for the brand family and the nonpartici-
pating manufacturer.
(3) The tax commissioner shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family.

(A) The commissioner may not remove any manufacturer or brand family from the directory unless the manufacturer and all distributors and other stamping agents registered under article twelve, chapter eleven of this code, have been given at least seven days' prior notice of the intended removal by electronic mail or first class mail the notices shall be e-mailed or posted to the addresses provided by the manufacturers, distributors or other stamping agents for this purpose.

(B) The commissioner shall transmit by email or other practicable means to each distributor or other stamping agent registered under article twelve, chapter eleven of this code, to affix West Virginia tax stamps to cigarettes notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family.

(C) Failure of a manufacturer, distributor or other stamping agent to receive notice under paragraph (A) or (B), subdivision (3), subsection (b) of this section, or failure of the state to provide notice of any addition to or removal from the directory shall not relieve the distributor or other stamping agent of its obligations under this article.

(4) Every tobacco product manufacturer selling cigarettes in this state and every distributor or other stamping agent affixing West Virginia tax stamps to packages of cigarettes for sale in this state shall provide and update as necessary an electronic mail address to the commissioner for the purpose of receiving any notifications required by this article.

(c) Prohibition against stamping or sale of cigarettes not on the directory. – It is unlawful for any person:
(1) To affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(2) To sell, offer, or possess for sale in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory, except as follows:

(A) This subsection shall not prohibit a distributor or other stamping agent from possessing unstamped containers of cigarettes held in inventory for delivery to, or for sale in, another state; and

(B) A person purchasing cigarettes for resale shall not be in violation of this subsection if, at the time the cigarettes were purchased, the manufacturer and brand families of the cigarettes are included in the directory maintained by the tax commissioner and the cigarettes are otherwise lawfully stamped and sold within thirty days after the date of the notice provided under paragraph (A), subdivision (3), subsection (b) of this section.

§16-9D-4. Certification of tobacco product manufacturer wanting to sell product in this state for the first time.

(a) A tobacco product manufacturer whose cigarettes have not previously been sold in this state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall, at least thirty calendar days before beginning to sell its cigarettes in this state, make the certification required by section three of this article. In addition to the information required by section three, the manufacturer shall include the following information in its certification:

(1) If the tobacco product manufacturer is a partnership, limited liability company, corporation, association or other business entity, the following where applicable:
(A) The names and addresses of every partner, member, officer, resident agent, director or person performing a function similar to a director;

(B) The names and addresses of any person owning of record a ten percent or greater equity interest in the tobacco product manufacturer; and

(C) A list of all names under which the tobacco manufacturer, or any partner, member, officer, resident agent, director, or person owning a ten percent or greater equity interest in the tobacco manufacturer, previously did business as a tobacco product manufacturer in the United States within the five-year period preceding the date of submission of the certification; and

(2) A statement of whether the tobacco product manufacturer, or any partner, member, officer, resident agent, director, or person owning a ten percent or greater equity interest in the tobacco manufacturer, or in any subsidiary, affiliate or persons controlled by or under common control with the tobacco manufacturer, has ever been an officer, partner, director or person owning a ten percent or greater equity interest in a tobacco product manufacturer that ever defaulted in fully funding the escrow account required by article nine-b of this chapter in the five-year period prior to the date of submission of the certification under this section and, if so, a brief explanation of the facts involved.

§16-9D-5. Agent for service of process.

(a) Requirement for agent for service of process.

(1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interrup-
tion the services of an agent in this state, or in the United States, to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this article and article nine-b of this chapter, may be served in any manner authorized by law. The service constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of the agent to the satisfaction of the commissioner and the attorney general.

(2) Any nonresident stamping agent authorized to affix stamps to packages of cigarettes evidencing payment of the tax levied by article seventeen, chapter eleven of this code, on cigarettes to be sold in this state that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to being authorized to affix West Virginia tax stamps, appoint and continually engage without interruption the services of an agent in this state, or in the United States, to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this article and article nine-b of this chapter, may be served in any manner authorized by law. The service constitutes legal and valid service of process on the nonresident stamping agent. The nonresident stamping agent shall provide the name, address, phone number and proof of the appointment and availability of the agent to the satisfaction of the commissioner and the attorney general.

(b) The nonparticipating manufacturer or the nonresident stamping agent shall provide written notice to the commissioner and the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five calendar days prior to the termina-
tion of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer, or nonresident stamping agent, as the case may be, shall notify the commissioner and attorney general in writing of the termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

(c) Any nonparticipating manufacturer and any non-resident stamping agent whose cigarettes are sold in this state, who has not appointed and engaged an agent as required by this section, shall be considered to have appointed the secretary of state of West Virginia as the agent and may be proceeded against in the courts of this state by service of process upon the secretary of state: Provided, That the appointment of the secretary of state as the agent of the manufacturer or the nonresident stamping agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory.

§16-9D-6. Reporting of information; escrow installments.

(a) Reporting by distributors and other stamping agents.—

(1) Not later than twenty calendar days after the end of each calendar quarter, and more frequently if directed by the commissioner, each distributor or stamping agent shall submit information required by the commissioner to facilitate compliance with this article, including, but not limited to, a list by brand family of the total number of cigarettes of nonparticipating manufacturers, or in the case of roll your own, the equivalent stick count, for which the distributor or other stamping agent affixed West Virginia stamps and sold in West Virginia during the previous calendar quarter or otherwise paid the tax due for the cigarettes.
(2) The distributor or stamping agent shall maintain, and make available to the commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes sold in West Virginia and any other information relied upon in reporting to the commissioner for a period of five years.

(b) Disclosure of information. – The commissioner may disclose to the attorney general of this state any information received under this article and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this article. The commissioner and the attorney general shall share with each other the information received under this article, and may share the information with other federal, state or local agencies only for purposes of enforcement of this article, article nine-b of this chapter, or corresponding laws of other states.

(c) Verification of qualified escrow fund. – The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with article nine-b of this chapter, of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the qualified escrow fund, and the amount and date of each withdrawal from the fund.

(d) Requests for additional information. – In addition to the information required to be submitted pursuant to this section, the attorney general may require a stamping agent, distributor or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, that is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this article.
Quarterly escrow installments. – To promote compliance with the provisions of this article, a tobacco product manufacturer subject to the requirements of subdivision (2), subsection (a), section three of this article, who, in the opinion of the attorney general, materially defaults in fully funding its escrow account timely and then cures the default shall make escrow deposits for the calendar year during which the default was cured and ensuing calendar years in quarterly installments during the year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

§16-9D-7. Electronic filing of quarterly reports.

(a) Electronic filing required. - After the first day of September, two thousand three, the quarterly reports required by section six of this article from distributors and stamping agents shall be electronically filed with the tax commissioner.

(b) “Filed Electronically” defined. - For purposes of this section, “filing electronically” means the filing of a report or other document by any electronic medium acceptable to the tax commissioner including, but not limited to, the filing of reports and other documents by electronic data interchange, or by use of the Internet for web-based filing or other technology specified by the tax commissioner by a procedural rule promulgated as provided in article three, chapter twenty-nine-a of this code.

(c) Signature requirements. - The signature requirement for all reports required to be filed under this article will be met if the submission is made pursuant to the tax commissioner’s procedural rule.

(d) Standards. - The tax commissioner shall give due regard to developing uniform standards for formats as adopted by the
§16-9D-8. Penalties and other remedies.

(a) Revocation of business registration certificate and civil money penalty. – In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a distributor, stamping agent or any other person has violated subsection (c), section three of this article, or any rule adopted pursuant thereto, the commissioner may revoke or suspend the business registration certificate of the distributor, stamping agent or other person in the manner provided by article twelve, chapter eleven of this code. Each stamp affixed and each sale or offer to sell cigarettes in violation of subsection (c), section three of this article constitutes a separate violation. The commissioner may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of subsection (c), section three of this article or any rules adopted pursuant thereto. The penalty shall be imposed and collected in the manner that tax is assessed and collected under article ten, chapter eleven of this code. The amount of penalty collected shall be deposited in the tobacco control special fund created in section nine of this article.

(b) Contraband and seizure. – Any cigarettes that have been sold, offered for sale, or possessed for sale, in this state, in violation of subsection (c), section three of this article, shall be considered contraband under article seventeen, chapter eleven of this code and the cigarettes are subject to seizure and forfeiture as provided in article seventeen, and all cigarettes seized and forfeited shall be destroyed and not resold: Provided, That this subsection shall not prohibit a stamping agent or
distributor from possessing unstamped containers of cigarettes held in inventory for delivery to, or for sale in, another state.

(c) Injunction. – The attorney general, on behalf of the commissioner, may seek an injunction to restrain a threatened or actual violation of subsection (c), section three of this article, subsection (a), section five of this article, or subsection (d) of said section five, by a distributor, stamping agent or other person and to compel the distributor, stamping agent or other person to comply with these subsections: Provided, That this subsection shall not prohibit a stamping agent or distributor from possessing unstamped containers of cigarettes held in inventory for delivery to, or for sale in, another state. In any action brought pursuant to this section, the state is entitled to recover the costs of investigation, costs of the action and reasonable attorney fees.

(d) Unlawful sale and distribution. – It is unlawful for a person to:

(1) sell or distribute cigarettes; or

(2) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in this state in violation of subsection (c), section three of this article. A violation of this subsection shall be a misdemeanor punishable as provided in section nineteen-a, article seventeen, chapter eleven of this code.

(e) Unfair trade practice. – A person who violates subsection (c), section three of this article, engages in an unfair and deceptive trade practice in violation of article six, chapter forty-six-a of this code.

(a) Notice and review of determination. – A determination of the commissioner or the attorney general to not include or to remove from the directory a brand family or tobacco product manufacturer is subject to review in the manner prescribed by article ten-a, chapter eleven of this code, by filing a petition for review with the office of tax appeals within thirty days of receipt of the commissioner's written determination to not include or to remove the brand family or tobacco product manufacturer from the directory. A determination not to list in, or to remove from, the directory any brand family or tobacco product manufacturer shall not be stayed during the pendency of appeal procedure.

(b) Applicants for business registration certificate. – No person shall be issued a business registration certificate under article twelve, chapter eleven of this code or granted a renewal of its business registration certificate to act as a distributor or stamping agent unless the person has certified in writing, under penalty of perjury, that the person will comply fully with this article.

(c) Promulgation of rules. – The commissioner and the attorney general may separately promulgate any procedural, interpretive and legislative rules in the manner provided in article three, chapter twenty-nine-a of this code, each considers necessary to effect the purposes of this article.

(d) Recovery of costs and fees by attorney general. – In any action brought by the state to enforce this article, the state is entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees.

(e) Disgorgement of profits for violations of this article. – If a court determines that a person has violated this article, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the state
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33 treasurer for deposit in the “tobacco control special fund”, which is created in the state treasury. Expenditures from the fund are to be made 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. Unless otherwise expressly provided, the remedies or penalties provided by this article are cumulative to each other and to the remedies or penalties available under all other laws of this state.

43 (f) Construction and severability.

(A) If a court of competent jurisdiction finds that the provisions of this article and of article nine-b of this chapter conflict and cannot be harmonized, then the provisions of article nine-b control.

(B) If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article causes article nine-b of this chapter to no longer constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of this article is not valid.

(C) If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision shall not affect the validity of the remaining portions of this article or any part thereof.

§16-9D-10. Effective date; implementation.

1 (a) If this act of the Legislature takes effect ninety days from passage, the first certification by a tobacco product manufacturer described in subsection (a), section three of this article, shall be due the first day of July, two thousand three, covering the two thousand two calendar year, and the additional
information required by section three for the current calendar year up to the date of the certification; and the directory described in subsection (b), section three of this article, is published in the state register by the fifteenth day of August, two thousand three, and made available on the tax commissioner’s web page by the fifteenth day of October, two thousand three.

(b) If this act of the Legislature is in effect from passage, the first certification by a tobacco product manufacturer described in subsection (a), section three of this article, is due the first day of May, two thousand three, covering the two thousand two calendar year, and the additional information required by section three for the current calendar year up to the date of the certification; and the directory described in subsection (b), section three of this article, shall be published in the state register by the fifteenth day of June, two thousand three, and made available on the tax commissioner’s web page by the fifteenth day of August, two thousand three.

(c) If this act of the Legislature takes effect the first day of July, two thousand three, the first certification by a tobacco product manufacturer described in subsection (a), section three of this article, is due the first day of July, two thousand three, covering the two thousand two calendar year, and the additional information required by section three for the current calendar year up to the date of the certification; and the directory described in subsection (b), section three of this article, shall be published in the state register by the fifteenth day of August, two thousand three, and made available on the tax commissioner’s web page by the fifteenth day of October, two thousand three.
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new articles, designated articles nine-e and nine-f, all relating to restricting delivery sales of tobacco products and prohibiting possession of counterfeit cigarettes; defining terms; specifying requirements for verification of age and identity of purchasers; requiring notices to consumers; establishing requirements for shipping and shippers; establishing requirements for registration and reporting to the department of tax and revenue; requiring payment of taxes; providing for forfeiture of tobacco products and personal property; prohibiting the possession or sale of counterfeit cigarettes; and providing for civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

9E. Delivery Sales of Tobacco.

9F. Counterfeit Cigarettes.

ARTICLE 9E. DELIVERY SALES OF TOBACCO.

§16-9E-1. Definitions.
§16-9E-2. Requirements for delivery sales.
§16-9E-1. Definitions.

For purposes of this article:

(a) "Adult" means a person who is at least the legal minimum purchase age, as defined by section two, article nine-a of this chapter.

(b) "Consumer" means an individual who does not hold a business registration certificate in this state for the business of selling tobacco products as a wholesale or retail dealer.

(c) "Delivery sale" means any sale of cigarettes to a consumer in this state where either: (1) The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the internet or other online service; or (2) the cigarettes are delivered by use of the mails or a delivery service. A sale of cigarettes shall be a delivery sale regardless of whether or not the seller is located within this state. A sale of cigarettes not for personal consumption to a person who holds a business registration certificate as a wholesale dealer or a retail dealer shall not be a delivery sale.

(d) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

(e) "Department" means the state tax department.
(f) "Legal minimum purchase age" is at least eighteen years of age as defined by section two, article nine-a of this chapter for the purchase of cigarettes in this state.

(g) "Mails" or "mailing" means the shipment of cigarettes through the United States postal service.

(h) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(i) "Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

16-9E-2. Requirements for delivery sales.

(a) No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in this state.

(b) Each person accepting a purchase order for a delivery sale shall comply with:

(1) The age verification requirements set forth in section three of this article;

(2) The disclosure requirements set forth in subdivision (3), subsection (a), section three of this article;

(3) The shipping requirements set forth in section four of this article;

(4) The registration and reporting requirements set forth in section five of this article;

(5) The tax collection requirements set forth in section six of this article; and
(6) All other laws of this state generally applicable to sales of cigarettes that occur entirely within this state, including, but not limited to, those laws imposing: (i) Excise taxes; (ii) sales taxes; (iii) license and revenue-stamping requirements; and (iv) escrow or other payment obligations.

§16-9E-3. Age verification requirements.

(a) No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer, the person:

(1) Obtains from the prospective consumer a certification that includes a reliable confirmation that the consumer is at least the legal minimum purchase age and a statement signed by the prospective consumer in writing that certifies the prospective consumer's address and that the consumer is at least eighteen years of age. The statement shall also confirm: (i) That the prospective consumer understands that it is illegal to sign another person's name to the certification; (ii) that the sale of cigarettes to individuals under the legal minimum purchase age is illegal; and (iii) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of this state;

(2) Verifies the information contained in the certification provided by the prospective consumer against an appropriate database of government records available to the distributor or seller, or obtains simultaneous with the certificate as provided for in subdivision (1), a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;

(3) Sends to the prospective consumer, via e-mail or other means, a notice that contains: (A) A prominent and clearly legible statement that cigarette sales to a consumer below the legal minimum purchase age is illegal; (B) a prominent and
clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(a)(1), rotated on a quarterly basis; (C) a prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with section three of this article; and (D) a prominent and clearly legible statement that cigarette sales are subject to excise and sales taxes in this state, and an explanation of how such taxes have been, or are to be, paid with respect to the delivery sale.

(4) In the case of an order for cigarettes pursuant to an advertisement on the internet, receives payment for the delivery sale from the prospective consumer by a credit or debit card or check that has been issued in the consumer’s name.

(b) Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses.

§16-9E-4. Shipping requirements.

(a) Each person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale:

(1) Shall include as part of the bill of lading or other shipping documents a clear and conspicuous statement providing as follows: “Cigarettes: West Virginia Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes”;

(2) Shall use a method of mailing, shipping, or delivery that obligates the delivery service to require: (i) The consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age, to sign to accept delivery of the shipping container; and (ii) proof, in the form of a valid, government-issued identification bearing a photograph of the
individual who signs to accept delivery of the shipping container, demonstrating that he is either the addressee or another adult of legal minimum purchase age; and

(3) Shall provide to the delivery service retained for such delivery sale evidence of full compliance with section seven of this article.

(b) A delivery service shall be in violation of this article if it: (1) Ships or otherwise delivers cigarettes in connection with a delivery sale without first receiving evidence of compliance with section seven of this article; or (2) fails to comply with the requirements described in subsection (a) or described in section six of this article:

(1) When obligated to do so under a method of shipping or delivery;

(2) When delivering any container pursuant to shipping documents containing the statement described in subdivision (1), subsection (a) of this section; or

(3) When delivering any container that the delivery service otherwise has reason to know contains cigarettes.

(c) If the person accepting a purchase order for a delivery sale delivers the cigarettes without using a delivery service, that person shall comply with all requirements of this article applicable to a delivery service and shall be in violation of the provisions of this article upon failure to comply with the requirements.

§16-9E-5. Registration and reporting requirements.

(a) Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, every person shall file with the department a statement
setting forth the seller's name, trade name, and the address of
the seller's principal place of business and any other place of
business.

(b) Not later than the tenth day of each calendar month,
each person that has made a delivery sale or mailed, shipped, or
otherwise delivered cigarettes in connection with any such sale
during the previous calendar month shall file with the depart-
ment a memorandum or a copy of the invoice that provides for
each and every delivery sale:

(1) The name and address of the consumer to whom the
delivery sale was made;

(2) The brand or brands of the cigarettes that were sold in
the delivery sale; and

(3) The quantity of cigarettes that were sold in the delivery
sale.

(c) Any person that satisfies the requirements of 15 U.S.C.
§376 shall be deemed to satisfy the requirements of this section.

§16-9E-6. Collection of taxes.

Each person accepting a purchase order for a delivery sale
shall collect and remit to the department all cigarette taxes
imposed by this state with respect to such delivery sale, except
that the collection and remission shall not be required to the
extent the person has obtained proof, in the form of the pres-
ence of applicable tax stamps or otherwise, that the taxes
already have been paid to this state.

§16-9E-7. Penalties.

(a) Except as otherwise provided in this section, a first
violation of any provision of this article shall be a misdemeanor
and punishable by a fine of five hundred dollars or five times
the retail value of the cigarettes involved, whichever is greater.

(b) Any person who knowingly violates any provision of
this article, or who knowingly and falsely submits a certifica-
tion under section three of this article in another person's name,
shall be guilty of a misdemeanor, be fined one thousand dollars
or ten times the retail value of the cigarettes involved, whichever
is greater, or confined not more than six months, or both.

(c) Any person failing to collect or remit to the department
any tax required in connection with a delivery sale shall be
assessed, in addition to any other penalty, a penalty of five
times the retail value of the cigarettes involved.

(d) Any cigarettes sold or attempted to be sold in a delivery
sale that does not meet the requirements of this article shall be
forfeited to this state and destroyed. All fixtures, equipment,
and all other materials and personal property on the premises of
any person who, with the intent to defraud this state, violates
any of the requirements of this article, shall be forfeited to this
state.

§16-9E-8. Enforcement.

For violations of this article resulting in a delivery of
tobacco products in this state, the prosecuting attorney of the
county where the delivery is made shall have the power to
prosecute the violation and to bring any action necessary to
prevent further violations. The attorney general or any person
who holds a valid permit under 26 U.S.C. § 5712 may bring any
actions required to enforce all other requirements of this article
and to prevent all other violations of its provisions.

ARTICLE 9F. COUNTERFEIT CIGARETTES.

§16-9F-1. Definition.
§16-9F-1. Definition.

As used in this article, "counterfeit cigarettes" means cigarettes that: (a) Have false manufacturing labels; (b) are not manufactured by the manufacturer indicated on the container; or (c) have a false tax stamp affixed to the container.


It shall be unlawful for any person to knowingly possess or sell counterfeit cigarettes, and all counterfeit cigarettes and the equipment, materials and personal property used in substantial connection with a knowing violation of this article may be seized and destroyed by any law-enforcement agency of this state.

§16-9F-3. Penalties.

(a) Any person who knowingly violates the provisions of this article with a total quantity of less than two cartons of cigarettes shall, for the first offense, be punished by a civil penalty of no more than one thousand dollars, and for a second or subsequent offense involving a total quantity of less than two cartons of cigarettes shall be punished by a civil penalty of no more than five thousand dollars and the revocation for a period of six months of any business held by the person.

(b) Any person who knowingly violates the provisions of this article with a total quantity of two or more cartons of cigarettes shall, for the first offense, be punished by a civil penalty of no more than two thousand dollars, and for a second or subsequent offense involving a total quantity of two or more cartons of cigarettes shall be punished by a civil penalty of no more than fifty thousand dollars and the revocation for a period
§16-9F-4. Enforcement.

The attorney general, the prosecuting attorney for the county in which counterfeit cigarettes are found or any person who holds a valid permit under 26 U.S.C. § 5712 may bring an action in the circuit court of that county to prevent or restrain violations of this article by any person, or any person controlling that person.
ARTICLE 2C. REDUCED RATES FOR CERTAIN LOW-INCOME RESIDENTIAL CUSTOMERS OF TELEPHONE SERVICE.

§24-2C-1. Legislative findings; utilities subject to public service commission to file new rates.

§24-2C-2. Tel-assistance; definitions.

§24-2C-3. Monthly rate set by public service commission; prohibited and permissible charges.

§24-2C-4. Availability of tel-assistance service; determination of eligibility; promulgation of rules.

§24-2C-5. Recovery of revenue deficiencies.

§24-2C-1. Legislative findings; utilities subject to public service commission to file new rates.

(a) The Legislature finds that universal telephone service contributes to the state's economic, social and political integration and development. The preservation of universal telephone service is therefore of utmost importance to the state and its citizens.

(b) Recent changes in the telecommunications industry, however, both in its structure and in the national policy which governs it, have begun to exert a general, upward pressure on the rates for basic telephone service. Although neither the extent to which basic telephone rates may rise in the future, nor the effect of any such future increases on the general affordability of telephone service can be ascertained at this time, the Legislature finds that anticipatory action should nonetheless be taken to preserve the universal telephone service which has been substantially achieved in this state.

(c) All eligible telecommunications carriers providing local exchange dial access line service subject to the jurisdiction of the public service commission shall file with the commission tariffs providing for the offering of a new class of basic residential service, at a special reduced rate, to certain low-
income households. Such tariffs shall be filed after the adoption of the rules mandated by subsections (b) and (c), section four of this article.

§24-2C-2. Tel-assistance; definitions.

For purposes of this article, the following terms apply:

(a) "Eligible telecommunications carrier" means a common carrier that offers telephone services that are supported by federal universal service support mechanism, advertises the availability of such services and the charges for the services using media of general distribution, and that otherwise is qualified as an eligible telecommunications carrier pursuant to the provisions of 47 U.S.C. Section 214.

(b) "Qualifying low-income consumer" means a consumer who is a recipient of Medicaid, food stamps, supplemental security income, federal public housing assistance, low-income home energy assistance program benefits, temporary assistance to needy families benefits or other income-related state or federal programs.

(c) "Tel-assistance service" means a wholly measured or message individual, residential local exchange dial access line offered through the provisions of this article and that provides for an allowance for usage not to exceed two dollars in value.

(d) "Usage" means the local exchange service and the long distance service provided by the eligible telecommunications carrier furnishing the tel-assistance service.

§24-2C-3. Monthly rate set by public service commission; prohibited and permissible charges.

(a) The monthly rate for tel-assistance service shall be set initially by the commission at the lower of: (1) The lowest priced service available to the consumer at the time of his or her
application; or (2) seven dollars and fifty cents. All usage exceeding two dollars in value shall be charged for at the otherwise applicable tariff rate. No other local voice telephone service may be provided to the dwelling place of a tel-assistance consumer, nor may individual line foreign zone or foreign exchange service be provided to a tel-assistance consumer. An eligible telecommunications carrier may not impose an order processing charge or line charge when an existing consumer who is eligible for tel-assistance service changes to such service, nor may any charge be made when a tel-assistance service consumer loses his or her eligibility and changes to another class of residential service: Provided, That charges for the initial installation of service for a new consumer, or charges for moving a consumer’s service from one dwelling place to another shall be made at the otherwise applicable tariff rate.

(b) The commission may, upon having set the rate initially for tel-assistance service as herein provided, change such rate from time to time upon a finding that is reasonable to do so, and may, in connection therewith increase or decrease the amount of local service usage provided as a part thereof.

§24-2C-4. Availability of tel-assistance service; determination of eligibility; promulgation of rules.

(a) All eligible telecommunications carriers shall make tel-assistance services available to qualified low-income consumers pursuant to tariffs or agreements filed with and approved by the public service commission.

(b) Insofar as permitted under federal law, eligible telecommunications carriers may file with the public service commission tariffs or agreements that, without limitation, offer tel-assistance service which includes a broader group of services, or make tel-assistance service available to a broader group of low-income residential consumers.
(c) The public service commission shall establish rules to implement the provisions of this article. The rules shall include, but not be limited to, procedures governing the application for and the provision of tel-assistance service; the determination, calculation and certification of the revenue deficiency resulting from the provision of tel-assistance service; criteria for establishing maximum levels of revenue deficiencies that may be claimed; establishing the methods by which telephone utilities shall maintain records pertaining to such deficiency and the methods by which such deficiency shall be calculated; and providing for alternate methodologies to simplify the record keeping of the eligible telecommunications carriers. The rules shall be promulgated pursuant to section seven, article one of this chapter and adopted within one hundred twenty days of the effective date of this article. The public service commission shall timely amend the rules thereafter as may be required by any provision of state or federal law.

(d) The department of health and human resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish, procedures to inform eligible telecommunications carriers of the eligibility of applicants for tel-assistance service, to assist applicants for tel-assistance service in proving their eligibility therefor, to determine on a continuing basis the eligibility of persons receiving tel-assistance service, and communicate such determinations to the eligible telecommunications carriers. Initially, rules shall be adopted and filed in the state register within one hundred twenty days of the effective date of this article and shall not otherwise be subject to the requirements of chapter twenty-nine-a of this code. Rules promulgated pursuant to this subsection shall become effective immediately upon filing in the state register and remain in effect until supplanted by legislative rules promulgated pursuant to chapter twenty-nine-a of this code.
(e) The secretary of the department of health and human resources or the public service commission may propose emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement additional provisions of this article as may be required.

§24-2C-5. Recovery of revenue deficiencies.

(a) In order to provide the special reduced rate mandated by section one of this article and still maintain the integrity of the earnings of the eligible telecommunications carriers offering tel-assistance service, the commission shall determine, upon application by any affected eligible telecommunications carrier, that eligible telecommunications carrier’s revenue deficiency for the eligible telecommunications carrier’s taxable year resulting from the special reduced rates. Upon determining any eligible telecommunications carrier’s revenue deficiency, the commission shall issue an order certifying the amount of that deficiency. Certified revenue deficiencies shall thereafter be recovered by the affected eligible telecommunications carrier as follows:

(1) An eligible telecommunications carrier’s certified revenue deficiency, if any, resulting from the provision of tel-assistance service shall be allowed as a tax credit against the liability of the eligible telecommunications carrier pursuant to the provisions of article thirteen-g, chapter eleven of this code.

(2) After allowance of such a tax credit pursuant to the provisions of article thirteen-g, chapter eleven of this code, an eligible telecommunications carrier’s remaining certified revenue deficiency, if any, resulting from the provision of tel-assistance service shall be allowed as a tax credit against the liability of the eligible telecommunications carrier pursuant to the provisions of section eleven-a, article twenty-four, chapter eleven of this code.
(b) An eligible telecommunications carrier's revenue deficiency under the provisions of section five of this article shall be limited to the amounts generated from providing tel-assistance service to qualified low-income consumers who are either disabled or age sixty or older. The agreements or tariffs required by this article shall specify the methodology by which the eligible telecommunications carrier will calculate the revenue deficiency, and may include a provision to freeze the revenue deficiency at certain levels as determined by the public service commission. No such agreement or tariff by an eligible telecommunications carrier may be effective unless first approved by the public service commission.

(c) In determining such revenue deficiency in the case of resale of tel-assistance service, the commission shall allocate the revenue deficiency between the eligible telecommunications carrier that physically provided the tel-assistance line, and the eligible telecommunications carrier that provided the tel-assistance service at retail to an eligible consumer. Such allocation shall be based on the wholesale resale discount applicable to such tel-assistance service.

CHAPTER 248

(Com. Sub. for H. B. 2865 — By Mr. Speaker, Mr. Kiss, and Delegates Browning, Staton, Beane, H. White, Stalnaker and G. White)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against property; and increasing penalties for damaging or destroying real
or personal property owned by a railroad company or public utility or any real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, water, wastewater, stormwater, telecommunications or cable service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

(a) Any person who knowingly and willfully damages or destroys any real or personal property owned by a railroad company or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, water, wastewater, stormwater, telecommunications or cable service, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two thousand dollars, or confined in the county or regional jail not more than one year, or both.

(b) Any person who knowingly and willfully damages or destroys any real or personal property owned by a railroad company or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, water, wastewater, stormwater, telecommunications or cable service
causing serious bodily injury to another is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than fifty thousand dollars, or confined in a state correctional facility not less than one nor more than five years, or both.

(c) Nothing in this section may be construed to limit or restrict the ability of an entity referred to in subsection (a) or (b) of this section or a property owner or other person who has been damaged or injured as a result of a violation of this section from seeking recovery for damages arising from violation of this section.

CHAPTER 249

(Com. Sub. for H. B. 2835 — By Delegates Ennis, Manchin, Poling, Shelton, Tucker, Smirl and Wakim)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven; and to amend and reenact section nine-a, article twenty-two, chapter twenty-nine of said code, all relating to establishing a special revenue fund to receive gifts and donations for the support of veterans facilities; authorized expenditures; renaming a special revenue fund and clarifying its purpose; and removing a statement implying restraints on funds to repay bonds.

Be it enacted by the Legislature of West Virginia:

That article one, chapter nine-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 eleven; and that section
nine-a, article twenty-two, chapter twenty-nine of said code be
amended and reenacted, all to read as follows:

Chapter
9A. Veterans Affairs.
29. Miscellaneous Boards and Officers.

CHAPTER 9A. VETERANS AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.


There is hereby created in the state treasury a special
facilities support fund. All interest or other returns earned on
the investment of the moneys in the fund shall be credited to the
fund. Funds paid into the account shall be derived from the
following sources: (1) Any gift, grant, bequest, endowed fund
or donation which may be received by any veterans facility
created by statute from any governmental entity or unit or any
person, firm, foundation or corporation; and (2) all interest or
other return on investment accruing to the fund. Moneys in the
fund are to be used for the operational costs of any veterans
facility created by statute or as otherwise designated or speci-
fied by the donor. Any balance including accrued interest or
other earnings in this special fund at the end of any fiscal year
shall not revert to the general revenue fund but shall remain in
the fund for use by the director of the division of veterans
affairs for any operational costs of any veterans facility created
by statute or as otherwise designated or specified by the donor.

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, operational costs, 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, any required operational costs, and architectural and other project costs associated with construction are paid in full for the construction and operation 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) 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, and any appropriations to the fund by the Legislature and all interest or other returns earned from investment of the fund.
(d) There is hereby created in the state treasury a special revenue fund designated and known as the veterans nursing home building 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 building 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.

(e) The commission shall change the design or theme of the veterans benefit game regularly so that the game remains competitive with the other instant lottery scratch-off games offered by the commission. The tickets for the instant lottery game created in this section shall clearly state that the profits derived from the game are being used to benefit veterans in this state.
AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter twenty-four-f, relating to authorizing the public service commission to regulate transactions between cemeteries, companies that set and install memorial head markers and veterans or their survivors concerning fees for setting United States department of veterans' affairs grave markers at the graves of deceased veterans; legislative findings; exemptions; enforcement of orders; judicial review; and designation of the affected cemeteries as outside the purview of utility regulation.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 24F. VETERANS' GRAVE MARKERS.

ARTICLE 1. VETERANS' GRAVE MARKERS.

§24F-1-1. Legislative findings.
§24F-1-3. Cemeteries and companies that set and install memorial monument markers affected by rate regulation for setting of department of veterans' affairs grave markers.
§24F-1-4. Enforcement powers.
§24F-1-5. Review of final orders of commission.
§24F-1-6. Cemeteries and companies that set and install memorial monument markers not regulated as utilities.

§24F-1-1. Legislative findings.

1 (a) The Legislature finds that it is in the public interest to regulate transactions between cemeteries, companies that set and install memorial monument markers and veterans in the fees and total charges for the setting of United States department of veterans' affairs grave markers at the graves of deceased United States armed forces veterans by authorizing
the public service commission to regulate the fees and total charges.

(b) The Legislature further finds that the public service commission is the appropriate agency to determine the reasonable rates as charged by these cemeteries and companies that set and install memorial monument markers for the setting of these markers.


(a) In addition to its other powers and duties, the public service commission may determine, establish and modify, in a manner that it considers appropriate, the fees and total charges imposed by cemeteries and companies that set and install memorial monument markers for the setting of United States department of veterans' affairs grave markers at the graves of deceased United States armed forces veterans.

If the commission establishes fees and total charges as authorized by this section, it shall establish:

(1) A maximum fee schedule to be designated “the permanent endowment care fund” which represents the costs to a cemetery for the perpetual care of the grave marker; and

(2) A maximum fee schedule to be designated as “the regional installation fees” which represents the costs of installation of the veteran grave marker.

Any fees established under this section shall consider regional market forces and may consider classes of veterans' markers or any other relevant conditions. The fees described in this section, when added together, shall be designated as the “total charges” permitted for the installation of a veterans' affairs memorial marker. No other fees, charges or other costs
may be assessed to the veterans’ estate or family for the
installation or maintenance of the veterans’ grave marker.

(b) Any fees and total charges established by the public
service commission may only apply to the installation of
memorial markers that are provided to the veteran without
charge by the U. S. government upon application.

§24F-1-3. Cemeteries and companies that set and install memo­
rial monument markers affected by rate regula­
tion for setting of department of veterans’ affairs
grave markers.

Unless otherwise exempted in accordance with section six,
article five-a, chapter thirty-five of this code, all cemeteries,
cemetery associations, cemetery companies and perpetual care
cemetery companies, irrespective of how each may be defined
in articles five, five-a and five-b, chapter thirty-five of this
code, and companies that set and install memorial monument
markers fall within the purview of the regulatory powers
exercised by the public service commission in accordance with
this chapter.

§24F-1-4. Enforcement powers.

The public service commission may compel obedience to
its lawful orders, as issued pursuant to this chapter, by manda­
mus or injunction or other proper proceedings in the name of
the state in any circuit court having jurisdiction of the parties or
of the subject matter, or the supreme court of appeals direct,
and the proceedings shall have priority over all pending cases.

§24F-1-5. Review of final orders of commission.

Any party feeling aggrieved by the entry of a final order by
the commission, which affects that party, may present a petition
in writing to the supreme court of appeals, or to a judge thereof
in vacation, within thirty days after the entry of the order praying for the suspension of the final order. The applicant shall deliver a copy of the petition to the secretary of the commission on or before the date the petition is presented to the court or the judge and the secretary shall promptly file with the clerk of the court all papers, documents, evidence and other records constituting the complete record in the case or certified copies of the records that were before the commission at the time of the entry of the order which is appealed. The court or judge shall fix a time for the hearing on the application, but the hearing, unless by agreement of the parties, may not be held sooner than five days after its presentation; and notice of the time and place of the hearing shall be immediately delivered to the secretary of the commission. The commission may be represented at the hearing by one or more of its members or by counsel. After hearing the appeal, if the court or judge is of the opinion that an order suspending order should be issued, the court or the judge may require bond, upon reasonable conditions and in reasonable penalty, and impose terms and conditions upon the petitioner that are just and reasonable. Before the day fixed for the final hearing, the commission shall file a written statement of its reasons for the entry of the order with the court. After arguments by counsel, the court shall decide the matter in controversy.

§24F-1-6. Cemeteries and companies that set and install memorial monument markers not regulated as utilities.

No provision of this chapter may be construed to grant the public service commission the power to regulate an affected cemetery or a company that sets and installs memorial monument markers as a utility.
AN ACT to amend and reenact sections four and six, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article fifteen-a, chapter thirty-one of said code by adding thereto a new section, designated section seventeen-a, all relating to providing for the use of waste tire remediation funds to finance infrastructure projects relating to waste tire processing facilities which have a capital cost of not less than three hundred million dollars.

Be it enacted by the Legislature of West Virginia:

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

Chapter
  17. Roads and Highways.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.
§17-24-6. Creation of the A. James Manchin fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

1 (a) The division of highways shall administer all funds made available to the division for remediation of waste tire piles and for the proper disposal of waste tires removed from waste tire piles. The commissioner of the division of highways may: (i) Propose for legislative promulgation in accordance with article three, chapter twenty-nine-a of this code emergency and legislative rules necessary to implement the provisions of this article; and (ii) administer all funds appropriated by the Legislature to carry out the requirements of this article and any other funds from whatever source, including, but not limited to, federal, state or private grants.

2 (b) The commissioner also has the following powers:

3 (1) To apply and carry out the provisions of this article and the rules promulgated under this article.

4 (2) To investigate, from time to time, the operation and effect of this article and of the rules promulgated under this article and to report his or her findings and recommendations to the Legislature and the governor.

5 (c) The provisions of articles two-a and four of this chapter and the policy, rules, practices and procedures under those articles shall be followed by the commissioner in carrying out the purposes of this article.

6 (d) On or before the first day of June, two thousand one, the commissioner shall determine the location, approximate size and potential risk to the public of all waste tire piles in the state and establish, in descending order, a waste tire remediation list.
(e) The commissioner may contract with the department of health and human resources and/or the division of corrections to remediate or assist in remediation of waste tire piles throughout the state. Use of available department of health and human resources and the division of corrections work programs shall be given priority status in the contract process so long as such programs prove a cost-effective method of remediating waste tire piles.

(f) Waste tire remediation shall be stopped and the division of environmental protection notified upon the discovery of any potentially hazardous material at a remediation site. The division of environmental protection shall respond to the notification in accordance with the provisions of article eighteen, chapter twenty-two of this code.

(g) The commissioner may establish a tire disposal program within the division to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at such division of highways county headquarters as have sufficient space for temporary storage of waste tires and personnel to accept and handle waste tires. The commissioner may pay a fee for each tire an individual West Virginia resident or West Virginia business brings to the division. The commissioner may establish a limit on the number of tires an individual or business may be paid for during any calendar month. The commissioner may in his or her discretion authorize commercial businesses to participate in the collection program: Provided, That no person or business who has a waste tire pile subject to remediation under this article may participate in this program.

(h) The commissioner may pledge not more than two and one-half million dollars annually of the moneys appropriated, deposited or accrued in the A. James Manchin fund created by section six, article twenty-four of this chapter, to the payment of debt service, including the funding of reasonable reserves, on
bonds issued by the water development authority pursuant to section seven-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state: Provided, That a waste tire processing facility shall be determined by the solid waste management board, established pursuant to the provisions of article three, chapter twenty-two-c of this code, to meet all applicable federal and state environmental laws and rules and regulations and to aid the state in efforts to promote and encourage recycling and use of constituent component parts of waste tires in an environmentally sound manner: Provided, however, That the waste tire processing facility shall have a capital cost of not less than three hundred million dollars, and the council for community and economic development shall determine that the waste tire processing facility is a viable economic development project of benefit to the state's economy.

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

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

(b) No further collections or deposits shall be made after
the commissioner certifies to the governor and the Legislature
that the remediation of all waste tire piles that were determined
by the commissioner to exist on the first day of June, two
thousand one, has been completed and that all infrastructure
bonds issued by the water development authority pursuant to
section seventeen-a, article fifteen-a of chapter thirty-one of this
code have been paid in full or legally defeased.

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

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELO-
PMENT COUNCIL.

§31-15A-17a. Infrastructure revenue bonds payable from A.
James Manchin fund.

Notwithstanding any other provision of this code to the
contrary, the water development authority may issue, in
accordance with the provisions of section seventeen of this
article, infrastructure revenue bonds payable from the A. James
Manchin fund created by section six, article twenty-four,
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-i, relating to creating a women's right to know act; requiring informed consent for an abortion to be performed; requiring certain information to be supplied to women considering abortion; establishing minimum waiting period for abortions after having been supplied information; exception for a medical emergency; requiring physicians to report abortion statistics; requiring the secretary of the department of health and human resources to publish information and develop a website on alternatives to abortion; protecting privacy in court proceedings; exempting certain information from disclosure under the freedom of information act; administrative remedies; civil remedies; and penalties.

Be it enacted by the Legislature of West Virginia:
That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-i, to read as follows:

ARTICLE 2I. WOMEN'S RIGHT TO KNOW ACT.

§ 16-2I-1. Definitions.

§16-2I-1. For the purposes of this article, the words or phrases defined in this section have these meanings ascribed to them.

(a) “Abortion” means the use or prescription of any instrument, medicine, drug or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead embryo or fetus.

(b) “Attempt to perform an abortion” means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in West Virginia in violation of this article.

(c) “Medical emergency” means any condition which, on the basis of a physician’s good-faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate termination of her pregnancy to avert
her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(d) "Physician" means any medical or osteopathic doctor licensed to practice medicine in this state.

(e) "Probable gestational age of the embryo or fetus" means what, in the judgment of the physician, will with reasonable probability be the gestational age of the embryo or fetus at the time the abortion is planned to be performed.

(f) "Stable internet website" means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the department of health and human resources.

§16-21-2. Informed consent.

No abortion may be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if, and only if:

(a) The female is told the following, by telephone or in person, by the physician or the licensed health care professional to whom the responsibility has been delegated by the physician who is to perform the abortion at least twenty-four hours before the abortion:

(1) The particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies and infertility;

(2) The probable gestational age of the embryo or fetus at the time the abortion is to be performed; and
(3) The medical risks associated with carrying her child to term.

The information required by this subsection may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied by the female to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician and whatever other relevant information is reasonably available to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician. It may not be provided by a tape recording, but must be provided during a consultation in which the physician or licensed health care professional to whom the responsibility has been delegated by the female and the female is able to ask questions of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician.

If a physical examination, tests or the availability of other information to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician subsequently indicate, in the medical judgment of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time prior to the performance of the abortion procedure.

Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(b) The female is informed, by telephone or in person, by the physician who is to perform the abortion, or by an agent of
the physician, at least twenty-four hours before the abortion procedure:

(1) That medical assistance benefits may be available for prenatal care, childbirth and neonatal care through governmental or private entities;

(2) That the father, if his identity can be determined, is liable to assist in the support of her child based upon his ability to pay even in instances in which the father has offered to pay for the abortion; and

(3) That she has the right to review the printed materials described in section three of this article, that these materials are available on a state-sponsored website and the website address.

The physician or an agent of the physician shall orally inform the female that the materials have been provided by the state of West Virginia and that they describe the embryo or fetus and list agencies and entities which offer alternatives to abortion.

If the female chooses to view the materials other than on the website, then they shall either be provided to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by first class mail in an unmarked envelope.

The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her.

(c) The female shall certify in writing, prior to the abortion, that the information described in subsections (a) and (b) of this section has been provided to her and that she has been informed
of her opportunity to review the information referred to in subdivision (3), subsection (b) of this section.

(d) Prior to performing the abortion procedure, the physician who is to perform the abortion or the physician's agent shall obtain a copy of the executed certification required by the provisions of subsection (c) of this section.

§16-21-3. Printed information.

(a) Within ninety days of the effective date of this article, the secretary of the department of health and human resources shall cause to be published, in English and in each language which is the primary language of two percent or more of the state's population, as determined by the most recent decennial census performed by the U.S. census bureau, and shall cause to be available on the website provided for in section four of this article the following printed materials in such a way as to ensure that the information is easily comprehensible:

(1) Geographically indexed materials designed to inform the reader of public and private agencies and services available to assist a female through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers. At the option of the secretary of health and human resources, a 24-hour-a-day telephone number may be established with the number being published in such a way as to maximize public awareness of its existence which may be called to obtain a list and description of agencies in the locality of the caller and of the services they offer; and

(2) Materials designed to inform the female of the probable anatomical and physiological characteristics of the embryo or fetus at two-week gestational increments from the time when a
female can be known to be pregnant to full term, including any
relevant information on the possibility of the embryo or fetus's
survival and pictures or drawings representing the development
of an embryo or fetus at two-week gestational increments:
Provided, That any such pictures or drawings must contain the
dimensions of the embryo or fetus and must be realistic and
appropriate for the stage of pregnancy depicted. The materials
shall be objective, nonjudgmental and designed to convey only
accurate scientific information about the embryo or fetus at the
various gestational ages. The material shall also contain
objective information describing the methods of abortion
procedures commonly employed, the medical risks commonly
associated with each procedure, the possible detrimental
psychological effects of abortion and the medical risks com-
monly associated with carrying a child to term.

(b) The materials referred to in subsection (a) of this section
shall be printed in a typeface large enough to be clearly legible.
The website provided for in section four of this article shall be
maintained at a minimum resolution of seventy dots per inch.
All pictures appearing on the website shall be a minimum of
200 x 300 pixels. All letters on the website shall be a minimum
of eleven-point font. All information and pictures shall be
accessible with an industry standard browser requiring no
additional plug-ins.

(c) The materials required under this section shall be
available at no cost from the department of health and human
resources upon request and in appropriate numbers to any
person, facility or hospital.

§16-21-4. Internet website.

Within ninety days of the effective date of this article, the
secretary of the department of health and human resources shall
develop and maintain a stable internet website to provide the
information required to be provided pursuant to the provisions
of section three of this article. No information regarding
persons visiting the website may be collected or maintained.
The secretary of the department of health and human resources
shall monitor the website on a daily basis to prevent and correct
tampering.

§16-21-5. Procedure in case of medical emergency.

When a medical emergency compels the performance of an
abortion, the physician shall inform the female, prior to the
abortion if possible, of the medical indications supporting the
physician’s judgment that an abortion is necessary to avert her
death or that a 24-hour delay will create serious risk of substan-
tial and irreversible impairment of a major bodily function.

§16-21-6. Protection of privacy in court proceedings.

In every civil or criminal proceeding or action brought
under this article, the court shall rule whether the anonymity of
any female upon whom an abortion has been performed or
attempted shall be preserved from public disclosure if she does
not give her consent to such disclosure. The court, upon motion
or sua sponte, shall make such a ruling and, upon determining
that her anonymity should be preserved, shall issue orders to the
parties, witnesses and counsel and shall direct the sealing of the
record and exclusion of individuals from courtrooms or hearing
rooms to the extent necessary to safeguard her identity from
public disclosure. Each such order shall be accompanied by
specific written findings explaining why the anonymity of the
female should be preserved from public disclosure, why the
order is essential to that end, how the order is narrowly tailored
to serve that interest and why no reasonable, less restrictive
alternative exists. In the absence of written consent of the
female upon whom an abortion has been performed or at-
tempted, anyone, other than a public official, who brings an
action under section nine of this article shall do so under a
§16-21-7. Reporting requirements.

(a) Within ninety days of the effective date of this article, the secretary of the department of health and human resources shall prepare a reporting form for physicians containing a reprint of this article and listing:

1. The number of females to whom the information described in subsection (a), section two of this article was provided;

2. The number of females to whom the physician or an agent of the physician provided the information described in subsection (b), section two of this article;

3. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in section three of this article other than on the website;

4. The number of abortions performed in cases involving medical emergency; and

5. The number of abortions performed in cases not involving a medical emergency.

(b) The secretary of the department of health and human resources shall ensure that copies of the reporting forms described in subsection (a) of this section are provided:

1. Within one hundred twenty days after the effective date of this article to all physicians licensed to practice in this state;

2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official
(3) By the first day of December of each year, other than the calendar year in which forms are distributed in accordance with subdivision (1) of this subsection, to all physicians licensed to practice in this state.

(c) By the twenty-eighth day of February of each year following a calendar year in any part of which this act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with section two of this article during the previous calendar year shall submit to the secretary of the department of health and human resources a copy of the form described in subsection (a) of this section with the requested data entered accurately and completely.

(d) Reports that are not submitted by the end of a grace period of thirty days following the due date are subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period they are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted only an incomplete report, more than one year following the due date may, in an action brought by the secretary of the department of health and human resources, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

(e) By the first day of August of each year, the secretary of the department of health and human resources shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (a) of this section. Each report shall also provide the statistics for all previous calendar years, adjusted to reflect any
additional information from late or corrected reports. The secretary of the department of health and human resources shall prevent any of the information from being included in the public reports that could reasonably lead to the identification of any physician who performed or treated an abortion, or any female who has had an abortion, in accordance with subsection (a), (b) or (c) of this section. Any information that could reasonably lead to the identification of any physician who performed or treated an abortion, or any female who has had an abortion, in accordance with subsection (a), (b) or (c) of this section is exempt from disclosure under the freedom of information act, article one, chapter twenty-nine-b of this code.

(f) The secretary of the department of health and human resources may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which alter the dates established by subdivision (3), subsection (b) of this section or subsection (c) or (e) of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection (e) of this section is issued at least once every year.

§16-21-8. Administrative remedies.

(a) Any person or entity may make a complaint to the licensing board, if any, of a person whose conduct is regulated by the provisions of this article and may charge such person with a violation of this article.

(b) Any physician or agent thereof who willfully violates the provisions of this article is subject to sanctions by the licensing board governing his or her profession. For the first violation, the licensing board shall issue a written reprimand to
9 the violator. For the second violation, the licensing board shall
10 revoke the violator’s license.

11 (c) No penalty or civil liability may be assessed for failure
12 to comply with paragraph (3), subsection (b), section two of this
13 article or that portion of subsection (c) of said section requiring
14 a written certification that the female has been informed of her
15 opportunity to review the information referred to in paragraph
16 (3), of subsection (b) of said section unless the department of
17 health and human resources has made the printed materials
18 available at the time the physician or the licensed health care
19 professional to whom the responsibility has been delegated by
20 the physician is required to inform the female of her right to
21 review them.

§16-21-9. Civil remedies.

1 Any person upon whom an abortion has been attempted or
2 performed without section two of this article having been
3 complied with may maintain an action against the person who
4 attempted to perform or did perform the abortion with a
5 knowing or consciously, subjectively and deliberately formed
6 intention to violate this article for compensatory damages. If the
7 person upon whom an abortion has been attempted or per-
8 formed without section two of this article having been complied
9 with is a minor, the legal guardian of the minor may maintain
10 an action against the person who attempted to perform or did
11 perform the abortion with a knowing or consciously, subject-
12 tively and deliberately formed intention to violate this article
13 for compensatory damages.

§16-21-10. Severability.

1 If any one or more provision, section, subsection, sentence,
2 clause, phrase or word of this article or the application thereof
3 to any person or circumstance is found to be unconstitutional,
4 the same is hereby declared to be severable and the balance of
this article shall remain effective notwithstanding such uncon-
stitutionality. The Legislature hereby declares that it would
have passed this article, and each provision, section, subsection,
sentence, clause, phrase or word thereof, irrespective of the fact
that any one or more provision, section, subsection, sentence,
clause, phrase or word be declared unconstitutional.

CHAPTER 253

(S. B. 626 — By Senator Prezioso)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-one, article nine, chapter nine of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended; and to amend and reenact sections one, two, three, four,
five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen,
sixteen and nineteen of said article, all relating to the “West
Virginia Works Act”; repealing rainy day fund; amending short
title throughout article; revising legislative findings and purpose;
eliminating performance-based measures for evaluating the
program; redefining terms; striking out provision that the
secretary shall ensure availability of support services to help meet
program’s requirements; reducing period of exemption from work
requirement for beneficiaries with newborn children; requiring
beneficiaries to participate in family assessments; providing that
personal responsibility contract is defined by time limits, avail-
ability of support services, program work requirements and
family assessments; eliminating consideration of participants’
challenges in meeting program requirements for purposes of the
personal responsibility contract; deleting guidelines for develop-
ing individualized personal responsibility contracts and authoriz-
ing secretary to define contracts by rule instead; retaining cash
incentive for married beneficiaries; reducing child support pass-through by fifty percent; providing sanctions for breach of contract by beneficiary; providing for reduction of benefits rather than revocation; providing for good cause exceptions to imposition of sanctions; reducing the period of benefit termination; reducing the period for obtaining diversionary assistance; and deleting provision that at-risk families may retain a portion of cash assistance when earnings are below the federal poverty guideline.

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

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

**ARTICLE 9. WV WORKS ACT.**

§9-9-1. Short title.

This article may be cited as the "WV Works Act".
§9-9-2. Legislative findings; purpose.

(a) The Legislature hereby finds and declares that:

(1) The entitlement of any person to receive federal-state cash assistance is hereby discontinued;

(2) At-risk families are capable of becoming self-supporting;

(3) An assistance program should both expect and assist a parent and caretaker-relatives in at-risk families to support their dependent children and children for which they are caretakers;

(4) Every parent or caretaker-relative can exhibit responsible patterns of behavior so as to be a positive role model;

(5) Every parent or caretaker-relative who receives cash assistance has a responsibility to participate in an activity to help them prepare for, obtain and maintain gainful employment;

(6) For a parent or caretaker-relative who receives cash assistance and for whom full-time work is not feasible, participation in some activity is required to further himself or herself, his or her family or his or her community;

(7) The state should promote the value of work and the capabilities of individuals;

(8) Job development efforts should enhance the employment opportunities of participants;

(9) Education is the key to achieving and maintaining life-long self-sufficiency; and

(10) An assistance program should be structured to achieve a clear set of outcomes; deliver services in an expedient,
effective and efficient manner; and maximize community support for participants.

(b) The goals of the program are to achieve more efficient and effective use of public assistance funds; reduce dependency on public programs by promoting self-sufficiency; and structure the assistance programs to emphasize employment and personal responsibility. The success of the program is to be evaluated on the following activities, including, but not limited to, the following: Job entry, job retention, federal work participation requirements and completion of educational activities.


In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:

(a) “At-risk family” means a group of persons living in the same household, living below the federally designated poverty level, lacking the resources to become self-supporting and consisting of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an “at-risk family” may include an unmarried minor parent and his or her dependent child or children who live in an adult-supervised setting;

(b) “Beneficiary” or “participant” means any parent or caretaker-relative in an at-risk family who receives cash assistance for himself or herself and family members;

(c) “Cash assistance” means temporary assistance for needy families;

(d) “Challenge” means any fact, circumstance or situation that prevents a person from becoming self-sufficient or from seeking, obtaining or maintaining employment of any kind,
including physical or mental disabilities, lack of education, testing, training, counseling, child care arrangements, transportation, medical treatment or substance abuse treatment;

(e) "Community or personal development" means activities designed or intended to eliminate challenges to participation in self-sufficiency activities. These activities are to provide community benefit and enhance personal responsibility, including, but not limited to, classes or counseling for learning life skills or parenting, dependent care, job readiness, volunteer work, participation in sheltered workshops or substance abuse treatment;

(f) "Department" means the state department of health and human resources;

(g) "Education and training" means hours spent regularly attending and preparing for classes in any approved course of schooling or training;

(h) "Family assessments" means evaluation of the following: Work skills, prior work experience, employability, education and challenges to becoming self-sufficient such as mental health and physical health issues along with lack of transportation and child care;

(i) "Income" means money received by any member of an at-risk family which can be used at the discretion of the household to meet its basic needs: Provided, that income does not include:

(1) Supplemental security income paid to any member or members of the at-risk family;

(2) Earnings of minor children;

(3) Payments received from earned income tax credit or tax refunds;
(4) Earnings deposited in an individual development account approved by the department;

(5) Any educational grant or scholarship income regardless of source; or

(6) Any moneys specifically excluded from countable income by federal law;

(j) "Personal responsibility contract" means a written agreement entered into by the department and a beneficiary for purposes of participation in the WV works program;

(k) "Secretary" means the secretary of the state department of health and human resources;

(l) "Subsidized employment" means employment with earnings provided by an employer who receives a subsidy from the department for the creation and maintenance of the employment position;

(m) "Support services" includes, but is not limited to, the following services: Child care; medicaid; transportation assistance; information and referral; resource development services which includes assisting families to receive child support and supplemental security income; family support services which includes parenting, budgeting and family planning; relocation assistance; and mentoring services;

(n) "Transitional assistance" may include medical assistance, food stamp assistance, child care and supportive services as defined by the secretary and as funding permits;

(o) "Unsubsidized employment" means employment with earnings provided by an employer who does not receive a subsidy from the department for the creation and maintenance of the employment position;
(p) "Work" means unsubsidized employment, subsidized employment, work experience, community or personal development and education and training; and

(q) "Work experience" means unpaid structured work activities that are provided in an environment where performance expectations are similar to those existing in unsubsidized employment and which provide training in occupational areas that can realistically be expected to lead to unsubsidized employment.


(a) The secretary shall conduct the WV works program in accordance with this article and any applicable regulations promulgated by the secretary of the federal department of health and human services in accordance with federal block-grant funding or similar federal funding stream. This program shall expend only the funds appropriated by the Legislature to establish and operate the program or any other funds available to the program; establish administrative due process procedures for reduction or termination proceedings; and implement any other procedures necessary to accomplish the purpose of this article.

(b) The WV works program authorized pursuant to this article does not create an entitlement to that program or any services offered within that program, unless entitlement is created pursuant to a federal law or regulation. The WV works program and each component of that program established by this article or the expansion of any component established pursuant to federal law or regulation is subject to the annual appropriation of funds by the Legislature.

(c) Copies of all rules proposed pursuant to authority granted in this article by the secretary shall be filed with the legislative oversight commission on health and human re-
§9-9-5. WV works program fund.

There is continued a special account within the state treasury to be known as the "WV Works Program Fund". Expenditures from the fund shall be used exclusively to meet the necessary expenditures of the program, including wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program. Moneys paid into the account shall be from specific annual appropriations of funds by the Legislature.

§9-9-6. Program participation.

(a) Unless otherwise noted in this article, all adult beneficiaries of cash assistance shall participate in the WV works program in accordance with the provisions of this article. The level of participation, services to be delivered and work requirements shall be defined through rules established by the secretary.

(b) Any individual exempt under the provisions of section eight of this article may participate in the activities and programs offered through the WV works program.

(c) Support services other than cash assistance through the WV works program may be provided to at-risk families to assist in meeting the work requirements or to eliminate the need for cash assistance.

(d) Cash assistance through the WV works program may be provided to an at-risk family if the combined family income, as defined in subsection (h), section three of this article, is below
the income test levels established by the department: Provided,
That any adult member of an at-risk family who receives supplemental security income shall be excluded from the benefit group: Provided, however, That, within the limits of funds appropriated therefor, an at-risk family that includes a married man and woman and dependent children of either one or both may receive an additional cash assistance benefit in an amount of one hundred dollars or less: Provided further, That an at-risk family shall receive an additional cash assistance benefit in the amount of twenty-five dollars regardless of the amount of child support collected in a month on behalf of a child or children of the at-risk family, as allowed by federal law.

§9-9-7. Work requirements.

(a) Unless otherwise exempted by the provisions of section eight of this article, the WV works program shall require that anyone who possesses a high school diploma, or its equivalent, or anyone who is of the age of twenty years or more, to work or attend an educational or training program for at least the minimum number of hours per week required by federal law under the work participation rate requirements for all families in order to receive any form of cash assistance. Participation in any education or training activity, as defined in section three of this article, shall be counted toward satisfaction of the work requirement imposed by this section to the extent permissible under federal law and regulation: Provided, That the participant demonstrates adequate progress toward completion of the program: Provided, however, That participants who are enrolled in post-secondary courses leading to a two- or four-year degree may be required to engage in no more than ten hours per week of federally defined work activities, unless the department certifies that allowing education to count toward required work activities would affect the state’s ability to meet federal work participation rates. In accordance with federal law or regulation,
the work, education and training requirements of this section are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services.

(b) The department and representatives of all college and university systems of West Virginia shall develop and implement a plan to use and expand the programs available at the state's community and technical colleges, colleges and universities to assist beneficiaries or participants who are enrolled or wish to become enrolled in two and four-year degree programs of post-secondary education to meet the work requirements of this section.


The secretary shall establish by rule categories of persons exempt, but the exemption applies only to the work requirements of the program: Provided, That a person who is exempt from the work requirements may nevertheless participate voluntarily in work activities. The categories of exemption shall include, but are not limited to, the following:

(a) A parent caring for a dependent child with a life-threatening illness;

(b) Individuals over the age of sixty years;

(c) Full-time students who are less than twenty years of age and are pursuing a high school diploma or its equivalent;

(d) Persons with a physical or mental incapacity or persons suffering from a temporary debilitating injury lasting more than thirty days, as defined by the secretary;

(e) Relatives providing in-home care for an individual who would otherwise be institutionalized; and
Any beneficiary who has a child in his or her at-risk family which has not attained twelve months of age, for a period of six months, and for a period of six months upon the birth of any additional child: Provided, That no more than one beneficiary in an at-risk family may be exempt at the same time.


(a) (1) Every eligible adult beneficiary shall participate in a program orientation, family assessments and in the development, and subsequent revisions, of a personal responsibility contract. The contract shall be defined based on the program time limits, support services available, work requirements and family assessments.

(2) The participant’s contract shall include the following requirements: That the participant develop and maintain, with the appropriate health care provider, a schedule of preventive care for his or her dependent child or children, including routine examinations and immunizations; assurance of school attendance for school-age children under his or her care; assurance of properly supervised child care, including after-school care; establishment of paternity or active pursuit of child support, or both, if applicable and if considered necessary; and nutrition or other counseling, parenting or family-planning classes.

(3) If the participant is a teenage parent, he or she may work, but the contract shall include the requirements that the participant:

(A) Remain in an educational activity to complete high school, obtain a general equivalency diploma or obtain vocational training and make satisfactory scholastic progress;

(B) Attend parenting classes or participate in a mentorship program, or both, if appropriate; and
(C) Live at home with his or her parent or guardian or in some other adult-supervised arrangements if he or she is an unemancipated minor.

(4) If the participant is under the age of twenty years and does not have a high school diploma or its equivalent, the contract shall include requirements to participate in mandatory education or training which, if the participant is unemployed, may include a return to high school, with satisfactory scholastic progress required.

(b) In order to receive cash assistance, the participant shall enter into a personal responsibility contract. If the participant refuses to sign the personal responsibility contract, the participant and family members are ineligible to receive cash assistance: Provided, That a participant who alleges that the terms of a personal responsibility contract are inappropriate based on his or her individual circumstances may request and shall be provided a fair and impartial hearing in accordance with administrative procedures established by the department and due process of law. A participant who signs a personal responsibility contract or complies with a personal responsibility contract does not waive his or her right to request and receive a hearing under this subsection.

(c) Personal responsibility contracts shall be drafted by the department on a case-by-case basis; take into consideration the individual circumstances of each beneficiary; reviewed and reevaluated periodically, but not less than on an annual basis; and, in the discretion of the department, amended on a periodic basis.

§9-9-10. Participation limitation; exceptions.

The length of time a participant may receive cash assistance through the WV works program may not exceed a period longer
than sixty months, except in circumstances as defined by the secretary.


(a) The department may terminate cash assistance benefits to an at-risk family if it finds any of the following:

(1) Fraud or deception by the beneficiary in applying for or receiving program benefits;

(2) A substantial breach by the beneficiary of the requirements and obligations set forth in the personal responsibility contract and any amendments or addenda to the contract; or

(3) A violation by the beneficiary of any provision of the personal responsibility contract or any amendments or addenda to the contract, this article, or any rule promulgated by the secretary pursuant to this article.

(b) In the event the department determines that benefits received by the beneficiary are subject to reduction or termination, written notice of the reduction or termination and the reason for the reduction or termination shall be deposited in the United States mail, postage prepaid and addressed to the beneficiary at his or her last known address at least thirteen days prior to the termination or reduction. The notice shall state the action being taken by the department and grant to the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the department in accordance with administrative procedures established by the department and due process of law.

(c) In any hearing conducted pursuant to the provisions of this section, the beneficiary has the burden of proving that his or her benefits were improperly reduced or terminated and shall bear his or her own costs, including attorneys fees.
(d) The secretary shall determine by rule what constitutes de minimis violations and those violations subject to sanctions and maximum penalties. In the event the department finds that a beneficiary has violated any provision of this article, of his or her personal responsibility contract or any amendment or addenda to the contract, or any applicable department rule, the department shall impose sanctions against the beneficiary as follows:

1. For the first violation, a one-third reduction of benefits for three months;

2. For a second violation, a two-thirds reduction of benefits for three months;

3. For a third or subsequent violation, a total termination of benefits for three months.

(e) For any sanction imposed pursuant to subsection (d) of this section, if the beneficiary is found to have good cause for noncompliance, as defined by the secretary, the reduction or termination in benefits shall not be imposed and the violation shall not count in determining the level of sanction to be imposed for any future violation. Once a reduction in benefits is in effect, it shall remain in effect for the designated time period: Provided, That if a participant incurs a subsequent sanction before the sanction for a previous violation has expired, the sanctions shall run concurrently: Provided, however, That if a third violation occurs before the period for a previous sanction has expired, benefits shall be terminated and may not be reinstated until the three-month termination period has expired.

§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.
(a) In order to encourage at-risk families not to apply for ongoing monthly cash assistance from the state, the secretary may issue one-time diversionary assistance allowances to families in an amount not to exceed the equivalent of three months of cash assistance in order to enable the families to become immediately self-supporting.

(b) The secretary shall establish by rule the standards to be considered in making diversionary assistance allowances.

(c) Nothing in this section may be construed to require that the department or any assistance issued pursuant to this section be subject to any of the provisions of chapter thirty-one or chapter forty-six-a of this code.


(a) To the extent that resources are available, an employer may be paid a subsidy by the department to employ a parent or caretaker-relative of an at-risk family if the employer agrees to hire the WV works program participant at the end of the subsidized period. If the employer does not hire the participant at the end of the subsidized period, the program may not use that employer for subsidized employment for the next twelve months.

(b) If the department determines that an employer has demonstrated a pattern of discharging employees hired pursuant to the provisions of this section subsequent to the expiration of the subsidized period without good cause, the employer shall no longer be eligible for participation in the subsidized employment program for a period to be determined by the department.


The WV works program may provide transitional assistance in the form of supportive services.

(a) The commissioner of the bureau of employment programs and the superintendent of the department of education shall assist the secretary in the establishment of the WV works program. Before implementation of this program, each department shall address in its respective plan the method in which its resources will be devoted to facilitate the identification of or delivery of services for participants and shall coordinate its respective programs with the department in the provision of services to participants and their families. Each county board of education shall designate a person to coordinate with the local department of health and human resources office the board’s services to participant families and that person shall work to achieve coordination at the local level.

(b) The secretary and the superintendent shall develop a plan for program implementation to occur with the use of existing state facilities and county transportation systems within the project areas whenever practicable. This agreement shall include, but not be limited to, the use of buildings, grounds and buses. Whenever possible, the supportive services, education and training programs should be offered at the existing school facilities.

(c) The commissioner shall give priority to participants of the WV works program within the various programs of the bureau of employment programs. The secretary and the commissioner shall develop reporting and monitoring mechanisms between their respective agencies.


The legislative oversight commission on health and human resources accountability is charged with immediate and ongoing oversight of the program created by this article. This commission shall study, review and examine the work of the
program, the department and its staff; study, review and
examine all rules proposed by the department; and monitor the
development and implementation of the WV works program.
The commission shall review and make recommendations to the
Legislature and the legislative rule-making review committee
regarding any plan, policy or rule proposed by the secretary, the
department or the program.

CHAPTER 254

(H. B. 3050 — By Delegates Manuel, Tabb and Doyle)

[Passed March 8, 2003; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson County to
convey a parcel of county-owned land to the Jefferson County
Fair Association after authorization by a majority vote of the
county commission of Jefferson County; and requiring reversionary rights provision.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

§1. County commission authorized to convey land to the Jefferson
County Fair Association.

1 (a) The Legislature finds that:

2 (1) An adequate site is necessary for the citizens of Jeffers-
3 son County to conduct a county fair to enable youth and adults
to exhibit livestock, horticultural products, agricultural products
and home economic skills;
(2) Transfers of property, real or personal, made by county commissions to any person, organization or corporation for the furtherance of county fair activities promotes the cultural and educational welfare of the public and, therefore, is a public purpose; and

(3) Transfers and conveyances of real property by county commissions are authorized without legislative approval, by article three, chapter seven of the code of West Virginia, as amended.

(b) Therefore, the Legislature declares that the county commission of Jefferson County is hereby authorized and empowered to transfer and convey unto the Jefferson County Fair Association the tract or parcel of land described in subsection (c), after the county commission of Jefferson County has approved such transfer and conveyance by a majority vote of the commission.

(c) The tract or parcel of land situate in Middleway District, Jefferson County, West Virginia, to the north of West Virginia County Route 15 (Leetown Road), approximately 0.5 mile east of its intersection with WV Co. Rte. 6, on the waters of Hopewell Run, more particularly described as follows:

Beginning at (200) a found No. 5 Capped Rebar (Shepp), corner in the line of the Jefferson County Volunteer Fireman Association (D.B. 346, P. 603) and to the Jefferson County Fair Association (D.B. 754, P. 48), thence leaving the Jefferson County Volunteer Fireman Association and with the Jefferson County Fair Association in part and finally with a 13.457 acre Lease Parcel of the Overseers of the Poor of Jefferson County (now the Jefferson County Commission, Lease recorded in D.B. 931, P. 581) N 65°00'00" W, 1367.26', passing (211) a Set No. 5 Capped Rebar at 931.09', corner to the above mentioned Lease Parcel, to (347) a Set No. 5 Capped Rebar, corner to the above mentioned Lease Parcel; thence again with the Lease
Parcel S 26° 58' 25" W, 182.62', to (216) a Set No. 5 Capped Rebar, corner to the Lease Parcel and to the Jefferson County Solid Waste Authority (D.B. 778, P. 630), said corner being located N 26° 58' 25" E, 1183.82', from (472) a Set No. 5 Capped Rebar; thence leaving the Lease Parcel and with the Jefferson County Solid Waste Authority N 22° 17' 06" W, 166.82', to (38) a Found No. 5 Capped Rebar (Shepp) corner to the Jefferson County Solid Waste Authority (D.B. 778, P. 630) and to other lands of the Jefferson County Solid Waste Authority (D.B. 665, P. 201); thence with said other lands of the Jefferson County Solid Waste Authority (D.B. 665, P. 201) N 32° 53' 05" E, 1147.92', to (34) a Found No. 5 Capped Rebar (Shepp), corner to the Jefferson County Solid Waste Authority (D.B. 665, P. 201) and to Tabb (D.B. 770, P. 581); thence with Tabb S 55° 03' 35" E, 1440.31', to (345) a Set No. 5 Capped Rebar, corner to Tabb and the aforementioned Jefferson County Volunteer Fireman Association, thence with the Jefferson County Volunteer Fireman Association S 30° 34' 53" W, 822.99', to (200) the Point of Beginning containing 32.145 acres, more or less, as surveyed by Appalachian Surveys of West Virginia, L.L.C., in May, 2001, and as shown on the Plat of Survey.

Being a part of the property conveyed to the Overseers of the Poor of Jefferson County (now the Jefferson County Commission), by deed of record in the office of the clerk of the county commission of Jefferson County in Deed Book 38 at page 24.

(d) Any proper conveyance made by the county commission of Jefferson County transferring ownership of the tract or parcel of land, described in subsection (c), to the Jefferson County Fair Association shall contain a provision that ownership of the tract or parcel of land, described in subsection (c), shall revert to the county commission of Jefferson County should the land cease to be used for the purpose of conducting a county fair.
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, from the state department of education-state aid to schools, fund 0317, fiscal year 2003, organization 0402, state fund, general revenue, to the state department of education, fund 0313, fiscal year 2003, organization 0402, 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 items of the total appropriation from the state fund, general revenue, to the state department of education-state aid to schools, fund 0317, fiscal year 2003, organization 0402, be amended and reduced in the line item as follows:

1 TITLE II-APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

37—State Department of Education-

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2003 Org 0402

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>School Building Authority</td>
<td>453</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state fund, general revenue, to the state department of education, fund 0313, fiscal year 2003, organization 0402, be amended and increased in the line item as follows:

16 TITLE II-APPROPRIATIONS.

17 Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

35—State Department of Education-

(WV Code Chapters 18 and 18A)
Any unexpended balance remaining in the appropriation for Unclassified (fund 0313, activity 099) at the close of the fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

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 three with no new money being appropriated.

CHAPTER 2

(H. B. 102 — By Delegates Michael, Doyle, Leach, Mezzatesta, Warner and Hall)

[Passed March 16, 2003; in effect from passage. Approved by the Governor.]
tion of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the department of education and the arts-state board of rehabilitation-division of rehabilitation services, fund 0310, fiscal year 2003, organization 0932, and to the bureau of commerce-West Virginia development office, fund 0256, fiscal year 2003, organization 0307.

WHEREAS, The Legislature finds that the account balance in the premium tax savings fund, fund 2367, fiscal year 2003, organization 0218 exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, By the provision 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 three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the premium tax savings fund, fund 2367, fiscal year 2003, organization 0218 be decreased by expiring the amount of two million 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 three, to the department of education and the arts-state board of rehabilitation-division of rehabilitation services, fund 0310, fiscal year 2003, organization 0932, be supplemented and amended by establishing a new line-item and increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section. 1. Appropriations from general revenue
3 DEPARTMENT OF EDUCATION AND THE ARTS

4 45-State Board of Rehabilitation

5 Division of Rehabilitation Services

6 (WV Code Chapter 18)

7 Fund 0310 FY 2003 Org 0932

8

9 General

10 Activity Funds

11 11a Capital Improvements - Surplus (R) . 661 $ 550,000

12 Any unexpended balance remaining in the appropriation for Capital Improvements - Surplus (fund 0310, activity 661) at the close of fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

13 And that the total appropriation for fiscal year ending the thirtieth day of June, two thousand three, to the bureau of commerce - West Virginia development office, fund 0256, fiscal year 2003, organization 0307 be supplemented and amended by increasing the total appropriations as follows:

21 Section. 1. Appropriations from General Revenue.

22 BUREAU OF COMMERCE

23 73-West Virginia Development Office

24 (WV Code Chapter 5B)

25 Fund 0256 FY 2003 Org 0307
Any unexpended balance remaining in the appropriation for Mid-Atlantic Aerospace Complex - Surplus (fund 0256, activity 257) and Local Economic Development Assistance - Surplus (fund 0256, activity 266) at the close of fiscal year 2003 is hereby reappropriated for expenditure during the fiscal year 2004.

The purpose of this supplementary appropriation bill is to supplement, amend, decrease and increase items of existing appropriations in the aforesaid accounts for expenditure during the fiscal year two thousand three.

CHAPTER 3

(H. B. 103 — By Delegates Michael, Doyle, Leach, Mezzatesta, Warner and Hall)

[Passed March 16, 2003; 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 three, in the amount of three million three hundred fifty thousand dollars from the abandoned property
claims trust, fund 1324, fiscal year 2003, organization 1300, and
making supplementary appropriations of public moneys out of the
treasury from the balance of moneys remaining as an unappropri­
ated surplus balance in the state fund, general revenue, for the
fiscal year ending the thirtieth day of June, two thousand three, to
the governor’s office, fund 0101, fiscal year 2003, organization
0100; and to the state department of education, fund 0313, fiscal
year 2003, organization 0402; all for expenditure during the fiscal
year ending the thirtieth day of June, two thousand three.

WHEREAS, The Legislature finds that the account balance in the
abandoned property claims trust, fund 1324, fiscal year 2003,
organization 1300, exceeds that which is necessary for the purposes
for which the account was established; and

WHEREAS, It thus appearing from the provisions of this legislation
that 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 three; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal
year ending the thirtieth day of June, two thousand three, in the
abandoned property claims trust, fund 1324, fiscal year 2003,
organization 1300, be decreased by expiring the amount of three
million three hundred fifty thousand dollars to the unappropriated
surplus balance in the state fund, general revenue, and the total
appropriation for the fiscal year ending the thirtieth day of June, two
thousand three, to the governor’s office, fund 0101, fiscal year 2003,
organization 0100 be increased in the line item as follows:

1 TITLE II-APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.
EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2003 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 Southern Governors' Association - Surplus</td>
<td>962 $ 150,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Southern Governors' Association - Surplus (fund 0101, activity 962) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to the state department of education, fund 0313, fiscal year 2003, organization 0402 be increased in the new line items as follows:

TITLE II-APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

35—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2003 Org 0402
Any unexpended balances remaining in the appropriations for Computer Basic Skills - Surplus (fund 0313, activity 965), S.U.C.C.E.S.S. - Surplus (fund 0313, activity 964), and Wyoming and McDowell County Flood Reparations - Surplus (fund 0313, activity 963) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

The purpose of this supplementary appropriation bill is to supplement, amend, expire, 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 three with no new money being appropriated.

CHAPTER 4

(H. B. 104 — By Delegates Michael, Doyle, Leach, Mezzatesta, Warner and Hall)

[Passed March 16, 2003; in effect from passage. Approved by the Governor.]
AN ACT supplementing, amending and increasing items of the existing appropriations from the balance of moneys remaining as an unappropriated balance in lottery net profits to the West Virginia development office-division of tourism, fund 3067, fiscal year 2003, organization 0304, the state department of education, fund 3951, fiscal year 2003, organization 0402, the educational broadcasting authority—lottery education fund, fund 3587, fiscal year 2003, organization 0439, and the higher education policy commission—lottery education—higher education policy commission—control account, fund 4925, fiscal year 2003, organization 0441, all supplementing, amending and increasing 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 lottery net profits, including that designated in the governor’s lottery fund statement of revenues as “reserve for cash flow/contingencies,” 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 items of the total appropriations from lottery net profits to the West Virginia development office-division of tourism, fund 3067, fiscal year 2003, organization 0304, be amended and increased in the existing and new line items as follows:

1 TITLE II-APPROPRIATIONS.

2 Section 4. Appropriations from lottery net profits.

3 222—West Virginia Development Office—

4 Division of Tourism

5 (WV Code Chapter 5B)
<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 Tourism-Special Projects(R)</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>8a Hatfield-McCoy Recreational Trail(R)</td>
<td>500,000</td>
</tr>
<tr>
<td>8b Stonewall Jackson State Park (R)</td>
<td>5,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Tourism-Special Projects (fund 3067, activity 859), Hatfield-McCoy Recreational Trail (fund 3067, activity 960), and Stonewall Jackson State Park (fund 3067, activity 959) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

And, that the items of the total appropriations from lottery net profits to the state department of education, fund 3951, fiscal year 2003, organization 0402, be amended and increased in the existing and new line items as follows:

**TITLE II-APPROPRIATIONS.**

**Section 4. Appropriations from lottery net profits.**

224—State Department of Education

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified (R)</td>
<td>$700,000</td>
</tr>
<tr>
<td>2 Teachers’ Retirement System (R)</td>
<td>1,000,000</td>
</tr>
<tr>
<td>28a Traditional Increased Enrollment -</td>
<td></td>
</tr>
<tr>
<td>28b 5 years through 12th grade (R)</td>
<td>1,900,000</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, activity 099), Teachers' Retirement System (fund 3951, activity 019), and Traditional Increased Enrollment - 5 years through 12th grade (fund 3951, activity 997) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

And, that the items of the total appropriations from lottery net profits to the educational broadcasting authority—lottery education fund, fund 3587, fiscal year 2003, organization 0439, be amended and increased in the new line item as follows:

TITLE II-APPROPRIATIONS.

Section 4. Appropriations from lottery net profits.

229—Educational Broadcasting Authority—

Lottery Education Fund

(WV Code Chapter 10)

Fund 3587 FY 2003 Org 0439

Activity Lottery Funds

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease Revenue Bonds</td>
<td>$1,300,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Lease Revenue Bonds (fund 3587, activity 646) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

And, that the items of the total appropriations from lottery net profits to the higher education policy commission—lottery education—higher education policy commission—control
TITLE II-APPROPRIATIONS.

Section 4. Appropriations from lottery net profits.

231—Higher Education Policy Commission—

Lottery Education—

Higher Education Policy Commission—

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2003 Org 0441

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>30a West Virginia State College Land Grant Match (R)</td>
<td>956</td>
</tr>
<tr>
<td>428 Glenville State College (R)</td>
<td>400,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for West Virginia State Land Grant Match (fund 4925, activity 956) and Glenville State College (fund 4925, activity 428) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

The purpose of this supplementary appropriation bill is to increase items of appropriations in the aforesaid accounts for the designated spending units.
AN ACT expiring funds to the unappropriated balance in the state excess lottery revenue fund, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of seventeen million one hundred thousand dollars from the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307; and transferring funds in the amount of eight million one hundred thousand dollars to the balance of the revenue shortfall reserve fund, fund 2038, fiscal year 2003, organization 0201.

WHEREAS, The Legislature finds that the fund balance in the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, in the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307, be decreased by expiring the amount of seventeen million one hundred thousand dollars to the unappropriated balance in the state excess lottery revenue fund.
And, that from the unappropriated balance of the state excess lottery revenue fund, eight million one hundred thousand dollars be transferred to the balance of the revenue shortfall reserve fund, fund 2038, fiscal year 2003, organization 0201.

The purpose of this supplemental appropriation is to expire funds to the unappropriated balance in the state excess lottery revenue fund from the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307; and to transfer funds to the revenue shortfall reserve fund, fund 2038, fiscal year 2003, organization 0201 from the unappropriated balance in the state excess lottery revenue fund.
Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding thereto a new section, designated section eight-a, relating to the issuance of bonds and other obligations by counties and municipalities; authorizing counties and municipalities to issue bonds and other obligations; providing that the bonds and other obligations be paid from certain revenues generated by increased property values.
resolved by the legislature of west virginia, two thirds of the members elected to each house agreeing thereto:

that the question of ratification or rejection of an amendment to the constitution of the state of west virginia be submitted to the voters of the state at the next general election to be held in the year two thousand two, which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section eight-a, to read as follows:

article x. taxation and finance.

§8a. issuance of bonds or other obligations payable from property taxes on increases in value due to economic development or redevelopment projects in counties and municipalities.

notwithstanding any other provision of this constitution to the contrary, the legislature by general law may authorize the issuance of revenue bonds or other obligations by counties and municipalities to assist in financing qualified economic development or redevelopment projects that benefit public health, welfare and safety subject to conditions, restrictions or limitations as the legislature may prescribe by general law.

the bonds or other obligations are payable from property tax revenues generated by the increases in value of property located within the development or redevelopment project area or district due to capital investment in the project. the legislature shall prescribe by general law the manner in which these increases are determined.

the term for any bonds or other obligations issued may not exceed thirty tax years. the bonds or other obligations may not be deemed to be general obligations of the issuing county or
municipality or of this state. The bonds or other obligations may provide for the pledge of any other funds as the owner of the improvements may by contract or otherwise be required to pay. Upon payment in full of the bonds, the increased tax revenues shall revert to the levying bodies authorized under the provisions of this Constitution to receive the revenues. The bonds or other obligations may not be paid from excess levy, bond levy or other special levy revenues.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, this proposed amendment is hereby numbered “Amendment No. 1” and designated as the “County and Municipal Option Economic Development Amendment”, and the purpose of the proposed amendment is summarized as follows: “To amend the State Constitution to permit the Legislature by general law to authorize county commissions and municipalities to use a new economic development tool to help create jobs. This tool will permit county commissions and municipalities to assist in financing economic development or redevelopment projects by redirecting specific new property tax revenues from an approved project, or project area or district. These redirected revenues will be used to pay-off revenue bonds or other obligations issued to finance some or all of the cost of the project. This amendment authorizes the financing of some or all of the cost of qualified economic development and redevelopment projects through issuance of county and municipal revenue bonds or other obligations, payable from property taxes assessed on the enhanced value of property located in the economic development or redevelopment project area or district. This proposed amendment does not apply to taxes from excess levies, bond levies or other special levies. Upon payment-in-full of the bonds or other obligations, the property tax revenues revert to the appropriate levying bodies. The term of the bonds or other obligations may not exceed thirty years.”
Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding thereto a new section, designated section eleven, relating to county and municipal excess levies; increasing from three to five the number of years of an excess levy; numbering and designating the proposed amendment; and providing a summarized statement of the purpose of the amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year two thousand two, which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section eleven, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§11. County and municipal excess levy amendment.

1 Notwithstanding any other provision of this Constitution to the contrary, the maximum rates authorized and allocated by law for tax levies on the several classes of property by county commissions and municipalities may be increased in any county
or municipality, as provided in section one of this article, for a period not to exceed five years.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 2” and designated as the “Equalizing Number of Years of Excess Levies Amendment” and the purpose of the proposed amendment is summarized as follows: “The purpose of this amendment is to allow county and municipal governments to propose excess levies for the same time periods as boards of education, which is up to five years.”
LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 2002

CHAPTER 1

(S. B. 3001 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 17, 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 - agriculture fees fund, fund 1401, 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 - agriculture fees fund, fund 1401, 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 1401, fiscal year 2003, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

EXECUTIVE

4 99—Department of Agriculture—

Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2003 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$110,000</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>$25,000</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>795,543</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 from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand three, in the miscellaneous boards and commissions, West Virginia board of examiners for registered professional nurses, fund 8520, fiscal year 2003, organization 0907, 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 miscellaneous boards and commissions, West Virginia board of examiners for registered professional nurses, fund 8520, fiscal year 2003, organization 0907, 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 8520, fiscal year 2003, 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

4 211-West Virginia Board of Examiners

5 for Registered Professional Nurses

6 (WV Code Chapter 30)

7 Fund 8520 FY 2003 Org 0907

Activity Other

1 Unclassified-Total ............... 096 $ 118,595

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriations in the afore-
13 said account for the designated spending unit for expenditure
14 during the fiscal year two thousand three.

CHAPTER 3

(S. B. 3003 — By Senators Tomblin, Mr. President, and Sprouse)

[By Request of the Executive]

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

AN ACT making a supplementary appropriation of federal funds out
of the treasury from the balance of federal moneys remaining
unappropriated for the fiscal year ending the thirtieth day of June,
two thousand three, to a new item of appropriation designated to
the department of health and human resources - West Virginia
health care authority, fund 8851, fiscal year 2003, organization
0507, supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand two, known as the budget bill.

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

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 263a—West Virginia Health Care Authority

5 (WV Code Chapter 16)

6 Fund 8851 FY 2003 Org 0507

7

8 Activity Federal

9

10 1 Unclassified - Total .............. 096 $ 1,197,074

11 The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand three, by providing for a new item of appropriation to be established therein to appro-
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 three, in the amount of two million dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; in the amount of ten million dollars from the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 642; and in the amount of eight million three hundred seventy-one thousand seven hundred seventeen dollars from the personal income tax reserve fund, fund 1313, fiscal year 2003, organization 1300, 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 three, to the department of health and human resources - division of human services, fund 0403, fiscal year 2003, organization 0511 and 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 department of health and human resources - division of human services, fund 8722, fiscal year 2003, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand three.
WHEREAS, The Legislature finds that the account balances in the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 642; and the personal income tax reserve fund, fund 1313, fiscal year 2003, organization 1300, exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand 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 amount of two million dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; the amount of ten million dollars from the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 642; and the amount of eight million three hundred seventy-one thousand seven hundred seventeen dollars from the personal income tax reserve fund, fund 1313, fiscal year 2003, organization 1300, be decreased by expiring the above amounts to the unappropriated surplus balance of the state fund, general revenue and that the total appropriation for the fiscal year two thousand three, to fund 0403, fiscal year 2003, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH

4 AND HUMAN RESOURCES

5 51—Division of Human Services
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to fund 8722, fiscal year 2003, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

265—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2003 Org 0511

The purpose of this supplementary appropriation bill is to supplement, decrease and increase items of appropriations in the aforesaid accounts for the designated spending unit for expenditure during the fiscal year two thousand three.
CHAPTER 5

(S. B. 3005 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 17, 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; and 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 joint expenses, fund 0175, fiscal year 2003, organization 2300, be supplemented and amended by decreasing the appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 LEGISLATIVE

4 3—Joint Expenses

5 (WV Code Chapter 4)
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand three, to the department of health and human resources - division of human services, fund 0403, fiscal year 2003, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

TITLE II—APPROPRIATIONS.

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

Medical Services .................. 189 $ 1,000,000

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 making a supplementary appropriation of lottery net profits from the balance of moneys remaining as an unappropriated balance in lottery net profits, to the bureau of senior services, fund 5405, fiscal year 2003, organization 0508, 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 lottery net profits, dated the seventeenth day of September, two thousand two, setting forth therein the cash balance as of the first day of July, two thousand two, and further included the estimate of revenues for the fiscal year two thousand three, less regular appropriations for the 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 5405, fiscal year 2003, organization 0508, be supplemented and amended by increasing the total appropriation as follows:
TITLE II—APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

230—Bureau of Senior Services
(WV Code Chapter 29)

Fund 5405 FY 2003 Org 0508

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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.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2003

HOUSE BILLS

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## Disposition of Bills Enacted

The first column gives the number of the bill and the second column gives the chapter assigned to it.

### Regular Session, 2003

### House Bills

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DISPOSITION OF BILLS ENACTED

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Regular Session, 2003

SENATE BILLS

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**Regular Session, 2003**

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